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# Women's Property Rights in Seventeenth-Century Istanbul

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# Women's Property Rights in Seventeenth-Century Istanbul

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# Dedication

In loving memory of my dad, Madar Ali

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# Women's Property Rights in Seventeenth-Century Istanbul

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In this dissertation, I examine the methods that Muslim women used to protect and manage their property rights in Istanbul in the second half of the seventeenth century. The flexibility of Islamic law permitted women to choose among the existing legal norms in order to possess, own, and manage their properties; to negotiate their relationship with natal and matrimonial families; and to strategize for their inheritance. Through the examination of sharia court records and endowment deeds, I demonstrate the changing patterns in Istanbulite women's relationship to property, their strategies in using the sharia court, and their mechanisms in transferring their properties to the next generations.

By the mid-seventeenth century, the Ottoman Empire was undergoing a series of administrative transformations that led to further expansion and centralization of the Ottoman legal administration in general and the expansion of the sharia courts in particular. This study investigates sharia court records in order to trace both continuities and changes regarding women's property rights in an era when the economy was increasingly privatized and monetized. While the amount and proportion of the properties to which women were legally entitled increased over the course of the seventeenth

century, this dissertation demonstrates that Istanbulite women continued to prefer the ownership of cash and movable properties to that of real estate. Yet, this preference did not mean that they gave away their properties; rather, these women transferred one form of property to another in order to meet their immediate needs. Istanbulite women also turned their real estate into family trusts, which provided relatively secure accommodation for their children and descendants. These women were particularly concerned about the devolution of their estates to their female descendants, a phenomenon that was especially apparent in the gender-egalitarian approach of female founders of family trusts. The sharia court proved to be an important ally for Istanbulite women in realizing their strategies for protecting property rights and securing the well-being of their nuclear families.

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# Abbreviations

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| A | Evâyil (Early period of Hijri month) |
| B | Evâsıt (Middle period of Hijri month) |
| BOA | Başbakanlık Osmanlı Arşivi (Prime Ministry's Ottoman Archives) |
| C | Evâhir (Later period of Hijri month) |
| $EI^2$ | Encyclopedia of Islam, Second Edition (Leiden: Brill, 1986) |
| Ev.VKF | Evkaf Vakfiye Collections at the BOA |
| İA | İslam Ansiklopedisi |
| İŞS | İstanbul Şeriye Sicili (Istanbul Sharia Court Record) |
| VGM | Vakıflar Genel Müdürlüğü Arşivi (The Archives of the General Direcotrate of Endowments) |

# Introduction

The Ottoman Empire of the long seventeenth century (1564-1703) has been called the "sultanate of women."[1] The political role played by imperial women reached its zenith under the Queen Mother Hadice Turhan (d. 1683), who acted as the regent of her child sultan Mehmed IV. Through her ostentatious processions in the capital and her influence on viziers and pashas, she served as both the actual and symbolic ruler of the empire. She erected the most significant architectural monument of the Ottoman Empire in the second half of the seventeenth century, the Yeni Valide Mosque, which became a permanent reminder of a woman's sultanate on the skyline of the imperial capital.[2] Historians have discussed the history of imperial women, including that of Hadice Turhan, since the late nineteenth century.[3] Yet we know less about the women who lived outside the royal household.

This dissertation examines the history of the understudied "ordinary" women of the capital who lived during the same period as Hadice Turhan. Did the transformation of gender dynamics in the imperial dynasty correlate with an increase in women's access to

[1] The exact periodization of this "women's sultanate," which traditionally ended in 1656 with Hadice Turhan's relinquishing of her political prerogatives to the grand vizier Köprülü Mehmed, is now challenged by new research. This scholarship demonstrates not only that Hadice Turhan continued to play a significant role in shaping Ottoman politics in the post-1656 period, but also the existence of other significant Queen Mothers such as Gülnüş Emetullah, the mother of Mehmed IV. See Leslie P. Peirce, *The Imperial Harem: Women and Sovereignty in the Ottoman Empire* (New York: Oxford University Press, 1993); Betül İpşirli Argıt, *Rabia Gülnüş Emetullah Sultan: 1640-1715* (Istanbul: Kitap Yayınevi, 2014).

[2] Lucienne Thys-Şenocak, *Ottoman Women Builders: The Architectural Patronage of Hadice Turhan Sultan* (Burlington, VT: Ashgate, 2006).

[3] In addition to the abovementioned citations, see for example Ahmed Refik (Altınay), *Kadınlar Saltanatı*, four vols. (Istanbul: Matbaa-yı Hayriye ve Şürekası, 1916-23); Ülkü Bates, "Women as Patrons of Architecture in Turkey," in *Women of the Muslim World*, ed. Lois Beck and Nikki R. Keddie (Cambridge: Harvard University Press, 1978), 245-60; Pars Tuğlacı, *Osmanlı Saray Kadınları* (Istanbul: Cem Yayınevi, 1985); M. Çağatay Uluçay, *Padişahların Kadınları ve Kızları* (Ankara: Türk Tarih Kurumu, 1985).

property, and therefore power? How did non-royal women act as legal and economic agents in order to optimize their options within their marital life? What did marriage and the formation of new families mean to women? What were the impacts of women's socio-economic status on their decisions to litigate in the sharia court about their marital rights? How did women's status as freeborn or freedwomen influence their roles within their families? By examining Istanbulite women's property rights, this study analyzes the patterns of legal actions taken by ordinary women to secure their rights pertaining to marriage, divorce, business transactions, familial ties, and family formation.

The subject of this study is what I call the "ordinary women" of intramural Istanbul in the second half of the seventeenth century. Ordinary women, in this study, consist of all Muslim inhabitants of the capital except for two categories: the royal women and the very poor. The commonality between these two groups was their absence in the sharia court, albeit for different reasons. The royal women benefitted from the executive power of the royal household, rendering them exempt from judicial and legal supervision by local courts. The very poor were underrepresented in the sharia court records because they had fewer assets and contractual relationships that might bring them to the court. Furthermore, the court fees might have encouraged the very poor to use alternative venues of dispute settlement.[4]

And what of those in between? The ordinary women of the capital, those who were neither royal nor destitute, were a diverse group. Since women were almost

[4] For a list of the court fees in the mid-seventeenth century, see Hezarfen Ahmed Çelebi, *Telhisül'beyan fi Kavânin-i Âl-i Osman* (Ankara: Türk Tarih Kurumu Basımevi, 1998), 264.

categorically barred from the employment market, we can trace these women's social status as family members of their male relatives who were urban artisans and merchants, religious functionaries of endowments, college students and professors, and military officials and bureaucrats of the empire. Istanbul also had a large population of domestic female slaves, many of whom acquired their manumission and managed to integrate within society.[5] As active members of society with legal and economic agency, freedwomen reproduced the dominant social hierarchies of the imperial capital. Some were and remained imperial women; others, who did not benefit from the support of their patrons, fell to the bottom of the social and economic hierarchy. The majority of them, however, added to the pool of the ordinary women as wives and mothers of Muslim men in the capital. Like their freeborn counterparts, these freedwomen used the sharia court to secure their marital and financial rights and settle disputes. This broad category of ordinary women, therefore, was highly stratified and ranged from individuals of relatively humble backgrounds to women from aristocratic households with large numbers of real and movable properties.

The power relationship between men and women in Istanbul underwent a tangible transformation over the course of the seventeenth century. The increasing visibility of women in the seventeenth century was not limited to imperial women. The anxieties of seventeenth-century moralists about the increasing intermingling of men and women in public spaces reflected actual shifts in gender roles. Ottoman chroniclers in the mid-

[5] Said Öztürk observes that 26.5 percent of the women registered in the estate inventories of the seventeenth century came from slave background. Said Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri* (Istanbul: Osmanlı Araştırmaları Vakfı, 1995), 106.

seventeenth century criticized royal women's increasing power over a mad sultan (İbrahim, r. 1640-48), who was replaced by a child sultan (Mehmed IV, r. 1648-87). A later generation of chroniclers ascribed the military victory over Candia in 1669 to the martial characteristics of Mehmed IV, who had successfully reinstated the authority of the sultan over the women of the palace.[6] Similarly, the fundamentalist *Kadızadeli* movement, that vehemently protested any form of religious heresy, condemned women's presence in public spaces. Their spiritual leader Birgili Mehmed emphasized that the proper place of women was the home and that their appropriate work was cooking and cleaning. God's angels, he maintained, would curse the women who went outside the home with non-relatives (*nâmahrem*) until they returned.[7] In the late seventeenth and early eighteenth centuries, the anonymous author of the *Risale-i Garibe* constantly complained about the presence of women in public spaces.[8]

Despite the existence of a large body of scholarship on both imperial women and non-royal women of other Ottoman cities, our knowledge about the roles of ordinary Istanbulite women as buyers, sellers, creditors, borrowers, and endowers is still very limited. This study focuses on ordinary women's property rights in this era of transformation and anxieties about gender roles. "Women's Property Rights" not only explores ordinary women's daily interactions within the family and in the market, but

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[6] Marc David Baer, *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008), chapter seven.

[7] Mehmed Birgivi, *Tarikat-i Muhammediyye Tercümesi*, trans. Celal Yıldırım (Istanbul: Demir Kitabevi, 1981), 478. For more on Birgivi and the *Kadızadeli*s see Madeline C. Zilfi, *The Politics of Piety : The Ottoman Ulema in the Postclassical Age (1600-1800)* (Minneapolis: Bibliotheca Islamica, 1988), chapter four.

[8] Hayati Develi, *XVII. Yüzyıl İstanbul Hayatına dair Risale-i Garibe* (Istanbul: Kitabevi, 2001).

also contributes to two significant debates around women and property in the Ottoman Empire: women's empowerment and the practice of Islamic law.

## PROPERTY, POWER, AND FAMILY

In Istanbul in the second half of the seventeenth century, women's property rights were tightly interwoven with their familial ties. Family was both the source of women's wealth and the destination of their investments. The notion of family, however—like that of gender—was flexible. This dissertation contributes to post-Orientalist scholarship in arguing against a uniform or static conception of the Middle Eastern or Muslim family. Despite the fact that Middle Eastern family history is still at a nascent stage, contributions by urban and gender historians have added much to our understanding of the diverse, dynamic, and flexible nature of family in different parts of the Middle East, and have effectively challenged the static notion of the "traditional" and extended Muslim/Arab family in pre-modern times.[9] In this dissertation, I explore both the continuity and transformation of family in seventeenth-century Istanbul.

In some ways, Istanbulite Muslim women were bound to a set of kinship definitions inherited from Muslim societies of earlier centuries. However, Istanbulite women in the second half of the seventeenth century also developed their own notion of kinship. Although the nuclear family was the predominant form of kinship in Istanbul, membership did not require ties by blood or marriage. Freed people, step-children, and

[9] For a relatively recent contribution on Middle Eastern family history, see Beshara Doumani, ed., *Family History in the Middle East: Household, Property, and Gender* (Albany: SUNY Press, 2003).

adopted children all found their way into the families formed by Istanbulite women in this period.

With their critical role in contributing not only to the material well-being of their family members but also in defining membership in a family itself, Istanbulite women jealously guarded their property rights. Scholars have long debated the correlation between women's access to property and their empowerment. While an earlier generation of scholars has established the fact that Ottoman women independently controlled their properties,[10] some more recent research has problematized the correlation between women's access to property and their actual power within their families. Two particular studies on sixteenth-century Aintab and modern Palestine have emphasized that women gave away their properties to acquire social capital, i.e. support from their male family members. In many cases, these studies argue, taking and controlling properties proved to be counterproductive for women, who would then lose the love, care, and financial support of their male family members. These authors do not see women's dispossession as a sign of their powerlessness; rather, they view it as a form of women's agency that

[10] Ronald C. Jennings, "Women in Early 17th Century Ottoman Judicial Records—the Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* 18, no. 1 (1975): 53-114; Haim Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," *International Journal of Middle East Studies* 12, no. 3 (1980): 231-44; Abraham Marcus, "Men, Women and Property: Dealers in Real Estate in 18th Century Aleppo," *Journal of the Economic and Social History of the Orient* 26, no. 2 (1983): 137-63. The pioneer works of these three scholars based on court records encouraged another generation of scholars in the 1990s to significantly contribute to the literature on Muslim/Middle Eastern women. See for example the three edited volumes: Madeline C. Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden: Brill, 1997); Amira al-Azhary Sonbol, ed., *Women, the Family, and Divorce Laws in Islamic History* (Syracuse: Syracuse University Press, 1996); Gavin Hambly, ed., *Women in the Medieval Islamic World: Power, Patronage, and Piety* (New York: St. Martin's Press, 1998).

prioritized the support of kin over access to property.[11] Although these studies have represented a significant contribution to our understanding of women's active roles, their observations reveal much about the structural limitations on women's access to property. In order to maintain the support of their families, women had to give up their properties in Aintab and Palestine. In short, debates about the connection between access to the sharia court and women's agency are far from settled.[12]

My research on Istanbulite women in the second half of the seventeenth century differs in important ways from these observations of women of sixteenth-century Aintab or modern Palestine. Although Istanbulite women in this period contributed financially to their natal and marital families, they were careful to use communal witnesses and/or the sharia court to make sure their contributions were noticed and recorded, either on paper or in the memory of the community. Exchanging real capital for social capital was a luxury only elite aristocratic women were willing to entertain. Women who lacked the familial and/or financial resources of their aristocratic counterparts viewed property as a means to either meet their immediate needs or to provide for their family members. Providing for family members, however, created a power dynamic between giver and receiver. Female founders of family trusts, for example, did not leave their properties under the management of their male relatives. Instead, they remained in control of their family trusts during their lifetimes. They carefully selected their own family members,

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[11] Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 226-32; Annelies Moors, *Women, Property, and Islam: Palestinian Experience, 1920-1990* (New York: Cambridge University Press, 1995).

[12] Madeline C. Zilfi, "Muslim Women in the Early Modern Era," in *The Cambridge History of Turkey: Volume 3. The Latter Ottoman Empire, 1603-1639,* ed. Suraiya Faroqhi (Cambridge: Cambridge University Press, 2006), 241-42.

including non-kin, who would benefit from the family trusts in generations to come. Having done that, they named themselves not only as the benevolent matriarchs of their families but also as the founders of new families. Istanbulite women in this period had access to property and effectively used their property rights to found new families and maintain and support existing ones.

## PRACTICE OF ISLAMIC LAW

Islamic laws pertaining to marriage and inheritance entitled women to certain property rights. One debate in the scholarship on Middle Eastern or Muslim women is about whether or not women actually controlled property to which they were legally entitled. A great number of studies suggest that many Muslim communities, in both pre-modern and modern times, actually ignored the laws that gave women certain property rights. Societies with strong patrilineal traditions did not tolerate the transfer of property to women of their conjugal families.[13] Other studies, particularly those of Ottoman urban centers, suggest that Muslim judges never tolerated any systematic departure from Islamic law that could lead to women's dispossession of their properties.[14]

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[13] David S. Powers, "Law and Custom in the Maghreb, 1475-1500: On the Disinheritance of Women," in *Law, Custom, and the Statute in the Muslim World: Studies in Honor of Aharon Layish*, ed. Ron Shaham (Leiden: Brill, 2007), 348-67; Emrys Peters, "The Status of Women in Four Middle Eastern Communities," in *Women in the Muslim World* ed. Lois Beck and Nikki R. Keddie (Cambridge Harvard University Press, 1978), 311-51.

[14] Among this group of scholars, Haim Gerber is the most emphatic supporter of the idea that Islamic law was actually practiced almost in all matters including women's property rights. See Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: SUNY Press, 1994); "Anthropology and Family History: The Ottoman and Turkish Families," *Journal of Family History* 14, no. 4 (1989): 409-21. Other scholars to varying extent supported the argument. See L. Margaret Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840* (Austin: University of Texas Press, 1999); Fariba Zarinebaf-Shahr, "The Role of Women in the Urban Economy of Istanbul, 1700-1850," *International Labor and Working-Class History* 60 (2001): 141-52.

This study adopts a holistic view of Islamic law. Debates on the legality of women's possession or dispossession of property often assume a static set of legal norms that do not take into account the diverse social practices among Muslim societies across time and space. In addition to the *feraid* rules, which fixed men's and women's inheritance rights, Islamic law also recognized and legalized intra-familial negotiation. Although women were entitled to certain shares in inheritance based on the *feraid* rules, mechanisms such as bequests, gifts, and family trusts could substantially modify and often increase women's shares in inherited properties. Even if a person died without making such inheritance arrangements, male and female heirs did not passively follow the *feraid* rules. Islamic law permitted heirs to leave the estate undivided for a considerable period of time, and even when heirs wanted to divide the estate, Islamic law permitted amicable settlements (*sulh*) which would divide the estate in ways different from what the *feraid* rules prescribed.

Women's rights to inherited property were neither fixed nor guaranteed. Disinheriting women was as legal as the equal distribution of properties between men and women. Islamic law was comprehensive not only because it covered almost all aspects of human life (including rituals, transactions, and crimes) but also because it integrated various rules that might lead to different outcomes for the same legal problem. Within this legal system, individuals could choose from among the available legal solutions to optimize the result. In the same manner, legal norms did not always prescribe a particular method for the redistribution of wealth among family members and left the family members largely in charge of settling the division of inherited properties.

The law, however, still mattered to women for two reasons. First, it set forth some important theoretical rights for women. Intra-familial negotiations or litigation over inheritance that followed the death of a family member, for example, used the *feraid* rules as a point of reference. Women might still be dispossessed of their inheritance, but only after a process of bargaining. Second, and probably more importantly, Islamic law's attitude toward the ownership and management of properties was genderless. Once a woman's rights to certain properties were secured, she could use the sharia court to settle disputes. The court applied the same set of evidentiary rules for all of its clients—male and female, Muslim and non-Muslim. Although Islamic law did not dictate the method for the distribution of familial properties, it did provide security for all men and women whose legal property rights had been already set. My study demonstrates that the use of the *feraid* rules to divide inherited property in the second half of the seventeenth century was not a preferred method for Istanbulites, yet women's access to property was strictly within the boundaries of the law and protected by it.

## TRANSFORMATION OF PROPERTY RELATIONS

Although Istanbulite women in the period under study shared the diverse socio-economic backgrounds of their sisters in other urban centers of the empire, the fact that Istanbul was the seat of the imperial elite had a significant impact on women's access to property. A significant portion of ordinary Istanbulite women had their wealth and income connected, through their male relatives, to the imperial army, bureaucracy, and pious foundations. The greater Istanbul area, consisting of the walled city and three

surrounding cities, was the home of some 300,000 people, with more than half residing within the city walls.[15] Although many families in the three surrounding cities were involved in different forms of agricultural activity—primarily for the provision of the city's large population—the majority of the residents of the intramural city were directly connected to the state for their livelihood. The walled city was the seat of the imperial palace, which had thousands of functionaries. By the seventeenth century, the judiciary had become highly centralized in the capital. The central bureaucracy expanded in the seventeenth century in order to have more effective control over taxation. This led to the creation of a number of new specialized offices in the capital and a sharp increase in the number of their employees.[16] The most prestigious positions within the judiciary were assigned only to the graduates of colleges in the capital. The number of *medreses* in the walled city doubled over the course of the seventeenth century, accommodating more professors and students on the payrolls of the imperial foundations.[17] Tens of thousands of Janissaries (members of the central army) resided within the capital; together with their families they formed about a third of the city's population.[18] The walled city, therefore, accommodated the largest concentration of those who were on the payroll of

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[15] Halil İnalcık, "Istanbul," in *EI*$^2$, 4: 230-39.

[16] Linda T. Darling, *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1560-1660* (New York: Brill, 1996), 45-46; 71-79.

[17] Zilfi, *The Politics of Piety : The Ottoman Ulema in the Postclassical Age (1600-1800)*, 195-212.

[18] Ömer Lutfi Barkan, "Osmanlı İmparatorluğu Bütçelerine Dair Notlar," *İktisat Fakültesi Mecmuası* 17, no. 1-4 (1955-56): 214. To this number should be added thousands of other members of the army, including cart carriers and armorers (*cebecis*), who helped the Janissaries in siege warfare, the halberdiers (*baltacıs*) employed in the imperial gardens in Istanbul, the novices (*acemi oğlanları*), and others (ibid., 215). Gülay Yılmaz, in her detailed study on the archival documents on the Janissaries of Istanbul, estimates the population of the Janissaries in the capital to be 35,000 in early seventeenth century. She estimates that there were around 18,000 Janissaries in the capital who had married and resided in different neighborhoods of Istanbul. See her "The Economic and Social Roles of Janissaries in a 17th Century Ottoman City: The Case of Istanbul" (Doctoral dissertation, McGill University, 2011), 84, 110-34.

either the central treasury or the imperial endowments. The Ottoman policy of periodically rotating executive and judicial officials meant that at any given time, a large army of temporarily unemployed high officials were involved in a web of political networking in the capital to secure their next appointments. The wealth that the central state's treasury and endowments distributed among these bureaucrats and officials was then redistributed among male and female members of their families through marriage and inheritance.

Women's shares in the wealth amassed in the capital increased over the course of the seventeenth century due to another set of transformations associated with the rise of a market economy. On the one hand, an increasing number of imperial (*miri*) lands were distributed as private property to Ottoman officials.[19] On other hand, many sources of revenue previously in the hands of the Ottoman cavalry in the form of fiefs (*timar*) were farmed out to private entrepreneurs. Although the *iltizam* (tax-farm) was introduced in the late sixteenth century, it was not until the second half of the seventeenth century that budget deficits, brought about by prolonged wars, accelerated the transformation from *tımar* to *iltizam*. The process reached its zenith in 1695, when the Ottomans introduced the *malikane* system, which permitted the investors to hold their tax-farms for life.[20] The

[19] The seventeenth-century Ottoman scholar Koçi Bey (d. 1650) viewed the privatization of *miri* lands, *inter alia*, as a source of the corruption of the Ottoman land-tenure system leading to its decline. Ali Kemali Aksüt, *Koçi Bey Risalesi* (Istanbul: Vakit, 1939), 7. Faroqhi observes that during the course of the seventeenth century in Kayseri, the majority of *miri* land was transformed into privately owned agricultural properties. Suraiya Faroqhi, *Towns and Townsmen in Ottoman Anatolia: Trade, Crafts, and Food Production in an Urban Setting* (Cambridge: Cambridge University Press, 1984), 264. For the rise of the privatization of *miri* properties in the seventeenth century, see also Mehmet İpşirli, "Temlikname," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 40: 353-55.

[20] Halil İnalcık, "Military and Fiscal Transformation of the Ottoman Empire, 1600-1700," *Archivum Ottomanicum*, no. 6 (1980): 328-33; Suraiya Faroqhi, "Crisis and Change, 1590-1699," in *An Economic*

transformation from *tımar* to *iltizam,* and later to *malikane,* resulted in the privatization of economic resources. Women, who could not inherit imperial lands in the form of *tımar,* were now legal heirs to the wealth amassed through privatized economic resources.

Although owners of privatized lands as well as tax-farmers lived in almost every city of the empire, Istanbul was particularly attractive to this new class of moneyed people. After all, being close to the political networks of the capital would increase one's chances of winning the competition over the limited sources of revenue in the empire. The court records of 1659–1661 demonstrate that many entrepreneurs who had tax-farms in different locations of the empire, such as Anatolia and Rumelia, resided in the capital and subcontracted their farms to local businessmen. Wealth accumulated in the capital was often reinvested either in privately owned urban residential properties or in pious endowments which supported philanthropic causes as well as the family members of the endowers. While women were traditionally barred from participation in investments as tax-farmers, they largely benefitted from the concentration of wealth in the capital when wealth and profits from such investments were redistributed through women's natal and conjugal family ties.

The economic transformations in the empire brought about an expansion in the legal system. The judicial system had already been institutionalized in the sixteenth century under the supervision of the imperial chief mufti Ebussuud. The privatization and marketization of the economy, however, needed the expansion of the sharia courts to

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*and Social History of the Ottoman Empire, 1300-1914*, ed. Halil İnalcık and Donald Quataert (Cambridge: Cambridge University Press, 1994), 567; Mehmet Genç, "Osmanlı Maliyesinde Malikane Sistemi," in *Türkiye İktisat Tarihi Semineri, Metinler-Tartışmalar, 8-10 Haziran 1973*, ed. Osman Okyar and Ünal Nalbantoğlu (Ankara: Hacettepe Üniversitesi, 1975), 244-45.

record business transactions and settle disputes. After all, the sharia court was, in Doumani's words, "above all else, the guardian of (mostly urban) property."[21] Intramural Istanbul had its own share of the growth of the judicial system. Two new deputy judgeships (Ahi Çelebi and Bab) were created towards the middle of the seventeenth century.[22] Around the same time a specialized form of court records (*sicil*) developed—the *Evkaf Muhasebeciliği*—which helped record the incomes and expenditures of, and settle disputes over, the numerous pious endowments in the city. Furthermore, the number of the records each court kept gradually increased since the mid-century. For example, *Evkaf-ı Hümayun Müfettişliği* (inspection of imperial endowments) and *Kısmet-i Askeriye* (the division of the estates of the members of the *askeri*) as well as the Istanbul sharia court witnessed a sharp rise in the volume of their records by the mid-century. It seems that deeds of and disputes over various financial transactions were increasingly recorded and supervised by the sharia courts around the mid-seventeenth century. After all, the regulation of the increasing amount of private property and endowments in the capital was exclusively under the jurisdiction of Islamic law as practiced by sharia courts.

The role of sharia courts vis-à-vis women's property rights, however, was ambiguous. On the one hand, the sharia court applied the basic principles of Islamic law to disputes over property ownership regardless of the gender of the owner. On the other hand, it did not intervene in intra-family arrangements and settlements, which might

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[21] Beshara Doumani, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700-1900* (Berkeley: University of California Press, 1995), 10-11.

[22] The exact dates of the establishment of these two deputy judgeships are not known. The first surviving registers from Bab and Ahi Çelebi courts correspond to the years 1652 and 1665, respectively. Mehmet İpşirli suggests that the Bab court was founded sometime in the seventeenth century. Mehmet İpşirli, "Bab Mahkemesi," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 4: 362.

bring about a wide variety of outcomes including the dispossession of women. In this regard, by studying the sharia court records, historians can connect the legal and social worlds.

A seemingly unique aspect of the connection between legal practice and social norms was the widespread use of perpetual leases of endowed properties in this period. Istanbulites invested large amount of their properties in the form of large and small endowments. One problem with endowing properties was their exclusion from the market. Once endowed, a property could not be sold or even modified without the permission of either the endower or the sultan. Endowed properties could generate income by renting them out. Hanafi law, however, prohibited leases longer than one year for endowed urban properties and three years for agricultural ones. The law was impractical. People with already limited options for investment in private properties (due to the high number of endowed properties and therefore lower number of properties for sale) were interested in reliable investments in the long run. That is why perpetual leases became widespread, at least as early as the second half of the seventeenth century in Istanbul, despite the controversial aspects of their legal validity.

The introduction of perpetual leases had a significant impact on women's property rights in the second half of the seventeenth century. The few studies on perpetual leases indicate that they were not commonplace in other urban centers of the empire until the nineteenth century.[23] Works on perpetual leases in the nineteenth

[23] Abul-Karim Rafeq, "The Application of Islamic Law in the Ottoman Courts in Damascus: The Case of the Rental of *Waqf* Land," in *Dispensig Justice in Islam: Qadis and Their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David Powers (Leiden: Brill, 2006), 411-25. In her study of

century, however, focus on the detrimental impacts these leases had on endowments.[24] One neglected aspect of perpetual leases is the radical innovation they brought to the inheritance system. The possession of perpetually leased properties would pass exclusively and, more importantly, equally to the sons and daughters of a deceased tenant. In this regard, the legal recognition of nuclear families and the gender equality in their inheritance rights could be dated back to about two centuries before more modern nineteenth-century legislation.[25]

The trend in the inheritance of perpetually leased properties can also be traced in the egalitarian approach of Istanbulites (particularly women) to designating beneficiaries of their family trusts. Although the laws of perpetual lease left little ambiguity about women's equal entitlement to their parents' leased properties, the Hanafi laws of family trusts granted the founders an absolute freedom in choosing the beneficiaries and their shares of endowed properties. The fact that Istanbulites predominantly chose to leave their properties to their biological children—and, in their absence, their adopted or step-children—demonstrates a particular notion of nuclear family during this period. Furthermore, female founders always designated equal shares to male and female beneficiaries for following generations. This choice demonstrates that the egalitarian

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seventeenth-century Kayseri and Ankara, Faroqhi observes that endowed properties were leased for short terms. Faroqhi, *Towns and Townsmen in Ottoman Anatolia: Trade, Crafts, and Food Production in an Urban Setting*, 246.

[24] Gabriel Baer, "The Dismemberment of *Awqâf* in Early 19th-Century Jerusalem," *Asian and African Studies* 13, no. 3 (1979): 220-41; Miriam Hoexter, "Adaptation to Changing Circumstances: Perpetual Leases and Exchange Transactions in Waqf Property in Ottoman Algiers," *Islamic Law and Society* 4, no. 3 (1997): 319-33.

[25] The 1858 Ottoman Land Law reformed the inheritance of *miri* lands. According to its provisions, both sons and daughters would have equal rights to the lands of their parents. Ömer Lutfi Barkan, *Türk Toprak Hukuku Tarihinde Tanzimat ve 1274 (1858) Tarihli Arazi Kanunnamesi* (Istanbul: Maarif Matbaası, 1940), 360.

inheritance laws of perpetual leases did not necessarily come as a top-down state project. The ordinary women of the capital who came to the sharia court to register their family trusts chose such a gender-egalitarian approach themselves.

## SOURCES AND METHODS

This study is based on the examination of three volumes of court records covering a period of 28 months from September 1659 to December 1661 as well as deeds of endowments founded in the second half of the seventeenth century (1650-1700). To examine the relationship between legal practice in the sharia court and legal norms, I consulted the *fetva* compilations of a seventeenth-century chief jurist, Çatalcalı Ali Efendi (d. 1693).

Court records, the most significant source for early modern social historians, prove particularly fruitful in studying women and their property rights. First, women were omnipresent in the sharia court records. Although cultural and moral norms limited, or at least tried to limit, women's access to many areas of public space, their unlimited access to the sharia court was one of the exceptions that Ottoman officials honored and that Ottoman urban women took full advantage of. Similar to their male counterparts, women appeared in the court on a daily basis as plaintiffs, defendants, legal representatives, and sometimes witnesses. They also used the sharia court to register their transactions, contracts, and settlements of disputes. After all, sharia court was "above all else, the guardian of (mostly urban) property," which renders the study of its records both compelling and rewarding for a project on property relations.

Second, Islamic law and particularly Hanafi law viewed property ownership as the primary requirement for legal agency.[26] Rights and responsibilities were almost exclusively defined in terms of material and financial exchange between individuals. Even crimes against sexual and bodily integrity were formulated in terms of the financial value of each body part.[27] Civil law was almost exclusively financial. The marriage contract, for example, was based on the sale contract: the husband pays dower (*mihir*) and maintenance (*nafaka*) to purchase the right to his wife's vulva. Legal justification for limiting married women's movements outside of the home was predicated on the fact that such movements were considered an infringement on the rights of the husband who had already paid to have unlimited access to his wife's body. A disobedient wife (*nâshize*), who left home without her husband's permission, therefore, was not entitled to be provided for.[28] This strict financial definition of marriage, however, left married women in control of their property. Although marriage was a financial contract, it was not a financial union. Women remained the owners and managers of their property regardless of their marital status. As such, time and again, the women of Istanbul used the sharia court to register the money they lent to their husbands in the period under study.

Using court records, however, has its own limitations. One significant limitation of the sharia court records is the underrepresentation of certain groups of women such as

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[26] In Baber Johansen's words, "proprietor became the prototype of the legal person in Hanafite law." See his *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 191.
[27] Elyse Semerdjian, *Off the Straight Path: Illicit Sex, Law, and Community in Ottoman Aleppo* (Syracuse: Syracuse University Press, 2008), 19; Colin Imber, "Women, Marriage, and Property: *Behcet'ül-Fetâvâ* of Yenişerhirli Abdullah," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 81-104.
[28] Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), 63-64.

non-Muslims and extremely poor women. Non-Muslims, for example, who constituted about half of the greater Istanbul area's population, appeared in the sharia court records less frequently than their Muslim counterparts. Non-Muslim women in particular were almost absent. Similar to their Muslim counterparts, non-Muslim women's property relations were primarily with their family members or outsiders from their own confessional communities. Non-Muslims, particularly in matters of familial relations, preferred their own communal tribunals. This led to an almost total absence of non-Muslim women in the sharia court records. This study therefore examines only Muslim women's property rights in the capital.

Another limitation of the sharia court records is the fact they do not contain the detailed minutiae of court proceedings; rather, they are summaries drafted after the judge had heard the parties and issued his decision. The records contain nothing of the anger, excitement, disappointment, or satisfaction of, for example, married couples and their lives together. Each court case was recorded in strict legal terminology and each party made particular legal arguments to promote their cause. We don't know, however, if each of the involved parties had sophisticated knowledge of their legal rights or if the scribe formulated their shouting and whining into the calm language of the law.[29] Using court records in order to deconstruct women's relationship with other men and women, both within the family as well as with outsiders, can prove a difficult task that requires a

[29] For methodological questions and issues pertaining to the study of *sicil*s see Dror Ze'evi, "The Use of Ottoman Sharīʿa Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5, no. 1 (1998): 35-56.

patience comparable, in Boğaç Ergene's words, to the suffering (*çile*) of a Sufi dervish before achieving enlightenment.[30]

For this study, I examined court cases both to extract hard evidence for exploring certain social and legal trends as well as to read between the lines to analyze the relationships between different actors, institutions, and social and legal norms. I used court records because of their detailed information regarding different types of properties owned by women, their business transactions, their pious endowments, and their marital property rights. Finding answers to some other questions, however, proved more difficult given the summarized and formulaic nature of the court records. The records do not provide direct answers to the questions about some aspects of legal practice including those about the extent of women's actual acquirement of their *feraid* shares of inheritance, the existence of a systematic judicial bias against women, and the extent of women's knowledge about legal niceties. In my attempt to answer similar questions, I situated relevant entries within their contemporary social and legal context by conducting a detailed case-by-case examination and by consulting a contemporary mufti's jurisprudential opinions. For example, in order to answer the question of women's awareness about their legal rights and responsibilities, I examined their pre-trial activities of procuring male witnesses, which proved vital to winning a case within the oral tradition of seventeenth-century Istanbul. I also consulted a *fetva* about the necessity of a judicial decision before a wife could hold her absentee husband liable for his marital

[30] Boğaç A. Ergene, "Legal History 'From the Bottom Up': Empirical and Methodological Challenges for Ottomanists," in *Political Initiatives 'From the Bottom Up' in the Ottoman Empire*, ed. Antonis Anastasopoulos (Rethymno: Crete University Press, 2012), 389.

responsibilities. The examination of the time-gap between a husband's desertion and his wife's application to the sharia court helped me answer questions about women's awareness of their rights and responsibilities.

I consulted the first three volumes of the Istanbul sharia court records that cover an uninterrupted period of 28 months. The earlier six volumes that have survived cover roughly the decade of the 1610s. After a hiatus of four decades, the next volumes cover the second half of the seventeenth century starting from 1659. The period covered in these three volumes were marked by political and military stability under the Grand Vizier Köprülü Mehmed Paşa. The relative political stability of this period proved conducive for the purposes of this research, as ordinary men and women of the capital increasingly used the sharia court to settle disputes over mundane and routine property-related affairs. This stability was counterbalanced by a disaster in 1660 that was dubbed the "Great Fire" by contemporaries. The fire devoured a great portion of the capital's properties, followed by a period of repairing, buying, and selling urban properties. I used the court records of the periods immediately before and after the fire to examine women's preference in maintaining and/or relinquishing certain types of properties at the time of the fire. These records show, more generally, that periods of disaster accelerated the process of women converting real property into cash.

## CHAPTER OUTLINES

Chapter one, "Litigation and Property," examines the most confrontational legal mechanism women used in the sharia court to protect their property rights: litigation.

Through a quantitative and qualitative analysis of the Istanbul sharia court from 1659 to 1661, this chapter explores trends in women's litigation. Studies on Ottoman women's litigation have consistently observed that women were active litigants in the sharia court. In that regard, this chapter is a contribution to the existing literature.[31] New lines of inquiry, however, have asked questions about the existence of certain types of judicial bias, most prominently the work of Kuran and Lustig who found the sharia court to be biased towards Muslims and against non-Muslim litigants.[32] Since their starting point is the discriminatory rules of evidence against non-Muslims, in this chapter I pose the question of whether the sharia court was biased against women as well. Answering this question requires the examination of rules of evidence as practiced in the sharia court. The Istanbulite men and women procured oral testimony and rarely wrote documents to substantiate their legal claims and arguments. A significant number of litigations were finalized in a party's favor, however, with no evidence and simply through either the confession of the other party or the oath of the winning party.

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[31] Jennings, "Women in Early 17th Century Ottoman Judicial Records—the Sharia Court of Anatolian Kayseri," 53-114; Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," 231-44; Marcus, "Men, Women and Property: Dealers in Real Estate in 18th Century Aleppo," 137-63; Sonbol, *Women, the Family, and Divorce Laws in Islamic History*; Zilfi, *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*; Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*; Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*; Suraiya Faroqhi, *Men of Modest Substance: House Owners and House Property in Seventeenth-Century Ankara and Kayseri* (Cambridge: Cambridge University Press, 1987); Boğaç A. Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire : Legal Practice and Dispute Resolution in Çankiri and Kastamonu (1652-1744)* (Leiden: Brill, 2003); Beshara Doumani, "Adjudicating Family: The Islamic Court and Disputes between Kin in Greater Syria, 1700-1860," in *Family History in the Middle East: Household, Property, and Gender*, ed. Beshara Doumani (Albany: SUNY Press, 2003), 173-200.

[32] Their argument, however, is about non-Muslims, whose testimony, similar to that of women, did not have the same value as Muslim men. Timur Kuran and Scott Lustig, "Judicial Biases in Ottoman Istanbul: Islamic Justice and Its Compatibility with Modern Economic Life," *The Journal of Law & Economics* 55, no. 3 (2012): 631-66.

In addition to the question of bias, this chapter examines the impact of legal norms on women's integration within the larger society. This chapter argues that Istanbulite women took preemptive measures such as procuring witnesses to their economic transactions in order to prevent future violations of their property rights. In this regard, two aspects of Islamic legal procedure resulted in women's further integration into a wider public sphere. Oral testimony was the most authoritative form of evidence, and men's testimony was worth much more than that of women. This fact meant that women testified only in exceptional cases. Although in theory, such procedural laws might deter women from bringing cases to court, this chapter argues that it had an opposite effect in Istanbul in this period. Muslim women in Istanbul, similar to their male counterparts, procured respected and impartial men to witness and testify to their economic transactions with both relatives and outsiders. This law, in fact, encouraged women to go beyond the comfort zone of their family members to engage with a wider society.

The sharia court's empowerment of women, however, had its limitations. Istanbulite women, like their counterparts in other cities of the empire, were more frequently sellers than buyers of real property. Unlike Faroqhi's observation in seventeenth-century Ankara and Kayseri, my findings do not suggest that women's properties were "bought out" by their male relatives; I do observe that managing and maintaining real estate proved more difficult for contemporary Istanbulite women. Furthermore, within a legal system in which providing accommodation was primarily the responsibility of men, women who enjoyed natal and conjugal family support did not

have much incentive to keep their own real estate. Instead, they amassed their wealth in the form of cash, jewelries, and other movable property, which could be used to meet the immediate needs of themselves and their family members.

The following chapters focus on particular aspects of women's control and management of their property. Chapter two, "Matrimony and Property," examines the conjugal family as a social unit which had a significant impact on the redistribution of accumulated wealth in the capital. Islamic marital laws rendered husbands responsible to pay a dower (*mihir*), maintenance (*nafaka*), and child support. My examination of Istanbulite women's marital rights corroborates the observations of other scholars for other Islamic societies.[33] Not all women, however, benefitted from the sharia court equally in securing their marital rights. The same set of legal norms and procedures, which were universally applied to all married couples, did not mean that all married women had equal access to the available legal measures. In this regard, this chapter problematizes "women" as a static unit of analysis. Women's decisions in resorting to particular legal actions were informed by a combination of factors including their socio-economic status, their marital status, and whether or not they benefitted from the support of kin. Elite women coming from prosperous and well-established households mobilized their resources to make their husbands meet their marital responsibilities. They used the sharia court to appoint proxies to go after absent husbands. When their husbands were in the capital, they counted on their natal familial ties to settle their marital disputes and

[33] Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005).

used the sharia court in order to record the final outcome. Women at the bottom of the social ladder, who lacked the familial and/or financial resources of elite women, had fewer options. Their primary way to settle marital disputes was to initiate lawsuits. The legal norms that rendered husbands responsible to provide for their conjugal families and permitted their wives to borrow on their behalf if they failed to provide, however, did not have much weight when the husbands of poor women deserted to other cities. Some women at this category had to face the hard decision of seeking either the support of other men through marrying while still married to absent husbands or fall to absolute destitution.

Chapter three examines yet another significant source of women's access to properties: inheritance. Through a case-by-case examination of inheritance cases in the Istanbul sharia court in 1659-1661, this chapter provides an analysis of the trends in the transfer of property to next generation and their impact on women's property rights. The scholarship on Muslim women's inheritance rightfully asks the question of whether or not women received their inherited properties as prescribed by Islamic law. While *sicil* studies of different urban centers of the Ottoman Empire demonstrate that women indeed received their prescribed shares, ethnographic studies of rural and nomadic societies find women's disinheritance a common method. Amelie Moors, who benefitted from both Ottoman *sicil*s and ethnographic observations, argues that the urban-rural dichotomy was

not necessarily the case for the modern Palestinian women. She argues that women's disinheritance was commonplace both in rural and urban areas.[34]

In this chapter, I argue that despite the centrality of the *feraid* rules in the legal discourse on women's inheritance, Istanbulites in this period rarely divided their properties according to the *feraid* prescriptions. Properties often remained undivided between close family members. This was, however, not a method to dispossess women from their property rights. Instead, women reserved their legal rights for the moments when familial ties were strained. In those times, women used the sharia court to effectively secure what they were legally entitled to. Judges in Istanbul during this period used their discretion in favor of widows who had children, by granting them guardianship. As legal guardians, widows controlled almost the entire inherited property of their late husbands' estates. When male extended family members were entitled to the property of the deceased, the parties usually settled their dispute through amicable settlements, which generally preserved the greatest portion of the property within the nuclear family. Istanbulites in this period were already accustomed to some legal, non-*feraid* norms, such as perpetually leased properties, which kept properties exclusively within small nuclear families.

While chapters two and three focus on the methods by which women acquired legal and actual entitlement to property, the final chapter, "Pious Endowments," examines one common method through which women managed their property. Due to the flexibility of the Hanafi laws of endowment, the reasons for founding endowments

[34] Moors, *Women, Property, and Islam: Palestinian Experience, 1920-1990*, 48-76.

demonstrated a remarkable variety across time and space. Some studies on endowments have demonstrated that endowments were used to disinherit women from their inheritance rights while others found that endowments had a positive impact on women's access to inherited properties.[35] Endowments were also used to either cement household relations or break from an existing household in order to form independent new households.[36]

This chapter demonstrates that women's kin support as well as social status played a role in their decisions to build different types of endowments and for different purposes. Although many women sold their real estate in order to have access to cash and movable properties, others kept control over their real estate not only during their lifetime, but also for their family members in next generations. Many women who chose to keep their houses in the form of family endowments, or family trusts, rather than selling them for cash and movable properties came from a particular background. They were relatively rich, but not from aristocratic families. About half of the female founders of family trusts studied here for the period between 1650 and 1700 were female ex-slaves, who were detached altogether from familial ties. Their integration within the

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[35] Aharon Layish, "The Family Waqf and the Sharʿī Law of Succession in Modern Times," *Islamic Law and Society* 4, no. 3 (1997): 352-58; "Waqfs of Awlād al-Nās in Aleppo in the Late Mamlūk Period as Reflected in a Family Archive," *Journal of the Economic and Social History of the Orient* 51, no. 2 (2008): 287-326; "The Mālikī Family Waqf According to Wills and Waqfiyyāt," *Bulletin of the School of Oriental and African Studies* 46, no. 1 (1983): 1-32; Gabriel Baer, "Women and Waqf: An Analysis of the Istanbul Tahrir of 1546," in *Asian and African Studies 17, Studies in the Social History of the Middle East in Memory of Professor Gabriel Baer* (Haifa: University of Haifa, 1983), 9-28. Compare to Beshara Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," *Comparative Studies in Society and History* 40, no. 1 (1998): 20; Judith E. Tucker, *Women in Nineteenth-Century Egypt* (Cambridge: Cambridge University Press, 1985), 95.

[36] Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," 3-41.

imperial palace, their successful marriages with Ottoman officials, and their subsequent integration into the households of their masters often resulted in material prosperity. Whether freedwomen or freeborn, women who lacked strong ties with their own natal kin often chose to establish their own families. The absolute freedom that Hanafi law granted to the founders in both designating and prioritizing the beneficiaries of their family trusts provided a dynamic legal framework for defining and redefining kinship. While aristocratic women invested their properties to aggrandize the reputation of their existing families, women of weaker natal familial ties established family trusts to bring new families into existence. Another trend in women's family trusts in Istanbul in the second half of the seventeenth century was the egalitarian division of the right to use the endowed properties for male and female beneficiaries.

# Chapter 1: Litigation and Property

On November 10, 1660, the woman Ayşe bint Abdullah brought a debt lawsuit against a man named Abdi. He admitted that he had taken money from her, but argued that the money was payment for a job he had done for her husband. Ayşe's husband Mehmed had left Istanbul to reside in Edremid, a city located in Western Anatolia on the Aegean coast. Abdi had done some work for Mehmed with a labor cost of 2,240 aspers. Mehmed had told him to go to Istanbul and ask his wife Ayşe to pay the amount. Based on Abdi's statement, he had subsequently come to Istanbul to ask Ayşe to pay his labor cost, which she did. Now, in court, Ayşe argued that the money was debt and not the labor cost of Abdi. The judge (*kadı*) asked Abdi to provide evidence for his claim, which he could not. Abdi, in return asked Ayşe to take an oath, swearing on God that she did not make the payment for the labor cost. Ayşe took the oath and won the case. A judicial order was issued, asking Abdi to redeem his debt to Ayşe.[37]

Ayşe's lawsuit was a typical example of Muslim women's litigation in Istanbul sharia court in 1659-1661. A significant proportion of women's litigations for their property rights involved male family members in various capacities. Most economic activities by women, particularly those about debts and the purchase or sale of movable property and real estate, took place within the family. In Ayşe's lawsuit, her husband had transferred a debt to her without her consent. Regardless of male family members' involvement in women's economic activities, women did not merge their finances to that of their male relatives, including their husbands. Ayşe, as the wife of Mehmed, acted

[37] İŞS8: 38b, 7 Ra 1071.

independently as lender of money to a third person and refused to pay off her husband's debt.

In this chapter, I examine women's litigation in the sharia court in order to analyze the legal methods they used to protect their property rights. In the past three decades, an increasing number of studies have shed light on women's use of the early modern sharia courts.[38] This chapter aims to contribute to the existing literature through a quantitative analysis of Istanbulite Muslim women's litigations in the sharia court in comparison with those of men. Through comparing and contrasting Muslim men and women's litigations particularly for their property rights, this chapter seeks answer to the following questions: What legal methods did women use to win their cases in the sharia court? Did the sharia court act in a biased way against women? And what were the primary subjects of property-related litigations by women?

## PROPERTIED WOMEN OF THE CAPITAL

The Istanbulite Muslim women studied in this chapter consisted of those who owned certain amounts of properties and could afford to come to the sharia court in order to register their deeds of sales and loans or settle their disputes. Therefore, women of lower social status were underrepresented in the sharia court records, which form one limitation of this research. There are some pieces of evidence to illuminate the economic

[38]Jennings, "Women in Early 17th Century Ottoman Judicial Records—the Sharia Court of Anatolian Kayseri," 53-114; Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," 231-44; Marcus, "Men, Women and Property: Dealers in Real Estate in 18th Century Aleppo," 137-63; Sonbol, *Women, the Family, and Divorce Laws in Islamic History*; Zilfi, *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*; Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*; Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*.

activities of those who were at the bottom of socio-economic status. Those who were not entirely dependent on charitable support chose to work in fields which were particular to women such as keeper of women's public baths.[39] The *avret pazarı* (women's bazaar) located close the complex founded by the sixteenth century queen Hürrem, held weekly gatherings where women sold and purchased many household materials including home-made embroideries.[40] Other impoverished women worked as prostitutes or other forms of entertainers in the capital.[41] In this chapter in particular, I concentrate on propertied women who, unlike poor women, were fairly represented in the court records.

Another category of women who are excluded from this chapter are female slaves, who did not have the legal right to own property and therefore did not use the sharia courts for related deeds and litigations. Ex-slaves, however, constituted a significant number of the Muslim women who came to the sharia court for their property related disputes. Their masters either married them or married them off to men of similar social status. Besides their names and some inheritance practices particular to freed people, these married and propertied female ex-slaves did not form any distinct group as far as the legal ownership or management of their properties was concerned. In this chapter, therefore, they are not singled out for their slave background.

The fact that women of higher socio-economic status actually used the sharia court, sometimes by a representative and sometimes on their own, conflicts with the

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[39] Indeed in the entire twenty eight months of records studied here, only one woman was explicitly mentioned to have earned money through work, and she was keeper of a public bath.
[40] Ertuğrul Özkan, "Avrat Pazarı," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 4: 124.
[41] Marinos Sariyannis, "Prostitution in Ottoman Istanbul, Late Sixteenth-Early Eighteenth Century," *Turcica* 40 (2008): 37-65.

general understanding that gender norms of seclusion were strong among women of higher socio-economic status due to the fact that they could afford sending servants and slaves to run errands outside the home. Dina Rizk Khouri draws attention to domestic architecture in eighteenth-century Mosul, where the middle-class had inner and outer courts to segregate men and women while the elite could have a third court (*haram*). *Haram*, having a male guard at the entrance, was the domain of female members of the family.[42] In her study of sixteenth century Aintab, Leslie Peirce observes that moral norms prevented the women of the old "aristocratic" elite from appearing in the sharia court.[43]

A detailed analysis of their economic activities as registered in the court records demonstrates that the prosperous propertied women of the capital did not shy away from coming to the sharia court to protect their property rights. Similar to fifteenth-century Aitanb, the elite women of Istanbul in the period under study usually sent their male proxies to the sharia court; unlike Aintabans, however, many elite Istanbulite women came to the sharia court in person. One example is that of Emetullah bint Mehmed Efendi, who appeared in the sharia court to manage her financial affairs with three non-relative men, two of whom were administrators of endowments. Emetullah was registered as *muhaddere*, which was the highest title an elite woman could acquire in seventeenth-century Istanbul. She had acquired her status through her natal and marital ties. Her father was a member of the elite learned hierarchy and her deceased husband had served as the

[42] Dina Rizk Khouri, "Drawing Boundaries and Defining Spaces: Women and Space in Ottoman Iraq," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira al-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 185.
[43] Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, 155-56.

governor-general of Anatolia. Despite that, Emetullah neither sent proxies nor asked the court to hold the meeting at her house.[44]

Peirce correctly points out to the fact that elite women's legal representatives required their physical appearance in front of other men. The authenticity of any legal representation required the testimony of male witnesses who knew both the represented person and the appointed proxy. This chapter contributes to her findings through the examination of the wider socio-legal culture, one that prioritized oral testimony over any other forms of evidence in the sharia court. Similar to their male counterparts, Istanbulite propertied women in the period under study had their contracts and transactions observed by "trustworthy" (*'udûl*) men in a preemptive measure to use them for prospective lawsuits. This is a point that I will examine in more detail below.

## WOMEN'S PROPERTY RIGHTS

Islamic law, and particularly the Hanafi school, which was the official Ottoman legal school, treated men and women equally in terms of their agency in acquiring and managing their properties. Yet, the methods by which men and women gained access to property were different. Women were categorically prohibited from entering into the ranks of the military, political, and legal hierarchies. Women were also prohibited from entering into the organized artisanal guilds, which had a monopoly on the many economic activities of production and distribution. Women's limited access to the city's economic activities is visible in the relatively smaller sums of money they disputed in

[44] İŞS9: 74b, 6 Z 1071; İŞS9: 81b, 6 Z 1071; İŞS9: 87a, 6 Z 1071. For another *muhaddere* who came to the sharia court in order to settle the financial issues of her deceased son, see İŞS9: 17a, 22 N 1071.

court as well as in their endowments, which were predominantly small family trusts consisting of one residential property (see chapter four).

Women's access to property came primarily through their association with their natal and matrimonial families. It was family law pertaining to inheritance, maintenance (*nafaka*), custody, and child support that enabled women to share the accumulated property of their families. Yet, Istanbulite women in the period under study were not passive recipients of properties. They were active litigants in the court in order to protect their rights against transgressions by family members and outsiders. Despite their limited access to the methods of acquiring property when compared to men, Muslim women of the capital in the period under study were buyers and sellers in real property, lenders and borrowers in the finance market, founders and managers of endowments, and partners in business with men. This chapter consists of two sections. In the first section, I analyze Istanbulite Muslim women's litigation and methods they used in order to win their cases. In section two, I provide a thematic breakdown of women's litigations in comparison with that of men.

**Women and the Sharia Court**

Muslim women of the capital in the period under study were active litigants and knowledgeable about legal niceties, which enabled them to have a high rate of victory in their lawsuits. They could sue almost any resident of the capital, including men and women, relatives and outsiders, Muslims and non-Muslims, their (ex-)slaves, and their (ex-)masters. Through providing a snapshot of Muslim women's litigation in 1659-1661,

this section argues that the biases in legal procedure did not deter women from acting as independent legal agents. Indeed, the fact that men's oral testimony had a higher value to that of women created some incentives for women to engage the respectable men in their businesses and transactions as witnesses. Within a legal culture in which oral testimony provided the strongest form of evidence in court, women acted very similar to their male counterparts in their preparation for lawsuits which required the involvement of male witnesses.

The Istanbul sharia court provided an accessible though uneven venue of litigation for male and female residents of Istanbul. Over the course of 28 months (September 1659-December 1661), the Istanbul sharia court registered some 475 cases of litigation out of a total of 2,174 entries (21.8 percent). In 7 cases, men and women acted as plaintiffs together. In the remaining 468 cases of lawsuits in which either men or women acted as plaintiffs, women appeared as plaintiffs in 106 cases (22.6 percent). Muslims appeared as plaintiffs in 360 cases, from which 98 cases were initiated by women (22.8 percent).

Table 1.1: Litigants in the Istanbul sharia court, 1659-1661

| Defendant<br>Plaintiff | Muslim Men | Muslim Women | Non-Muslim Men | Non-Muslim Women | Mixed-Men and Women | Total |
|---|---|---|---|---|---|---|
| Muslim Men | 162 | 37 | 51 | 5 | 7 | 262 |
| Muslim Women | 67 | 22 | 4 | 1 | 4 | 98 |
| Non-Muslim Men | 21 | 1 | 70 | 5 | 0 | 97 |
| Non-Muslim Women | 1 | 0 | 7 | 0 | 0 | 8 |
| Mixed-Muslim & Non-Muslim | 0 | 0 | 3 | 0 | 0 | 3 |
| Mixed-<br>Men & Women | 4 | 1 | 1 | 0 | 1 | 7 |
| Total | 255 | 61 | 136 | 11 | 12 | 475 |

Women appeared as defendants less frequently than they did as plaintiffs. From 468 cases in which either men or women acted as defendants, women were defendants in 72 cases (15.4 percent). Out of 316 cases in which either Muslim men or women appeared as defendants, Muslim women were defendants in 61 cases (19.3 percent). Female litigants in Istanbul in the period under study appeared in the court much more frequently than their counterparts in the nearby city of Üsküdar more than a century earlier. The relatively high rate of women's litigation in the seventeenth century was not limited to Istanbul. Ankara and Kayseri in the seventeenth century had female litigants at similar rates to that of Istanbul.[45] A study of the eighteenth-century Anatolian towns of Çankırı and Kastamonu finds similar patterns in the rate of women's litigation.[46] The seventeenth century, therefore, seems to have been a period when the sharia court became

[45] Faroqhi, *Men of Modest Substance: House Owners and House Property in Seventeenth-Century Ankara and Kayseri*, 185.

[46] Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire : Legal Practice and Dispute Resolution in Çankiri and Kastamonu (1652-1744)*, 63. Beshara Doumani finds that women were litigants in 52 percent in Tripoli and one-third in Nablus in the eighteenth century. See his "Adjudicating Family: The Islamic Court and Disputes between Kin in Greater Syria, 1700-1860," 177-78.

more accessible to women, a trend that continued in the next centuries. More quantitative research on women's litigation in the earlier periods of different Ottoman cities would shed further light on women's access to the sharia court in the classical and post-classical periods. Regardless, the sharia court was the most accessible legal venue to settle disputes for female litigants.[47]

The data on women's litigation demonstrates that many Muslim women in Istanbul used the legal system as an ally in order to protect their rights, particularly those pertaining to their property.[48] They had a much higher chance of winning than losing their cases against their male defendants. From the 98 cases in which Muslim women acted as plaintiffs in the period, their winning ratio was three to one, regardless of the gender of the defendants (Table 1.2). They won 54 cases against their male defendants while losing only in 18 cases against them. Almost the same ratio applies when Muslim women sued female defendants (they won in 17 and lost in six cases against women).

[47] Another important location to seek justice was the imperial divan. Zarinebaf-Shahr found that the rate of women who sent petitions to the imperial divan was 8 percent, much lower than that of their litigations in the sharia court. Fariba Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century," in *Women, the Family and Divorce Laws in Islamic Society*, ed. Amira al-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 81-96.

[48] From the entire cases in which Muslim women appeared as either plaintiff or defendant, only four were related to crimes which did not involve property. For a thematic analysis of the litigation cases, see below.

Table 1.2: Muslim female plaintiffs in Istanbul, 1659-1661

| | Female plaintiffs v. Male defendants | Female plaintiffs v. Female defendants | Female plaintiffs v. a combination of male and female defendants | Total Female plaintiffs |
|---|---|---|---|---|
| plaintiffs won | 54 | 17 | 1 | 71 |
| plaintiffs lost | 18 | 6 | 2 | 26 |
| No final decision | 1 | 0 | 0 | 1 |
| Total | 72 | 23 | 3 | 98 |

The findings are striking when compared against the performance of male plaintiffs in court for the same period. Muslim men appeared as plaintiffs in 262 cases in the period under study (compare to 98 cases of Muslim female plaintiffs for the same period). Similar to female plaintiffs, male plaintiffs won in the majority of their cases. They appeared as winners in 182 cases while losers in 73 cases (a ratio of approximately 2.5:1).[49]

In keeping with female plaintiffs who won most of their cases against the defendants of opposite sex, Muslim male plaintiffs won in 26 cases against women while losing in 15 cases against them. This ratio, however, is lower than that of Muslim female plaintiffs winning their cases against men (3:1). Muslim women's superior performance in winning their cases is also visible in the total number of cases in which they appeared as litigants against men. In total, Muslim women won in 69 cases against their male

[49] In the remaining seven cases, no parties won as result of lack of evidence.

litigants while they lost in 44 cases against them. The data suggests that Muslim women were not at any particular disadvantage against men in the courthouse (See Table 1.3).

Table 1.3: Muslim male and female plaintiffs in Istanbul, 1659-1661

| | Male plaintiffs v. female defendants | Male plaintiffs v. Male defendants | Male plaintiffs v. male & female defendants | Female plaintiffs v. Male defendants | Female plaintiffs v. Female defendants | Female plaintiffs v. male & female defendants | Total |
|---|---|---|---|---|---|---|---|
| Plaintiffs won | 26 | 150 | 5 | 54 | 17 | 0 | 252 |
| Defendants won | 15 | 56 | 1 | 18 | 6 | 2 | 98 |
| No decision | 0 | 9 | 0 | 1 | 0 | 0 | 10 |
| Total | 41 | 215 | 6 | 73 | 23 | 2 | 360 |

How should one explain the fact that Muslim female litigants had a higher rate of victory when compared to that of male litigants? An interesting study by Kuran and Lustig on non-Muslim litigants of the seventeenth century observed that non-Muslim plaintiffs had a higher rate of victory against Muslim litigants. While the fact that non-Muslim litigants did well in the sharia court is not news to Ottomanists,[50] Kuran and Lustig's explanation is radically different. "If the evidence generating procedures of the Islamic courts were stacked in favor of Muslims," they ask, "how could their verdicts have been unbiased?"[51] They find that Muslims were overrepresented as plaintiffs against

[50] See, for example, Ekrem Buğra Ekinci, *Ateş İstidâsi: İslam-Osmanli Hukukunda Mahkeme Kararlarinin Kontrolü* (Istanbul: Filiz Kitabevi, 2001); Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*, 56-57; Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), 112.

[51] Kuran and Lustig, "Judicial Biases in Ottoman Istanbul: Islamic Justice and Its Compatibility with Modern Economic Life," 633.

non-Muslims, a fact that suggests non-Muslims did not sue their Muslim counterparts as long as they did not have a strong case with a high chance of victory.

Kuran and Lustig's question about the court's bias against non-Muslims is also valid for women, whose testimony did not count for as much as that of men. Does a higher rate of women's victory against men actually indicate the existence of certain judicial biases against women? While certain cases of judicial manipulations against women and non-Muslims, but also against Muslim men, have been observed by some Ottomanists, was it indeed a wider phenomenon that systematically favored Muslim men against parties of different confessions and genders? My findings about Muslim women's litigations in the period under study do not provide a conclusive answer in light of Kuran and Lustig's methodology. Muslim women did have a higher victory rate when compared to Muslim men; they were also underrepresented as plaintiffs. This explanation, however, might not be the whole picture. Women had fewer economic transactions when compared to men, which was a partial explanation for their underrepresentation as litigants. For smaller amounts of transactions, in which one might expect that many women were involved, litigants used other methods of conflict resolution such as amicable settlements, not all of which were recorded in the sharia courts. As we will see below, women did not frequently sue their close family members, with whom they might have made the majority of their economic transactions. My data, therefore, does not corroborate the existence of a systematic judicial bias against Muslim women in the period under study.

What was the impact of the gendered value of testimony on women's litigations? The answer to this question can be provided through a closer examination of the judicial

procedure in the sharia courts. In order to prove a case, except for the cases that required the expertise of women, at least two males or a combination of one male and two female witnesses were required. While the weight of testimony was explicitly gendered, it is important to remember that providing testimony was not necessary for winning a case. Procedurally, after hearing a plaintiff's claim, the *kadı* asked the defendant if he or she would comply. If the defendant did, the case would be decided in the plaintiff's favor. If the defendant did not, then the *kadı* would ask the plaintiff to provide evidence for his/her claim to win the case. In case the plaintiff failed to substantiate their claim, they would have the right to ask the defendant to take an oath denying the plaintiff's claim.

One intriguing fact about the function of the sharia court was the frequency of the cases in which neither side provided any form of evidence. After excluding the cases which were not finalized or those that contained a combination of male and female defendants, we have 342 cases in which the parties were either men or women and the court made a decision in favor of a party. From among these cases, 145 cases required proof, predominantly in the form of oral testimony (42.4 percent), while no proof was presented in the remaining 197 cases (57.6 percent). The fact that the majority of litigations were finalized without any evidence should qualify our understanding about the significance of "evidence generating procedures," which were discriminatory against non-Muslims and women.

Table 1.4: Evidence in the Istanbul sharia court, 1659-1661

| | Male plaintiffs v. Male defendants | Male plaintiffs v. Female Defendants | Female plaintiffs v. Male defendants | Female plaintiffs v. Female defendants | Total |
|---|---|---|---|---|---|
| Provided evidence | 78 | 21 | 34 | 12 | 145 |
| Either Acquiescence or Oath | 128 | 20 | 38 | 11 | 197 |
| Total | 206 | 41 | 72 | 23 | 342 |

One explanation, particularly for cases in which defendants simply accepted plaintiffs' claims, is the fact that parties may have already agreed on the terms of a settlement before they even arrived in the court. This possibility, however, does not explain the formulation of their settlements in terms of a lawsuit, particularly because parties had the right to simply register their amicable settlements (*sulh*) in the sharia court, and indeed many did so. In addition, some of the cases that were finalized with no proof were based on procedural laws, particularly the lapse of time. In the Ottoman legal system, if a litigant claims the ownership or possession of a property based on what happened more than 15 years before the lawsuit, the *kadı* would not require either party to provide any evidence and would declare the defendant as the winner. That was exactly what happened in the case of the man Süleyman bin Dede who sued the woman Dilaver bint Abdullah in October 1661 over an inherited house. Süleyman argued that his father had sold his share in the house to Dilaver's husband at a lower price than normal. She did not deny his claim; rather, she argued that the house had been in her husband's

possession for the last 35 years. The court ruled in her favor without asking any party to provide evidence.[52]

Furthermore, lack of evidence on the plaintiff's side usually required taking oath by the defendant. Taking an oath of denial had a significant moral weight on the litigants. In July 1661, for example, a female resident of Istanbul named Müslime bint Osman sued her husband Abdulkerim bin Ali over the possession of some real properties she had earlier bought from him. Abdulkerim denied the sale. Instead of soliciting evidence to prove her claim, Müslime asked her husband to swear to God that he did not sell her the disputed properties. Abdulkerim chose not to take the oath and lost the case.[53] In yet another case that came to the attention of the court some three months later, a female plaintiff named Ayşe bint Abdullah sued three men for having sold her a "deficient" female slave. While the defendants had the right to deny the accusation and ask her to prove her claim, they simply asked her to take an oath in the court that she was right, which she did and subsequently won the case.[54] Many litigants who came to the court without any form of evidence, therefore, were aware that a lawsuit was a particular legal action that initiated a set of procedural laws (including oath), which were absent in cases of simple registration of their settlements.[55]

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[52] İŞS9: 169b, 28 S 1072.
[53]İŞS9: 2b, 25 Za 1071.
[54] İŞS9: 174b, 7 Ra 1072.
[55] The reputation of litigants had a significant impact on the legal procedure. Sometimes, a claim could be proved by taking an oath if he/she was "trusted" (*emin*) person. Thus, two defendants in two separate cases of debts came with the counterargument that they had already paid the amounts due to them. Under normal circumstances, these defendants would be asked to prove their counterclaims. Yet, the court offered them to take an oath because they were "trusted" people and their oath would suffice to prove their claims (*yemin*

The gendered value of oral testimony had a complicated impact on Istanbulite Muslim women's litigations. While one expects that requiring male witnesses might have a detrimental impact on the outcome of women's litigations, this was certainly not the case for Istanbul in 1659-1661. When compared to their male counterparts, Istanbulite Muslim women did not have any particular difficulties in providing non-relative male witnesses in order to win a case. This discriminatory aspect of the procedural laws ironically encouraged women to become further integrated within the larger society in order to seek the support of the respected men of their communities and protect their property rights.

When Muslim women were involved in litigations, there was a higher possibility of providing evidence in the form of oral testimony than when only men were involved. Muslim women appeared in 23 cases against other women, from which they provided evidence in 12 cases (52.2 percent). Muslim men, on the other hand, appeared in 205 cases against other men, from which they provided evidence in 78 cases (38 percent). In general, when Muslim women were involved in any case of litigation, there was a much higher proportion of providing evidence. From among the 113 cases in which Muslim women were litigants against their male counterparts, in 55 cases (48.7 percent), one party had to provide evidence against the litigant of the opposite sex (compare to 42.2 percent for the entire cases of litigations).

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*ile musaddak olmağın*). In one case, the defendant took the oath and won (İŞS8: 46a, 24 R 1071) while in the other case the defendant did not take the oath and lost (İŞS9: 89a, 6 Z 1071).

Was the higher rate of providing proof in cases where Muslim women were involved as litigants a cause for their higher rate of winning cases in the sharia court? The question can be answered by looking at the rate of proof in cases in which male and female litigants appeared against each other. Out of the 69 cases in which female litigants won against their male counterparts, they provided proof in 32 cases (46.4 percent). From the 44 cases that Muslim men won against their female counterparts, the former provided evidence in 21 cases (47.7 percent). These findings demonstrate that evidence (or lack thereof) in any litigation did not significantly impact the outcome of women's litigations. A higher rate of providing evidence in cases where Muslim women were involved might be a result of the fact that women used other methods of conflict resolution at a higher rate than their male counterparts when they did not have evidence. This is evident in the cases of amicable settlements (*sulh*) brought to the Istanbul sharia court in the period under study. Muslim men and women appeared in 149 cases of *sulh*, from which Muslim women appeared in 69 cases (46.3 percent), which was more twice the rate of their litigations (see above).

Muslim women were aware of the significance of oral testimony. That explains why many of their economic transactions, even with close family members, took place in front of a group of primarily male witnesses. One example is the case of a Palace woman (*saraylı*) named Hadice bint Abdullah whose deceased husband Ali Çelebi owed her some 150 piasters.[56] Instead of paying her the amount, Ali Çelebi transferred the money

[56] *Sayaylı* referred to women who had lived in the Ottoman palace for a while as female slaves and servants. Many of them were married off to Ottoman officials and started to reside in different neighborhoods of the capital.

from his business partnership with a third person. Accordingly, the person who owed him, named Mehmed Beşe, was to directly pay her the amount. After the death of Ali Çelebi in November 1659, Hadice sued Mehmed Beşe in order to make the transfer take place. Mehmed Beşe admitted that he owed Ali Çelebi the amount, but he denied the transfer arrangement. Fortunately for Hadice, she had made sure that the arrangement took place in front of at least two male witnesses named Halil Çelebi and Süleyman Çelebi. They came to court and testified for the authenticity of the transfer agreement, after which she won the case.[57] For Hadice, as a childless woman, the presence of witnesses at the time of the agreement proved extremely significant. The absence of witnesses would have entitled her to only a quarter of the 150 piasters she had claimed, the rest of which would go either to her husband's other relatives or in their absence to the state (see chapter three).

Women's awareness about the significance of oral testimony encouraged them to go beyond the segregations that some moralists and legal scholars advocated for.[58] It seems that oral testimony formed a culture of frequent conversation about existing contracts. It is evident in a peculiar form of oral testimony, in which witnesses did not necessarily observe the disputed contract but rather witnessed a party's admission to

[57] İŞS7: 34a, 9 Ra 1070.

[58] The jurist and moralist of the sixteenth century, Birgili Mehmed, whose writings inspired the influential conservative movement of the *Kadızadeli*s in the late seventeenth century, elaborated on women's divinely sanctioned obligations. They consisted primarily of domestic functions including baking, cleaning, and cooking. See Birgivi, *Tarikat-i Muhammediyye Tercümesi*, 478. For the rise of the *Kadızadeli*s in the seventeenth century, see Zilfi, *The Politics of Piety : The Ottoman Ulema in the Postclassical Age (1600-1800)*, chapter four.

his/her liability in the time period between the original transaction and the current lawsuit.

How does one explain this aspect of oral testimony in which witnesses observed the confession of liability rather than the original transaction? Boğaç Ergene, in his study of eighteenth-century Çankırı and Kastamonu, suggests that testimony to such confessions of liability might have been a case of court manipulation, particularly in the lawsuits in which community members testified against an unwanted member of the community such as the *kızılbaş* or a slave accused of sexually harassing a Muslim woman.[59] For Istanbul in the period under study (at least for the cases of property-related disputes studied here) manipulation seems unlikely for testimonies to confessions. After all, if the plaintiffs wanted to bring fake witnesses, they could do so by asking them to simply claim they were present at the time of the transaction. Yet, in the majority of the cases that were finalized by witnesses, the testimony was about the defendants' confession after the transaction and before the court.

An alternative explanation could be the legal culture that valued oral testimony as the primary form of evidence in seventeenth-century Istanbul. Men and women of the capital regularly had their transactions observed and verified by their community members, particularly those Muslim men who qualified as *'udul* (fair witnesses). After all, original witnesses to any contract could not be solicited for several reasons, including their absence due to traveling or death. Even the validity of a written court document

[59] Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire : Legal Practice and Dispute Resolution in Çankiri and Kastamonu (1652-1744)*, 162-64.

could be contested. In such cases, proof of the document's authenticity required the testimony of the exact court witnesses (*şuhud el-hal*) who had testified to and signed under the document. Within this context of Islamic legal procedure, it seemed necessary to have contracts repeatedly verified in front of other witnesses who could later testify in court in case a party initiated a lawsuit. For women, this gendered value of women's testimony encouraged them to be actively involved in constant contact and conversation with non-relative male members of their communities.

This aspect of legal culture also helps answer the question of the extent of women's knowledge about legal niceties. Irisi Agmon, in her study on the women of late Ottoman Jaffa and Haifa, maintains that court records cannot be used to answer this question. After all, court records were summaries, not verbatim accounts of the events that happened and statements that were made in the sharia court.[60] While I agree with Agmon about the methodological problems that scholars of court records face, this particular question could be answered through the prevalence of oral culture, at least in Istanbul in the period under study. Many women, similar to men, made sure their transactions with relatives and outsiders were publicly observed. Not many women had expertise in the details of legal norms and procedures, but many men did not either. Muslim men and women of the capital in this period interacted with one another under a larger cultural umbrella that crossed gender lines. Men's oral testimony proved critical to

[60] Iris Agmon, "Muslim Women in Court According to the Sijill of Late Ottoman Jaffa and Haifa," in *Women, the Family and Divorce Laws in Islamic History*, ed. Amira al-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 132.

winning a case, and women secured evidence through publicizing their transactions in front of men's eyes.

**Litigation for Property**

The sharia court was, first and foremost, a place where economic transactions were registered, disputed, and settled. The majority of litigation cases brought by men and women of the capital to the sharia court in this period were related to property disputes on debts, inheritance, and ownership of real estate and movable property.

Yet, the cases of litigation demonstrate that men and women had different concerns when it came to the protection of their property rights. Similar to the women of many other Ottoman cities, Istanbulite women were barred from participating in most of the city's economic activities which were regulated by organized guilds.[61] The putting-out system, particularly in textile production, which allowed women to work from their homes in cities such as seventeenth-century Bursa, did not play a predominant role in the economy of Istanbul in the seventeenth eighteenth century.[62] Customary limitations on women's participation in the market economy, however, did not mean they were barred from owning, possessing, and managing their properties. The data on women's litigations demonstrate that women acquired a higher proportion of their properties through their natal and conjugal families when compared to men.

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[61] Evliya Çelebi, whose accounts should be taken with grain of salt, mentions the existence of a women's guild specializing in slave dealership in Istanbul in 1640. Evliya Çelebi, *Evliya Çelebi Seyahatnamesi*, trans. Zuhuri Danışman, vol. 2 (Istanbul, : Zuhuri Danışman Yayınevi, 1971), 188-89.

[62] Zarinebaf-Shar's study about the existence of putting out system and women's "informal" economic activities in the textile sector provides some useful though scanty evidence for eighteenth-century Istanbul. Evidence for the seventeenth century, however, has not been located yet. See Zarinebaf-Shahr, "The Role of Women in the Urban Economy of Istanbul, 1700-1850," 141-52.

Table 1.5: Themes of Muslim women's litigation in Istanbul, 1659-1661[63]

| | Plaintiff | Defendant |
|---|---|---|
| Debt | 26 (26.5%) | 15 (24.6%) |
| Movable Property | 5 (5.1%) | 7 (11.5%) |
| Real Estate | 14 (14.3%) | 11 (18%) |
| Inheritance | 8 (8.1%) | 4 (6.6%) |
| Marital | 14 (14.3%) | 4 (6.6%) |
| Slavery | 19 (19.4%) | 14 (22.9%) |
| Theft/Usurpation | 8 (8.2%) | 6 (9.8%) |
| Criminal[64] | 4 (4.1%) | 0 (0%) |
| Total | 98 | 61 |

Table 1.6: Themes of Muslim men's litigation in Istanbul, 1659-1661

| | Plaintiff | Defendant |
|---|---|---|
| Debt | 156 (59.6%) | 124 (48.6%) |
| Movable Property | 20 (7.6%) | 20 (7.8%) |
| Real Estate | 16 (6.1%) | 21 (8.2%) |
| Inheritance | 17 (6.5%) | 20 (7.8%) |
| Marital | 4 (1.5%) | 12 (4.7%) |
| Slavery | 15 (5.7%) | 18 (7.1%) |
| Theft/Usurpation | 17 (6.5%) | 16 (6.3%) |
| Criminal | 8 (3.1%) | 12 (4.7%) |
| Guild | 4 (1.5%) | 5 (2%) |
| *Zulüm*[65] | 4 (1.5%) | 6 (2.4%) |
| *Vakıf* | 1 (.4%) | 1 (.4%) |
| Total | 262 | 255 |

[63] I categorized litigations based on the primary theme of disputes. I located, for example, the disputes related to an inherited house or debt under the categories of real estate or debt, respectively, rather than inheritance. When a dispute was about the ownership of a slave, similarly, I located it under the category of movable property rather than slavery.

[64] Criminal cases were those about verbal or physical assaults. I placed crimes against one's ownership of property under the category of theft/usurpation.

[65] *Zulüm* (suppression) here means the suppression of high officials against tax paying subjects, which were later brought to the Istanbul sharia court.

A survey of women's debt-related litigations, for example, demonstrates that while they were independently involved in borrowing and market transactions, a relatively high number of their cases pertained to debt claims inherited from their relatives. Muslim women sued for debt in 26 cases, from which 13 cases were related to inherited assets from a relative. In contrast, Muslim male plaintiffs sued for inherited debts at a much lower rate (26 cases which consisted 16.7 percent of their entire debt cases).

In addition to inheritance laws, Muslim family law entitled women to certain property rights in the form of dower (*mihir*), maintenance (*nafaka*), and child support. Women's relatively high number of litigations on the basis of their marital rights demonstrates the significance of marital ties in their acquisition of property. From the 14 cases in which Muslim women sued for marital disputes, 11 cases were related to their dower, maintenance, or child support. In contrast, men brought only 4 cases related to marital rights. Men's marital disputes, different from those of women, were related to their non-pecuniary rights such as demanding a wife to move with her husband to a new neighborhood. Based on the analyses of litigations in the sharia court of Istanbul in this period, it seems that women's marital ties provided a significant portion of their financial well-being.[66]

What did different forms of property mean for Istanbulite women in the period under study? What kinds of properties were disputed between women and their family members on the one hand and outsiders on the other? Did men and women have different

[66] For an analysis of women's financial rights within their marriage, see chapter two.

priorities in owning and managing their properties? In the following three subsections, I will examine the Istanbul court records (1659-1661) in order to provide some partial answers to these questions by focusing on three forms of properties which were disputed in the sharia court: movable property, cash, and real estate. While the categorization is somehow arbitrary since any type of property could be readily transformed into another form, I find the categorization useful since each type of property represented different meanings for men and women.[67]

***Movable property***

If there was one form of property that women had the least problems in managing and controlling, it was movable properties such as furniture and other household and personal items. While almost every woman had ownership of certain personal and household items, many of which they received as trousseaus from their natal family at the time of their marriage, their actual control over such items were not frequently disputed. In the period under study, Istanbulite Muslim women brought only five cases involving movable properties, three of which were against their ex-husbands.

Personal properties such as jewelry and household items could easily be converted into cash and therefore circulate in the economy. Women sometimes used their movable properties to help their husbands in dire financial situations, although they primarily left them as surety to secure a loan for their husbands. Women did not,

[67] I excluded cases on inheritance and matrimony from the following analysis since they are analyzed in details in the following chapters. Furthermore, I excluded the category of slavery since they were primarily lawsuits for emancipation and had little to do with women's property rights. Criminal cases were also excluded for the same reasons.

however, transfer the ownership of their personal items to their husbands. The ownership of such properties, similar to that of cash (see below), was not frequently disputed among couples during their married life. It was the deterioration of marital relations that initiated women's litigation against their husbands. These cases, furthermore, demonstrate that women could and did use sharia courts to secure the ownership of what legally and culturally belonged to them.

While trousseau was not a part of the marriage contract as sanctioned by Islamic law, it has been widely practiced in the Islamic world since at least the medieval period and continues up to this day.[68] Trousseau was a form of pre-mortem inheritance arrangement, according to which daughters received some properties and took them to their marital households. In one case of calculating the assets and liabilities in the estate of the deceased Ahmed Ağa that came to the attention of the sharia court in June 1660, it became clear that he had given some land to his son as a gift and some movable materials to his daughter as a dowry. The value of the dowry items amounted to as much as 55,000 aspers, i.e. the price of a relatively large house in the capital.[69]

The cultural norm of women's ownership of such movable properties was also reflected in the opinions of contemporary jurists. The question of the ownership of domestic materials after the death of a spouse was asked of the seventeenth-century chief jurist Çatalcalı Ali Efendi. His response was that the materials that suit women belonged to the wife and the materials that suit men belonged to the husband unless this could be

[68] Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 14-18; Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*, 55-57.
[69] İŞS9: 25b, 22 L 1071.

proven otherwise.[70] In other words, women were the natural owners of "feminine" materials. The jurist did not specify what materials belonged to either men or women. The court records, on the other hand, provide some insights into which properties were viewed primarily as feminine.

The woman Rabia, for example, came to the court on August 7, 1661 to sue her husband Mehmed Ağa for having sold her belongings without her permission. The properties she claimed consisted of a set of silver washbowl ewer and a silver candlestick.[71] Eleven days later, a divorced couple came to the sharia court where the woman Havva sued her ex-husband for having appropriated her movable properties after having divorced her a day earlier. The materials she claimed consisted of a ruby ring, a pearl mirror, a cap (*'arakiyye*), a red scarf, a flask for holding rosewater (*gülâbdân*), a green velvet headcover (*serpûş*), and a pair of shoes.[72] In both cases, the male defendants admitted their liability and the court asked them to return the appropriated materials to their (ex-)wives. It seems that movable materials such as jewelry, ornamental clothes, and household items were assumed to belong naturally to women.

An interesting area of contention between spouses was the ownership of domestic female slaves. How were such slaves viewed within the gendered division of domestic properties? Did they naturally belong to the master or mistress of the house? The chief jurist Çatalcalı Ali Efendi did not specify what constituted masculine or feminine properties, but a legal justification for his response quoted a medieval Indian legal text,

[70] Çatalcalı Ali Efendi, *Fetâvâ-yı Ali Efendi ma'an-Nukûl* (Istanbul: Matbaa-ı el-Hac Muharrem Efendi el-Bosnevi, 1887), 76-77.
[71] İŞS9: 38a, 11 Za 1071.
[72] İŞS9: 93b, 22 Z 1071.

which included male slaves among the properties that belonged to husbands.[73] The quote, however, does not specify to whom female slaves belonged.

Again, the sharia court records provide some additional information about the ownership of male and female slaves. While, on a legal level, free men and women could own both male and female slaves, ownership of slaves was also a gendered phenomenon in Istanbul. The manumission deeds of slaves recorded in 1659-1661 demonstrate that women almost exclusively owned female slaves and men owned primarily male slaves.[74] In the period under study, 52 women came to the court to manumit 51 female slaves and only one male slave; while 122 men came to manumit 73 male slaves and 51 female slaves. The data, of course, challenges the Orientalist harem notion of Muslim men surrounded by concubines.

What was the impact of the gendered ownership of slavery on married couples' relationships? Deeds and disputes on inheritance recorded in the Istanbul sharia court suggest that Istanbulites, similar to the residents of many other cities of the empire, were primarily monogamous. Wives, therefore, could have resisted the ownership of female slaves by their husbands. After all, sexual union between a man and his female slave was legal and the ensuing children were regarded as legitimate heirs of the man. One method

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[73] The text *Fetava Tatarhaniyye* was authored by a legal scholar in the late fourteenth-century Turco-Persian Sultatane of Delhi. The genre of *Nukûl* (quotes) was a form of Ottoman legal scholarship which justified the short responses of grand jurists by anchoring them in previous juristic opinions. For *Fetava Tatarhaniyye* see Ferhat Koca, "El-Fetâvat't-Tatarhâniyye," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 12: 446-47.

[74] Seng did not observe female owners of male slaves in early sixteenth century Üsküdar, while female slaves were owned both men and women. Yvonne Seng, "Fugitives and Factotums: Slaves in Early Sixteenth-Century Istanbul," *Journal of the Economic and Social History of the Orient* 39, no. 2 (1996): 145.

wives applied to prevent such undesirable outcomes was acquiring the ownership of their husbands' female slaves. One divorced couple pursued such a case in court on October 3, 1661. Hasan Ağa sued his divorced wife Hadice for not returning his female slave after the divorce. Hadice responded that he had granted the female slave as gift to her while they were married. After Hasan Ağa's denial of Hadice's claim, the court asked her to provide proof. Hadice procured two witnesses who testified in her favor. They maintained that Hasan Ağa had admitted in front of them some five months before the divorce that he had already granted the slave as a gift to Hadice. The court ruled in Hadice's favor and asked Hasan Ağa to drop his claim for the female slave.[75]

***Cash***

Litigation on debts formed the largest category of women's disputes in the period under study. Out of 41 cases of women's debt-related litigations, 17 were related to inherited debts involving non-relative debtors to a deceased family member of the female litigants. The remaining 24 cases of debt-related litigations indicate that women were involved in a wide variety of economic activities with both their relatives as well as outsiders. Women were litigants against their relatives in five cases and the rest were against outsiders, a point that I will examine in more detail below. Before that, an analysis of women's financial activities in the capital would be in order.

A survey of women's deeds pertaining to debts shows that Istanbulite women were involved in financial transactions as borrowers and lenders with other individuals as

[75] İŞS9: 152a, 8 S 1072.

well as financial institutions (Table 1.7). The average number of loans involving women was higher than 55,000 aspers, a handsome amount of money sufficient to purchase a relatively large house in the capital. There were no loan deeds below 1,000 aspers and only seven cases of loans between 1,000 and 5,000 aspers.

Table 1.7: Istanbulite women as borrowers and lenders, 1659-1661

| | Female Borrower | Male Borrower | |
|---|---|---|---|
| Male Lender | 10 | 0 | 10 |
| Female Lender | 6 | 12 | 18 |
| Vakf Lender | 17 | 0 | 17 |
| Total | 33 | 12 | 45 |

It is notable that the data from court records does not include the entirety of loan transactions in the capital. Loans for small amounts were negotiated in more informal settings, perhaps due to the fees associated with court proceedings. We typically learn about the existence of relatively smaller amounts of loans and those between family members usually when the borrowers failed to repay their debts. Most of the loans below 5,000 aspers were recorded in the court usually after some difficulties the lenders had in redeeming their debts. These deeds were either about the appointment of a proxy to collect the debts or about a settlement (*sulh*) of disputes between the involved parties. It seems fair to argue that many cases of small loans were not brought to the attention of the sharia court unless there was a dispute. This finding is corroborated with the data from women's debt-related litigations. The average amount of disputed debts between men and women in this period was more than 19,000 aspers, when women were plaintiffs, and 8,000 aspers, when they were defendants (compare to more than 55,000 in loan deeds).

From among 24 debt-related litigations of Istanbulite women, 10 cases involved a value between 1,000 and 5,000 aspers (compare to five cases of loan deeds in this range).

Another category of women's loans which were underrepresented in the court records were those involving their relatives. Only two out of 43 cases of women's loan deeds involved their relatives. Similarly, women did not frequently use the sharia court to settle their disputes over loans with relatives. Women's financial disputes with family members, particularly with their husbands, were usually a sign, and perhaps a consequence, of the strained familial relationship.

The woman Ayşe bint Şaban, for example, came to court on November 5, 1661 to sue her husband Ebubekir. She maintained that her husband had taken some of her personal belongings and sold them on the market for 17 piasters, which he now owed her. The husband responded that Ayşe had actually owed her the money and after she failed to pay her debt, he sold the items to redeem the debt. When Ayşe denied her debt, he provided two witnesses who testified that Ayşe had taken the loan from her husband in their presence. Ayşe, subsequently, lost the case.[76] The couple, though still married, had gone through a series of financial disputes which were not resolved within intra-familial or communal settings. In other litigations involving intra-familial loans, women did not sue their husbands during the lifetime of their marriage. They rather litigated as either divorcees or widows for the money they had lent their husbands during the time they were married.

[76] İŞS9: 180a, 12 Ra 1072.

The few cases of women's debt-related deeds and litigations provide, however, a colorful picture of women's contribution to the economy of their households. Islamic law did not view family as a financial union: husbands and wives, as well as parents and adult children, had the right to acquire and manage their properties independently, which many residents of Istanbul did. Yet, wives took an active role in contributing to the economy of their families through lending money, permitting their properties to be used as surety for family members' loans, and forming business partnerships.

While the finance market in the capital was a vital economic sector with an interest rate that could fluctuate between 12 to 22 percent in the years 1659-1661, intra-familial debts seemed to be without any interest. The woman Hadice bint Mehmed, for example, had lent some 700 piasters to her husband, which became the matter of lawsuit on October 25, 1661 between her and the public treasurer who had appropriated her late husband's estate.[77] More than three months earlier, another woman named Fatma sued a male relative of her late husband for 40,000 aspers, which she had lent her husband.[78] While many cases of debts from the third parties were recorded with the exact amount of their interest rate, the cases of intra-familial debts did not mention the existence of interest.

In addition to providing direct loans to their husbands, women contributed to the economy of their matrimonial household through leaving their personal items as surety for their husbands' debts to third parties. Similar to the times when women lent money to

[77] İŞS9: 167a, 1 Ra 1072.
[78] İŞS9: 50a, 17 Za 1071.

their husbands without charging any interest, putting their household items and jewelry as surety for their husbands' debt meant that they shared some of their husbands' financial responsibilities in managing the household economy. If their husbands failed to pay the debt, the lender could appropriate the items in surety and sell them on the market to redeem their debt. The woman Tevekkül, for example, came to the court on October 29, 1660 to appoint her current husband as her proxy to deal with her properties that she had given as surety for the debt of her previous and deceased husband Mustafa Beg. The latter had borrowed 150 piasters from a cash endowment (*vakıf*) with 15 percent of annual interest. Tevekkül had given the administrator of the *vakıf* some of her properties as surety, which included an emerald ring, two ruby rings, a couple of gold bracelets, a damaskeened girdle, and some other ornamented clothes. Mustafa Beg had passed away before paying his debt, the payment of which was now the responsibility of Tevekkül. She appointed her current husband to sell the properties, redeem the debt, and pay her any extra money that remained afterwards.[79]

Some other women played an even more active role to financially help their husbands and other male family members. When a certain Mehmed Çelebi was indebted to another person, for example, his wife Emine stepped in to take over the debt. Emine and the creditor appeared in court on September 2, 1661 to record the transfer of the debt. They maintained that at a previous meeting where the three parties were present, Emine's husband "transferred" (*havâle*) the debt to her. At the court meeting, the husband was not present since he was not a party to the financial transaction between the creditor and

[79] İŞS8: 1b, 24 S 1071.

Emine.[80] About two months later, Emine and the creditor appeared again in the court to register a settlement (*sulh*) over the debt issue and her subsequent payment of the money.[81]

A survey of widows' legal actions immediately after the deaths of their husbands suggests that wives were not oblivious to their husbands' economic activities, which had a direct impact on the wellbeing of their nuclear families. After the death of el-Hac Ahmed, for example, his widow Fatma sent a proxy to the court to sue Mayil, a Jewish businessman for some 20.5 piasters he owed to her deceased husband. Fatma's proxy mentioned that the money was owed for some silk the late el-Hac Ahmed had sold to Mayil. After Mayil's denial of his indebtedness, the proxy procured two witnesses to prove Fatma's claim. The court subsequently ordered Mayil to pay her the claimed amount.[82] In the period under study, many women came to the sharia court with a detailed knowledge of their husbands' economic activities, enumerating the lists of their assets and liabilities to third parties. While husbands were responsible for providing for matrimonial family members, some women were actively involved in their husbands' business activities.

In addition to their immediate family members, Muslim women of the capital in the period under study entered into financial transactions, both as borrowers and lenders, with a wide variety of individuals and institutions (Table 1.7). In this period, Muslim women borrowed from Muslim women in six cases, from men in 10 cases and they lent

[80] İŞS9: 113a, 7 M 1072.
[81] İŞS9: 176b, 10 Ra 1072.
[82] İŞS9: 150a, 9 S 1072.

money to men in 12 cases. The case of the woman Safiye, for example, illustrates women's wide network of financial transactions. On November 12, 1659, Safiye and her four male creditors came to the sharia court to register her loans. Accordingly, she had borrowed a total amount of 442.5 piasters from two men with the military title of *beg*, one man with the *ilmiye* title of *efendi*, and a Christian man.[83]

A more important source of loans, at least for Istanbulite women, was cash endowments which functioned as public financial institutions. From among the 33 cases in which women borrowed money, in 19 cases the lenders were endowments. The average sum of women's debts to endowments was more than 90,000 aspers, much higher than the total average (above 50,000 aspers). The lowest sum a woman borrowed from an endowment was 6,000 aspers, followed by another woman with a loan of 12,000 aspers. It seems that endowments in the second half of the seventeenth century dominated the finance market of the capital.

One significant aspect of Istanbulite women's economic life was their transformation of other forms of wealth into cash. Istanbulite women, similar to their sisters in other urban centers of the empire, were active borrowers and lenders. Yet, they borrowed more than they lent, which was similar to the situation of the seventeenth-century women in Kayseri and unlike those in seventeenth-century Bursa.[84] In Istanbul,

[83] İŞS7: 35b, 26 S 1070.

[84] Gerber observes that the seventeenth-century women of Bursa "gave money on credit no less than they received loans from others." Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," 234. My observation corroborates that of Jennings who found more female borrowers than creditors in Kayseri. Ronald C. Jennings, "Loans and Credit in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* 16, no. 1 (1973): 194-95.

not only were female lenders fewer than female borrowers, there was also a significant difference between the average sums they lent and borrowed. Women were lenders in 18 cases, and borrowers in 33 cases. The average amount Muslim women lent money was below 30,000 aspers, while the average amount they borrowed was above 65,000 aspers.

A direct method of acquiring cash for women was selling their real estate or movable properties. As we will see below, women were net sellers of real estate for cash. Another method was getting loans after having left their real estate or movable properties as surety. One woman, Ayni, for example, came to the court on October 3, 1661 to sue a certain Veli Beşe for items that she had left as surety for a loan. She had borrowed 1,400 aspers some two years ago and in return she had left a silver sword and a large double-edged silver scimitar (*gaddâre*).[85] Similarly, another woman named Rabia had borrowed some 80 piasters from a certain Mustafa Beşe, for which she had left some of her jewelry and household items as surety. Rabia's representative, who was another woman named Ayşe, sued Mustafa Beşe on October 11, 1660 for not returning Rabia's properties despite the fact she had redeemed her debt. Among the materials Rabia had left as surety in Mustafa Beşe's hands were a ruby ring, two pearl buttons, and nine other pearl buttons ornamented with pieces of ruby.[86]

They were not only the women of middle social strata who left personal items as surety to secure a debt. Court records contain many examples of the women of the highest echelons of society who had to leave their personal items in temporary possession

[85] İŞS9: 148a, 8 S 1072.
[86] İŞS8: 18a, 7 Ra 1071.

of lenders. One such example was the woman Şehr Hatun, who was of slave origin but had achieved her manumission and integration within the household of her master. Manumitted female slaves did not necessarily belong to the lower social strata of the city. Many acquired the social status of their masters. In addition to highly valued personalized items that Şehr Hatun owned, another signifier of her social status was the fact that she did not come to the sharia court. Nor did she send a proxy. Instead, the sharia court sent a deputy judge to the house of a member of the learned hierarchy, who resided in Şehr Hatun's neighborhood.

In the "court" meeting (*meclis-i şer'*), in front of the deputy judge, Şehr Hatun admitted that she had borrowed some 500 piasters (approximately 60,000 aspers) from Şeyh Sadık Efendi, who was also present in the meeting. As surety, she had left a house as well as her personal items which included two pairs of bracelets weighed at 67 *miskal*s,[87] two garments ornamented with silver, five daggers, a silver knife, a scabbard ornamented with a silver chain, a number of silver bandeaus with rubies and pearls on them, a number of caftans made of satin with gold buttons, a girdle ornamented with silver, pillows made of fur and satin, an earring with ruby and pearl, and seats (*mak'ad*) made of satin. She declared that in case she failed to pay her debt at the end of six months, the lender could sell the items in surety to redeem his loan.[88] It seems that Istanbulite women in the seventeenth century did not necessarily attribute any significant emotional meanings to their belongings no matter how "personal" they were. The most

[87] Each *miskal* weighed around 4.25 grams.
[88] İŞS9: 101a-b; 20 Z 1071.

personal items such as bandeaus, earrings, cushions, and pillows could be easily turned into cash whenever needed.

Women who owned houses usually used *istiğlal* as a common method of borrowing higher amounts of money. *İstiğlal* was a form of conditional sale, according to which the owner of a house would sell it for a certain period, usually one year, and then immediately rent it for the period. At the end of the contract, the buyer would sell it back to the original owner. In this transaction, the "price" of the house was the amount of debt while the annual rent was actually the interest for the loan. Throughout this method, the lender eventually had the right to sell the house to third parties if the borrower failed to repay his or her debt. In other words, the *istiğlal* contact was effectively a contract of loan with interest while leaving the "sold" real estate as surety for the loan. In the period under study, Istanbulite Muslim women came to the court to record the use of their real estate as surety for loans in 23 cases, 19 of which were through the *istiğlal* contract.

What was the reason for Istanbulite Muslim women's indebtedness? The debt-related litigations demonstrate that women's socio-economic background as well as their marital status determined their different needs. Married women were mostly provided with accommodation, food, and clothing by their husbands, and unmarried young women usually benefitted from the support of their natal families. The dissolution of a marriage, due to either divorce or the death of a husband, could cause serious economic hardship for some women. Although Islamic law on marriage and inheritance entitled women to certain financial rights (see chapters two and three), it appears that some Istanbulite women were pushed to the margins of society, often in need of charitable support.

Among the beneficiaries of a charitable endowment were "women without husbands" including divorced and widowed women. The founder el-Hac Mehmed Efendi's proxy came to the sharia court on September 11, 1660, to endow a large residential house initially for his descendants. After the extinction of their line, the founder stipulated that the house should be rented out. The income, the stipulations continued, should provide 100 aspers a year for each woman in the neighborhood who did not have a husband.[89] The founder's care for the divorced and widowed women of his neighborhood indicates that the impoverishment of women after the dissolution of marriage indeed created a social problem.

Some other women with no familial support had to borrow from the market in order to meet their immediate needs for food and clothing. The woman Rabia bint Mehmed, for example, owed a grocer (*bakkâl*) a considerable amount of 6,902 aspers for her purchase of grocery items on credit. The case came to the attention of the sharia court after Rabia's death. Rabia was either a widow or divorced. Her only heir was her daughter, who had inherited this relatively large amount of debt from her mother. The case was settled amicably (*sulh*) between the grocer and the daughter, possibly because the latter did not have the financial power to pay her mother's debt either.[90]

Many widows of a better economic situation also appeared in the sharia court as borrowers in order to maintain themselves and particularly their orphans. The widow Badreftar bint Abdullah, for example, came to the sharia court on October 31, 1661, in

[89] İŞS9: 138a-b, 16 M 1072.
[90] İŞS8: 21b, 6 Ra 1071.

order to record a debt from a certain Halil Efendi. As the guardian of her minor son, she borrowed around 40,000 aspers with an interest rate of 12.5 percent; in return, she left as surety a house inherited from her late husband.[91]

It was not only widows or impoverished women who were indebted for their daily and immediate material needs. Some women borrowed in order to acquire materials that would match their social status. The woman Safiye, for example, acquired a female slave for 150 piasters on credit. She had paid only 13 piasters, the rest of which became a matter of litigation between her and the seller on November 11, 1660.[92] Some six months later, the woman Rabia bint Hasan purchased on credit a highly valued piece of Persian muslin (*'acem metâ'ı dülbend*) from an Armenian merchant.[93] Ten days after Rabia's case, another woman named Fatma bint Abdullah was sued for her debt related to the purchase of a couple of gold earrings. She admitted to her debt and promised to pay it in 45 weekly installments.[94]

One, perhaps unexpected, group of women who appeared as borrowers of large amounts of money consisted of married women of high social and economic status. The woman Afife bint el-Hac Ahmed, for example borrowed from a cash endowment on two occasions. On December 9, 1660, her husband and legal representative Mahmud Ağa came to the sharia court to record her debt from a cash endowment at the amount of 200 piasters. The day after, Mahmud Ağa appeared again in the court to record another one of

[91] İŞS9: 175a, 7 Ra 1072.
[92] İŞS8: 6a, 28 S 1071.
[93] İŞS9: 17a, 24 L 1071.
[94] İŞS9: 24b, 4 Za 1071.

his wife's debts from the same endowment, this time at the amount of 215 piasters. She left two of her houses as surety for her debts, for which she was responsible to pay an annual interest of 15 percent. Afife was by no means an impoverished woman. She had at least two houses; her father had the honorary title of *el-hac* while her husband had the military title of *ağa*. It is difficult to explain the reasons for the indebtedness of this category of women. It is probable that they needed the cash in order to invest in their husbands' economic endeavors or purchase dowries for their children.

***Real Estate***

Unlike women who owned household items, jewelry, female slaves, and cash, men were the primary owners of agricultural, horticultural, and residential property. True, women acquired real estate through inheritance as well as purchase, yet they sold their real property much more often than their male counterparts (Table 1.8). Muslim women of the capital in this period bought real estate on 17 occasions and sold it in 75 cases. Istanbul, in that sense, was similar to many other Ottoman cities where there was a net exchange of real estate in favor of men.

Table 1.8: Istanbulite Muslim women's sale deeds, 1659-1661

| Sellers / Buyers | Men | Women | Men and Women | Total |
|---|---|---|---|---|
| Men | 0 | 68 | 7 | 75 |
| Women | 6 | 6 | 5 | 17 |
| Men and Women | 2 | 1 | 0 | 3 |
| Total | 8 | 75 | 12 | 95 |

Why did women sell their real estate? Faroqhi attributes the high rate of women's sales of real estate to the possibility that female heirs did not hold on to their inherited estates. A sale, however, did not mean giving up inheritance rights. The examination of other forms of properties demonstrate (see above) that women actually turned their real estate into currency, either in the form of cash or movable properties that could easily be converted into cash. If the sale of property for women was related to an inheritance practice that kept real property intact at the cost of women's disinheritance, then the majority of their buyers should have been their male relatives. From among the numerous inherited real estate properties that Istanbulite Muslim women sold in this period, only four were sold to close relatives, two of whom were women. Other women sold either entire houses or their inherited shares to non-relatives. Women, therefore, were not disinherited. They rather transformed one form of property to another.

In addition to the gendered nature of properties, the practical difficulties women faced in the management and maintenance of their real estate could provide a better explanation for sale of their real estate. Cases of litigation of real estate demonstrate that

women had more difficulty controlling real estate (Tables 1.5 and 1.6). Despite the large difference between the number of lawsuits between men and women, the number of lawsuits initiated by men and women for real estate were almost equal (16 and 14, respectively). Litigations regarding real estate formed a considerable portion of female plaintiffs' cases in the sharia court (14.3 percent) when compared to that of men (6.1 percent). Similarly, Muslim female defendants had a higher proportion of real estate-related disputes when compared to that of their male counterparts (18 percent compared to 8.2 percent, respectively). It seems that women had a much more difficult time in acquiring their properties when they were in the form of real estate.

Unlike women's litigations for other forms of property, which we saw above, their litigations for real estate were primarily against relatives, particularly male members of their extended families. From the 25 cases in which women were litigants for disputes pertaining to real estate, in 19 cases the other parties were family members, 17 of which were related to disputes about inherited real estate. The court cases demonstrate that while Muslim women's ownership of real estate was constantly challenged by their family members, they benefitted from the application of Islamic law in the sharia court in order to secure their property rights.

From the 19 (out of a total of 25) cases in which women were litigants against their family members, in seven cases they litigated against female relatives. A survey of the relationship of these relatives against whom women litigated demonstrates members of small nuclear families rarely sued each other while disputes over inherited real estate could be a common source of contention between members of the extended family. The

*feraid* rules, that prescribed the division of estate among multiple heirs of close and distant relation to a deceased person, were not necessarily conducive to the needs of nuclear families as it divided inherited properties into arbitrary shares among descendants and other relatives. Accordingly, time and again the material interests of nuclear family members were in conflict with that of members of the extended family. According to the *feraid* rules, for example, a deceased man's wife was entitled to only one-eighth of the entire estate, and in case he did not have any children, the rest of the estate would pass to his agnatic family members such as siblings, cousins, and nephews. Daughters, similarly, did not exhaust the entire estate; members of the deceased father's extended family were entitled to a significant portion of the estate (see chapter three). Many men and women bypassed the *feraid* rules through making gifts and alienating properties in the form of family trusts in order to keep the inherited properties in the possession of nuclear family members (see chapter four). The legality and legitimacy of such mechanisms were contended by members of the extended family who were excluded as legal heirs.

After the death of a certain Ahmed in October 1661, for example, his legal heirs came to the sharia court to settle a dispute over real estate. According to the *feraid* rules, Ahmed's heirs were his widow, daughter, and nephew (brother's son), who were legally entitled to one-eighth, four-eighths, and three-eighths of the estate, respectively. The most significant part of Ahmed's estate was a house in the Karabaş neighborhood of Istanbul, where his widow and daughter continued to live after his death. Ahmed's nephew Süleyman sued the widow Dilaver and the daughter Fatma for having appropriated the entire inherited house and refused to give him his share in the estate.

Dilaver and Fatma responded that the late Ahmed had given the house as "gift" to them some three years ago. The two women procured four male witnesses to prove their claim and the court subsequently decided in their favor.[95]

The rarity of suing close family members for property-related disputes, however, does not mean that there were no conflicts among them. Rather, they might have used other methods such as intra-familial or communal negotiations and mediations to settle their disputes. Women, after all, needed the support of their close male family members for a number of purposes, including legal representation in their economic endeavors as well as the protection of their property against non-relatives. Using the court of law in order to sue a close male family member may have strained familial relations and therefore cost women their "social capital," i.e. the protection of their male relatives.[96]

For Istanbulite women, social capital was closely and directly related to their real capital. Women's investment in real estate usually took place through their male family members. Husbands particularly proved to be ideal candidates as business partners since they could act as the representative of their wives not only in the sharia court for legal issues, but also to take care of the maintenance and day-to-day administration of their businesses.[97] The couple Muharrem Beg and Rahime, for example, had a large investment in an endowed property, which was burned to ashes in the Great Fire that started on July 24, 1660. The couple asked the permission of the endowment's

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[95] İŞS9: 166b, 25 S 1072.

[96] Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, 227.

[97] For husbands representing their wives in managing their properties see İŞS7: 15a, 9 S 1070; İŞS7: 22b, 10 Ra 1070; İŞS8: 6a, 1 Za 1069; İŞS8: 18b, 15 S 1071; İŞS8: 19a, 15 Ra 1071; İŞS8: 32a, 5 R 1071; İŞS8: 32b, 5 R 1071; İŞS8: 37b, 8 R 1071; İŞS8: 42b, 21 R 1071; İŞS9: 16b, 22 L 1071; İŞS9: 19b, 17 L 1071; İŞS9: 22b, 27 L 1071; İŞS9: 47a, 19 Za 1071; İŞS9: 56a, 20 Za 1071; İŞS9: 144b, 7 S 1072.

administrator (*mütevelli*) to build a large estate at the place of the burned properties. About a year after the fire, the couple finished the construction of a large complex, which included some 47 one-room apartments. After that, Muharrem Beg came to court both as a legal agent as well as his wife's representative, to ask the court to ascertain the value of their investments, which was subsequently evaluated to be a considerable amount of more than 350,000 aspers.[98] In another similar case of common investment in an endowed property, a married couple came to the court in mid-November 1661 to record the details of their investments.[99] The husband was not her legal proxy in the court and yet it could be assumed that he represented her when they decided to repair the endowed property which had been devoured by the Great Fire of 1660.

Not all women, however, benefitted from the support of their male relatives in acquiring and managing their real estate. Women, as mentioned above, were more frequent sellers than buyers of real estate. The fact that the practical hardships of managing and maintaining properties was a reason for women to sell their real estate became even more evident after the Great Fire of 1660.

Abundant numbers of the court records that registered transactions about burned and destroyed properties after the fire show the terrifying impact of the incident on the lives and the properties of the Istanbulite. While fires were not unknown to the residents of Istanbul, the contemporary chronicles and court records immediately named it as the

[98] İŞS9: 63b, 20 Za 1071.
[99] İŞS9: 188a, 22 Ra 1072.

"Great Fire" (*Harîk-i 'Azîm*), indicating the fire's size and destructive power.[100] From the court records registered after the fire, one can imagine a great dislocation of people and destruction of their properties during the fire. In addition to saving their lives, many Istanbulites were also concerned with saving at least some of their valuables, observable in cases where people gave their properties to others for safekeeping (*emâneten*). It is also easy to picture some opportunists stealing and looting the properties whose owners had fled, a few cases of which were reflected later in the court records as well.

For Muslim men, the short- and middle-term impacts of the fire were more complicated. While many men, like women, lost all their properties in the fire, a group of moneyed elites of the capital lost no time in turning the disaster into an opportunity. The destruction caused by the fire brought many damaged properties onto the market. In addition, the Jewish residents of the capital were expelled from many areas particularly those around Tahtakale, after which their properties were auctioned for sale. Many damaged churches and synagogues were also confiscated by the state and sold on the market.[101] The huge number of new properties on the market should have decreased the value of real estate for Muslim men, who were the primary buyers of the burned houses,

[100] It started in the Odunkapısı area of the city on the Golden Horne's shore and then quickly spread to the central areas including the districts of Süleymaniye, Fatih, the Janissary Barracks, Bayezid, and the Old Palace. It destroyed a great portion of the Eminönü area where primarily Jewish residents lived. Considering the fact that many houses were wooden and there were no well-organized firefighting system, the fire was spread as far as Samatya to the western parts of the capital. Marc David Baer, "The Great Fire of 1660 and the Islamization of Christian and Jewish Space in Istanbul," *International Journal of Middle East Studies* 36, no. 2 (2004): 159; Kenan Yıldız, "1660 İstanbul Yangınının Sosyo-Ekonomik Tahlili" (Doctoral dissertation, Marmara University, 2012), 10-13.

[101] Baer, "The Great Fire of 1660 and the Islamization of Christian and Jewish Space in Istanbul," 159-81.

churches, and synagogues. The fire, therefore, provided a unique opportunity for moneyed Muslim men to acquire real estate.

Istanbulite Muslim women were more frequently sellers than buyers both before and after the Great Fire. The fire, however, started a new era in which women's sale of property accelerated. In the post-fire period, many women came to the sharia court in order to transfer ownership of the debris (*enkâz*) and land of their burned houses both to relatives and outsiders. Out of the 25 sale deeds of burned houses that involved women, in 24 cases women sold property and only in a single case did a wife purchase her husband's burned house. The Great Fire, therefore, had accelerated an already existing trend of women parting with their real estate for cash.

There were, therefore, two reasons for women to sell their real estate. One was the practical difficulties associated with women's management and maintenance of their properties. The other one was the fact that women's possession of property was frequently challenged by outsiders, and more particularly by their extended male family members. It seems that for many women, their independent ownership of real estate was a temporary situation.

Yet women, particularly those without male family support, needed to purchase and maintain their houses. One common method Muslim women used in the second half of the seventeenth century in order to secure their control over their privately owned real estate was turning them into family trusts (see chapter four). Using this method, women benefitted from legal and moral principles regarding the impunity of endowments and therefore could safely pass them on to the next generation. The woman Fatma bint

Kasım, for example, came to the sharia court on July 24, 1661, to register the purchase of a middle-size house for 20,000 aspers. The house had two upper rooms, a porch, a workshop, and a backyard with trees. The next day, she came to the court to announce that she had turned the house into a family trust, the primary beneficiary of which was herself. After her death, a woman named Ayşe bint Abdülcelil would be the resident of the endowed house, and then Ayşe's descendants.[102] The relationship between Fatma and Ayşe remains unclear. Fatma was living alone, and had neither close male family members nor children who could serve as the beneficiaries of her family trust. Likewise, Ayşe's marital situation is ambiguous. Her patronymic name implies that she might have been a freedwoman.[103] In any case, the fact that Fatma had turned her privately owned real estate into a family trust would help the two women to claim a relatively secure ownership over the house.

## CONCLUSION

By the mid-seventeenth century, the Ottoman Empire was undergoing a series of social, economic, and political transformation which had a direct impact on the property ownership of men and women in the capital. The classical feudal system of land tenure (the *tımar* system) was increasingly replaced by tax-farming (*iltizâm*). Tax farmers, unlike the feudal warlords of the fifteenth and sixteenth centuries, did not have to reside in the places of their appointments. Many of them lived in large cities, particularly

[102] İŞS9: 100b, 27 Z 1072; İŞS9: 103b, 28 Z 1071.

[103] Many converted female slaves used the patronymic Abdullah (lit. "slave of God"). Occasionally, they used alternative names of Allah such as *Mennân* or *Celîl*, hence Abdulmennan or Abdulcelil. See Nur Sobers-Khan, "Slaves without Shackles: Forced Labour and Manumission in the Galata Court Registers, 1560-1572" (Doctoral dissertation, Pembroke College, 2012), 226-73.

Istanbul, where they had easier access to the power networks necessary for securing additional investments. The Istanbul court records show that many tax-farmers whose appointments were in several corners of the empire were indeed residents of Istanbul. These tax-farmers subcontracted (*der-uhde*) these appointments—which were located in nearby regions like Eyüb, or as far away as Erzurum in eastern Anatolia and villages in western Rumelia—and pocketed the difference between the amounts they originally paid to secure the appointments and what subcontractors paid them. The income of tax-famers was re-invested in commerce, financial market, and particularly the real estate.

Another aspect of the post-classical transformation was *temlik*, which was an imperial grant of previously feudal lands as private property to state officials. Koçi Bey, the seventeenth-century Ottoman scholar who was critical of the ongoing transformations, viewed *temlik* and the subsequent transformation of such privatized lands into non-taxable alienated endowments as signs of the corruption of the classical system and hence the "decline" of the empire.[104] It was not only a case of the large-scale landholding distributed as *hâs*, *dirlik*, and private property to the grandees and the male and female members of the Palace. Many small-scale agricultural lands were also privatized in the seventeenth century. Faroqhi documents this transformation in seventeenth-century Kayseri. Agricultural fields, which theoretically belonged to the

[104] Rifaat Abou el-Haj, *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries* (Syracuse: Syracuse University Press, 2005), 16.

state, began to circulate on the market in the form of private property over the course of the seventeenth century.[105]

Corrupt or not, Ottoman urban women benefitted greatly from these ongoing transformations. The reinvestment of tax-farm income in different varieties of private property, the privatization of lands which were previously under the imperial ownership, and the proliferation of the endowment system all meant that a greater proportion of the property within the empire now came under the regulation of Islamic law as practiced by sharia courts. Unlike the feudal land system from which female heirs were almost categorically excluded, the new sources of private property meant that women started to enjoy a certain share of accumulated wealth through the application of the Islamic inheritance system. In addition, the rise of the *vakıf* system in seventeenth-century Istanbul led to a more egalitarian division of inherited properties (see chapter four).

In this chapter, I examined Muslim women's use of the sharia court in order to secure their property rights within this era of transformation. Istanbulite Muslim women were active litigants. Many were also knowledgeable about legal norms and practices. Most of the cases that women brought to the court in 1659-1661, similar to their male counterparts, pertained to the protection of property rights. Unlike men, however, women acquired economic resources primarily through inheritance and marriage.

The fact that the majority of Muslim women's wealth came through their familial ties did not mean that women did not have access to the world beyond their domicile.

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[105] Faroqhi, *Men of Modest Substance: House Owners and House Property in Seventeenth-Century Ankara and Kayseri*, 206.

Indeed, women procured the testimony of impartial observers in order to prove their claims against both their family members and outsiders. True, customary laws that regulated most of Istanbul's economy through organized guilds prohibited women's access to a significant portion of the city's economic resources. And true, customs excluded them from a new group of moneyed people, the tax-farmers who controlled a significant portion of the city's commerce. Yet, Islamic legal culture provided women with easy access to the sharia court to protect the wealth they acquired through the application of Islamic law, despite the challenges caused by their relatives.

The gender-egalitarian approach of Islamic law pertaining to men and women's ownership and management of property, however, did not necessarily lead to a regime of property in which gender did not matter. Muslim jurists and judges were sensitive to the social practices of their times and therefore certain properties such as women's household and personal items were indeed viewed as "feminine." Perhaps more importantly, the ownership of slaves was a gendered phenomenon as well: women almost exclusively owned female slaves while men owned primarily male slaves. The ownership and management of real estate, on the other hand, was primarily the prerogative of men.

The gendered division of different types of properties was in line with the disparate functions that men and women were expected to perform in society. Legally and culturally, men were expected to provide their families with accommodation and other immediate needs such as clothing and food. Their monopoly, therefore, over many sources of economic activities was viewed as the norm. The domain of women, on the other hand, was primarily their domicile. Women were expected to reside within the

houses of their natal or marital family members, and therefore they did not need to own houses. The gendered division of public and private spaces between men and women also prevented women from active management of their real estate. Women, however, did own considerable amounts of cash and movable properties. Such properties were not only the signifier of women's social status; they also provided a certain level of security in case they lost their familial support for reasons such as a husband's death or divorce.

This gendered division of property ownership, however, seems to have been an idealized reflection of the expected gender norms in society. First, women of lower socio-economic status were underrepresented in the sharia court and therefore this chapter does not represent their relationship with different forms of property. Second, some propertied married women were actively involved in the economic world of their male relatives and husbands. While some women built business partnerships with their male relatives, others contributed by providing cash or surety for loans.

What were the incentives for women to contribute to the economic activities of their husbands? Despite the fact that ownership of property was not legally shared between male and female family members, the economic activities of husbands determined the financial well-being of their families. Muslim women of the capital in this period viewed their nuclear families not only as a social but also, at least, partially as an economic unit.

Another explanation, as suggested by Leslie Peirce in her study of the sixteenth-century Anatolian town of Aintab, is that women relinquished some of their properties to male relatives in order or secure "social capital." Aintaban women frequently gave their

real estate as "gifts" to their male relatives and in return they benefitted from their support and protection. My examination of the Istanbul court records corroborates her suggestion, as women frequently used their male relatives (and particularly their husbands) as legal representatives in order to protect their property rights.

Unlike the women of the sixteenth century Anatolian town of Aintab, however, Istanbulite Muslim women in the period under study did not relinquish their property rights in order to achieve social capital. While cases of "gifts" of real estate to relatives were not uncommon in Istanbul, it was not necessarily a gendered phenomenon. It was rather a method to bypass some of the inconveniences of the *feraid* rules that divided the estate randomly among many close and far relatives (see chapter three). While Istanbulite women shared some of the financial responsibilities of their male relatives, they made sure that their contributions were observed by the community members, and sometimes even recorded in the sharia court. Such measures would provide some insurance for women whose marital and financial status was far beyond stable. There were many social and legal reminders of the fact that women's share in their husbands' wealth was minimal. Husbands could unilaterally divorce their wives, after which they were responsible for their maintenance for only a few months. A married woman's share in her husband's estate was only one-fourth if she had not borne him children, and one-eighth if she had. Muslim Istanbulite women, therefore, formed a balance between their need to establish amiable relationships with their male relatives, on the one hand, and their financial security, on the other. An important area in which women sought such a balance

was in the area of their financial rights, which they acquired through marriage, the topic of my next chapter.

## Chapter 2: Money and Matrimony

On July 21, 1661, a case of marital infidelity appeared in the sharia court of Istanbul. A woman named Ayşe stayed overnight at the house of a couple some ten days before the court hearing. When they all woke up in the morning, the hostess Rabia saw some hickies (*emik*) on the guest's neck. Rabia accused her husband Himmet Beşe of having caused the hickies, which he denied. Under Rabia's accusations, and desperate to emphasize his innocence, Himmet Beşe responded, "If I did it, you would have been irrefutably divorced (*talâk-ı selâse*) from me."[106] In the days after the incident, Himmet Beşe was likely subject to his wife's uneasy questioning, and he eventually admitted his infidelity. Now in court, Rabia had a strong argument against her husband. She argued she was already divorced from him based on his statement on the day of the incident and his subsequent confession of infidelity. She asked the court to register her divorce as well her financial demands from her husband that included her dower, her maintenance, as well as child support for their minor daughter. The court ruled in her favor, granting Rabia all of her requests.[107]

Although the court scribe presented the lawsuit in the typical rigid language of the court record, the existing details still help to reconstruct the realities of the married lives of Istanbulites in the period under study. Rabia and Himmet Beşe had a minor daughter and Rabia was again pregnant at the time of the divorce. Besides a story of infidelity at the center of Rabia's claim, the court record does not reveal much about the domestic

[106] It literally meant "you will be divorced thrice." See fn. 120.
[107] İŞS9: 66b, 24 Za 1071.

issues that escalated to a divorce, which would separate a minor daughter and an unborn child from their father. Although the record is kept in the form of a lawsuit, it seems that the couple had mutually decided that the marriage bond was not sustainable. When the husband was asked about Rabia's claim, he corroborated her story although he had the legal right to deny it, which would have put the difficult burden of proof on Rabia. It seems that divorce was unavoidable between the couple and the real reason they were in court was Rabia's financial claims after the divorce.

Rabia benefitted from the sharia court in order to obtain a divorce and secure her financial interests. Her legal rights to child custody, child support, and her maintenance were not even disputed. They were all well-known legal doctrines in practice in the Islamic world for centuries.[108] After the approval of the divorce, she asked the court to determine the amount of child support for the minor daughter as well as her alimony. As a pregnant woman, she was entitled to receive alimony until the child was born. She would remain the custodian of the minor daughter until the age of nine, during which Himmet was responsible for providing child support. The court determined that he had to pay eight aspers a day for her alimony and four aspers a day for the child support. In addition, she also demanded her delayed dower of 1,100 aspers.

Rabia's story sheds some lights not only on Istanbulite women's matrimonial rights but also on the negotiation of power relationships between men and women in the period under study. It demonstrates several aspects of patriarchy, including men's

[108] For a discussion of medieval and early modern legal and social practices about women's marital rights see Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*; Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*.

unilateral right to divorce. Husbands' responsibilities were also the sign of their power to provide *nafaka*, i.e. to spend their money on the needy. The word *nafaka* had a wide definition in the Islamic tradition. It referred to the costs necessary to maintain a wife and children, as well as needy relatives. It was by no means a voluntary charity by a benefactor. *Nafaka* was a legal obligation, whose details and methods were clearly elaborated by Muslim jurists over the centuries.

As a form of compulsory charity, the word *nafaka* suggested a hierarchy of power between the rich and the poor, a hierarchy well documented in the form of the prophetic tradition: "the upper hand (that gives) is much better than the lower hand that receives."[109] Men's responsibility to provide *nafaka* for their wives, children, and slaves should be viewed within this gendered cultural and religious setting, in which it was assumed that men with the "upper hand" supported those under their protection. Yet, concerns about social and familial harmony could render gender norms negotiable. The seventeenth-century chief jurist Çatalcalı Ali, for example, permitted a poor father to use the money of his rich minor daughter for his own *nafaka*.[110] The emphasis, though, was on the father's being "poor and needy" (*fakîr ve muhtâc*) and his minor daughter's being "rich" (*mûsire*), most likely through inheritance or gifts, and the fact that he did not have anyone else but his daughter to support him. A father's patriarchal responsibility to maintain his minor daughter could be challenged by his poverty, leading to the reversion

[109] Abdullah Allheedan, "Poverty and Wealth in Islam's Sacred Texts," in *Poverty and Wealth in Judaism, Christianity, and Islam*, ed. Nathan R. Kollar and Muhammad Shafiq (London: Palgrave McMillan, 2016), 272.
[110] Çatalcalı Ali Efendi, *Fetâvâ-yı Ali Efendi ma'an-Nukûl*, 145.

of the power relationship in order to preserve familial unity and keep the poor protected from absolute destitution.

In this chapter, I examine Muslim women's recourse to the Istanbul sharia court in the period 1659-1661 in order to analyze their methods of protecting and managing their marital property rights. In an attempt to contribute to the existing body of literature on women's matrimonial rights—which have already challenged the stereotypical depiction of passive Muslim/Middle Eastern women[111]—I try to answer the following questions: What methods did Istanbulite Muslim women use in order to secure their marital rights? Did women of all socio-economic backgrounds use similar legal methods? Did all married women—whose husbands were absent, dead, or divorced—benefit from the Islamic family laws in the same manner?

Marriage and divorce have formed one of the central themes of scholarship regarding women in the Middle East. By now, it is a known fact that pre-modern Middle Eastern/Muslim enjoyed certain rights in marriage such as the property rights they acquired in the form of dower and maintenance, as well as the right to initiate divorce. Istanbulite Muslim women of 1659-1661 benefitted from the same rights that their sisters enjoyed in other Ottoman cities and times. Yet, a case-by-case analysis of the sharia court records depicts another aspect of this general picture. True, women's choice of strategies depended mostly on the available legal norms as practiced in the sharia court. Yet, the

[111] See for example three contributions by Abdal-Rehim, Ivanova, and Agmon in Sonbol, *Women, the Family, and Divorce Laws in Islamic History*.

social and capital resources required for taking particular legal measures also had a significant impact on women's legal strategies.

Matrimonial rights and responsibilities proved too important to be regulated privately within the confines of households. As the most significant "social building block" and a "bulwark against social discord and disorganization,"[112] the institution of marriage needed to be regulated by jurists and supervised by relatives, neighbors, and other community members. The legal significance of marriage is visible even in the organization of *fetva* compilations. Laws related to marriage, divorce, maintenance, alimony, and child support usually formed the first chapters of *fetva* compilations immediately after the chapters on the five pillars of faith in Islam. The state, as the executor of judicial decisions, could theoretically sentence a husband incapable of performing his financial responsibilities to his wife.[113] While I have not observed cases of prison sentences for such husbands, there is ample evidence demonstrating that sharia courts actively regulated marital rights and responsibilities, and that Istanbulites took these judicial decisions seriously.

Yakub, the father of two minor children, for example, came to the court on November 11, 1660, to ask the court to reduce his mandated child support. A previous judicial decision had determined six aspers a day, which he had to pay to the maternal grandmother and custodian of his children.[114] Yakub declared that he could not pay it (*ol mikdâr nafakayı edâya iktidârım olmamağla*) and requested to pay five aspers a day

[112] Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*, 40.
[113] Ibid., 42.
[114] The children's mother had either died or married a non-relative and was therefore incapable of acting as children's custodian.

instead. The judge, before changing the previous judicial decision, asked the "impartial" (*bî-garez*) members of the community about his financial situation. They testified that Yakub was indeed capable of only making five aspers of payment for either child. The judge adjusted his child support accordingly.[115] Both the sharia court as well as community members were deeply involved in regulating domestic issues.

How did the expansion of the Ottoman administrative and judicial bureaucracy affect women's marital property rights? Istanbulite Muslim women of 1659-1661 witnessed the expansion of the sharia courts through the addition of two other sharia courts within the walled city a few years before and after this period.[116] The proximity of Istanbulite women to the imperial divan gave them easier access to the highest executive council of the empire in order to complain about unfair and illegal treatments. In the mid-seventeenth century, as part of the larger process of imperial bureaucratization, the "complaint registers" (*şikayet defterleri*) became an independent category within the large body of imperial administrative records. Although women rarely applied to the imperial divan to settle their marital disputes, the majority of the women who did apply came from Istanbul.[117] Some relevant questions that require further research are: Did the proliferation of the sharia courts in this period decrease court fees due to the competition between several courts in the capital? Did poor women, therefore, have better access to

[115] İŞS8: 16a, 8 Ra 1071.
[116] Although the exact date of the Bab and Ahi Çelebi courts are not known, the first available records from these courts are from the mid-century (see Introduction).
[117] Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century," 81-96.

the sharia court in ameliorating some of the injustices they faced by virtue of their gender and class?

The marriage contract, on the one hand, was sexual. A marriage could not be initiated before the married couple had intimate intercourse. Availability for sexual union was a wife's primary responsibility. Leaving home, except for a few occasions such as going on pilgrimage to Mecca, visiting parents, going to public bath, and attending the sharia court, could limit a husband's access to copulation. A disobedient wife (*nâşize*), therefore, could lose her marital rights because she had violated the sexual aspect of the marriage contract.

On the other hand, marriage was a financial contract. Husbands were responsible for providing their wives and children with shelter, clothing, and food. In addition, the husband was supposed to pay the wife the dower, specified at the beginning of their marriage. The dissolution of a marriage contract through divorce did not end the financial responsibility of the husband; he had yet to provide for his divorced wife for a certain period until she was allowed to marry another person and for his children until they reached a certain age. While it can be assumed that many men did provide maintenance for their families with the necessary items in kind, the court records of 1659-1661 demonstrate that (at least when disputed) women asked their husbands to meet their marital responsibilities in cash. Furthermore, all of married women's dowers recorded in the court records were in the form of cash. It seems that the monetization of matrimony

that started in the late medieval period in the Middle East had been completed by the mid-seventeenth century, at least for Istanbulites.[118]

A common methodological problem for students of Ottoman records is that the records are short summaries rather than detailed minutes of court proceedings. In the process of summarizing, many legally irrelevant details were purged. A consequence of reading the sharia court records, for the purpose of this chapter, can be an overrepresentation of women's marital property rights. In rare cases, like that of Rabia's story mentioned above, we learn about some other aspects of marital life, such as a woman's discontent about her husband's disloyalty. Yet, such cases should not be reduced to mere issues of jealousy. Rabia's reaction was not merely an emotional reaction to her husband's impertinent action. For Rabia, marriage also meant financial security. Her husband was responsible for providing for her and her children. The security Rabia sought in marriage, however, was threatened by a possible competitor. According to Islamic law, Himmet Beşe could easily and unilaterally divorce her. He could also marry a second wife while still married to Rabia, which was not common but a real possibility in seventeenth-century Istanbul. In that case, Rabia had to share her breadwinner's earnings with another woman and her prospective children. Rabia and her children's share in Himmet Beşe's inheritance would be also reduced substantially if he married a second wife. Rabia, therefore, secured a divorce as a preemptive measure to retain her financial rights while still young and eligible for another marriage.

[118] Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 51-68.

Himmet Beşe's use of conditional divorce, which formed Rabia's primary legal argument in her lawsuit, requires some additional attention in order to examine the power relationship between Istanbulite men and women. Conditional divorces, formulated in the form of "if *x* happens or happened, my wife will be divorced," were unequivocal signs of patriarchy. Men liberally used the formula to prove that they were honorable men of their words. While not many women had financial incentive to sue for divorce, the examination of the *fetva*s of the contemporary chief jurist Çatalcalı Ali Efendi demonstrates that seventeenth-century men used the formula in almost every aspect of their manly world, publicly promising to do something or suffer the consequences of divorce.

The jurist's *fetva* compilation even has an entire chapter and four subsections dedicated to such conditional divorces, called *ta'lîk*, or suspension.[119] Wives' marital status thus depended upon their husbands' display of their masculinity. For example, men promised to pay their debts on the condition that if they failed to do so, their marriage would be terminated. On one occasion, the mourning and angry father of a murdered son promised to kill the murderer, otherwise his wife would be divorced. Later on, he settled the murder dispute amicably (*sulh*), which led to the divorce of his wife, at least according to the jurist. Another man, possibly accused of theft, maintained that if any stolen item was in his house, his wife would be divorced. Later on, it was found out that he actually had some of those items in his house, which resulted in the divorce of his wife, again at least according to the jurist. In some other cases, men used this formula as

[119] Çatalcalı Ali Efendi, *Fetâvâ-yı Ali Efendi ma'an-Nukûl*, 97-111.

a threat against their wives who would frequently leave house to visit other people, including their parents.

The conditional divorce, however, was a double-edged sword. From the questions posed to the jurist, we realize that many men actually resented uttering the stipulation and were desperately in need of legal advice to overcome their situation. One solicitor to the jurist had stipulated previously that his wife would be irrevocably divorced from him if he performed a certain action left unspecified in the documents. In the end, the action in question proved too difficult for him to avoid.[120] As a legal solution, he chose first to divorce his wife (not irrevocably), execute the action, and then remarry his wife. In this scenario, the divorce did not preclude his right to remarry her after the act in question.

Sometimes even single men made stipulations about the divorce of their *prospective* wives. There are many such cases in the *fetva* compilation in which the solicitor asks the jurist's opinion about a "legal leeway" (*mahlas-ı şer'î*). In one such a case, a single man had stated, "If I do this act, all the wives I will take will be divorced (*alıb alacağım boş olsun*)." He subsequently performed the act and asked the jurist for a solution. The answer was that he could marry through a third party (*fuzûlen*), who would first marry him off to his future wife and then ask him to validate the marriage.[121] This way, he did not technically "take" the wife; she was rather given to him.

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[120] Islamic law limited men's divorce of their wives to three times. After the third divorce, the divorced wife had to marry another and experience intimacy (*halvet*) with him, before she could get married to the previous husband. According to the Hanafi law, a man had the right to divorce his wife thrice simply by uttering in a single statement. It was practically an irrevocable divorce due to the practical and emotional burdens associated with the conditions the couple had to meet before they could get remarried.

[121] Çatalcalı Ali Efendi, *Fetâvâ-yı Ali Efendi ma'an-Nukûl*, 110.

What were the implications of such conditional divorces for the wives? While many wives were harmed by the suspension of their marital status, it would appear that other women in the capital, like the above mentioned Rabia, employed the same formula to their benefit. Unlike the Maliki, Hanbali, and Shia schools of Islamic law that permitted stipulated marriages so that wives could secure particular rights at the time of marriage, the Hanafi school which was the official legal school in Istanbul, did not allow such stipulations in marriage contracts.[122] The seventeenth-century Cairene women added certain clauses in their marriage contracts in order to prevent their husbands from marrying other women or leaving them behind unsupported while traveling. Marriage contracts in Istanbul, in contrast, were particularly short. They entailed only the consent of both parties and the amount of dower that the husband had to pay his wife.

It was within this legal context that many women of the capital used conditional divorce to mitigate some of their insecurities. Men took the oath that if they married other women while married to their current wives, the subsequent wives would be divorced. This statement might have been a gesture of the husband's affection toward his wife and/or a result of his wife's insistence that he promise not to take a second wife. In one of the questions posed to the jurist, it is clear that the wife initiated a dialogue in which she expressed her dissatisfaction with her husband's prospective second marriage. The woman Hind told her husband Zeyd that she worried her husband would take a second

[122] Ziba Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco* (London: I.B. Tauris, 2011), 39-40; Nelly Hanna, "Marriage among Merchant Families in Seventeenth-Century Cairo," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira al-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 147.

wife.[123] Zeyd responded that if he married another woman while still married to Hind, the other woman would be divorced. Now, if Zeyd marries Zeyneb, while still married to Hind, would Zeyd and Zeyneb be considered divorced? The answer was yes.[124] In this way, the first wife had secured the monogamy of her husband, at least as long as they were married. Other women, like Rabia, used conditional divorce in order to secure divorce from an unwanted marriage, without sacrificing their financial rights. Using this formula, Rabia did not have to initiate a *hul'* divorce, according to which she would be obliged to waive her rights to dower, maintenance during her pregnancy, and even child support.

As shown in the previous chapter, Istanbulite women did not frequently sue their husbands for their financial rights as long as their marital bond was not strained. This was particularly the case in regards to women's financial rights gained through matrimony. After all, many marital disputes were a result of a husband's failure to perform his marital responsibilities. Therefore, the remaining part of this chapter examines three categories of women who struggled to acquire their marital property rights: wives of absent husbands, divorced women, and widows.

## WIVES OF ABSENT HUSBANDS

Maintenance was not usually a problem, at least as reflected in the sharia courts, as long as spouses and their children lived under the same roof. It was the dissolution of

[123] The *fetva*s did not include the real names of the solicitors. They were rather given the hypothetical names Zeyd and Amr for men and Hind and Zeyneb for women, analogous to the English John and Jane Doe.
[124] Çatalcalı Ali Efendi, *Fetâvâ-yı Ali Efendi ma'an-Nukûl*, 109.

this common domicile that triggered women to apply to the sharia court to protect their rights including maintenance for themselves and their children. The men of the capital traveled to other areas of the vast empire for business, pilgrimage, or war. It can be assumed that many traveling men left sufficient funds at home in Istanbul to provide for their families. When they failed to do so, their wives did not shy away from taking their cases to court, asking the judge to determine the amount of maintenance and also issue permission to borrow on their absentee husbands' behalf. Women's access to different legal measures, however, depended on the availability of financial resources and familial support.

Women were encouraged to seek judicial support in securing their matrimonial rights. The seventeenth-century jurist Çatalcalı Ali Efendi, for example, stated that absent husbands were accountable to pay for the maintenance of their wives only if the latter had secured a judicial decision. If the wives of absent husbands spent from their savings or borrowed from a third party without obtaining a judicial decision about their daily maintenance amount, the husbands were not responsible for paying the maintenance amounts spent in their absence.[125] While the history of this particular legal opinion requires further research,[126] it seems that Ali Efendi assumed that the sharia court was

[125] Ibid., 147.

[126] The two quotes that follow the chief jurist's opinion belong to a late medieval Indian *fetva* compilation and a legal commentary by a sixteenth century Egyptian jurist, Ibn Nujaym. The quote by the latter maintains that "in our opinion" a judicial decision was necessary in similar cases. Ibn Nujaym's quote clearly demonstrates that by the sixteenth century, there were different legal opinions in circulation, one of which was the necessity of a judicial decision. Further research will hopefully shed light on the evolution of this legal opinion.

accessible for all women, which was more the case for the Istanbulite Muslim women in the period under study than women of previous generations.

Legal "encouragement" of women to use the sharia court proved very effective. The cases of wives of absent husbands demonstrate that they did frequent the sharia court in order to secure a judicial decision for their marital rights. Thus, when the husband of a childless woman named Emine bint Ramazan Efendi had gone to another place without leaving any funds behind or sending any money from wherever he was, she came to the court on July 5, 1661, to secure a judicial decision for her maintenance. The court ruled she receive 12 aspers a day and permitted her to borrow on her husband's behalf.[127] In another case, Ümmühani, the mother of a minor daughter, came to the court on November 30, 1660, to complain against her husband who had left her and the minor daughter without providing any funding. Ümmühani also added that her husband never showed up and was in a state of constant flight (*dâimâ gıybet ve firâr*). He had even, she added, married another woman. The court, after hearing Ümmühani, decided that she was entitled to 5 aspers a day to maintain her daughter and that she could borrow this amount from third parties on behalf of her deserted husband.[128]

Some four months earlier, another case of maintenance of an absent husband came to the attention of the court. A certain Kenan bin Abdullah had been captive in the island of Malta, leaving behind a childless wife Saliha, a female slave Belkıs, and two minor children from his union with the slave. As a rare example of polygamy, Kenan's

[127] İŞS9: 38b, 8 Za 1071. For similar cases see İŞS7: 17a, 1 Ra 1070; İŞS7: 26b, 5 Ra 1070; İŞS8: 14a, 1 S 1071; İŞS9: 84b, 5 Z 1071; İŞS9: 174a, 6 Ra 1072.
[128] İŞS8: 27a, 27 Ra 1071.

decision to have another conjugal partner was probably due to the fact that he had not had any children from his marriage.[129] Belkıs was not his legal wife but had the status of "mother of child," (*ümm-i veled*). Regardless, both Saliha and Belkıs came to the court to ask the *kadı* to determine the amount of maintenance for them and for the minor children. They also asked the judge to let them borrow from Yahya Çelebi, who was indebted to the captive husband. The court determined two aspers a day for the four members of the captive's family and permitted them to borrow from Yahya Çelebi. On the same day, Yahya Çelebi argued that he had already paid some 6,270 aspers for their maintenance.[130] While we cannot be sure if all the wives of absentee husband could actually take money from third parties on behalf of their husbands, the case of Saliha and Belkıs demonstrates that wives and even female slaves had access to the funds of their missing husbands and masters.

In cases when the funds of absent husbands were not accessible, Istanbulite women did not passively wait for their husbands to appear so that they could sue them.

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[129] In his study of the estate inventories of the seventeenth-century Istanbulites, Said Öztürk finds that 92.3 percent of the entire non-taxpaying men were monogamous. See his *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri*, 110-11. Similar trends have been observed for Edirne and Bursa as well as Arab cities although Anatolian towns had a much higher rate of polygamy. See Ömer Lutfi Barkan, "Edirne Askerî Kassamı'na Âit Tereke Defterleri (1545-1659)," *TTK Belgeler* 3 (1966): 13; Hüseyin Özdeğer, *1463-1640 Yılları Bursa Şehri Tereke Defterleri* (Istanbul: Istanbul Üniversitesi, 1988), 50; Madeline C. Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 269; Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century*, 199-200; Colette Establet and Jean-Paul Pascual, *Familles et fortunes à Damas : 450 foyers damascains en 1700* (Syria: Institut français de Damas, 1994), 43-57; Ömer Demirel, Adnan Gürbüz, and Muhittin Tuş, "Osmanlılarda Ailenin Demografik Yapısı," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi* (Ankara: Başbakanlık Aile Araştırma Kurumu Başkanlığı, 1992), 102.

[130] İŞS9: 41b, 9 Za 1071. For similar cases of women with their minor children demanding a judicial decision about their maintenance from heir absent husbands see, İŞS7: 20b, 4 Ra 1070; İŞS7: 38b, 4 R 1070; İŞS8: 14a, 1 S 1071; İŞS8: 23b, 22 Ra 1071; İŞS9: 10b, 10 L 1071; İŞS9: 189a, 19 Ra 1072; İŞS9: 190a, 24 Ra 1072.

Kerime bint el-Hac Ahmed, for example, first applied to the court to ascertain the amount of her maintenance due to her absent husband, a man named Abdünnebi bin el-Hac Ahmed. The court assigned 12 aspers a day. Later, she came to the court on July 29, 1661, to appoint a proxy to go after her husband and collect the maintenance money he had to pay. The court record does not show if the proxy actually found Abdünnebi and sued him in the court. It does, however, show that Kerime took legal measures in her capacity to secure the payment of the money she believed belonged to her.[131]

Kerime's story demonstrates the significance of men's support due to the technical and cultural limits on women's movements. It was particularly the case if their husbands were not in Istanbul anymore. Kerime, now a resident of Istanbul, was originally from Ankara, by then a mid-size Anatolian town. By the time she resorted to the sharia court, Kerime did not know the whereabouts of her husband, or at least she did not mention it in court. Her husband was probably also from Ankara and might have returned there some time ago. In any case, Kerime needed to secure her property rights from her husband, for which the support of a man looked necessary. The proxy was a certain Esad Efendi, a member of the judicial hierarchy and most probably not a kin member of Kerime. After all, Kerime should have left most of her kin in Ankara, where she was originally from. Yet, she employed a powerful proxy, someone that matched or even surpassed her social status. From Kerime's maintenance amount (12 aspers a day) and the fact that her father had the title of *el-hac,* we know that Kerime enjoyed a high social and economic status in the capital. When male kin were absent, employing a

[131] İŞS9: 70b, 2 Z 1071.

member of the elite and learned hierarchy would prove significant in order to achieve her goal of protecting her marital rights against a husband who did not perform his responsibilities.

While the court records of Istanbul do not provide much information on the legal actions of Istanbulite women against their husbands who lived in other cities, the cases that were initiated by the female residents of other cities and towns whose husbands lived in Istanbul provide some insights into contemporary legal practices. The case of Ayşe, who was originally from Trabzon, and whose husband lived in Istanbul, sheds some light on such legal measures. She travelled together with her father all the way from Trabzon (located on the southwestern shores of the Black Sea) to Istanbul. With the help of her father, she found and sued her husband, named Ali, in court on July 17, 1661, for failing to provide her with support for the preceding seven months. Her proxy and father claimed a total amount of 2,100 aspers that her husbands had to pay her. They finally arrived at the terms of an amicable settlement (*sulh*), according to which the husband agreed to pay her some 800 aspers. By the time they arrived in the court, Ayşe and Ali were already divorced, possibly due to the latter's absence and failure to maintain his wife.[132]

The court record does not provide much information on how Ayşe and her husband got divorced. The negotiation over Ayşe's financial rights might have been also a part of their divorce negotiations. Negotiation for divorce took several forms, one being

[132] İŞS9: 62a, 20 Za 1071. In another case, a Muslim female resident of Rumelia sent a proxy to arrange for the return of his husband, who had been absent for six years. On November 20, 1659, the proxy together with the absent husband appeared in the sharia court and maintained that the husband has promised to return to his wife in 60 days, otherwise she would be divorced from him. The absent husband corroborated the proxy and the court handed the latter a *hüccet* (İŞS7: 37b, 5 R 1070).

the use of conditional divorce as we saw in the case of Rabia at the beginning of this chapter. A provincial woman from Rumelia, for example, sent a proxy to Istanbul, where her absent husband Mehmed Beşe had been living for an extended period. The proxy Mehmed Ağa found her husband, brought him to the court on December 20, 1659, and made him promise to go back to his wife. Mehmed Beşe, who had not visited his wife for the past six years, maintained that "if I do not go to her in 90 days, she would be divorced from me."[133] In this case, the wife probably did not prefer divorce, but she was fed up with her husband's constant absence as well as his failure to provide for her. She wanted him back but she also wanted to reserve her legal right to marry another person if her husband continued to live apart from her. One can assume that many contemporary women of the capital took similar measures against their husbands living in other cities.

The most common method women used for divorce was *hul'*, according to which women had to waive some of their financial rights in order to persuade their husbands to agree to a divorce. The Istanbul sharia court in the period under study is full of *hul'* cases, in which women waived their rights to dower and post-divorce maintenance. In most of these cases, we are not informed about the reasons for women's decision to terminate their marriage. That was not the case, however, for a *hul'* case initiated by a woman named Mümine bint Hüseyin on October 12, 1661. She maintained that her husband, Seyid İbrahim Efendi, did not provide for her in the past three years. She argued he owed her some 10,800 aspers in recompense. She continued that she waived her right to the accumulated maintenance, her dower which was 4,000 aspers, and her post-divorce

[133] İŞS7: 37b, 5 R 1070.

maintenance in order to get divorced from Seyid İbrahim Efendi.[134] It shows that his failure to provide for her was, at least partially, a reason for Mümine's initiation of a divorce case.[135]

Some other wives of absent husbands decided to take a more radical measure, perhaps because they did not have sufficient social and financial capital to initiate such legal measures, which usually required the employment of a male proxy that had to travel to another city. Absence of husbands, even if they did not provide for their wives, did not lead to a judicial separation (*tefrîk*) in the Hanafi school. The marriage contract was terminated only if there was a good reason to believe the husband was dead. Either reliable evidence of a husband's death had to be produced, or the wife had to wait as long as 90 years to be considered legally eligible to marry another man. True, the door of the sharia court was wide open for the wives of absent husbands to claim their marital rights. For women of lower socio-economic status, however, securing loans without trustworthy guarantors or valuable properties such as jewels and houses proved difficult.

That is probably why a woman named Fatma bint Abdullah, possibly from a slave background and therefore with no male kin members in Istanbul, decided to marry another person after her first husband had left her without divorcing her. In the court session held on July 28, 1661, Fatma was present together with her first and second husbands. The first husband maintained that he had married her some 10 months ago, after which he had gone to another place (*âher diyâr*). In the meantime, he added, Fatma

[134] İŞS9: 156b, 17 S 1072.
[135] For a similar case, see İŞS9: 104b, 2 M 1072.

married the second husband, which should be null and void. The second husband replied that he had married Fatma without knowing she was already married. The first husband procured two male witnesses to prove the authenticity of the first marriage, which was subsequently endorsed by the court.[136] The record does not recount Fatma's side of the story, but it seems plausible that her decision to remarry was related to her husband's absence and failure to provide for her, on the one hand, and her lack of resources to initiate legal measures against her husband, on the other. Unfortunately, as a typical case of the sharia court record, this entry does not inform us about whether or not Fatma faced any repercussion for her illegal act.[137]

**DIVORCED WOMEN**

According to Islamic family law, the dissolution of marriage, similar to its initiation, brought about significant financial responsibilities for husbands. Upon divorce, a husband had to pay the remainder of his wife's dower (*mihir*), provide her with maintenance for a few months before she could marry another person (the *'idde* period), and also provide for the minor children who were usually in the custody of their divorced wives. Istanbulite Muslim divorcees, at least those whose ex-husbands resided within the capital, had fewer problems when compared to the wives of absent husbands in bringing their husbands to court. Yet, women's socio-economic status, as well as whether or not they enjoyed kin support against their ex-husbands, had an impact on the legal measures

[136] İŞS9: 70b, 1 Z 1071.

[137] For another case of a woman who married another man while being legally married to an absentee husband, see İŞS9: 166a, 16 S 1072.

they took in the sharia court in ways that were completely different from those of the wives of absent husbands.

One common area of contention between divorced spouses was the woman's right to a dower. A husband usually paid his wife the dower in two installments. One was usually paid in advance (*mu'accel*) upon the initiation of the marriage contract and the other was delayed (*mü'eccel*) until the dissolution of marriage, as a result of either divorce or the spouse's death.[138] The court documents studied here do not provide much information about the ratio of the advance and delayed portions of the dower. In the few cases of marriage in which the amounts of both advance and delayed dowers were mentioned, it seems that there were no set ratio for the installments.[139]

Regardless of its proportion in the entire dower, the delayed dower (as clearly mentioned in cases of divorce) constituted a significant amount of money that could be used as a bargaining chip against their husbands' unilateral right to divorce. The many cases of *hul'* registered in the Istanbul sharia court in the period under study demonstrate that delayed dower constituted the most significant part of their financial rights, which they often waived to secure a divorce. Furthermore, dower formed a deterrence against husbands who could easily divorce their wives by simply uttering "you are divorced." When Murad bin Süleyman, for example, regretted divorcing his wife Ayni bint Hasan, the two came to the court on June 6, 1661, to get married once again. This divorce and

[138] It should be noted that the payment of delayed dower did not have to wait for the dissolution of marriage. In one case, the woman Ümmühani bint el-Hac Ramazan came to the court to state that she had received 1,000 aspers from the total amount of 1,500 aspers of her delayed dower (İŞS9: 23a, 18 M 1072).
[139] İŞS9: 83b, 17 Z 1071; İŞS9: 95b, 8 L 1071; İŞS9: 103a, 29 Z 1071.

remarriage cost Murad at least 4,000 aspers in the form of Ayni's dower for this second marriage.[140]

For divorced women, the payment of their delayed dower meant that they could independently maintain themselves for a considerable period after their divorce. The dower could provide funds for a few months to a few years depending on the social status of the divorced women. Women of higher status had higher costs of living, which can be observed in the amount of maintenance mentioned in their divorce cases. Yet, the ratio of dower to maintenance was higher for women of higher social status when compared to those of relatively humble background.

The woman Meryem was an example of the women of higher social status. She had been married to a high military officer with the title of *beg*. The couple's social status is also evident in the fact that they did not come to the court; rather the court personnel went to the residence of Meryem in order to record their divorce on October 12, 1659. Meryem maintained that the *beg* paid her the delayed dower of 12,000 aspers and the post-divorce maintenance for about three months of 500 aspers.[141] Accordingly, Meryem's dower provided her with sufficient funds for six years. About a month earlier, another woman named Rabia came to the court to register her divorce. She maintained that her husband Mustafa Beşe had paid her the delayed dower of 6,000 aspers and her post-divorce maintenance of 900 aspers.[142] The facts that she was married to a Janissary with the title *beşe* and that she was paid 10 aspers a day for her maintenance clearly

[140] İŞS9: 5a, 8 L 1071. See also İŞS8: 45b, 24 R 1071.
[141] İŞS7: 11, 25 M 1070.
[142] İŞS8: 8a, 6 Ra 1071. See also İŞS9: 26b, 26 L 1071.

demonstrate that she enjoyed a high socio-economic status. The amount of her delayed dower was enough to provide for her living costs for 20 months, despite the fact that her cost of living was much higher than the average woman.[143]

Divorced women of relatively humble social backgrounds came more frequently to the court to either register or demand their dower and *'idde* maintenance, despite the fact that their dower could provide for them for a much shorter period when compared to women of higher social status. While the average rate of women's dower, as observed in the cases of *hul'* divorce and marriage deeds, was slightly above 2,000 aspers, the majority of divorcees who used the sharia court to register their marital financial rights had a dower below 2,000, the average being slightly above 900 aspers. The woman Saraylı bint Mehmed,[144] for example, came to the court on September 10, 1659 in order to register her divorce from her husband Mustafa bin Hüseyin. Neither she nor her husband had any titles to their names or their patronymics, which indicate their non-elite status. Furthermore, her post-divorce maintenance consisted of only 350 aspers, which was equal to less than 4 aspers a day and much lower than that of the divorced woman Meryem, mentioned above. Her delayed dower, in line with her humble social status, was

[143] The dower was a signifier of the bride's status. The *muhadderes*, a minority of elite women who could afford invisibility in public spaces, could have delayed dowers as high as 1,000 *sikke-i hasene* (210,000 aspers) or 1,000 piasters (120,000 aspers) (İŞS9: 171b, 4 Ra 1072; İŞS9: 49b, 17 Za 1071) while for women of lower status it could be as low as 500 aspers or below (İŞS8: 4b, 16 Ra 1071; İŞS8: 28b, 29 Ra 1071; İŞS9: 98a, 25 Z 1071; İŞS9: 124b, 19 M 1072; İŞS9: 137a, 29 M 1072; İŞS9: 166a, 16 S 1072). The majority of endowed dowers ranged between 1,000 and 10,000 aspers in Istanbul the period under study.
[144] Saraylı was her name and not her status for being a member of the Palace women.

1,000 aspers. Regardless of her low living costs compared to that of the two women mentioned above, her dower would be enough only for more than eight months.[145]

The financial responsibilities of husbands at the time of divorce were not limited to the dower and *'idde* maintenance of their wives, they also included the child support of minors in the custody of divorced wives. Women of the capital could and did benefit from the application of Islamic law in the sharia court to make their husbands perform their financial responsibilities towards minor children. The woman Havva came together with her husband to the court on August 25, 1661 for a divorce, immediately after which the wife asked for the maintenance of her two children. The court assigned four aspers a day for each child to be paid by the divorced husband.[146] A week earlier, another woman asked her husband in the court to provide for her children immediately after they were divorced. The court, subsequently, assigned six aspers a day for each child.[147]

While it is unclear if all ex-husbands actually paid the amount the *kadı* determined for child support, the sharia court provided the divorced women with an opportunity to follow up and render their husbands accountable for their financial responsibilities. The case of a convert couple who came to the sharia court on November 5, 1660, sheds some light on this process. Ümmü Gülsüm and Ahmed—their names after

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[145] İŞS7: 7b, 22 Z 1069. This was the case also for other women of similar social backgrounds. See İŞS9: 12b, 24 L 1071; İŞS9: 55b, 17 Za 1071; İŞS9: 104b, 2 M 1072; İŞS9: 125a, 20 M 1072; İŞS9, 131b, 26 M 1072; İŞS9: 139a, 2 S 1072. For the *'idde* maintenance of two pregnant women see İŞS9: 80a, 15 Z 1071; İŞS9: 137a, 25 M 1072.

[146] İŞS9: 100a, 29 Z 1071; İŞS9: 101a, 29 Z 1071.

[147] İŞS9: 92a, 20 Z 1071; İŞS9: 92b, 20 Z 1071. For similar cases in which divorced women came to the court to ascertain the amount of child support see İŞS7: 14b, 10 S 1070; İŞS7: 16a, 1 Ra 1070; İŞS7: 34b, 1 Ra 1070; İŞS8: 23b, 22 Ra 1071; İŞS8: 35b, 27 Ra 1071; İŞS8: 37b, 13 R 1071; İŞS8: 41a, 1 R 1071; İŞS9: 5b, 12 M 1071; İŞS9: 7a, 27 N 1071; İŞS9: 63b, 27 Z 1071; İŞS9: 65a, 29 Za 1071; İŞS9: 66b, 24 Za 1071; İŞS9: 71b, 4 Z 1071; İŞS9: 121a, 14 M 1072; İŞS9: 149a, 30 M 1072; İŞS9: 160b, 20 S 1072; İŞS9; 168b, 1 Ra 1072; İŞS9: 192a, 25 Ra 1072.

their conversion to Islam—had been divorced for some 15 months. The ex-wife Ümmü Gülsüm had gone to court immediately after the divorce to assign child support for her son born into her marriage with Ahmed. The court had decided on five aspers a day. After 15 months, Ahmed had not paid the child support. Ümmü Gülsüm, therefore, decided to come to the court to document her husband's failure to make the payment. She maintained that the accumulated sum of the child support in the past 15 months was 2,250 aspers. Ahmed corroborated his ex-wife's account, after which the court ordered him to pay her the amount.[148] In about a year after the convert couple's case, another couple came to the court to declare that the ex-husband paid the ex-wife the remainder of the child support, constituting 1,000 aspers.[149] The two cases demonstrate that despite some difficulties Muslim women had in securing child support from their divorced husbands, the sharia court provided a venue for them to seek justice.

Not all ex-wives were as patient as Ümmü Gülsüm; nor were all husbands as cooperative as Ahmed. In such cases of non-cooperation, ex-wives had the right to initiate a lawsuit against their husbands. After the janissary Mahmud Beşe divorced his wife Fatma bint Abdullah in April 1661, he refused to pay not only the child support for his minor daughter who was in Fatma's custody, he also did not pay Fatma her dower and her *'idde* maintenance. After the divorce, similar to Ümmü Gülsüm, Fatma had made sure to go to the court to ascertain the amount of her child support; the court assigned 10 aspers a day. It took her less than three months after the divorce to come again to the

[148] İŞS8: 8a, 2 Ra 1071.
[149] İŞS9: 88b, 17 Z 1071.

court, this time as a plaintiff against her husband. She claimed that Mahmud Beşe did not pay her the dower, *'idde* maintenance, and child support, which amounted to a sum of 2,270 aspers. Mahmud Beşe responded that he had paid her the sum but could not substantiate his claim. Fatma took an oath that she did not receive the money from him, after which the court ordered Mahmud Beşe to make the payment.[150]

A commonality between Fatma and Ümmü Gülsüm was their patronymic, bint Abdullah, common for female ex-slaves but also used for freeborn convert women. From the seven cases of litigations for marital rights such as dower, *'idde* maintenance, and child support that divorced women brought against their husbands, five had the same patronymic of bint Abdullah.[151] In two of them, the plaintiffs' names were Cinan and Fağfur, common names for female slaves. While coming from slave background did not necessarily mean impoverishment since slaves were usually integrated into the households of their masters and adopted their social status, the court records demonstrate that some female ex-slaves, who probably could not secure the favor of their masters, fell into the lower social strata of society. Unlike their freeborn counterparts, female ex-slaves could not count on the support of their kin, absent from the capital. Whether female ex-slaves or converts to Islam, these five women (whose low-value dowers imply a lower socio-economic background) did not enjoy kin support. Ex-slaves did not literally have any kin in Istanbul and freeborn converts did not have a high chance of counting on

[150] İŞS9: 5b, 12 M 1071.

[151] İŞS9: 4a, 16 L 1071; İŞS9: 5b, 12 M 1071; İŞS9: 103a, 29 Z 1071; İŞS9: 120b, 12 M 1072. Freeborn converts also adopted the same patronymic, although their status was clearly mentioned in the sharia court records to be *muhtediye*, which literally means "she who has found the right path," indicating her conversion from Christianity to Islam. For the litigation of such a convert woman against her husband see İŞS8: 8a, 12 Ra 1071.

their non-Muslim kin. Their low socio-economic status, combined with a lack of kin support, explain why these women were more active litigants when compared to others.

**WIDOWS**

Another group of women who applied to the court for their delayed dower as well as child support were widows. According to the *feraid* rules, a wife could inherit one-fourth of her husband's estate if he did not have any children and one-eighth if he did. If the widow was the mother of her deceased husband's children, the estate would usually remain intact and under the supervision of the widow, especially if the children were minors. The widow would act as both custodian and legal guardian of her minor children, and therefore would effectively be in control of her husband's estate (a process that is analyzed in chapter three). Istanbulite widows who were the guardians and custodians of their children refrained from applying to the sharia court for their marital rights including alimony and child support. After all, particularly if they were the guardians of their minor male children, widows were in charge of the entire inherited property of their husbands.[152] For widows, therefore, recourse to sharia court for marital rights depended more on whether or not they had borne children and particularly sons to their late husbands, and on whether or not they secured the guardianship of their children.

Legal guardianship was not the right of widows by default. According to Islamic law, fathers were the natural guardians of their children, which could be transferred to the relatives of fathers after the latter's death. A *kadı*, however, could use his discretion to

[152] Only in one case, a widow came to the court first to be appointed as the guardian of her two minor children, then to ascertain the amount of the children's maintenance, and finally to sell an inherited property on behalf of the children (İŞS9: 72a, 3 Z 1071; İŞS9: 72b, 5 Z 1071).

appoint widows as the guardians of their children. In Istanbul in the period under study, Muslim widows applied frequently to the sharia court in order to be appointed as the guardian of their minor children, which was usually granted. In the rare cases in which widows were not appointed as the guardian of their minor children, they acted as their custodians. It was in their capacity as custodians, similar to the divorced women with minor children, that Istanbulite Muslim widows applied to the sharia court in order to ascertain the amount of their child support.[153]

Similar to child support, non-guardian widows could also apply to the court to demand their delayed dower to be paid from the deceased husband's estate. It was not only some few widows with minor children who were deprived of the privilege of a guardian, other widows who either did not have minor children or had adult children were not eligible to be guardians. Non-guardian widows had limited control over the inherited estate of their deceased husbands and, therefore, used the sharia court for their marital property rights to supplement their limited share in inheritance. After the death of Süleyman in November 1660, for example, his heirs consisted of his widow and son. His wife, Kerime, could not act as the legal guardian for the son Halil as he was already an adult. Her legal share in Süleyman's estate was one-eighth, which amounted to only 3,000 aspers. It was her dower of 9,000 aspers that enabled her to share the ownership of

[153] İŞS7: 6a, 10 M 1070; İŞS9: 87b, 13 Z 1071; İŞS9: 168b, 1 Ra 1072. In these cases, it is not very clear why these widow-mothers were not appointed as the guardians of their minor children. One explanation might be the fact that they might have remarried after the death of their previous husbands.

an inherited humble house with his son. Thus, the two heirs came to the court and recorded the transfer of the ownership of half of the house to Kerime.[154]

Fatma bint Abdullah and Safiye bint Abdullah, the two wives of the late Ömer Ağa, fell into the category of non-guardian widows. Ömer Ağa had a minor son among his heirs, who was most probably born to either of his two wives. Yet, Hüseyin Ağa had decided to appoint another man, probably his brother (both shared the same patronymic bin Hüseyin), as his "chosen guardian" (*vasi-yi muhtâr*). The guardian Yunus Ağa had appropriated the entire estate. Despite the fact that either wife was entitled to only one-sixteenth of her late husband' estate, Ömer Ağa's huge amount of wealth meant that either wife was entitled to more than 66,000 aspers. Yet, the wives came separately to the sharia court to claim their delayed dowers from the guardian. In both cases, the guardian claimed, but failed to prove, that he had already paid their shares in the inheritance as well as their delayed dowers. After the wives swore to God that they did not receive any money from Yunus Ağa (the guardian), the court ordered him to pay them their delayed dowers in addition to their shares in the inheritance.[155]

## NEGOTIATING MATRIMONY

The fact that women used their property rights to negotiate a *hul'* divorce is commonly known. Istanbulite Muslim women in the period under study negotiated the matrimonial regime at several levels, from before the marriage contract until its

[154] İŞS8: 24a, 23 Ra 1071. For other cases of widows who asked for their dower in the court see also İŞS7: 40b, 8 R 1071; İŞS8: 39b, 14 R 1071; İŞS8: 40b, 13 R 1071; İŞS9: 25b, 22 L 1071; İŞS9: 154b, 14 S 1072; İŞS9: 169b, 3 Ra 1072.
[155] İŞS9: 3b, 16 L 1071; İŞS9: 4a, 16 L 1071.

dissolution. Terms of negotiation were determined by what wives wanted and what they could offer in order to acquire their desired outcome. Legal norms and practice, which formulated men's and women's matrimonial rights and responsibilities, crosscut other factors such as socio-economic status and social support from one's natal family. For women at the bottom of the socio-economic ladder, the financial security of their marital relationship proved vital. Being married for them was not only an escape from the social stigma against adult unmarried women; it also provided them with an escape from absolute poverty. That is why they frequented the sharia court to secure their financial rights whenever they could and resorted to other means when they could not.

The financial security of marriage was under constant threat by a number of factors, including the premature death or desertion of a husband. The fact that Islamic law granted husbands the unilateral right to divorce was an additional factor. Istanbulite women took several steps to avoid the hardships that lingered as a result of their precarious marital status. A female ex-slave, for example, "bribed" her husband in order to remain married. Gülistan bint Abudullah came to the sharia court on August 28, 1661, to sue her ex-husband Kenan for a bribe (*rüşvet*) of 16 piasters. She explicitly mentioned that she had paid Kenan 16 piasters so that he would not divorce her. Kenan had divorced her anyway and now she demanded her money back. After Kenan corroborated her claim, the court ordered him to pay her back.[156]

The insecurity of unmarried women who did not live with kin can also be observed in the questions posed to the contemporary jurist Çatalcalı Ali. The case of a

[156] İŞS9: 110b, 2 M 1072.

poor widow who rushed to remarry after the death of her husband is illustrative. The anonymous protagonist was a woman who arranged for her next marriage while she was still in the four-month waiting period after her husband's death. She had asked the prospective husband to provide for her while she was still in that waiting period, which he did. In case she married him, she would not be responsible to pay back the amount she received in the waiting period, but she did not keep her promise, possibly because she had a better suitor. In that case, according to the jurist, she was responsible to pay back the money she had received.[157]

Women of higher social status, who were freed from immediate subsistence needs of shelter, food, and clothing, had other concerns when it came to their marital relationships. This category of Istanbulite Muslim women used their financial power to negotiate different gendered aspects of marriage prescribed by Islamic law. While Islamic law had imposed some limitations on their rights to move, initiate a divorce, and guardianship of children after the divorce or death of a husband, married women were able to use their wealth to negotiate some of these limitations. The flexibility of Islamic law, which could sanction several solutions to the same legal problem, provided wives with the opportunity to be actively involved in negotiating their social and legal status within their conjugal family.

A case of such negotiations came to the attention of the sharia court when a couple, Emine and Receb Ağa, asked the sharia court to send a deputy judge to their house in order to settle their financial disputes. The wife Emine claimed that she had

[157] Çatalcalı Ali Efendi, *Fetâvâ-yı Ali Efendi ma'an-Nukûl*, 152.

given her husband a female slave as well as some pieces of her jewelry to sell, which he did for a total sum of 300 piasters (approximately 36,000 aspers). When she asked her husband for money from her husband, he said he had spent the money on her expenditures. The husband Receb Ağa's claim, however, was legally invalid since he was already responsible for providing for her. The couple, then, agreed on terms of an amicable settlement, according to which the husband agreed to pay her 5,000 aspers. At the meeting in front of the deputy judge, the husband paid her 500 aspers and promised to pay the rest in 360 days in four installments. Her generous offers to her husband were not limited to the terms of the amicable settlement, but also included waiving a significant portion of her delayed dower. She agreed to waive 7,000 aspers of her dower, which was 10,000 aspers. Emine's generosity, however, seems to be part of the negotiation process with her husband about securing permission for her to travel outside the capital. She wanted to go to Edirne together with her minor son. She also offered to cover the travel costs for her and the child. Her travel, which legally required the permission of her husband, had been secured at the same court session in which she had given up on a significant portion of her properties. Emine seems to have successfully secured her freedom of movement together with the minor child, who was legally under the guardianship of Receb Ağa, in return for waiving some of her material belongings.[158]

Women did not only use the indebtedness of their husbands to secure some freedoms within the marriage; they also used that as leverage to leave unhappy marriages. The woman Ayşe, for example, initiated a case of *hul'* divorce on July 30, 1661,

[158] İŞS9: 157a, 13 S 1072.

immediately after which she raised the case of her husband's debt of some 3,000 piasters (approximately 360,000 aspers). The husband's hesitance to repay his debt had caused some tension in their relationship before their divorce. She had asked him to redeem his debt, but he had denied that he owed her anything in the first place. On the day they divorced, Ayşe maintained that some mediators (*muslihûn*) intervened to settle the debt dispute amicably. Accordingly, the husband agreed to pay half of what she had claimed.[159] The *hul'* divorce had proved to be very expensive for Ayşe. She had given up not only her marital financial rights, but also a considerable amount of the personal wealth she had acquired through other means, most likely as inheritance from her natal family. As a result she negotiated her freedom from an unhappy marriage.[160]

## CONCLUSION

Universal marriage was the case in Istanbul in the period under study, as it was in other cities and times of the empire. Parents married off their daughters at an early age, sometimes even as young as four or six (though the initiation of marriage had to wait until they reached a certain age deemed as sexually active). Marriage, however, did not always last forever. High mortality rates meant that many young couples suffered the loss of marital partners. Cultural and legal norms, also, facilitated the dissolution of marriage contracts if the spouses wished it to be so. The universality of marriage, therefore, meant

[159] İŞS9: 70a, 3 Z 1071.
[160] For another divorce case in which the husband's indebtedness was reduced to half, see İŞS9: 139a, 2 S 1072.

than men and women were ideally married at any given time of their life but did not necessarily remain married to the same person until their death.

There were many reasons for women to cherish the institution of marriage. Forming one's own family, raising children, and enjoying the emotional support of a companion were, perhaps, universal values associated with marriage, though unquantifiable in the available sources for seventeenth-century Istanbul. The available data, however, provide ample evidence about the material aspects of women's marital life. In this chapter, I examined the different legal strategies that Istanbulite women employed to protect their property rights.

A case-by-case examination of the matrimonial regime demonstrates that marriage had different meanings and consequences for women of different social and economic backgrounds. For women of lower status, particularly those without much support from natal families, marriage offered certain material rights. Women of higher social status also valued the material benefits of a married life, but to a lesser extent compared to less fortunate women, such as impoverished ex-slaves, converts, and migrants. Ordinary women of different socio-economic backgrounds, however, came to the sharia court for different reasons and utilizing different methods. Resourceful women mobilized their financial and social powers either to bring absent husbands home, demand they meet their financial responsibilities, or secure a divorce. Women used the sharia court in order to initiate a set of legal measures against absent husbands, but not as much against their divorced husbands who were already in Istanbul. In the latter case, divorced women of high socio-economic status used the sharia court only to register the

out-of-court settlement and registration of their marital rights. Divorced spouses of higher socio-economic status are less present in records of litigations, indicating that these women might have used other sources such as their kin support in order to secure their rights.

Poor wives of absent husbands had to face a harsher reality. In cases when their husbands did not have sufficient funds for them during their absence, these women found little success in sharia court. The registration of their daily maintenance amount in the court and the permission to borrow from third parties, in reality, could not have a significant impact on their well-being, particularly when the chances of borrowing, for this category of women, was not high. This group had limited resources to employ proxies, who could travel to other cities and initiate lawsuits against their absent husbands in the cities of their residence. This dire state of affairs left many poor wives of absent husbands in a precarious situation. Many were pushed further to the margins of society, seeking charitable support or work, neither of which existed in abundance. Other poor women who did not have the means to bring their absent husbands home resorted to a second marriage while still married to their first husbands. The harsh choice was between the illegal and immoral action of adultery and absolute destitution.

One category of women, the widows, used the sharia court under different circumstances when compared to married or divorced women. While widows' marital rights did not end due to the death of their husbands, the way this group of women used the sharia court depended largely on another factor: their status as guardians. Widows were heirs to a fraction of their late husbands' estate, the exact proportion of which

depended on whether or not the late husbands had surviving children and the number of wives he had at the time of death. For widows, guardianship over minor children granted a more secure control over the properties inherited from their late husbands. Widows, therefore, typically used the sharia court to secure legal guardianship of their children rather than dispute the marital rights of delayed dower or child support. Lack of relevant deeds and lawsuits for widow-guardians, however, does not necessarily mean they gave up on their marital rights. Their effective control of their husbands' estate rendered it unnecessary to use the sharia court for such financial rights. In cases in which widows did not enjoy the status of guardians, they frequented the sharia court not only to ask for their marital financial rights or delayed dower, but also their share in the inheritance. In the two chapters, I will examine women's different strategies to secure their inherited properties and the mechanisms they used to transfer their properties to the generations to come.

# Chapter 3: Inheritance

A complicated case of inheritance came to the attention of the Istanbul sharia court on September 20, 1661. A certain Hüseyin Çavuş had passed away years before, leaving behind a considerable number of properties to be divided among his three daughters and wife. His estate had remained undivided while his three daughters were alive. In the meantime, the daughters formed their own conjugal families. One of them, Saliha, married twice, and had a child from her first marriage. When Saliha passed away, her legal heirs consisted of her second husband, her child, her two sisters, and her mother. When the child died soon after Saliha, her first husband became an heir to the deceased child, and therefore an indirect heir to Hüseyin Çavuş's undivided estate. To further complicate the matter, one after another, Hüseyin's other two daughters passed away as well, leaving their husbands and mother as their heirs. With so many indirect heirs, the division of Hüseyin Çavuş's estate would require judicial attention. The *kadı* employed the algebra of the *feraid* rules, distributing Hüseyin Çavuş's estate into 9,216 shares, of which 4,449 shares would go to his widow; 672 to Saliha's second husband and 1,120 to her first husband; 1,050 to the husband of Hüseyin Çavuş's second daughter; and 1,925 to the husband of the third daughter.[161]

Women's right to inheritance was a central theme of the *feraid* rules and one of the revolutionary aspects of Islam. The *feraid* rules complimented the existing pre-

[161] İŞS 9: 154b, 25 M 1072.

Islamic inheritance traditions with a list of female heirs through Quranic verses.[162] The message of women's inheritance rights permeated time and space to challenge patrilineal and patrilocal traditions in which women were systematically disinherited. The late medieval Maghrebi jurists, for example, viewed systematic exclusion of women from their legally inherited properties as a sign of apostasy, which would require the Muslim state to wage a holy war against fellow Muslims who ignored the Quranic verses. The Cairene Maliki jurist of the fourteenth century, Sidi Khalil, for example, protested the exclusion of female heirs from inheritance through family endowments. The Hanbali school held that the exclusion of any heir was illegal.[163] Regardless of the sensitivities of Muslim jurists about women's entitlement to their Quranic shares, the incompatibility of legal norms and social practices with these dictates, time and again, led certain societies to bypass Islamic laws of inheritance and occasionally resulted in the disinheritance of women.[164]

In this chapter, I analyze the intersection of inheritance laws with social practice in order to examine women's right to inheritance in Istanbul in 1659-1661. I argue that Istanbulites used a wide variety of legal mechanisms in order to arrange for the devolution of their estate. Istanbulite women in this period inherited, but not always exactly according to the *feraid* rules. The application of the *feraid* rules for women depended on many factors such as the amount of one's estate that was actually divisible

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[162] Noel J. Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971), 29-30.
[163] Layish, "The Mālikī Family Waqf According to Wills and Waqfiyyāt," 8-9; J. N. D. Anderson, "The Religious Element in Waqf Endowments," *Journal of the Royal Central Asian Society* 38 (1951): 298.
[164] One example is the Malikis of Algeria, whose family endowments disinherited female heirs until the colonial period. Layish, "The Mālikī Family Waqf According to Wills and Waqfiyyāt," 1-32.

by the *feraid* rules; whether or not a widow had borne children to her late husband; the age and sex of her children; and her decision to remarry. It was the intersection of these factors with the prescriptions of the *feraid* rules that determined when, how, and to what extent women were entitled to their inheritance rights.

The observance of Islamic inheritance laws depended not only on the compatibility of legal norms with dominant social practices, but also on the power of state to enforce the laws. Pastoral and tribal societies in which the power of the state was limited could therefore easily maintain their inheritance systems. In urban societies, however, particularly those under the jurisdiction of a powerful state, individuals sought alternative legal mechanisms if the *feraid* rules proved too rigid to support their traditional inheritance practices. Ottoman cities of the seventeenth century such as Bursa and Kayseri were examples of cities in which ignoring Islamic inheritance laws was not an option. The residents of the capital in 1659-1661 were under even stricter legal surveillance than the Anatolian cities. After all, the capital was the seat of the empire's highest echelons of the judicial and legal hierarchy. So was the seat of the empire's most important legal and executive council, the imperial divan (*divan-ı hümâyun*), to which Istanbulite men and women had easier access than did residents of other parts of the vast empire. A systematic breach of inheritance laws for the urban population of the empire, and particularly for Istanbulites, did not seem to be an option.

Hanafi law, as the only school of Islamic law applicable in many parts of the empire including Istanbul, recognized more flexibility in inheritance arrangements when compared to other schools of law. Accordingly, the use of non-*feraid* mechanisms of

inheritance in order to exclude legal heirs, including women, was regarded as equally legitimate as the application of the *feraid* rules. Residents of Istanbul in 1659-1661, therefore, felt legally and morally free to arrange for the devolution of their properties to future generations as they wished. Theoretically speaking, Hanafi law permitted mechanisms that could disinherit women or give them shares equal to those of men, both of which were perfectly legal. Within this legal context, answering the questions of whether or not and to what extent women inherited can shed more light on Istanbulites' social practice than can an analysis solely of the relevant legal prescriptions.

Despite the sophisticated knowledge of legal scholars and practitioners regarding the division of estates based on the *feraid* rules, and despite the financial incentives to abide by these regulations, seventeenth-century Istanbulites did not leave their inheritance to be regulated by these predetermined rules. Instead, they effectively used other inheritance mechanisms to determine who would benefit from the estate and to what extent. While they were still alive, many individuals would arrange preemptively for the inheritance of their estates through other mechanisms already recognized and permitted by Islamic law. (For my examination of family trusts, see chapters 4.)

Even when such arrangements did not take place, the heirs were not passive subjects of the *feraid* rules. They frequently retained their inherited estate undivided for generations, as long as the family continued as a social unit. Even when disruptions within a family took place, members used negotiations and mediations to arrange for the division of the inherited properties. The *feraid* rules were applied in the absence of the

social ties between legal heirs, particularly when it consisted of distant relatives or when it included the state among the legal heirs.

## FAMILY AND INHERITANCE

One area of contention in the field of Muslim women's inheritance rights is the question of whether or not women actually acquired the inherited properties to which they were legally entitled. While studies on *sicil*s usually suggest that Muslim urban women acquired their inherited properties,[165] anthropologists have found many cases in which women were disinherited, particularly of agricultural lands.[166] Moors questions the urban-rural dichotomy among historians and anthropologists and observes that Palestinian women in both urban and rural areas were excluded from their inheritance rights. She argues, however, that women's disinheritance did not necessarily lead to their disempowerment; many times a woman's actual acquisition of her inheritance might

[165] For relevant *sicil* studies, for example, see Haim Gerber, "*Sharia, Kanun* and Custom in the Ottoman Law: The Court Records of 17th-Century Bursa," *International Journal of Turkish Studies* 2, no. 1 (1981): 131-47; "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," 231-44; Jennings, "Women in Early 17th Century Ottoman Judicial Records—the Sharia Court of Anatolian Kayseri," 5-114; Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840*.

[166] For a sample of such anthropological studies see Deniz Kandiyoti, "Social Change and Family Structure in a Turkish Village," in *Kinship and Modernization in Mediterrannean Society*, ed. P. G. Peristiani (Rome: The Center for Mediterrannean Studies, 1976), 61-71; Peters, "The Status of Women in Four Middle Eastern Communities," 311-51; Martha Mundy, "The Family, Inheritance, and Islam: A Re-Examination of the Sociology of Fara'id Law," in *Islamic Law: Social and Historical Contexts*, ed. Aziz al-Azmeh (London: Routledge, 1988), 1-123. Patrilineal traditions, however, have not been universal within the diverse Muslim societies. Different Indonesian ethnic groups, for example, have retained the *adat* (tradition) of devolving the property primarily to the female members of their communities. See, for example, John R. Bowen, "Equality, Difference, and Law in Indonesian Inheritance Practices: A Sumatran Case Study," *Political and Legal Anthropology Review* 19, no. 1 (1996): 83-90; C. W. Watson, "Islamic Family Law and the Minangkabau of West Sumatra," *Cambridge Anthropology* 16, no. 2 (1992): 69-84.

cause alienation from her kin, who provided the main source of emotional and material support.[167]

The *sicil* studies, however, are not uniform in their answers to the question of women's disinheritance. Gerber and Meriwether argue for the exact application of *feraid* rules in seventeenth-century Bursa and eighteenth-century Aleppo, respectively. Others maintain that women had difficulty in acquiring their inherited properties due to either being pressured to sell out their shares[168] or by the application of other mechanisms of inheritance such as endowments and bequests.[169] Similar to Moors' findings, Leslie Peirce observes that the sixteenth-century women of Aintab gave away their properties in order to gain "social capital," i.e. acquire support from their male family members.[170]

While my findings for Istanbul in 1659-1661 corroborate the argument that familial ties played a role in women's negotiation over their inherited properties, it seems that Istanbulite women in this period were generally more protective of their inheritance when compared to their modern Palestinian counterparts. Estates, such as that of Hüseyin Çavuş, often remained undivided for a considerable period of time. Despite this, women's right to inheritance was not usually forsaken. Istanbulite Muslim women in the period under study benefitted from male support in managing their properties; yet, the

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[167] Moors, *Women, Property, and Islam: Palestinian Experience, 1920-1990*, 48-76.
[168] Faroqhi, *Towns and Townsmen in Ottoman Anatolia: Trade, Crafts, and Food Production in an Urban Setting*, 254.
[169] Aharon Layish, "Bequests as an Instrument for Accommodating Inheritance Rules: Israel as a Case Study," *Islamic Law and Society* 2, no. 3 (1995): 282-319; "The Family Waqf and the Sharʿī Law of Succession in Modern Times," 352-88. For some non-*sicil* historical studies about the disinheritance of daughters through non-*feraid* mechanism in North Africa, where the practice of excluding daughters were the norm, see "The Mālikī Family Waqf According to Wills and Waqfiyyāt," 1-32; Ernest Mercier, *Le code du Hobous ou Ouakf, selon la législation musulmane* (Constantine: Imprimerie D. Braham, 1899), 131; Powers, "Law and Custom in the Maghreb, 1475-1500: On the Disinheritance of Women," 17-40.
[170] Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, 226-32.

fact that the legal ownership of their properties remained in their hands can be observed from the inheritance cases that appeared generations after the death of a certain person. If the pendulum for other Muslim women of other times and places was between receiving their *feraid* shares on the one hand and total disinheritance on the other, Istanbulite women of this period had a particular status. In a city which had a considerable amount of its properties alienated in the form of endowments, women of this period inherited the right to their usufruct on equal footing with their male counterparts. The actual division of inheritance based on the *feraid* rules, as this chapter demonstrates, happened rarely and only in the absence of the nuclear family members of a deceased person. When the *feraid* rules failed to be applied, however, it was not because judges were ignoring the Islamic laws of inheritance, and it did not lead to the disinheritance of women. The appointment of a widow as the guardian of her orphaned children, for example, was a judicial discretion used by the judges of Istanbul. In practice, it left estates undivided and the widow in control of almost all of the properties inherited from her late husband. Similarly, the egalitarian division of the right to usufruct of endowed properties between male and female descendants, for example, was sanctioned by the judges of Istanbul because Islamic law prescribed it to be so.

The details of Hüseyin Çavuş's inheritance case demonstrate that the meticulous calculus used by the *kadı* did little more than pay lip service to the *feraid* rules. Among the most valuable properties Hüseyin Çavuş left was a house worth 100,000 aspers as well the domestic material within the house. It is unlikely that a man such as Hüseyin Çavuş, the owner of an expensive house, did not have any other assets.

He might have been a creditor or borrower of money and the owner of other commercial and residential properties. Yet, the record does not provide a comprehensive list of the inherited items, and includes only the estimated value of an inherited house. Furthermore, it does not record the exact monetary value of the exchanged items at the time of the "division" of Hüseyin Çavuş's estate. Rather, it simply records the final outcome of a possible intra-familial negotiation.

The parties involved in Hüseyin Çavuş's inheritance case can also illuminate more details about contemporary inheritance practices and family relationships. This particular court case was initiated by İbrahim, the second husband of Hüseyin Çavuş's daughter Saliha. On the other side of the case stood not only Hüseyin Çavuş's widow Kelale, but also Şahin, the husband of the daughter who was the last to pass away among the sisters. The two parties—Kelale and Şahin on the one hand, and İbrahim on the other—maintained that they had settled the inheritance issues among themselves. The fact that Kelale and Şahin stood together as a united party indicates that the two lived together in the inherited house and had been viewed as the possessors of the entire estate until İbrahim launched his case to take his share. Keeping the estate intact served a significant function for Hüseyin's widow Kelale. Not having any sons, Kelale sought the support of her son-in-law. In return, she provided him with a large house to reside in. It is likely that Kelale's daughters did not ask for their shares of the estate immediately after their father's death so that their mother could continue to reside on the property. By the time Hüseyin Çavuş's estate finally did come to be divided among legal heirs, none of his descendants were still alive. Hüseyin Çavuş's inheritance case demonstrates that the non-

application of the *feraid* rules did not necessarily mean the exclusion of female heirs. Rather, the sharia court maintained a low profile, permitting family members to arrange for optimal solutions. The judges of Istanbul provided the legal framework by ascertaining each heir's legal shares according to the *feraid* rules and permitted the family members to negotiate their property rights.

## ISLAMIC INHERITANCE SYSTEM

The "Islamic law of inheritance" is usually used to refer to the *feraid* rules, which prescribed who legal heirs were and what share each heir was entitled to. The entitlement of any heir depended on their membership in the categories of "agnatic" and "Quranic" heirs. Agnatic heirs were all male relatives connected through men to the praepositus (the deceased person who owned intestate properties at the time of death). Therefore, one's son, brother, and father were agnatic heirs. The male ascendants and descendants of these relatives were also considered as agnatic heirs. In the presence of multiple agnatic heirs, those who were closer to the praepositus would exclude those who were farther. Accordingly, an uncle would exclude all paternal nephews from inheritance. According to Coulson, the rules pertaining to agnatic heirs' inheritance are reminiscent of the pre-Islamic tribal traditions of Arabia.[171]

The Quran assigned some portions of the estate to certain relatives, including some female and non-agnatic relatives such as daughters, sisters, and uterine brothers. The agnatic relatives become entitled to inheritance only when the assigned shares to the

[171] Coulson, *Succession in the Muslim Family*, 10-28.

Quranic heirs (*zev'il-feraid*) do not exhaust the entire estate. There are twelve Quranic heirs: daughter, agnatic granddaughter, husband, wife, father, mother, agnatic grandfather, grandmother, uterine brother, uterine sister, consanguine sister, and germane sister.[172] Being a Quranic heir, however, does not automatically render one an heir. While spouses, parents, and daughters cannot be excluded from the estate under any circumstances, the entitlement of other Quranic heirs was conditional. Siblings of a deceased person can inherit only if the latter had no surviving children. A granddaughter and a grandparent can inherit only in the absence of son and parent, respectively. A father, or, in his absence, an agnatic grandfather, are entitled to inheritance both as a Quranic heir and agnatic heir. Sons and non-uterine brothers are merely agnatic heirs. Because of the general rule that males get twice the share as females of the same status, daughters don't receive their Quranic share in the presence of surviving sons. Rather, the daughters receive half of what the sons receive.

The application of the *feraid* rules sometimes had consequences that were not necessarily compatible with the prevalent definitions of kin and family in a given time. The notion of an agnatic heir (*'asaba*) excluded all non-Quranic female relatives as well as male relatives connected through female relatives from inheritance. Accordingly, aunts, nieces, children of a daughter or sister and paternal aunts were categorically excluded from the estate, while male ancestors through the paternal line, male children of male siblings, and male children of paternal uncles were potential heirs. Even when they

[172] A germane sibling is one with the same mother and father, a consanguine is a half-sibling on father's side, and a uterine is a half-sibling on mother's side.

did provide for female kin, these rules gave larger portions of an estate to men in the paternal family line. Furthermore, the Hanafi *feraid* rules did not recognize the doctrine of representation, which would entitle the surviving grandchildren to the shares of their deceased parents. In the presence of agnatic nephews (brother's sons), therefore, a daughter's daughter would be excluded from the entire estate.

The *feraid* rules were particularly complicated in the determination of "outer" family members, who were neither Quranic heirs nor agnatic family members. Outer family members could have a close relationship to the praepositus and yet be disinherited in favor of Quranic and/or agnatic family members. The agnatic grandson of a paternal uncle, for example, would trump a daughter's daughter as heir, the former being an agnatic heir and the latter an outer family member.[173]

An additional, and perhaps more significant, problem with the *feraid* rules is that they are context-blind. Muslim families functioned within specific contexts, assigning varying financial responsibilities to male and female members of the family. An adult married son, according to the *feraid* rules, was entitled to the same share as his infant brother. A widow's decision to remarry was irrelevant to her entitlement in the estate. A young widow with several minor children was entitled to the same share as if she was a senior widow with adult and married children. In practice, however, as this chapter demonstrates, seniority and marriage transformed the lives of Istanbulite men and women and their membership within the family. Therefore, their entitlement to the same inheritance shares regardless of their status and ties within the family led Istanbulites to

[173] Coulson, *Succession in the Muslim Family*, 65-78.

arrange for more socially acceptable solutions within the broad framework of the Islamic inheritance system.

The centrality of the *feraid* rules, as extensively elaborated by jurists, combined with the existence of other multiple mechanisms of inheritance, might lead to some confusion in terminology. In this chapter, I use Powers' term "Islamic inheritance system" to refer to the comprehensive set of rules that regulated inheritance and "*feraid* rules" to refer to the particular set of prescribed rules that divided estates among heirs.[174] In this way, I hope to avoid the ambiguities about the term Islamic *law* (in the singular) of inheritance. After all, other inheritance mechanisms, such as *inter vivos* gifts, bequests, and endowments, were all regulated by Islamic law. The transfer of one's right to usufruct of either agricultural land or endowment was regulated by imperial orders and not the *feraid* rules. Yet, such practices were well integrated within the broader Islamic inheritance system as the early modern jurists recognized and legitimized Ottoman sultans' decrees on inheriting the right to usufruct.[175]

## *FERAID* RULES IN THE ISTANBUL SHARIA COURT (1659-1661)

The financial concerns of the state agents involved in regulating inheritance played a significant role in the actual application of relevant laws. The fee associated with the registration of estates whetted the appetite of the court personnel to act rigorously in dividing inheritance among heirs based on the *feraid* rules.[176] Nevertheless,

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[174] David S. Powers, "The Islamic Inheritance System," *Islamic Law and Society* 5, no. 3 (1998): 13-29.
[175] Ahmet Akgündüz, "İntikal," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 22: 353-55.
[176] İsmail Hakkı Uzunçarşılı, *Osmanli Devletinin Ilmiye Teşkilâti* (Ankara: Türk Tarih Kurumu Basımevi, 1965), 122-25. The tax rates changed between 15% and 25%. See Fatih Bozkurt, "Tereke Defterleri ve

the *kadıs* were frequently reminded by the central authority not to intervene if there were no legal reason to record estates. Estates needed only to be recorded with the court when there were concerns about the rights of those who did not have the legal capacity to act on their own behalf: minors, the mentally disabled, and those who were not physically present in the location where the estate was divided. Otherwise, the parties involved would have to request the court's involvement.[177] As we will see below, officials' financial incentive to register inherited estates, and individuals' lack of incentive to do so, left a significant portion of estates beyond the scope of the court's jurisdiction.

### INTESTATE INHERITANCE: *İCARETEYN* AND *MUKTATA'A*

Many people did or could arrange for the posthumous distribution of their property during their lifetimes. However, many of the estates brought before the court involved only a fraction of the entire property of the deceased—a sign that many estates to which the *feraid* rules were applied had in fact been largely divided up by other means on a previous occasion. Individuals could arrange for several forms of pre-mortem provisions, such as founding a family trust, giving away gifts, or bequeathing. While gifted properties had to be handed over to the beneficiary immediately, bequeathed and endowed properties usually remained in the control of the original owner until his death. Regardless, since gifted, endowed, or bequeathed properties were no longer considered "owned" by the deceased, they were not subject to division by the *feraid* rules.

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Osmanlı Maddî Kültüründe Değişim (1785-1875 İstanbul Örneği)" (Doctoral dissertation, Sakarya Üniversitesi, 2011), 69-70.

[177] Bozkurt, "Tereke Defterleri ve Osmanlı Maddî Kültüründe Değişim (1785-1875 İstanbul Örneği)," 68-69; Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri*, 79-80.

There was yet another area of properties which stood beyond the jurisdiction of the *feraid* rules, which resulted in a significant impact on women's inheritance rights. The intestate properties (the estates which remained undivided upon the owner's death) formed two primary categories based on the extent to which the praepositus had controlled the property. Ownership, in legal terms, meant enjoying the right to the "*rakaba*" of property, indicating an unlimited right to possess, rent, sell, modify, or give away as gift.[178] Legal possession and use of a property, however, did not necessitate its ownership. A right to usufruct (*menfaat*), for example of a rented house, gave the possessor some limited right to benefit from a property according to the conditions of the lease.

The Ottomans inherited the Mamluk tradition of regarding agricultural lands as the state's property. By the sixteenth century, the theory that the state had the right to the *rakaba* of the land and the peasants' tax was a form of rent became the dominant legal theory among the Hanafi jurists, and was particularly promoted by Ebu's-su'ud, the chief jurist of Süleyman the Magnificent. Such lands were called *miri* (imperial) lands to distinguish them from privately owned or endowed lands. The *miri* land, according to the new legal regime, theoretically belonged to God and the state acted as its administrator. The Ottoman jurists further elaborated on another legal problem, the inheritance of *miri* land. While in practice, pre-Ottoman Muslim states maintained the practice of leaving agricultural lands only in the hands of men, Ottoman jurists of the sixteenth century

[178] Islamic law has prescribed some limitations on the right to *rakaba*. *Şuf'a*, for example, requires the owner of a house to first ask his neighbors before he could sell it to third parties.

legalized and legitimized the practice by granting the ruler the right to determine pertaining inheritance rules. Women, nonetheless, were almost categorically excluded from inheritance, though now in no particular contradiction with the Islamic laws of inheritance. A new terminology was coined in order to refer to this particular method of inheritance. *İntikal-i âddi* (literally ordinary transfer), as opposed to the *feraid* rules, prescribed that *miri* lands were automatically transferred from fathers to sons. In the absence of any surviving sons, daughters had the right to step in, but on the condition of proving that they could cultivate them and only after paying an initial fee.[179] Some agrarian properties in the larger Istanbul area in the seventeenth century were transferred according to "ordinary transfer."[180]

Another category of real estate whose inheritance rules were not determined by *feraid* rules were endowments. Setting aside lands and urban residential properties for either public philanthropic purposes or for supporting one's family excluded them from the category of private property and therefore rendered the *feraid* rules inapplicable. According to the Hanafis, the founder had the right to stipulate who the beneficiaries were without any limitations, which also had a significant impact on women's inheritance rights for Istanbulites in the second half of the seventeenth century (see chapter 4).

An important legal innovation in the Ottoman Empire that considerably changed women's right to inheritance was the introduction of *icareteyn* (literally double rent) for endowed properties. Accordingly, a tenant would give a huge amount of money, close to

[179] Ahmet Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, vol. 3 (Istanbul: Fey Vakfı Yayınları, 1990), 97-98.
[180] İŞS9: 152b, 5 S 1072.

the real value of the property, in the form of "advance rent" (*mu'accele*) at the beginning of the lease period and then make nominal and periodical payments in the form of "delayed rent" (*mü'eccele*). The most important aspect of the *icareteyn* contracts was their perpetuity. Unlike other forms of rent, tenants with *icareteyn* contract had the right to either benefit from the rented property as long as they lived, or transfer their right to others (*ferağ*). More importantly for this chapter, tenants had the right to inherit these rented properties. The pertaining inheritance law, however, was very different both from the *feraid* rules as well as the rules regulating the inheritance of *miri* lands. After the death of an *icareteyn* tenant, only his sons and daughters could inherit the rented property. A significant difference of this new regulation was that sons and daughters had equal shares.[181]

The introduction of *icareteyn* brought about another long-lease form of endowed properties. The periodic fires and earthquakes in Istanbul destroyed large portions of the capital's residential and commercial properties. If the administrator of a destroyed endowment did not have enough funds to repair the buildings, he/she could lease the land and permit the tenant to build private buildings on top of the endowed land. *Mukata'a* leases, therefore, introduced new forms of property which were partially endowed and partially private properties. The *muktata'a* lease resembled *icareteyn* in that the tenant had to pay a substantial sum at the beginning and periodical rents afterwards for the rented land. The *mukta'a* land, however, was inseparable from the private buildings

[181] Akgündüz, "İntikal," 354-55.

constructed above it and the sale of such private buildings also required the transfer (*ferağ*) of the land to the buyer.

The perpetual lease in the form of *icareteyn* and *mukata'a*, however, was a controversial issue among Muslim jurists. The Hanafi jurists permitted it only in exceptional cases. If the endowed properties were in ruins and the administration did not have enough funds to repair them, the prospective tenant and the administrator of endowment had to acquire an imperial permission for either *icareteyn* or *mukata'a*. Only after securing such permission could the endowed properties be rented out in perpetuity. The permissibility of these practices was debated among the sixteenth-century Ottoman jurists and was finally legalized in the seventeenth century.[182] In seventeenth-century Ankara and Kayseri, endowed properties were rented out for short terms, usually for one year.[183] A study of leases of endowed properties in Aleppo demonstrates that tenants and administrators used non-Hanafi judges to validate their long-leases; the practice of *icareteyn* was uncommon between the sixteenth and eighteenth centuries despite the juristic elaborations in Istanbul.[184] Aleppans had decided to use other schools of law instead of leasing on new but controversial legal norms. It seems that for provincial areas

[182] Bülent Köprülü, "Evvelki Hukukumuzda Vakıf Nev'iyetleri ve İcareteynli Vakıflar," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 18, no. 1-2: 215-57; Ahmet Akgündüz, "İcareteyn," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 21: 353-55.
[183] Faroqhi, *Towns and Townsmen in Ottoman Anatolia: Trade, Crafts, and Food Production in an Urban Setting,* 246.
[184] Rafeq, "The Application of Islamic Law in the Ottoman Courts in Damascus: The Case of the Rental of *Waqf* Land," 411-25.

of the empire, perpetual lease had to wait the nineteenth century to become a prevalent method of possessing endowed properties.[185]

Istanbul in the seventeenth century was very different from the provincial areas as far as *icareteyn* and *mukata'a* leases were concerned. First, the proximity to the sultan rendered acquiring permissions for double-rent leases much easier than in any other areas of the empire. Second, Istanbulites did not have the luxury of using other schools of law; the Hanafi school had monopolistic jurisdiction over the Muslim residents of the capital. Istanbulites, therefore, took full advantage of the introduction of *icareteyn* and *mukata'a*.

By 1659-1661, the dense population of the city already had limited access to new residential properties in the form of private property. A considerable number of urban properties had been set up as endowments to support public buildings such as monumental mosques, fountains, and colleges (*medrese*s). An increasing number of existing private real properties were also set up as family endowments. The fact that endowments were founded in perpetuity meant that the Istanbulites turned to endowed properties for residential or investment purposes. While short-term leases did exist, many Istanbulites sought a more reliable form of housing, one that would be safe against fluctuations in prices and the whims of a landlord.[186] A study of the estate inventories of

[185] Baer, "The Dismemberment of *Awqâf* in Early 19th-Century Jerusalem," 220-41; Hoexter, "Adaptation to Changing Circumstances: Perpetual Leases and Exchange Transactions in Waqf Property in Ottoman Algiers," 319-33.

[186] As an example of the insecurity of short-term leases in Istanbul, a tenant came to the court in June 1661 and maintain that he had rented a house from an endowment, but the administrator wanted to evict him (İŞS9: 11a: 20 L 1071). In another case, a landlady applied to the court in July, 1661 to ask her tenant to vacate her house (İŞS9: 68a:27 Za 1071).

Istanbulites in the eighteenth and nineteenth centuries demonstrates that such investments comprised a significant portion of Istanbulites' wealth.[187]

Court documents that recorded lease contracts and transactions persistently demonstrate the prevalence of *icareteyn* and *mutaka'a* leases for both small and large properties in Istanbul in the period under study. Many plots of lands, houses, and particularly apartment complexes belonged to large endowments, and were rented out to individuals.[188] Although the nominal rate would stay stable during the term of a lease, the appreciation in the rented property would be reflected in an advance payment. At the time of the sale of the usufruct right to a property, the amount of the advance payment was close to the current price of the property, which could change over time.

The difference in the inheritance of *miri* lands and endowed properties reflected the disparate social assumptions and customary practices in rural and urban centers. The legislature, who came exclusively from an urban elite background, prescribed that the usufruct right to agricultural land had to pass to male children who were assumed to be capable of managing the land and maintaining its taxable productivity over generations. The management of urban properties, on the other hand, did not require masculine and muscular power. While many women got rid of their real estate to acquire cash and movable properties, many others decided to manage their real properties. After a period following the death of a certain İlyas, for example, his son and daughter appeared in the court in October 1661 to settle a dispute over the inheritance of a rented endowed

[187] Bozkurt, "Tereke Defterleri ve Osmanlı Maddî Kültüründe Değişim (1785-1875 İstanbul Örneği)," 90-94.
[188] İŞS9:120a, 14 M 1072; İŞS9: 155b, B S 1072.

property. Their father, who was a *peştemalcı* (a dealer in or keeper of towels used in public baths), had invested in a one-room apartment, which was part of a large endowed complex. After his death, the investment was transferred equally to his son and daughter. The daughter was the sole manager of the property, probably due to the younger age of the son. The sale of their possession rights over the property to another person became the subject of a lawsuit with a third person, which was settled in the daughter's favor. The case explicitly mentioned the equal shares of the two siblings and the central role played by the daughter in the management and then sale of the property.[189] İlyas's daughter did not disappoint the legislature's assumption about women's capability in managing their urban properties, and, when necessary, litigating to protect their rights.

For the nuclear families of the Istanbulites in the period under study, *icareteyn* and *mutaka'a* had the obvious advantage of excluding non-nuclear and agnatic family members from estates. When, for example, a certain Mahmud passed away in August 1661, his widow and two minor daughters were among his heirs. According to the *feraid* rules, the daughters would receive two-thirds of the estate, and the wife one-eighth. The remaining portion would belong to the agnatic heirs, such as a paternal uncle, or a male cousin. Mahmud and his wife had equally invested in the property that belonged to an endowment. The property was not private; rather, it was a *mukata'a* from the endowment and, therefore, the *feraid* rules were not applicable. In this case, half the property that belonged to the deceased Mahmud would pass exclusively to his two minor daughters. In order to solidify her management right over the property, Mahmud's wife purchased her

[189] İŞS9: 155b, B S 1072.

daughters' shares and became the sole possessor of the entire property.[190] After her death, the entire property would pass again to the daughters. Investment in the increasing number of endowed properties, therefore, demonstrated a particular trend in the devolution of estates, one that included sons and daughters on an equal basis while excluding the agnatic heirs.

### INTESTATE INHERITANCE: PRIVATE PROPERTY

The portion of the estate that was subject to division by *feraid* rules, then, was limited to that "owned" by the praepositus at the time of his/her death. The Istanbulites in the period under study opted to limit the *feraid* rules to determine the heirs and their shares in the estate. The high number of court records involving estates theoretically divisible according to the *feraid* rules does not contradict the observation that Istanbulites managed inheritance through a wide range of mechanisms and rarely through the *feraid* rules. There are two primary reasons for the existence of such inheritable estates, both of which indicate the exceptionality of such cases: first, the praepositus died unexpectedly and therefore left his/her estate without any arrangements; second, the praepositus actually preferred the *feraid* rules to arrange for the transfer of his/her estate in cases in which his/her nuclear family members did not have to compete with the extended family members over the estate.

[190] İŞS9: 75b, 7 Z 1071.

**Unexpected Death**

The high mortality rate of the capital caught many residents of Istanbul by surprise, as was the case in many other parts of the world. The Great Fire of 1660 devoured a good portion of the wooden houses in the walled city, causing the death of thousands of people.[191] Both external wars and internal turmoil had significant impact on the life expectancy of the Istanbulites. Tens of thousands of members of the imperial army, frequently mobilized for campaigns on different borders of the empire, lived in or around the walled city. The uprisings in the capital between different political and military factions frequently became violent, causing the death of many officials including the *şeyhülislam*s and grand viziers.[192] Even travelling for pilgrimage and business out of the city was not a safe endeavor. Many travelers succumbed to the "highway robbers" (*kuttâ'-i tarîk*)[193] and to the hardships and diseases of the long journeys. The sudden and unexpected death of many Istanbulites left a considerable amount of inheritable estates to be divided among heirs according to the *feraid* rules.

While court records did not always register the reason for a person's death, several examples show that the deceased's failure to arrange for the division of his or her estate was due to an expected death. When a certain Mustafa Çavuş died on a military

[191] Yıldız, "1660 İstanbul Yangınının Sosyo-Ekonomik Tahlili," 10.
[192] The sharia court records occasionally mention the causes of the "unordinary" deaths of some individuals, who could not arrange for their estate. They included individuals who were "drowned" such as a navy captain (İŞS9: 74b, 8 Z 1071), a *çavuş* (İŞS9: 85a, 16 Z 1071), a janissary (İŞS9: 94a, 23 Z 1071), and a *seyyid* (İŞS7: 11a, 23 M 1070). It also included a grand vizier who was executed (İŞS9: 73b, 29 Za 1071).
[193] İŞS9: 129a, 21 M 1072. In this court record, an Armenian resident of Istanbul was killed on his way to the Anatolian town of Tokat by highway robbers.

campaign to re-conquer Transylvania in November 1659,[194] for example, his inheritance became the subject of a series of disputes (*nizâ-i kesîr*) between his heirs: his two wives, his adult daughter, and his agnatic nephew Ahmed Beg. The latter, according to the *feraid* rules, was entitled to three-eighths of the entire estate. Mustafa Çavuş's wives and daughter, however, wanted the entire estate to remain within the conjugal family. The ensuing disputes were eventually resolved after some "mediators" (*muslihun*) intervened.[195] Similarly, when a high-ranking officer of the Imperial Navy passed away on the island of Midilli (Lesbos) in October 1661, his inherited property in Istanbul was to be divided among his heirs, which included his widow, his minor daughter, and his two paternal uncles. He had not arranged for the devolution of his estate, and therefore, the uncles appeared in court as the shareholders of a significant portion of his estate.[196]

### *State as the Shareholder*

In certain situations, the state could become an heir to the entirety or a portion of one's estate. The *feraid* rules recognized the state as an heir in cases when the estate was not exhausted by legal heirs. The introduction of the *red* principle by Hanafi jurists, however, rendered state's right in inheritance extremely limited. According to the *red* principle, the residue of an estate which was not exhausted by the *feraid* heirs would be redistributed among the existing heirs. Widows and widowers, however, were excluded

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[194] He died in Ineu (Yanova) in modern Romania. The campaign to re-establish the Ottoman authority in Transylvania lasted between 1658-1661, after which Ineu became the capital of a newly established Ottoman *beylerbeyliği* (governorate-general). Sadık Müfit Bilge, "Macaristan'da Osmanlı Hakimiyetinin ve İdari Teşkilatının Kuruluşu ve Gelişmesi," *Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi (OTAM)* 11 (2000): 33-81.
[195] İŞS7:19a, A Ra 1070.
[196] İŞS9: 150a-b, 11 S 1072; İŞS9: 154b, 13 S 1072.

from receiving any shares in the redistributed residue. In practice, it meant that the state became a shareholder when a deceased person either did not have any heirs or had only a spouse as heir. The exclusion of spouses from the benefits of the *red* principle, however, had an uneven impact on widows and widowers. A childless widower was entitled to half of his late wife's estate while a childless widow's share was only one-fourth.

Public treasurers (*beytülmal emini*), as the state's agents in receiving its shares from unexhausted estates, had become highly institutionalized by the seventeenth century. The office, by the seventeenth century, was farmed out to investors, whose collection of the state's inheritance shares provided a substantial amount of their income and profit.[197] Public treasurers, therefore, acted quickly in appropriating any estate in which they had any possible share. The tax policies related to the collection of the estate of heirless deceased people further encouraged the officials to act vigilantly. In case the treasurers were wrong in appropriating the estate of a person who had surviving heirs, the latter not only had to prove that they were legal heirs; they also had to pay the officials for retrieving the misappropriated estate.[198] Treasurers also brought numerous lawsuits against those who had allegedly violated the state's rights in unexhausted estates.[199]

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[197] Arif Bilgin and Fatih Bozkurt, "Bir Malî Gelir Kaynağı Olarak Vârissiz Ölenlerin Terekeleri ve Beyülmâl Mukataaları," *Kocaeli Üniversitesi Sosyal Bilimleri Enstitüsü Dergisi* 10, no. 2 (2010): 1-31.
[198] Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri*, 61.
[199] İŞS9: 115b; 13 M 1072; İŞS9: 12 N 1071; İŞS9:47b, 17 Za 1071; İŞS9: 31b, 4 Za 1071; İŞS9: 128b, 20 M 1072. In one case, the public treasurer did not lose time in appropriating a relatively small amount of 2,000 aspers from the debtors of a deceased person, claiming that he died heirless. The story came to the attention of the Istanbul court when the heirs of the deceased person sued the debtors in September 1661 (İŞS9: 123b, 12 M 1072). In another example, the collector-general of Sakız Island appropriated the entire property of a Greek passenger named Nikola, who passed away on a ship under the captainship of another Greek man named Panayot. There were no apparent public treasurer on the island, and the collector-general acted as the *de facto* treasurer. The case came to the attention of the Istanbul court when the deceased Nikola's brother sued the captain for not handing over Nikola's cargo. This case demonstrates that state

Yet, a closer look at cases in which public treasurers were involved demonstrate that childless widows, who could inherit only one-fourth of their husbands' estate, used certain strategies to limit and challenge the state's rights to the estate. Such a case came to the attention of the court after the death of a certain İbrahim Çelebi on his pilgrimage to Mecca in September 1661. The treasurer did not lose any time bringing a lawsuit against İbrahim Çelebi's widow, named Fatma Hatun. Instead of simply acquiescing to the sound legal argument of the treasurer, Fatma Hatun was involved in a sophisticated web of connections involving notables of the neighborhood community in order to prevent the treasurer from acquiring her husband's estate. She argued that her husband arranged for a bequest before he went on his trip to Mecca. Accordingly, if he died on his pilgrimage, a considerable amount of his estate should go to his wife. The legal problem for such an arrangement was the one-third clause in Islamic law. One could not bequeath more than one-third of one's estate, and, more importantly, no legal heir could benefit from a bequest. Fatma Hatun bypassed that conundrum by claiming that her husband's will was, in fact, for the redemption of the money he had owed her (a considerable amount of 360 piasters in debt and a higher-than-average amount of 60 piasters in the form of a delayed bridal gift). This amount of cash would of course be on top of her legal right to one-fourth of the estate.

For Fatma Hatun, the cooperation of the neighborhood community was essential in order to substantiate her claims. She took several steps to secure their involvement in

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officials acted quickly in appropriating unclaimed properties, regardless of their location. (İŞS9: 126a, 21 M 1072).

her favor. The first step was the appointment of a respected member of the community as the executor (*vasi*) of the bequest. This guardian was a certain Mehmed Çelebi, who held the same religious title as the deceased. The defendant argued that the executor had been appointed by the deceased İbrahim Çelebi before his death. The authenticity of this claim, as well as the terms of the bequest required the collaboration of other respectable members of the community. Three people gave such testimony, two of whom were members of the *sâdât* (descendants of the Prophet Muhammad), and all of whom held the same title as the deceased İbrahim Çelebi. This communal support, however, came at a certain cost. The three *çelebi*s testified that in addition to the amount of cash that was due to Fatma Hatun, the deceased İbrahim Çelebi had bequeathed some of his estate as an endowment to support the local mosque. The endowment would hire five people to recite the Quran within the mosque with a daily stipend, a stipulation that would generate additional income to the learned members of the community. The end result was the division of İbrahim Çelebi's estate between his widow and the fellow members of the community. The executor provided a detailed calculation of the assets and liabilities according to the alleged bequest. In the end, no money remained in İbrahim Çelebi's estate for the public treasurer to claim.[200]

***Patrimonial State***

In its patrimonial role, the state acted as the protector of orphans' financial interests through a careful supervision of the devolution of the estate, based on the *feraid*

[200] İŞS9: 169a-b, 20 M 1072.

rules in the absence of other alternative mechanisms. The state's patrimonial role was manifested after the murder of a grand vizier after an uprising in the capital. Tarhuncu Ahmed Paşa was executed in 1653 by the chief black eunuch, an act that was possibly ordered by the regent queen mother. Ahmed Paşa's execution, like the execution of many other grand viziers of the seventeenth century, was immediate, without either previous notice or a trial. As the grand vizier of the empire, he left a considerable estate. The only surviving heir was his minor daughter, Fatma. The sharia court, as one of the instruments of the patrimonial state, appointed İsmail Ağa, a member of the grandees (titled as *fahr'ül-akran*) as her guardian. The guardian, who was responsible for managing the property of the minor in her best interest, came to the court to register the sale of some of the inherited property, which was needed for the maintenance of the minor girl. The court record, in its formulaic nature, maintains that the sold property was auctioned and was purchased by the highest bidder, who happened to be two non-Muslim residents of Istanbul. Although we cannot be sure about how fair the process and price of the sale was,[201] the state demonstrated its patrimonial role by recording minor children's properties; appointing guardians for them; requiring auctions for the sale of minor children's properties; and registering the transactions in the sharia court. The state might execute Fatma's father with no trial, but it was concerned with the wellbeing of his minor daughter. It provided a set of political and financial institutions that would implement the sharia rules pertaining to the protection of minor children's rights. On the state's part, it

[201] The central government received many complaints about the corruption of the officials involved in the process of the registration, evaluation, and auctioning of inherited properties. See Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri*, 79-84.

was an ostentatious show of interest in safekeeping the interests of its powerless subjects.[202]

This patrimonial role, however, was subject to negotiation and modification by interested parties, and not to a rigid set of pre-determined rules as prescribed by sharia and applied by state institutions. The state's patrimonial care for minor children could, at times, contradict the interests of widows who had limited inheritance rights (one-eighth in the presence of children) in their husbands' estate. If a late husband's heirs consisted of only his widow and minor children, then his widow's control of the entire or the majority of his estate was the norm (see below). Occasionally, however, widows with minor children legally lost control of their husbands' estates. In what follows, I will examine the strategies used by a widow with a minor son who had to share the inherited estate with her husband's children from another marriage. The state agents were involved in regulating the inheritance because minor children were among the heirs. The widow, however, negotiated with state officials and other involved parties in order to ameliorate her legally disadvantaged position.

A certain Mahmud Ağa, a *çavuşbaşı* (high court official), was murdered in 1656.[203] His heirs were his wife Hemrah Hatun and his five minor children. The state played a patrimonial role in the following ways. First, the *kassam-ı askeri* registered Mahmud Ağa's inherited items and his heirs. Second, the court appointed Hemrah Hatun as the guardian of the minor children. She was the mother of one of Mahmud Ağa's sons,

[202] İŞS9: 73b, 29 Za 1071.
[203] The head of the corps in charge of significant missions pertaining to the affairs of the Imperial Council.

and the rest were from a different mother or mothers. The mother(s) of the other children were either divorced or passed away before Mahmud Ağa's murder. Third, the court appointed a supervisor (*nazır*) to oversee the management of the inherited property by Hemrah Hatun. Although the wives of the deceased were generally appointed as the guardian of minor children without any extra supervision during this period, concern about Hemrah Hatun's capacity to manage such a large inheritance, or about her fairness in administering the property of her stepchildren, most likely drove the court to the appointment of a supervisor.[204]

The items in Mahmud Ağa's estate suggest that there was yet another reason for the court's concerns about the management of the inherited properties. It included privately owned real estate and cash, as well as investments in perpetually leased properties that included two fruit and vegetable gardens, five shops in different parts of the city, a house, and an apartment complex (all located in Istanbul), as well as two mills in Rusçuk. The right to use these properties could be inherited by Mahmud Ağa's sons and daughters equally, but not by Hemrah Hatun. The court, therefore, might have been concerned about such a large portion of Mustafa Ağa's estate being managed by a woman who was not even legally entitled to it. The supervision of the *nazır* was subject, likewise, to a final level of supervision. He was supposed to provide a detailed report about the management of the estate to the court, in which court personnel including the court witnesses (*şuhud el-hal*) supervised the registration of Hemrah Hatun's financial transactions on behalf of the minor children.

[204] İŞS8: 38a-38b, 10 Ra 1071.

Despite these careful patrimonial protections, Hemrah Hatun was able to become the manager of the entire inherited properties in the years after the death of her husband. A year before the supervisor's report, the Great Fire had devoured a huge number of properties in the capital.[205] Among them were many items in Mahmud Ağa's estate. In addition to the costs of maintenance and a marriage trousseau for one minor daughter, Hemrah Hatun used a significant portion of her late husband's estate to repair the damaged properties. The report does not show any distinction between owned and leased properties in calculating the income and costs of the estate. A strict application of legal norms, however, should have clearly distinguished between such properties because leased properties would exclude Hemrah Hatun and include male and female children as equal inheritors, while the owned properties would be divided according to the *feraid* rules. Having proved her accountability through her cooperation with the supervisor, Hemrah Hatun was able to combine her late husband's owned and leased properties under her control.

Considering the age of her only son, Hemrah Hatun was probably young, and could have remarried in the years after her husband's death. That would have led to the appointment of another person as the guardian of the minor children and the exclusion of Hemrah Hatun from her late husband's estate. Instead, she decided to maintain the integrity of her husband's family and property and remain as the manager of the undivided inheritable property. The court showed more interest in the wellbeing of the

[205] For a detailed analysis of the impact of the fire see Yıldız, "1660 İstanbul Yangınının Sosyo-Ekonomik Tahlili."; Baer, "The Great Fire of 1660 and the Islamization of Christian and Jewish Space in Istanbul," 159-81.

minor children than in the observance of strict categorizations and divisions based on legal doctrine. It seems that Hemrah Hatun made calculated decisions to cooperate with the supervisor and the sharia court in order to maintain the integrity of the inherited estates and, through it, of her family.

### *The Preferred Feraid Rules*

Not all the outcomes of the *feraid* rules were undesirable to the residents of Istanbul, which could be the reason that some Istanbulites did not make any particular arrangements for the transfer of their estates. Any son would exclude all agnatic relatives from inheriting. Therefore, unless the praepositus intended to provide for those who were non-*feraid* heirs, he or she did not have the incentive to circumvent the *feraid* rules. One such case came to the attention of the court on August 28, 1661. A certain Veli bin İbrahim, aware of his imminent death, perhaps due to illness, left his minor son and daughter as his only heirs. Veli's wife was not listed among the heirs, which means she most probably predeceased him.[206] Therefore, Veli had to arrange for a smooth transition of his estate to the minor children in order to safeguard their financial wellbeing. In the presence of his son and daughter, the *feraid* rules would assign his entire estate to them to the exclusion of other relatives. Therefore, Veli did not have any incentive to circumvent the *feraid* rules as they already guaranteed a favorable outcome. Three days before his death, Veli held a meeting in the presence of some of the local elite—including a member of the Janissaries and the *müezzin* of a mosque—in which he officially appointed a

[206] Another possibility was that she was divorced from Veli and married another person, which would also disqualify her as the guardian and custodian of Veli's children.

certain Ahmed Beşe as the guardian of the children.[207] The guardian, then, would manage the estate, which according to the *feraid* rules, belonged to the children.[208]

Unlike sons, daughters did not exhaust the entire estate. A daughter's *feraid* share, in the absence of a surviving son, was half of the estate. Two or more daughters were entitled to a total of two-thirds of the estate. In a scenario in which a man passed away leaving his widow and one daughter as heirs, the widow was entitled to one-eighth and the daughter to one half. The remaining three-eighth would belong to agnatic family members. In the absence of agnatic family members, the principle of *red* would divide the residue among the legal heirs with the exception of spouses. In this case, the residue would be returned to the daughter and the final division of the estate would be as follows: The widow would receive one-eighth of the estate, and the rest would belong to the daughter. This outcome could also be a favorable division of estate based on the *feraid* rules as long as the maintenance of the estate within the small nuclear family was the concern.[209]

In certain cases, an undivided estate would remain within the same nuclear family even after the death of some heirs, which would legally redistribute their shares in inheritance. A certain İbrahim Beşe had passed away long before his inheritance case was

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[207] The court case does not elaborate on the relationship between Veli and Ahmed Beşe. Yet, the fact that Ahmed Beşe was a member of the Janissaries, with sufficient resources for executing the transfer of the estate and protecting the minors' rights, might have played a significant role in Veli's appointment of him as a guardian.

[208] İŞS9: 117b-118a, 2 M 1072.

[209] For cases in which daughters exhausted the entire estate due to the *red* principle which rendered their parents' pre-mortem inheritance arrangements unnecessary, see İŞS9: 161a, A S 1072; İŞS9: 161b-162a, 24 S 1072; İŞS9: 134b, 28 M 1072; İŞS9: 138b, 28 M 1072; İŞS9: 161a, 21 S 1072; İŞS9: 161, 22 S 1072; İŞS9: 162b, 22 S 1072.

recorded in the sharia court in July 1661. His legal heirs consisted of his widow, his minor son, and his adult daughter. İbrahim Beşe was not worried about the division of his estate according to the *feraid* rules because members of his immediate nuclear family were entitled to the entire estate. That is probably why he left the estate without any particular arrangements. His nuclear family, consisting of his wife and children, did not divide the estate for many years. In this period, the daughter passed away and the minor son reached adulthood. The estate of the daughter, according to the *feraid* rules, would be divided between her mother and brother, which meant that the estate would remain within the small nuclear family. The mother and son appeared in the court in July 1661 to sell a house belonging to their joint inherited property, perhaps to meet their financial needs. Regardless of whether or not the estate was divided between the mother and son, it is significant to note that the *feraid* rules kept the property within the nuclear family after the death of not only the family's patriarch, but also of his daughter.[210]

Accordingly, under certain circumstances, the *feraid* rules could actually help small nuclear families retain inherited properties. In such cases, the *feraid* rules provided legal protection against the claims of extended family members. After the death of a woman named Ayşe, for example, her daughter Fatma and nephew Mehmed initiated a legal dispute over her estate in July 1661. According to the *feraid* rules, Fatma, the daughter, was entitled to half the estate. The remaining part would belong to agnatic family members. In their absence, the entire estate, based on the principle of *red*, would belong to the daughter. Mehmed, however, was not an agnatic nephew. Had he been the

[210] İŞS 9:34b, 6 Za 1071.

deceased Ayşe's brother's son, he would have a sound legal claim. Unfortunately for him, he was Ayşe's sister's son. Once the merits of the legal arguments of both parties were set, the judge decided that Fatma was entitled to the entire estate, excluding Mehmed altogether.[211]

## DIVISION OF THE ESTATE

While the *inter vivos* arrangements for the division of an estate provide information on who belonged to the deceased's household, the post-mortem divisions demonstrate the fragility of such family structures. Regardless of how long the inheritable estate remained in joint possession of family members,[212] there were certain moments that signified the end of the family as a social unit, resulting in the division of the communally-held property among the individuals who had been members of the same family.

Matrimony created a fragile link between an individual and his or her spouse's extended family. A married couple usually separated from their paternal households in order to form their own small conjugal family. The death of a husband, however, created

[211] İŞS9: 170a, 1 Ra 1072. For a similar case in which a widow, who was also the guardian of her minor children, won against her late husband's extended family members, see İŞS8: 26b, 15 Ra 1071.

[212] The cases involving undivided estates usually do not mention exactly when the principal praepositus died. Some circumstantial evidence, however, shows that such estates were undivided for a long period of time. In one such example, the estate belonged to the wife and son of a deceased person. At the time of the praepositus's death, the son was legally a minor (*sağîr*). This small family, consisting of a mother and a son, did not divide the estate for a considerably long time. By July 1661, when the two came to sell an inherited property, the son had become mature (İŞS9: 34b, 6 Za 1071). The non-division of inherited residential properties was also detected in the documents about the transaction of real estate. In the absence of street names, the court records showed the address of any real property by the name of the neighborhood and/or district in which they were located, as well as the properties on the four sides of the property in question. Some of these properties were inherited but not divided amongst the heirs; these were recorded as the "inherited property" of the original owner (İŞS9: 21, 29 L 1071).

a complicated relationship between the widow and her late husband's paternal family, which was manifested in the court cases pertaining to the division of the late husband's estate. A widow would usually strive to maintain the integrity of her small conjugal family after her husband's death, which was typically in contradiction with her late husband's family's financial interests. The end result of the bargaining between the late husband's paternal family and the widow's small conjugal family depended on a number of factors, including the widow's maternity, the age and sex of her children, and her decision to remarry.

The continuation of a widow's control over the property of the conjugal family depended largely on whether or not she had children. After her husband's death, a widow had to compete with her husband's paternal family members over the material resources accumulated within her conjugal family, including any property her husband had inherited from his paternal family. If the widow had no surviving children from her husband, the latter's paternal family members acted quickly to appropriate the inherited estate from the widow. In such cases, widows usually demanded the one-fourth of their husband's estate in addition to their delayed dower.[213]

If the deceased patriarch had minor children, it was usually the mother of the children who retained the integrity of the family and their financial assets (see below). The mother was usually appointed as the guardian (*vasi*) of the children, after which she

[213] İŞS 9:49b-50a, 17 Za 1071. For a similar case, in which the widow was compensated before being excluded from the estate by her deceased husband's siblings, see İŞS9: 154b, 14 S 1072. In yet another case, the heirs of a deceased man were his widow and his brother. The widow sued a person who owed her deceased husband, after which they agreed to an amicable settlement. It is interesting that she claimed only her one-fourth share in the owed money, a clear indication that the she and her brother-in-law had already divided the estate (İŞS9: 162b, 23 S 1072). For a similar case see İŞS8: 39b, 14 Ra 1071.

would control the entire estate in their names. Being the custodians (*hâdine*) of their minor children by default, widows' guardianship over their children granted them the absolute authority to possess and manage the entire inherited estate. After the death of her husband Mahmud Ağa, Hemrah Hatun (discussed above) had been appointed as the custodian of his five minor children—despite the fact that she was the mother of only one son and the other children were from a different mother or mothers. Five years later, a detailed list of her subsequent financial activities showed that Hemrah had inherited 638,000 aspers in cash, collected some 555,000 aspers from those who owed her late husband, and collected the rent from Mahmud Ağa's real-estate investment amounting to 166,650 aspers. In total, she had acquired the considerable amount of 1,370,350 aspers in this five year period. Even after the redemption of Mahmud Ağa's debts, she was still in charge of about one million aspers.[214]

From the list of her expenditures, it becomes evident that Hemrah Hatun did not rush to sell income-generating investments such as the numerous apartment complexes, shops, mills, and horticultural gardens included in her late husband's estate. She was not intimidated by the fact that these investments were scattered not only in different parts of Istanbul, but also in Rusçuk (in modern Bulgaria) as well as in Aksaray in Anatolia. According to the list of expenditures she repaired and maintained the far-flung properties. The management of significant investments spread over a large geographic area, however, often came with disputes. Hemrah Hatun therefore, took necessary measures to

[214] İŞS8: 38a-38b, 10 Ra 1071. For similar cases of widows' actual control and management of their late husbands' estates see İŞS9:29a, 5 Za 1071; İŞS9:35b, 6 Za 1071; İŞS9: 36a, 29 L 1071.

safeguard her possessions. She sent her minor son and a certain Hacı Süleyman to take care of "an important affair" in the city of Edirne, which was now practically the seat of Mehmed IV. It seems that "the important affair" pertained to a dispute over mills in Rusçuk. The case ended in an amicable settlement, according to which she retained the possession of the mills in return for some 20,000 aspers. After the Great Fire of 1660, she took care of repairing some of damaged properties in the capital. Hemrah Hatun's economic activities were not typical of Istanbulite widows in this period, who would usually sell their real estate in order to provide for their minor children. Hemrah Hatun, however, different from the majority of other widows, had to share her husband's estate with his children from another marriage. She had to prove her capability of controlling and managing the properties in order to maintain her status as the guardian of not only her minor son, but also her step-children.

Even in the rare cases in which widows were not appointed guardians of their minor children, they were their natural custodians according to Islamic law and custom. The custody of the children necessitated child support payments from the estate of their deceased father. The custodian mother was entitled to receive and spend the payment on behalf of their minor children. Widows used their custody-related financial power to keep the family and its property together. After the death of a certain el-Hac Ebubekir, he had left his inheritable estate to his wife and his minor son. The court appointed a certain Musa as the guardian of the child. Regardless, the mother remained as the child's legal custodian, for whom the court determined child support of four aspers a day should be paid by the guardian. The guardian now had control over the child's inherited estate,

including the residential house in which the widow and the minor child resided. Yet, the guardian and the custodian appeared in front of the Istanbul judge in order to record a mutual agreement, according to which the guardian would rent the residential house to the custodian for four aspers a day. It was the exact amount the guardian was supposed to pay for the childcare. In effect, they had agreed that the custodian mother would not ask the guardian for child support, and the guardian would not ask the mother for the rent. The widow, through her role as the custodian, had remained in control of the inherited house.[215]

**Judicial Intervention in Family Formations**

The judicial decisions to appoint guardians over minors had a direct impact on who controlled the bulk of the estate. The *feraid* rules clearly prioritized children over other members of the family. Therefore, whoever was appointed guardian of minor children would control a significant portion of the estate. The appointment, dismissal, and reappointment of guardians were all at the discretion of the sharia court. Gender played a significant role in this decision-making process. If the mother died, there was no question about guardianship, since the father would act as the natural *veli* and *vasi*.[216] If, however,

[215] İŞS9: 168b, 1 Ra 1072. Widows would frequently appear in front of the judge to register their right to child support after the death of their husbands. See for example İŞS8: 23b, 22 Ra 1071. Non-Muslims applied rarely to the court to settle their intra-familial issues. Yet, when they did apply, they were entitled to similar treatment as their Muslim counterparts. In one such case, an Armenian widow, who had been appointed as the guardian of her son and was already his legal custodian, applied to the sharia court to determine the amount of the child support. The court determined that two aspers a day could be taken from the inherited estate to support the child (İŞS9: 17b, 25 L 1071).

[216] Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*, 138. It was very exceptional for the widowers to acquire a judicial permission to control their minor children's property. See, for example, İŞS9: 121b, 15 M 1072. The term *veli* was used for the father's capacity to

the father died, guardianship was a matter of negotiation between the court, the mother, and the deceased husband's paternal family members. Islamic law appointed the paternal male family members as the *default* guardians after minor children's fathers passed away.[217] Judicial discretion, however, meant that judges might appoint mothers rather than paternal male family members as guardians.[218]

In Istanbul in the period under study, judges predominantly used their discretion in favor of mothers as guardians. Except for a few cases, whenever minor children and their mothers were among the heirs to the father's estate (i.e., if the mother was still alive and married to the husband at the time of his death), the court almost exclusively nominated mothers as legal guardians, regardless of the presence of agnatic family members.[219] Widowed mothers, however, lost their status as the natural guardians of their own minor children if they decided to remarry. In such cases, the court would re-instate the paternal male family member of the children as their guardians. In other words, the remarriage of a widow would transfer the control of the majority of the property from her to her late husband's agnatic relatives, including his brothers, uncles, nephews, cousins,

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marry his daughter off and *vasi* was used for his capacity to serve as the guardian, though they were often used interchangeably. Ibid., 138, n.64.

[217] Ibid., 142.

[218] Judicial discretion in the seventeenth century was in line with the contemporary jurisprudential opinions that viewed mothers as normal guardians. See ibid.

[219] Widows were the primary candidates as guardians of their minor children. See İŞS8: 38a-38b, 10 Ra 1071; İŞS7: 11a, 23 M 1070; İŞS8: 12b-13b, 15 Z 1071; İŞS8: 14b, 6 Ra 1071; İŞS8: 30b, 4 R 1071; İŞS8: 36a, 5 Ra 1071; İŞS8: 43a, 28 R 1071; İŞS8: 45a, 24 R 1071; İŞS9: 15a, 17 L 1071; İŞS9: 29a, 5 Za 107; İŞS9: 35b, 6 Za 1071; İŞS9: 36a, 29 L 1071; İŞS9: 72a, 3 Z 1071; İŞS9: 74b, 7 Z 1071; İŞS9: 85a, 12 Z 1071; İŞS9: 95a, 15 Z 1071; İŞS9: 86b, 18 Z 1071; İŞS9: 109a, 25 Z 1071; İŞS9: 123b, 12 M 1072; İŞS9: 129b, 23 M 1072; İŞS9: 150a, 9 S 1072; İŞS9: 151a, 14 S 1072; İŞS9: 152b, 15 S 1072; İŞS9: 163a, 15 S 1072; İŞS9: 168a. A woman's pregnancy from her deceased husband was also sufficient for her control over the entire inherited estate (İŞS9: 127b, 12 M 1072). The court's general tendency to appoint minor children's mothers as their legal guardians applied also to the non-Muslim population. See for example İŞS9: 16b, 24 L 1071.

and grandfather. This conditional appointment of mothers as guardians might very well have discouraged many women from remarrying. Such a woman could remain unmarried and retain the guardianship of her children and control over the possession and management of the family's property, or she could remarry and lose her children and property. The decision not to remarry, however, was a risky one. The mortality rate was high and many children died young. In such cases, the widow's control over her late husband's properties would pass again to his family members, and she would be left without any children or any means of financial support. Time and again, after the death of minor children, the family members of their fathers initiated lawsuits against their mothers, even if they had remained unmarried.[220]

One solution to the problem was to marry a deceased husband's paternal family member. After the death of Ali Beşe bin Ahmed, for example, his widow Gülistan married her deceased husband's brother, a certain Mustafa Beşe bin Ahemd. This marriage helped her maintain her guardianship over her minor son. The court appointed the new husband as the supervisor over the guardian. Marrying her brother-in-law, therefore, had secured the widow a marriage without forfeiting her guardian status over her child.[221]

***Negotiation between the Social and the Legal***

Though the *feraid* rules were only infrequently applied in the division of estates among close family members, they nevertheless proved significant when distant family

[220] İŞS9: 110a, 4 M 1072; İŞS9: 147b, 29 M 1072; İŞS9: 164b, 29 S 1072.
[221] İŞS9: 78b, 2 Za 1071.

members were entitled to inheritable estates. The *feraid* rules provided a concrete legal argument for distant relatives to claim their share of an estate. The legal basis provided by the *feraid* rules did not only specify the share of the distant relatives, they also determined who the actual heirs were. Regardless of how commonplace *inter vivos* arrangements for the devolution of one's estate were, there were cases in which the praepositus failed to perform his duties, for example due to sudden death. Unlike the nuclear and close family members who would retain the family property intact for an extended period, the non-nuclear family members generally rushed to the court to claim the portion of the estate they were legally entitled to.

Even in such cases, the application of the *feraid* rules was subject to negotiation between different interested parties. These negotiations were the result of the incompatibility between two definitions of kinship: on the one hand, as defined by the *feraid* rules and, on the other, by the social practices of Istanbulites. Extended agnatic family members—legal heirs often at the expense of close female family members—were aware of the predominant social definitions of kinship. The negotiation between the close and the extended family members over the division of inheritance, therefore, was also a negotiation between law and social custom. That is why, in general, the *feraid* rules were literally applied only in the absence of close family members.

A case demonstrating the negotiation between the legal and the social came to the attention of the sharia court in September 1661. After the death of a minor girl, named Fatma, her legal heirs were her minor sisters and a male cousin (her paternal uncle's son). The guardian of the minor girl, a third person who was most probably also the guardian

of her two minor sisters, controlled the deceased girl's estate. According to the *feraid* rules, two-thirds of the estate belonged to Fatma's sisters and the remaining one-third to her cousin. The cousin wanted to claim his share in the inherited estate, though he was faced with the guardian's protest. It was the intervention of the communal mediators (*muslihûn*) that brought the two parties together for an amicable settlement. Accordingly, the cousin would get 1,300 aspers and relinquish his rights in the inherited property of the minor children. The amicable settlement came despite the fact that the court had recognized the cousin's legal rights to a third of the entire estate.[222] Regardless, neither the guardian nor the community members found his claim equitable or socially acceptable despite his sound legal argument based on the *feraid* rules.[223] In many other cases, members of the extended family appeared in court to declare that they received their shares of inheritance without elaborating on the exact division of the state according to the *feraid* rules.[224]

### *The* Feraid *Rules in Full Swing*

The *feraid* rules played a more significant role in the actual devolution and division of one's estate when there were no surviving nuclear family members. In that case, the estate would be divided among distant family members, and in their absence, it

[222] İŞS9: 131b, 26 M 1072.
[223] See also the abovementioned case of Mustafa Çavuş who was killed in the battle of Ineu. His nephews immediately asked for their shares in the estate, which resulted in a "series of disputes" between them and the deceased official's conjugal family members consisting of his two wives and a daughter. The dispute was settled by the intervention of communal mediators (İŞS7:19a, A Ra 1070). For other similar examples in which members of immediate conjugal family excluded the farther agnatic relatives through settlements, see İŞS7: 32b, 28 Ra 1070; İŞS8: 17a, 11 Ra 1071; İŞS8: 29a, 3 R 1071.
[224] İŞS7: 20a, 6 Ra 1070. See also İŞS7: 30a, 25 Ra 1070; İŞS 9: 70a, 19 Za 1071; İŞS9: 168b, 29 S 1072.

would belong to the state in its entirety. Competition might arise among distant relatives on the one hand, and between the state and distant relatives on the other. Both state agents and distant relatives—who had minimal, if any, interest in the integrity of the inherited estate—would use their legal rights based on the *feraid* rules to the fullest extent in order to maximize their material gain. The *feraid* rules, therefore, was more commonly applied when the division of an estate was a matter of simple legal deliberation between heirs who had legal claims but lacked the social and emotional bonds of a family unit.[225]

The state, through the *kassam*, the public treasurer, and the sharia court executed the *feraid* rules immediately when its rights were at stake. When the state was the sole beneficiary of one's estate, there was almost no room for any kind of negotiation as there were no competing claimants. This was particularly the case when a particularly large inherited estate was involved. The state agents acted preemptively in collecting and appropriating the estates of the people who passed away without any "apparent" heirs (*bila varis-i maruf vefat etmekle*). The phrase suggests that the state agents did not wait for the determination of any possible heirs.[226]

The *feraid* rules, therefore, provided a legal basis for the devolution and division of inherited private properties. Yet, exact compliance with the *feraid* rules was a rare phenomenon Istanbul in this period. Members of a nuclear family almost never divided the estate until a disruption in the family unit took place. The deceased's estate would be divided only when the nuclear family as a unit that had retained the estate communally no

[225] İŞS9: 160a, 22 S 1072.
[226] İŞS9: 164b, 29 S 1072.

longer existed. The estate was most often divided in certain situations: when the minor children grew up and formed their own conjugal families, or when members of the nuclear family died rendering distant relatives the sole heirs to the undivided estate. However if a member of the nuclear family passed away or got married and the rest of the nuclear family remained intact, the rest of the original family would generally still retain the remaining inherited properties intact and undivided. The application of the *feraid* rules for inheritable estates, therefore, was indeed an anomaly rather than the norm in Istanbul in this period.

## CONCLUSION

In this chapter, I examined the application of the *feraid* rules in the sharia court of law in Istanbul. My overall observation is that the *feraid* rules, despite their centrality within the normative legal texts, played a limited role in the actual division of estates.[227] To start, the *feraid* rules had jurisdiction only over private property, which excluded a large portion of most Istanbulites' wealth. Furthermore, many Istanbulites arranged for the devolution of their private properties while they were still alive, using other mechanisms recognized by the sharia such as bequest, gift, and more importantly family trusts. The *feraid* rules, therefore, regulated the division of a deceased persons' private

[227] In this regard, my observation is very different from the scholarship on inheritance in the Ottoman Empire. Meriwether and Gerber find that the Islamic law of inheritance was faithfully observed in Aleppo and Bursa, respectively. See Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840*, 153-77; Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," 232; "*Sharia, Kanun* and Custom in the Ottoman Law: The Court Records of 17th-Century Bursa," 131-47.

property only for those who had not made arrangements before they died. Even the limited jurisdiction of the *feraid* rules itself was subject to negotiation.

The sharia's critical role was providing the legal grounds upon which disputing parties could negotiate the terms of their own settlement. The final outcome of the division of the estate came as a result of negotiations between the prescribed legal norms (the *feraid* rules) and social practice. For small nuclear families, the inherited property usually remained undivided without any judicial intervention. When distant family members were legal heirs to a deceased person's inheritance, negotiation or communal mediation generally divided the estate. In this process, the court was used as a venue to register the end result of the terms of the settlement, according to which distant family members were paid off to leave the integrity of the bulk of the inherited estate intact, which would remain undivided among the nuclear family members. The *feraid* rules were literally applied in cases in which close family members did not survive and the estate was a matter of debate between distant family members and the state.

The role of the sharia court in sanctioning the existing social practice and settling the emerging disputes proved of critical significance for the Istanbulite women in the period under study. When disputes emerged, the application of the *feraid* rules guaranteed women's minimum inheritance rights. Yet, the existence of other practices such as widows' appointments as the guardians of their minor children meant that women actually exercised control over a larger amount of inherited properties than their fixed shares prescribed by the *feraid* rules. Furthermore, the existence of other inheritance practices such as those related to the *icareteyn* and *muktata'a* properties meant that

women were legally entitled to equal shares in a significant number of inherited properties in the capital. When faced with some undesirable outcomes under the *feraid* rules, Istanbulite women employed a wide range of strategies to negotiate and mitigate such legal outcomes. In the next chapter, I will analyze women's inheritance rights through examining yet another mechanism within the Islamic inheritance system: family trusts.

# Chapter 4: Pious Endowments

*This world is the farm for the hereafter*.[228]

A woman named Elif bint Şaban came to the deputy judgeship of Balat in Istanbul in March 1668 to record the foundation of a pious endowment (*vakıf*). The ensuing deed (*vakfiye*) informs us that Elif endowed one mid-size, two-story house she owned in the Katib Muslihuddin neighborhood to the north of the central Fatih district. The preamble of the endowment deed left no doubt that Elif's investment was a pious act and an investment for the hereafter. She was introduced as a "performer of charities and good deeds" ("*sâhib el-hayrât ve'l-hasenât*). In addition, she explained that she founded the endowment because "this world is not eternal and its blessings are doomed to decline." She was therefore endowing her property "for the sake of God" and in preparation for the day when everyone would seek protection under the "shade of his charities," referring to a prophetic tradition about the Day of Resurrection when the sun would shine too close to human beings. Among the people protected from the heat of the sun, the tradition maintains, will be those who had given their properties in charity.

Elif's stipulations about who would benefit from her endowment, however, indicate that her concerns were more mundane than the preamble implied. She appointed herself as the sole beneficiary of the house as long as she lived. After her, the three rooms of the house would provide residence for the three people she regarded as family: her

[228] This prophetic tradition was frequently used in the preamble of endowment deeds.

husband, her sister, and her freed female slave. Her endowment was in fact a family trust (*ehli vakıf*) rather than a public philanthropic endowment (*hayri vakıf*). This apparent contradiction was reconciled at the end of her stipulations. She added a final group of beneficiaries, the poor of Medina, who would receive the income from the property after her family members and their descendants died out.

More importantly, what modern eyes view as the contradictions or (even worse) as the corruption of a system of charity into a self-serving institution was viewed differently by Elif's contemporaries.[229] Family trusts were commonplace among different Muslim societies since at least the late Mamluk period.[230] Elif and her contemporaries viewed providing for the family as an important form of charity. Elif lived within an Islamic tradition that regarded supporting family members as the highest form of charitable deeds.[231] Her contemporaries, therefore, would have viewed her trust as an example of a pious act *because* it benefited her close family members.

In the previous chapters, I analyzed the ways in which women might receive property through marriage and inheritance. In this chapter, I examine one significant method by which women managed their own properties. Through founding endowments,

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[229] The British and French colonial rulers in India and North Africa illegalized family trusts based on their readings of the classical Islamic texts and ignoring centuries of the development of Islamic law, which came to regulate family trusts as a legitimate way of founding endowments. To the colonial administrations, family trusts figured as the corruption of the Islamic charity system as well as a means to bypass the Islamic inheritance laws. See Gregory C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge: Cambridge University Press, 1985); David S. Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, no. 3 (1989): 535-71.

[230] Layish, "Waqfs of Awlād al-Nās in Aleppo in the Late Mamlūk Period as Reflected in a Family Archive," 287-326.

[231] A prophetic tradition maintains that supporting one's family was superior to feeding the poor or manumitting slaves. "The Book of Obligatory Alms," *Sahih Muslim*, accessed September 15, 2016, http://www.sahihmuslim.com/sps/smm/.

Istanbulite women provided income and/or accommodation for their family members. Further, founding these endowments was an active and effective way for women to define and redefine kinship and family. By examining endowment deeds from the second half of the seventeenth century, this chapter argues that Istanbulite women in this period were primarily concerned about the property ownership of their female family members in future generations. For those of a more humble background, founding endowments also meant founding their own families and naming themselves as the benevolent matriarch for generations to come. For women of the highest socio-economic background, who came from well-established aristocratic households, the grand reputation of their households brought with it significant social capital—a reputation that was worth the investment of cash and real property.

In the second half of the seventeenth century, family trusts provided an important method by which Istanbulite men and women could plan for the future distribution of their estate. In particular, Hanafi family trusts granted the founder an absolute freedom to assign the benefits of an endowment to herself, as well as to any other person regardless of their blood or marital relationship. Using family trusts as a mechanism for inheritance permitted founders to construct their own definitions of kinship rather than being subject to kinship as defined by the *feraid* rules. For a childless woman like Elif, founding a family trust was not only a method to provide housing for her sister and husband after her death. It was also a means to cement the kinship she had constructed with her freed female slave. Although the freedwoman was already married and had children, Elif still regarded her as a family member—close enough to be included as one of the primary

beneficiaries of her family trust along with her sister and husband. Elif stipulated that after the death of her husband and her sister, her ex-slave and the latter's descendants would benefit from the trust "generation after generation." Being a childless woman with a childless sister, Elif's best way to maintain her family was through the children of her ex-slave, for whom Elif had founded a *family* trust.

Studies on women's endowments have shed light on several aspects of women's relationship with property and family. My findings for Istanbulite women in the second half of the seventeenth century corroborate the general observation that women were active founders of endowments.[232] Historians have come to different conclusions about the impact of endowments on women's property rights in various Muslim societies. In nineteenth-century Egypt, for example, Judith E. Tucker has found that some women used endowments to form a matrilineal regime of inheritance.[233] At the other extreme, Aharon Layish has found that endowments were used to exclude women from their inheritance during various periods and many regions of the Islamic world.[234] Other

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[232] For examples of the quantitative studies see Baer, "Women and Waqf: An Analysis of the Istanbul Tahrir of 1546," 267-97; L. Margaret Meriwether, "Women and Waqf Revisited: The Case of Aleppo, 1770–1840," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 128-52; Mary Ann Fay, "Women and Waqf: Toward a Reconsideration of Women's Place in the Mamluk Household," *International Journal of Middle East Studies* 29, no. 1 (1997): 33-51; Daniel Crecelius, "Incidences of Waqf Cases in Three Cairo Courts: 1640-1802," *Journal of the Economic and Social History of the Orient* 29, no. 2 (1986): 176-89; Bahaeddin Yediyıldız, *18. Yüzyılda Türkiye'de Vakıf Müessesesi* (Istanbul: Türk Tarih Kurumu, 2000); Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," 3-41.

[233] Tucker, *Women in Nineteenth-Century Egypt*, 95.

[234] Aharon Layish has studied the impact of endowments on women's inheritance rights in different regions and periods of the Islamic world. In all of his works, he found that endowments had a detrimental impact on women's rights to inheritance, though to a varying extents. See Layish, "The Family Waqf and the Sharʿī Law of Succession in Modern Times," 352-58; "Waqfs of Awlād al-Nās in Aleppo in the Late Mamlūk Period as Reflected in a Family Archive," 287-326; "The Mālikī Family Waqf According to Wills and Waqfiyyāt," 1-32.

scholars have observed a large variety of trends in the founding of endowments that had uneven impacts on women's property rights.[235]

Gabriel Baer has studied Istanbulite women's endowments in the mid-sixteenth century and maintains that although women appeared prominently among the founders of endowments, the actual administration of women's endowments would fall in time into the hands of men. These male managers were entitled not only to the control and management of the endowed properties, but also to a significant portion of the endowment's income. Endowments, he argues, were therefore a method to place women's properties back into the hands of men.[236] My findings corroborate Baer's, but only in the case of elite women's public and philanthropic endowments. Such large endowments left significant wealth in the hands of male beneficiaries and administrators. The majority of women's endowments, however, consisted of only one house to be left to close family members. Leaving a daughter, sister, or other female administrator in charge of these small family endowments was both practical and common.

The records analyzed in this chapter come from several sources: all of the endowment deeds registered in the three Istanbul court records of 1659-1661; all of the endowment deeds of the Evkaf Vakfiye catalogue of the Primer Ministry's Ottoman Archives (BOA) founded in 1650-1700; and a selection of endowment deeds from the archives of the General Directorate of Endowments in Ankara (VGM) founded in 1650-

[235] An interesting case study demonstrates a sharp difference between the impact of endowments on women's inheritance in Triploli and Nablus in the nineteenth century. In Tripoli, 98.3% of family endowments included daughters as beneficiaries while in the nearby city of Nabuls the rate was only 12.1%. Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," 20.

[236] Baer, "Women and Waqf: An Analysis of the Istanbul Tahrir of 1546," 9-28.

1700. From the 219 endowment deeds studied here, women appeared as founders of 75 endowments (34.2 percent).

One limitation of studying endowment deeds is the fact that they reveal more about the intention of the founder than about the actual management and administration of the endowment. Endowed properties sometimes became subject to disputes among the beneficiaries, or between the beneficiaries and third parties. The existence of numerous sharia courts and the proximity of the imperial divan meant that violations of stipulated terms could be easily litigated by interested parties. Two courts specifically inspected, investigated, and kept accounts of the endowments in the capital (*Evkaf Muhsebeciliği* and *Evkaf-ı Hümayun Müfettişliği*). In addition, many family trusts were similar to that of Elif in appointing Mecca and Medina as the final destination of the trusts' income. In this way, the founders integrated their endowments with the largest endowment of the empire, that of the *Haremeyn* (the two sacred places of Mecca and Medina) whose administrator was the incumbent chief black eunuch. The administrator had a particular office staffed by members of the *ulema* to investigate and produce reports about the properties and incomes of the *Haremeyn* endowment.[237] Although negotiations among interested parties as well as the involvement of corrupt officials might lead to some deviations from the founders' stipulations, the existence of multiple offices to inspect endowments probably minimized such problems in the capital. To what extent the founder's stipulations were

[237] In 1668, the chief black eunuch was in control of 313 endowments, more than a third of which were located in Istanbul. Ülkü Altındağ, "Dârüssaâde," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 9: 2-3. See also Suraiya Faroqhi, *Pilgrims and Sultans: The Hajj under the Ottomans, 1517-1683* (New York: Tauris, 1994), 83-84.

carried out, however, remains to be answered by further research on relevant disputes and complaints.

A second limitation of studying endowment deeds is that founders were generally far wealthier than most Istanbulites, a fact that limits researchers' attempts at drawing generalizations about women's control and management of their properties. The founders of the endowments were those who owned properties, at least a house, which was not affordable for many Istanbulites. Furthermore, the data on the family trusts in Istanbul demonstrate that a considerable proportion of them were created for the founders' ex-slaves, indicating that the founders were able to afford one or more slaves. Although endowed properties varied widely in size and value, this chapter sheds light on notions of family, gender, and property among the better-off—those who owned at least a house and/or slaves. These propertied female founders, however, came from a wide variety of socio-economic backgrounds, and their endowed properties ranged from a single-room house to millions of aspers and multiple large houses.

## TYPES OF ENDOWMENTS

A *vakıf* is a pious endowment, consisting of some property (*mevkûf*) alienated by the founder (*vâkıf*) for a pious purpose. The founder would devise the stipulations for how the alienated properties would generate income and who or what would be the beneficiary (*mevkûf âleyh*).[238] In Ottoman practice, endowments could legally consist of both cash and real estate. Regardless of the nature of the alienated properties,

[238] Rudolph Peters, "Waqf," in *EI*$^2$, 11: 59-63; Bahaeddin Yediyıldız, "Vakıf," in *İA*, 13: 153-72.

endowments were divided into two categories based on their immediate purpose. A founder could alienate property directly to support public and philanthropic purposes, in which case the endowment would be "charitable" (*hayrî*). Alternatively, founders could designate their family members as the immediate beneficiaries of the endowment's income; thus the endowment was called family endowment (*ehlî*). My analysis of the endowments in the second half of the seventeenth century in Istanbul demonstrates that despite the vast number of public services provided by the *vakıf*s, the primary concern of founders—particularly female founders—was either the financial well-being of their family members or the reputation of their households.

**Cash and Real Estate**

Despite serious debates among Ottoman jurists of the sixteenth and seventeenth centuries about the legality of cash endowments,[239] these concerns were primarily theoretical. In practice, very few cash *vakıf*s were endowed during this period.[240] Of the 219 endowments studied here, only 17 were cash endowments and another 25 involved both cash and real estate (see Table 4.1). There are various reasons for such a low number

[239] There were mainly two legal debates. One was technical and related to the perpetuity of endowed properties. Cash and other movable properties could scarcely be viewed as perpetual. The second concern was moral. The income of cash endowments was the interest on loans, which was initially inconceivable as a source to support religious institutions such as mosques and *medrese*s. See Tahsin Özcan, *Osmanlı Para Vakıfları: Kanuni Dönemi Üsküdar Örneği* (Ankara: Türk Tarih Kurumu Basımevi, 2003); Jon E. Mandaville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire," *International Journal of Middle East Studies* 10, no. 3 (1979): 289-308.

[240] To compare the data from seventeenth-century Istanbul to sixteenth-century Istanbul and Bosnia see Ömer Lûtfi Barkan and Ekrem Hakkı Ayverdi, *İstanbul Vakıfları Tahrir Defteri: 953 (1546) Tarihli* (İstanbul: Baha Matbaası, 1970); Kerima Filan, "Women Founders of Pious Endowments," in *Women in the Ottoman Balkans: Gender, Culture and History*, ed. Amila Buturović and İrvin C. Schick (London, New York: 2007), 99-121. Filan maintains that cash formed the primary portion of women's endowments in sixteenth-century Bosnia, while in the later centuries women endowed more real estate than cash (pp. 109-111).

of cash endowments appearing in the archives. Examining a survey of Istanbul endowments conducted in 1600, Mehmet Canatar observes that cash endowments were almost entirely absent from the survey. Canatar suggests that this might have been the result of the fact that the surveyors did not intend to include cash endowments in the first place.[241] Similarly, I did not come across a single cash endowment for the studied period in the Evkaf Evrakı catalogue at the Prime Ministry's Ottoman Archives. The absence of cash endowments in the archives might be the reflection of the Ottoman officials' particular concern for the registration of endowed real properties rather than the representation of all the endowments actually founded.

Table 4.1: Types of endowed properties in Istanbul endowments, 1650-1700

| Cash | Real Estate | Mixed | Total |
|---|---|---|---|
| 17 (7.8%) | 177 (80.8%) | 25 (11.4%) | 219 (100%) |

Several other conditions might explain the low number of cash endowments in the archives. Founding cash endowments was a risky business. Although the negative impact of the high inflation rate of the period might have been balanced by fluctuations in the nominal interest rate, time and again it proved difficult for the administrators of cash endowments to force borrowers to repay principal capital with the accumulated interest of the loan. It proved particularly difficult for women, as some female founders added

[241] Mehmet Canatar, *İstanbul Vakıfları Tahrir Defteri: 1009 (1600) Tarihli* (Istanbul: İstanbul Fetih Cemiyeti, 2004).

special stipulations about who could borrow from their cash endowments. The woman Hadice, for example, founded a cash endowment with the principal capital of 400 piasters in November of 1660. Despite the fact that having a wide range of possible borrowers would financially benefit her endowment, Hadice excluded two groups from among the possible borrowers: members of the army and non-Istanbulites, regardless of how reliable their guarantors might be.[242] Hadice worried that members of the military could get away with abusing her endowment's funds, and that anyone from outside Istanbul would be hard to track if they left the capital. Such concerns might explain why many other female founders stipulated that their cash endowments should be turned, sometimes immediately, into real-estate endowments.[243]

**Ehli and Hayri Endowments**

Based on the immediate purpose of the foundation, endowments were divided into two main categories: public (*hayri*) and family (*ehli*) endowments. A third category, *ehli-hayri*, emerged as a mixture of the two. Public endowments provided services through the construction and maintenance of facilities such as mosques, schools, hospitals, soup kitchens, and fountains. They also provided livelihoods for the members of the *ulema* and charity for the urban poor, particularly those living in the sacred cities of Mecca and Medina. Other functions of public endowments included paying *avarız* tax for certain

[242] İŞS8: 8b, 27 S 1071.
[243] VGM defter 623, 236/232; VGM defter 623, 110/120; VGM defter 623, 60/63.

neighborhood households[244] and providing guesthouses and for other needs of artisan guilds and the Janissary Corps.[245] The founders of public endowments also provided some income for family members in the form of stipends for their services as administrators and supervisors.[246]

The second category of endowments was the family trust (*ehlî vakıf*). The founders of trusts provided accommodation and/or stipends for their descendants, freed slaves, family members, or others. After beneficiaries' descendants had all died, the endowed property was supposed to revert to a pious purpose such as providing for the poor of Medina or the functionaries of a mosque. Although such trusts would eventually become public charitable endowments, I refer to them as family trusts because the primary objective of the founders was to provide for their family members and descendants. The third category of endowments (*ehli-hayri* endowments) simultaneously provided for public services and supported the founder's descendants and family members.

More than half of the endowments studied here were family trusts (56.2 percent), less than a quarter consisted of public endowments (17.3 percent), and the remainders were a mixture of *ehli* and *hayri* endowments (26.5 percent) (Table 4.2). My criterion for classifying an endowment as a family trust was the appointment of particular individuals, usually the family members of the founder, as the beneficiaries of the endowment without

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[244] İŞS9:129b, 17 M 1072. Also see Mustafa Nuri Türkmen, "Halep Para Vakıfları Muhasebelerinin Kısa Bir Değerlendirmesi," *Sosyal Bilimler Enstitüsü Dergisi* 9 (2012): 121-31; Mehmet İpşirli, "Avarız Vakfı," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 4: 109.
[245] İŞS9: 41b, 3 Za 1071; İŞS9: 48a, 5 Za 1071.
[246] Gabriel Baer, "The Waqf as a Prop for the Social System (Sixteenth-Twentieth Centuries)," *Islamic Law and Society* 4, no. 3 (1997): 264-97.

necessarily assigning them any duties, either administrative (such as in the trusteeship [*tevliyet*] and supervision [*nezâret*] of the endowment) or religious (such as preaching or recitation of the Quran.)

Table 4.2: The purpose of Istanbul endowments, 1650-1700

| Hayri | Ehli | Mixed | Total |
|---|---|---|---|
| 38 (17.3%) | 123 (56.2%) | 58 (26.5%) | 219 (100%) |

Taking into consideration the fact that most of the mixed endowments primarily supported family members, I argue that the main purpose of endowments founded in the second half of the seventeenth century was to circumvent the *feraid* rules. Such circumvention occurred primarily in four ways: A) the exclusion of *ferâid* heirs, such as wives, parents, siblings, and other agnatic heirs; B) the inclusion of those who were not *ferâid* heirs, primarily a founder's slaves, but also others such as more distant and non-agnatic relatives, or even those without any specified relationship; C) the prioritization of certain beneficiaries over others, for example spouses over children or vice-versa, in contravention of the *ferâid* rules; and D) the egalitarian division of the endowed estate among male and female beneficiaries, which would also be at odds with the *ferâid* rules. I will examine the patterns of inheritance based on *ehlî* endowments below.

**Large and Small Endowments**

A significant portion of the properties in the walled city in the seventeenth century were endowed. Although it is almost impossible to ascertain the amount of

money invested in endowed properties and its share in the overall financial market, the court records (*sicil*s) and endowment deeds (*vakfiye*s) provide abundant information about endowed real estate. In the absence of street names and house numbers in the early modern Ottoman urban centers, a property was identified by the name of the neighborhood and the properties bordering it in the four cardinal directions. The records also specify if the neighboring properties were endowments or private property. My examination of the relevant documents shows that about a quarter of the total real estate was alienated in the form of endowments in 1659-1661.

The size of an endowment was related to its purpose. Family trusts were on average smaller when compared to pious endowments. More than 80 percent of family trusts consisted of a single property, typically a house with a few rooms. In this category of small endowments, there were only three pious and one mixed endowment out of the total number of 96 (less than 4 percent). Two family trusts involved two houses each[247] and two others consisted of only empty plots of land.[248] There were other small family trusts containing a few residential rooms or a few shops.[249] Only a few family trusts contained a *saray* (palace), large apartment complexes, or multiple houses and only two of such large endowments had non-residential, income-generating properties such as shops and a bathhouse (Table 4. 3).

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[247] The endowments of Ayşe Hatun bint Mehmed (VGM defter 1763, 230/214) and el-Hac Sefer Odabaşı bin Ali (VGM defter 581/2, 388/384).

[248] The endowments of Fatma Hatun bint Abdullah (BOA EV.VKF 13/47) and Ali Beşe bin Hüseyin.

[249] The endowments of Musli Paşa (VGM defter 582/2, 399/301), Fazlullah Çelebi bin Hüseyin (VGM defter 629, 698/475), Salih Efendi bin Numan Efendi (VGM defter 570, 132/84), Veli Bey bin Mahmud (VGM defter 1759, 307/193), Berber Süleyman bin Abdullah (VGM defter 731,120/66), and Ümmühani Hatun (İŞS 8: 6a, 29 S 1071).

Table 4.3: The size of Istanbul endowments, 1650-1700

| | Single real estate | Multiple real estate | Multiple real estate and cash | Cash Only | Total Number |
|---|---|---|---|---|---|
| Ehli | 99<br>(80.5%) | 22<br>(17.9%) | 1<br>(0.8%) | 1<br>(0.8%) | 123<br>100% |
| Hayri | 3<br>(7.9%) | 19<br>(50%) | 5<br>(13.2%) | 11<br>(28.9%) | 38<br>100% |
| Ehli-Hayri | 1<br>(1.7%) | 33<br>(56.9%) | 19<br>(32.8%) | 5<br>(8.6%) | 58<br>100% |
| Total | 103 | 74 | 25 | 17 | 219 |

The largest endowments were mixed *ehli-hayri* endowments consisting of multiple properties, including buildings for mosques, children's schools (*muallimhâne*s), schools for higher education to teach prophetic traditions (*dârülhadîs*), sufi lodges (*zâviye*s), and public fountains. They also included many revenue-generating properties such as residential properties, ovens (*fırın*), mills, bathhouses (*hamâm*s), shops (*dekkâkîn*), workshops (*kârhâne*s), vegetable gardens (*bostân*s), agricultural lands and sometimes entire villages, and/or large amounts of cash. A typical example is the endowment of Kayazade el-Hac Mehmed, who founded a large *ehli-hayri* endowment in

August 1695. His endowment consisted of nine houses in seven different neighborhoods of Istanbul, three shops in the Tahtakale area, two large apartment complexes named as *yahûdihâne* in Eyüb, a mill in Unkapanı, a house with an oil workshop (*revganhâne*) to produce oil in Galata, and an amount of 1,500 piasters in cash.[250]

Table 4.4: Cash in Istanbul endowments, 1650-1700

| | Cash below 1,000 piasters | 1,000-9,999 piasters | 10,000 piasters and above |
|---|---|---|---|
| Ehli | 1 | 1 | 0 |
| Hayri | 6 | 10 | 0 |
| Ehli-Hayri | 7 | 13 | 4 |

Family trusts, consisting typically of small dwellings, rarely involved cash. Only in one case did a founder choose to use cash to support his family and in only one case did a founder add some cash to the real property in his family trust.[251] In contrast to the low number of family trusts involving cash (1.6 percent), the founders of public and mixed endowments used cash in about 40 percent of cases. Public endowments had a higher ratio of endowments that were solely cash, while mixed endowments had a high rate of properties consisting of both cash and real estate. Mixed endowments not only had high amounts of real estate, they also involved the highest amounts of cash (Table 4.4).

[250] VGM defter 623, 35/44.
[251] VGM defter 623, 1/1; VGM defter 623, 48/53.

The information about the amounts of real estate and cash in each category of endowment shows that family trusts were small, consisting usually of one house. Pious endowments were larger, involving both real estate and cash endowments, and mixed endowments were the largest, consisting typically of large numbers of residential and income-generating buildings as well as huge amounts of cash.

## THE SOCIO-ECONOMIC BACKGROUNDS OF MALE FOUNDERS

Male founders of endowments in the second half of the seventeenth century belonged almost entirely to a highly stratified *askeri* (non-taxpaying elite), which was also the case for earlier periods of Istanbul.[252] Stratification within the ranks of the *askeri* themselves was at least as significant as the stratification that separated the *askeri* from the *reaya* (tax-paying subjects). The *askeri* included a wide range of the state's highest officials such as the grand vizier, the *reisülküttab*, the chief black eunuch, and the *şeyhülislam,* as well as the infantrymen of the Janissaries and the simple *duagu*s (reciter of prayers) of some endowments with minor daily stipends. Prologues of endowment deeds usually describe the founders with the honorary titles that provide information on their social and economic status. The *askeri* status of seventeenth-century male founders of Istanbul endowments is evident in their honorary titles. Based on their titles, founders can be divided into four main groups: the religious elite, the military elite, non-title holders, and women (Table 4.5).[253]

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[252] Canatar, *İstanbul Vakıfları Tahrir Defteri: 1009 (1600) Tarihli*; Barkan and Ayverdi, *İstanbul Vakıfları Tahrir Defteri: 953 (1546) Tarihli*.

[253] I use this classification based on Ergene and Berker's work on wealth in two eighteenth-century Anatolian towns. Boğaç A. Ergene and Ali Berker, "Wealth and Inequality in 18th-Century Kastamonu:

Table 4.5: The socio-economic background of founders in Istanbul, 1650-1700

| | Hayri | Ehli-Hayri | Ehli | Total |
|---|---|---|---|---|
| Religious Title Holders | 13 | 30 | 22 | 65 |
| Military Title Holders | 16 | 25 | 35 | 76 |
| Women | 9 | 3 | 63 | 75 |
| Non-Title Holders | 0 | 0 | 3 | 3 |
| Total | 38 | 58 | 123 | 219 |

The stratification within the group of title-holders helps to explain different behaviors in founding endowments in Istanbul in this period. The highest officials of the military, religious-legal, and administrative hierarchies, who were typically the most affluent residents of the imperial capital, founded the largest endowments of mixed purpose (*ehli-hayri*). Religious title-holders formed the largest group (30 out 58) in this category, closely followed by holders of military titles (25 out 58).

Like mixed endowments, public endowments were founded primarily by men who held religious and military titles. However, public endowments were on average smaller than mixed endowments, a fact that is linked to the socio-economic background of their founders. Unlike the *ehli-hayri* founders, the founders of pious endowments did not include members of the highest military and religious elite such as the *şeyhülislam*, the grand vizier, or the *kadıasker*. The majority of the founders of pious endowments were of more modest backgrounds, including many members of the urban middle class

Estimations for the Muslim Majority," *International Journal of Middle East Studies* 40, no. 1 (2008): 23-46.

such as the Janissaries and members of lower *ulema*, active in artisanal work and commerce. The number of the military title-holders who founded public endowments was very close to that of the religious title holders, 16 and 13 respectively.

Among the three types of endowments, family trusts were on average the smallest in size. Founders of family trusts came from a relatively humble background when compared to the founders of the other two endowment types. Among the members of the *reaya* who founded endowments in this period, the three with no honorary title founded family trusts. Although there were a few prominent members of the military and religious title-holders among the founders of family trusts, the size of their endowments in this category never reflected their high religious-legal, administrative, or military positions. Family trusts remained primarily the domain of relatively humble men from military and religious backgrounds as well as tax-paying subjects, but, more significantly, of women.

**WOMEN'S ENDOWMENTS**

Istanbulite women founded 34.7 percent of the endowments analyzed in this study. This number corresponds to the trends in other Ottoman cities from the sixteenth to the nineteenth centuries which show a rate of female founders of endowments between 11 to 50 percent with an average of 30 to 40 percent.[254] The type and average size of the endowments founded by women were different from those founded by men. As in earlier

[254] Meriwether, "Women and Waqf Revisited: The Case of Aleppo, 1770–1840," 131-32; Mary Ann Fay, "From Concubines to Capitalists: Women, Property, and Power in Eighteenth-Century Cairo," *Journal of Women's History* 10, no. 3 (1998): 122; Haim Gerber, "The Waqf Institution in Early Ottoman Edirne," in *Asian and African Studies, Volume 17, Studies in the Social History of the Middle East in Memory of Professor Gabriel Baer* (Haifa: University of Haifa, 1983), 37; Baer, "Women and Waqf: An Analysis of the Istanbul Tahrir of 1546," 10; Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," 11.

and later periods in Istanbul as well as in other cities of the empire, Istanbulite women in the second half of the seventeenth century typically founded small endowments.[255] Out of the 75 endowments founded by women, 62 were family trusts, which constituted more than half of the entire family trusts studied here. Women were the founders of only four out of a total of 58 mixed *ehli-hayri* endowments. It is noteworthy that the number of mid-sized public endowments founded by women, although smaller than the ones founded by men, was statistically significant. Women were founders of 9 out of 38 pious endowments (23.7 percent)

Table 4.6: Istanbulite women's endowments, 1650-1700

| | Hayri | Ehli | Mixed (Ahli-Hayri) | Total |
|---|---|---|---|---|
| Real Property | 3 | 62 | 2 | 68 |
| Cash | 5 | 0 | 0 | 5 |
| Mixed (Cash and Real Property) | 1 | 0 | 2 | 3 |
| Total | 9 | 62 | 4 | 75 |

**FAMILY TRUSTS**

Founders retained the right to benefit from their endowments as long as they lived and would appoint one or more people as the primary, secondary, and sometimes tertiary beneficiaries who would benefit from the trust after the founder's death. Founders could also assign hereditary rights to certain beneficiaries. Accordingly, some of the

[255]See for example Baer, "Women and Waqf: An Analysis of the Istanbul Tahrir of 1546," 9-28; Meriwether, "Women and Waqf Revisited: The Case of Aleppo, 1770–1840," 128-52.

beneficiaries could pass the right to use the endowed properties to their descendants until their line died out. Family trusts, therefore, granted almost an unlimited number of options for the founders to not only include or exclude people from a significant portion of their estate, but also prioritize some over others.

Examining the different groups of people who were the beneficiaries of these family trusts provides information about how these female founders regarded family and gender in this period. As we saw in chapter three, Istanbulite women prioritized the protection and continuation of their nuclear families when they negotiated their inheritance rights. The data on women's endowments clearly demonstrate that Istanbulite female founders in the second half of the seventeenth century were primarily concerned with providing for their close family members. We can see founders' notion of family via whom they included or excluded in their family trusts and how they prioritized beneficiaries. Family formation did not require conjugal or sanguine relationship. Istanbulite women appointed their children, but also their step children, adopted children, non-relatives, and more frequently their female ex- slaves as the beneficiaries of their *family* trusts. Such appointments reflected either an already strong bond between the founder and the beneficiaries, or a bond that the founder hoped to build or strengthen.

Family trusts, therefore, can be viewed as documents that portrayed family formation in the making. When family bonds changed, the female founders of these family trusts came to court to modify their initial stipulations. The woman Alime bint Abdullah, for example, made such modifications in her endowment deed more than once over a period of twenty-one years. When she first founded the family trust in 1657, she

was probably young and married to a certain Ahmed Çelebi. She stipulated that her mid-size house should be alienated for her use as long as she lived. The right to use the property after her death would pass to her husband Ahmed Çelebi and to their future children. After the expiration of the line of the couple's descendants, Alime's freed slaves and their descendants would step in as beneficiaries. It is possible that Alime did not have any slaves yet, as she did not name any specifically in the stipulations of the 1657 deed. Her endowment served to cement her relationship with her husband, but the list of other beneficiaries reflected more about Alime's imagination of an ideal family consisting of the couple, their children, and her freed slaves than about the family she had at the time.

Some twelve years later, she went to court to modify her original stipulations. By 1679, Alime did not have any children and she was no longer married to Ahmed Çelebi, who had either died or who she had divorced. Therefore Alime excluded her ex-husband and their prospective children from among the primary beneficiaries. Alime had already married another man named İlyas Beg. Because she had not borne children to either of her husbands, and because she excluded prospective children from the beneficiaries, it is quite possible that she was infertile. In the meantime, she had manumitted a female slave named Muammere, with whom she had retained close ties. The 1679 deed, therefore, reflected the transformation in Alime's family life. According to the 1679 deed, after Alime's death, her new husband İyas Beg and her freed slave Muammere would simultaneously and equally benefit from the endowed house. After the death of İyas and Muammere, their children would equally share the right to use the house. As a childless woman, Alime was keen to integrate her step-children among the primary beneficiaries of

her endowment. Another important modification was the new way in which she prioritized the beneficiaries. In 1657, she had stipulated that her freed slaves and their descendants had to wait until the line of her own descendants expired. In 1679, Alime appointed her step children and the children of her freedwoman as simultaneous beneficiaries of the endowment. Alime, it seems, may have felt equally close to the two groups of children.

Alime came once again to the sharia court some nine years later in 1688 to make some additional modifications. By then, her second husband had died without any surviving children. In the meantime, she had manumitted another slave. She therefore excluded her second husband and step-children as beneficiaries. The new deed appointed two ex-slaves, one male and one female, as the primary beneficiaries of the endowment after the founder's death. After the death of the freed slaves, who were not married to each other, their respective children would share the benefits of the endowment. The documents related to Alime's endowment demonstrate how, in time, she replaced her own imagined children with step children and freed slaves as the primary and hereditary beneficiaries of her family trust. As she lost hope for having her own line of descendants who would benefit from her legacy, she adopted her slaves as her family members so that they and their children would live in the same family dwelling that she had endowed.

The most striking aspect of family formation among Istanbulite women in the second half of the seventeenth century, as we saw in Alime's story, was the integration of former slaves into the household. From among 66 *ehli* and mixed endowments founded by Istanbulite women in this period, 30 endowments primarily benefitted founders' ex-

slaves. Indeed founders' former slaves made up the majority of beneficiaries of such endowments, followed by founder's children (16) and husbands (10) (Table 4.7). Among the 30 endowments that prioritized ex-slaves, in 26 cases the primary beneficiaries were female ex-slaves, in three cases both male and female ex-slaves, and only in one case a male ex-slave. For female founders of endowments in the second half of the seventeenth century, including their freedwomen as the beneficiaries of their family trusts and therefore integrating them within the family seemed to be a primary concern. Male founders also provided for their ex-slaves in their family trusts, though the distribution between their children and ex-slaves as beneficiaries were more even (81 to 103, respectively). The numbers of male and female ex-slaves as the primary beneficiaries of men's endowments were also more evenly distributed (47 to 55), when compared to that of women's endowments.

Table 4.7: The beneficiaries of Istanbulite women's *ehli* and mixed endowments, 1650-1700

| | Husbands | Children | Multiple beneficiaries | Ex-slaves | Others | Total |
|---|---|---|---|---|---|---|
| Primary beneficiaries | 10 (15.2%) | 16 (24.2%) | 9 (13.6%) | 30 (45.5%) | 1 (1.5%) | 66 (100%) |

Many of the founders who prioritized their female slaves among the beneficiaries of their endowments came from slave background themselves, some with clear connection with the royal palace. Some of these founders were known by the title *sarayi*

(from the palace), indicating their status as either concubines or servants in the imperial harem. Only a limited number of these female ex-slaves continued to reside within the New Palace, the residence of the Ottoman sultan. The palace women were subject to a hierarchy depending on their proximity to the sultan. Many of these female slaves were married off to Ottoman officials of different ranks and started to reside in several neighborhoods of the capital. For these women of the palace, integrating other female slaves into their households probably resembled their own life story. After all, they had been cut off from their familial ties and were subjected to the whims of their patrons. The lucky ones were integrated into the household of the sultan or the high officials of the empire and were able to amass a significant amount of power and fortune. Regardless of how they contributed to the reproduction of slavery as a system, these women found acquiring, manumitting, and integrating other female slaves to be a way of life that they were accustomed to.

Family trusts, particularly when female ex-slaves were the primary beneficiaries, served another purpose: circumventing the *feraid* rules. According to the *feraid* rules, a master's status was similar to that of an agnatic family member. Masters would inherit the estate of their former slaves, but ex-slaves could not inherit from their masters. Accordingly, if the Quranic heirs did not exhaust a former slave's estate, his/her master would step in to collect the residue. For ex-slaves, many of whom had no family members in Istanbul, the possibility that their masters would inherit their estate was quite high. Palace women faced a similar problem. Time and again, the chief eunuch of the Old Palace appeared in front of the Istanbul judge to claim the sultan's share in a

deceased palace woman's inheritance. Founding family trusts, therefore, formed an important method for ex-slaves to avoid the transfer of their wealth to their masters. It might explain why female ex-slaves appeared prominently among the founders of family trusts. Among the 66 *ehli* and mixed endowments founded by women, 29 of the founders were freedwomen.

Circumventing the *feraid* rules was not only beneficial to founders from slave background. Freeborn women also used family trusts to exclude agnatic heirs and include whomever they considered to be family members, regardless of what the *feraid* rules prescribed. Female founders appointed not only their children, but also their step-children and adopted children, farther relatives, as well as non-relatives as the primary beneficiaries of their endowments. The appointment of freedwomen and those who were not close relatives clearly demonstrates women's effective role in constructing new forms of family bonds. A closer look at the primary beneficiaries of women's family trusts would illuminate their notions of who they viewed as family members. In what follows, I will examine two particular groups who appeared frequently among the primary beneficiaries: husbands and children.

**Husbands**

The properties of a deceased wife, according to the *feraid* rules, could be divided among her husband, children, and occasionally her agnatic family members; her master, if she was an ex-slave; or the state. A husband's share in his wife's estate was half if she did not have children, and one-fourth if she did. Therefore, half of a childless woman's

estate would belong to her natal and agnatic family members, the state, or her master. While the division of childless woman's inheritance among her husband and siblings would not necessarily be an undesired outcome, many women wanted to avoid the alternative outcomes that might entitle the state, extended family members, or their masters to inherit half of their estate.

All of the 10 female founders who appointed their husbands as the primary beneficiaries of their endowments were childless women. In all of these cases, the founders stipulated that their step-children and their descendants should benefit from the endowment after their husbands' death. In seven cases, founders came from slave background. The close ties these childless women had built with their step-children often drove them to arrange for the transfer of their properties to them. These female founders considered their step children to be family despite the fact they were not legal heirs according to the *feraid* rules. By establishing these family trusts, women effectively circumvented the *feraid* rules in order to exclude the state, their agnatic family members, and their masters from the list of their legal heirs while including non-legal heirs in order to maintain their properties within their family.

**Children**

Children appeared frequently as the primary beneficiaries of women's family trusts. After all, family trusts were also known as *vakf-i evlad*, or endowment for children. The women who already had children or grandchildren named them explicitly as the primary beneficiaries of their endowments. Those who did not have children or

those who expected to have more children at the time they founded their endowments used the general term "children" (*evlad*) to designate the first round of beneficiaries. In all of these cases, the founder's children would be followed by their descendants until the expiration of the line.

With the *feraid* rules clearly favoring children to other heirs, one wonders about what incentives these women had to found family trusts in the first place. Endowments historically featured two general benefits: they avoided the division of family property among numerous heirs, and they decreased the possibility of confiscation by the state. Were these the only reasons for women to found family trusts for their own descendants? A detailed examination of the relevant family trusts demonstrates that Istanbulite women in this period had three additional inheritance-related reasons to found trusts for their descendants. One was related to the Hanafi *feraid* rules that did not recognize the doctrine of representation. Accordingly, orphaned grandchildren did not inherit what their late parents would be entitled to. In one such example, the woman Ayşe came to the sharia court in 1658 to endow a large house she had in the Firuz Ağa neighborhood. She appointed her two grandsons and one granddaughter and their descendants as the primary beneficiaries of the house.[256] Under the Hanafi *feraid* rules, the three grandchildren were considered agnatic heirs who would be entitled to the residue of the estate after the Quranic heirs received the shares they were entitled to. If Ayşe, the founder, had a surviving son, all three orphaned grandchildren she had appointed as the beneficiaries would be automatically excluded from her entire estate. If Ayşe did not have a surviving

[256] BOA EV.VKF 10/30.

son, her grandchildren would have to compete with her agnatic uncles, nephews, and cousins over her estate. Ayşe, therefore, maneuvered around the *feraid* rules by founding a family trust to make sure her orphaned grandchildren received a significant portion of her estate.

The stipulations in Ayşe's endowment deed indicate the existence of a second reason for women to found family rusts: the egalitarian division of their properties among their descendants. Ayşe had explicitly mentioned that her two male and one female grandchildren should have equal rights (*'ale'l-sevâ*) to the use of her endowment and that their male and female descendants would also be equally entitled. This was indeed a clear deviation from the *feraid* norms that clearly favored male and agnatic family members over female ones.

All of the women's family trusts studied here consistently retained this gender-egalitarian approach. While male founders of family trusts usually assigned equal shares to male and female beneficiaries, there were some occasional cases in which women were discriminated against. The endowment deed of the man Şeyh Mustafa can shed light on such discriminatory clauses. He came to the sharia court in 1661 with a large cash endowment worth 5,000 piasters. He stipulated that that his children should benefit from the income of the endowment based on what the *feraid* rules prescribed (*'alâ mâ faraza allah te'âlâ mine'l-irs el-şer'î*).[257] It clearly meant that his female descendants would receive half the share of their male counterparts.

[257] İŞS9: 133a-133b, 15 Z 1071.

A third reason was that family trusts allowed founders to include non-biological children. We saw above that childless women appointed their step-children together with their husbands as the beneficiaries of their endowments. There was another category of children who appeared occasionally among the primary beneficiaries: adopted children. Despite the fact that Islamic law did not recognize fictive kinship based on adoption, there are some pieces of evidence that indicate the Istanbulites in the second half of the seventeenth century adopted children and transferred properties to them. The story of a woman who modified the terms of her endowment deed in 1650 in order to include an adopted son is illuminating. Ayşe, the founder of a family trust, had appointed her own descendants as primary and her step-children as secondary heirs to her large endowment consisting of a house with eleven rooms and two shops. As in the case of Alime, whom we met above, Ayşe realized over time that she could not bear children. She therefore modified the terms of the endowment to exclude her children and instead appoint her step-children as the primary beneficiaries. By 1650, it became evident that her husband did not have any surviving children either. Therefore, she modified the terms of the endowment to exclude her step-children and instead appoint a certain Sührab Mehmed Ağa, whom she called her *oğulluk* (adopted son) and his descendants as the sole and primary beneficiary of her endowment.[258] Other terms used for adopted children included the Arabic *rebîb* (*rebîbe* for females) or the Turkish *ahiret kız/oğul*.[259]

[258] VGM Defter 1763, 230/214.
[259] BOA EV.VKF 11/53; BOA EV.VKF 14/48; BOA EV.VKF 14/44.

## PUBLIC ENDOWMENTS

The difference in the purposes of public (*hayri*) endowments and family trusts was not as striking as their names suggest. All family trusts had to eventually turn into public and charitable endowments, while almost all charitable endowments had family members as administrators or other functionaries and therefore benefited family members with a significant portion of the endowments' income. Indeed, almost all kinds of endowments supported family members in one way or another. To further blur the distinction, some endowments had elements of both family trusts and public endowments.

Family trusts and public endowments, however, were significantly different in size, and generally had different kinds of founders and beneficiaries. As we saw above, public endowments were on average larger than family trusts, the latter primarily consisting of one mid-size house in the second half of the seventeenth century. Women's endowments were predominantly family trusts while men were the primary founders of public endowments. Although all kinds of endowments supported family members, male family members were the recipients of the lion's share of public endowments, while men and women were treated equally by family trusts, particularly those founded by women. The cash endowment of Şeyh Mustafa, whom we met above, was a mixed *ehli-hayri* endowment. He did not simply discriminate against his female descendants by assigning them half the share of their male counterparts, he also reserved a significant portion of the endowment's income for his male descendants by assigning them certain functions. He established a teaching chair at the mosque founded by Mehmed the Conqueror and

stipulated that the teacher should be selected from among his sons, who would hold regular sessions to teach Islamic law, hadith, exegetics (*tefsîr*), and logic. He also stipulated that seven of his male descendants should attend the lectures. The teacher and his students were all entitled to fixed daily stipends from Şeyh Mustafa's endowment. The public aspect of his endowment, therefore, primarily benefited his family members, but only male ones.

It is unlikely that the female members of the family protested Şeyh Mustafa's foundation of such a public endowment. The social status of elite women was closely tied to that of their families, and by establishing an ostentatious chair at one of the most prestigious imperial mosques, Şeyh Mustafa's endowment was an investment in the family's reputation. Indeed, Şeyh Mustafa did not intend to exclude female family members from their inheritance rights. He had stipulated that his female descendants should receive their shares according to the *feraid* rules from the endowment's extra income. He had also made sure to provide a daily stipend of 5 aspers for his wife. It was rather the gendered division of spaces that kept women from appearing in mosques as professors and students that resulted in their exclusion from a significant portion of the endowment's income.

Although some female founders of public endowments appointed women as the administrators of their endowments, the fact that the majority of functionaries such as Quran reciters, professors, imams, muezzins, and students were all men meant that their public endowments contributed to a net transfer of wealth from the hands of women into those of men. For example, an elite woman named Esma Hatun bint Abdülaziz Efendi

founded a large *ehli-hayri* endowment in 1686. The endowment consisted of 4,000 piasters in cash, a house, and two large complexes which contained 16 two-room and six one-room apartments. The public aspect of her endowment created 15 posts for male Quran reciters in the Fethiye Mosque with a daily stipend of two aspers. Esma Hatun stipulated that the Quran reciters should commemorate her late father Abdülaziz Efendi who was the chief jurist (*şeyhülislam*) in 1651, her late husband Esiri Mehmed Efendi who also served as the chief jurist from 1659 to 1661, and her three brothers who were also prominent members of the Istanbul *ulema*.[260] Clearly Esma Hatun was concerned about the well-being of her family members, and assigned a significant portion of the endowment's income to her two daughters and their descendants. However, the public aspect of the endowment excluded about 11,000 aspers a year from the endowment's income for men outside of the family. Rather than a direct investment in her family members, Esma Hatun's public charity was an investment in the family's reputation—the very source of her wealth and social status.[261]

Women's public endowments were not substantially distinguishable from those of men. Many women's public endowments were actually attached to those of their male family members including their fathers, brothers, and husbands. In these cases, women simply added funds and retained the same functionaries who were in charge of managing their male relatives' endowed properties. The elite woman Ayşe Hatun bint Hüseyin Efendi, for example, provided additional funds in 1655 to an endowment founded earlier

[260] Mehmet Süreyya Bey, *Sicill-i Osmanî*, vol. 1 (Istanbul: Numune Matbaacilik, 1996), 100; Mehmet İpşirli, "Esîrî Mehmed Efendi," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, 11: 390-91.
[261] VGM defter 583, 99/86.

by her husband. Eight years later, their daughter Rabia registered her large endowment, which was again an "attachment" (*mülhak*) to that of her father.[262]

## CONCLUSION: CLASS, STATUS, AND PROPERTY

It is difficult to situate these women in Istanbul in clear socio-economic categories. Women were prohibited from taking official positions in the military or *ilmiye* hierarchy and therefore lacked the associated honorary titles that might tell their rank or social status. The early modern world of Ottoman "ostentatious inegalitarianism," however, assigned signs to both men and women that described their affiliation to highly hierarchized social strata.[263] Some women were referred to with titles such as *hatun* or *hanım*,[264] and others were introduced with their particular relationship to the palace such as the *daye* (foster nurse) or the *haseki* (favorite) of Osman II or simply *sarayi* (from the Palace). Some had the hereditary title *seyyide* or *şerife* (descendant of the Prophet) and others acquired the title of *el-hace* through performing the ritual pilgrimage to Mecca. Some enjoyed the most honorable titles of *muhaddere* (veiled) or *muvakkare* (revered), both signs of being respectable for being veiled and/or secluded, a luxury that only elite women could afford.[265] All of these women were referred to with the names of their

[262] VGM defter 574, 23/7. For other women's public endowments which were attached to that of their male relatives see VGM defter 623, 30/38; VGM defter 623, 8/13; VGM defter 623, 2/6; VGM defter 571, 39/17; VGM defter 571, 40/18; VGM defter 623, 236/232.

[263] Patricia Crone, *Pre-Industrial Societies* (New York: B. Blackwell, 1989), 105.

[264] The title *hatun*, usually used for a married and adult woman, did not bear much meaning at least for the purpose of examining her socio-economic background. Sometimes a woman was identified simply by her name and her father's name, while the same woman could also be referred to as *hatun*. Even the criterion of being married and adult was not observed when using the title *hatun*.

[265] For a discussion of the term *muhaddere* see pp. 157-160.

fathers and sometimes of their husbands, usually with their social and professional affiliations.

Women's choice of the people to represent them in the court to register their endowment deeds, and their choice of the people to be the beneficiaries of their pious or family endowments, indicated their familial and personal ties within the larger political and social network. Their choice of the sites of their charitable endowments (e.g. an imperial mosque or a small local mosque) as well as the size of the alienated property for the endowments provide yet additional information on the female founders' socio-economic status. The existence or absence of such titles, positions, and affiliations as well as markers of their social and political network clearly depicted a female founder's socio-economic status. Another important signifier of status was one's background as a slave or freeborn person, which did not necessarily correspond to one's socio-economic status in the second half of the seventeenth century.

As with male founders of endowments, Istanbulite women's wealth and status had an impact on the type of endowments they founded. Elite women, particularly members of the aristocratic learned hierarchy, founded large endowments with a mixed *ehli-hayri* purpose. Other elite women, of relatively more humble background, appeared among the founders of public endowments. The female founders of family trusts came from a variety of social backgrounds, though all were wealthy enough to own at least a house and/or slaves.

Compared to male founders, however, female founders were more concerned about either establishing a new family through their family trusts or contributing to the

reputation of their families through charitable endowments. Male founders' charitable endowments often constructed a new public building such as a mosque, a school, or a fountain which would bear the name of the founders. In that sense, Doumani suggests, men's public foundations probably indicated the emergence of a new line within an aristocratic household.[266] Elite women's public endowments, however, were mere contributions to the family lines established by their male family members.

Female founders of family trusts used their properties to cement existing family ties as well as to build new ones. Many female founders of family trusts came from relatively humble socio-economic backgrounds when compared to the founders of public endowments. A common feature among female founders of family trusts was the absence of strong ties with their natal families. Less than half of them were freedwomen and others were not associated with well-established households. For these women, founding family trusts was not necessarily a break from their natal families but rather the formation of a new one from the scratch. As we see in their endowment deeds, childless female founders of family trusts included a range of individuals including their step-children, adopted children, and female slaves as the primary beneficiaries of their endowments. They did not grant their wealth to their husbands or other male relatives to be managed. Instead, they acquired the role of benevolent matriarchs who constructed their own network of kin and whose names would be remembered as such in future generations.

[266] Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," 3-41.

An important category of female founders consisted of freedwomen, whose patronymics were simply bint Abdullah "daughter of God's slave" or a variation. It was the Ottoman tradition of calling convert slaves as the children of "God's slave" in order to both avoid their real fathers' non-Muslim names as well as the mark of their slave status. Female ex-slaves as founders of endowments came from a variety of socio-economic backgrounds depending on the splendor of their masters' households, including the imperial household. The social integration of these female ex-slaves in the society was not simply through the benevolence of their masters. After all, their relationship with their masters' households was a fragile one, particularly if they were attached to an elite household with multiple male and female slaves. The material properties these female ex-slaves acquired due to gifts, dowers, or other means provided them with a great opportunity to establish what they lacked: family.

# Conclusion

Scholarship on the social and political history of the Ottoman Empire in recent decades has effectively challenged the negative connotation of a "women's sultanate" and its association with the decline of the empire in the seventeenth century. Recent scholarship moves from the negative representation of a so-called "post-classical" period to instead document a set of social, political, and legal transformations that might even be described as "proto-democratic."[267] This dissertation has examined ordinary women's property rights in the imperial capital of Istanbul during this period of substantial change.

Tracing the historical transformations of Istanbulite women's property rights requires a diachronic analysis of the decades before and after the period covered by this study. Yet, the observations presented here shed light on some similarities with (and differences between) Istanbulite women and their peers in other cities of the empire. In line with almost all other studies on women in the Ottoman Empire, this study presents a picture of Muslim women as active litigants, buyers and sellers of real property, borrowers and lenders of money, and founders and managers of endowments. The key differences, however, involve their access to property and their particular strategies in managing their possessions. A seemingly unique aspect of Istanbul in the second half of the seventeenth century was the egalitarian trend of inheritance in the form of perpetual lease of endowed properties, as well as family trusts.

[267] Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (New York: Cambridge University Press, 2010).

Studies on early modern Ottoman history, similar to this current study, are primarily based on the sharia court records. Such studies link the social to the legal by examining different aspects of women's lives as reflected within the legal archival sources. The term "transformation" as applied to gender relations, however, usually comes in tandem with discussions of modernity. An earlier generation of scholars, such as Anderson, Schacht, and Coulson, cherished the legal reforms as emancipatory in regards to Muslim women's rights, including their property rights.[268]

Historical research on premodern Muslim women, however, has added insights that raise questions about the impact of modern reforms on Muslim women's lives. Islamic law was not static in regulating women's rights, nor did Muslim women form one category of people. Some reactions to an ahistorical picture of pre-modern Muslim women came from a feminist re-reading of the earlier history of Islam, which problematized a canonized and unchanging patriarchal understanding of women's history in the earlier generations of Islam.[269] Due to the availability of Ottoman court records in the past few decades, an increasing number of studies of early modern societies have documented social and legal strategies available to women before modern reforms. Having established women's agency in the history of the Middle East, some historians

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[268] Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago: University of Chicago Press, 1969), 96-116; J. N. D. Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 42-82; Joseph Schacht, *An Introduction to Islamic Law* (New York: Clarendon Press, 1982), 32-33.
[269] Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Cambridge: Perseus Books, 1991); Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992). For another study that contributed to the understanding of gender norms in medieval Islamic history through the examination of the life of one of the most visible and controversial female figures of Islamic history, the wife of Prophet Muhammad, see Denise A. Spellberg, *Politics, Gender, and the Islamic Past: The Legacy of 'A'isha bint Abi Bakr* (New York: Columbia University Press, 1994).

started to criticize the modern reforms which strictly regulated women's status within family and society. In the conclusion of her study of eighteenth-century Syria and Palestine, Judith Tucker criticizes the modern legal codifications of the nineteenth and twentieth centuries which resulted in limiting the flexibility of Islamic law, and at least partially, led to the deterioration of Muslim women's status.[270]

This study on Istanbulite Muslim women's property rights aims to contribute to the ongoing discussions about legal reforms and women's status in Muslim societies. Early modern legal systems contained elements of both continuity and change, but did not impose a universal solution for similar issues. Male and female subjects of the empire chose among the available legal strategies to secure optimal solutions to their everyday problems. The study of the sharia court records renders it possible to document general trends in the lives of women. Through such studies, for example, we know that the seventeenth-century women of Cairo added certain stipulations to marriage contracts in order to allow their husbands to remain monogamous, to prevent them from abandoning their wives, or to permit their wives to continue their economic activities. We also know that women in eighteenth-century Aleppo served as buyers of real estate in more than 30 percent of the entire cases. Similarly, women in seventeenth-century Bursa were largely involved in financial market as well as textile production. Women in many parts of the Arab Middle East had access to multiple schools of Islamic law, which provided several

[270] Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*, 184-86. For similar observations see Amira al-Azhary Sonbol, "Shari'ah and State Formation: Historical Perspective," *Chicago Journal of International Law* 8, no. 1 (2007); "A Response to Muslim Countries' Reservations against Full Implementation of CEDAW," *Hawwa* 8, no. 3 (2010); *Women of Jordan: Islam, Labor & the Law* (Syracuse: Syracuse University Press, 2003).

options to secure divorce.[271] This current study demonstrates that Istanbulite women in the second half of the seventeenth century had a much higher access to property than the Islamic *feraid* rules would appear to prescribe.

The experience of Istanbulite Muslim women in this period, I suggest, can shed light on modern discussions of women's property rights. The introduction of the 1858 Ottoman Land Code is viewed as the very first Ottoman reform attempt to provide a gender-egalitarian access to inheritance. The Code dictated that agrarian land should be divided equally among the sons and daughters of the owner. In the absence of children, the Code retained the *feraid* rules' prioritization of male agnatic kin over female family members. Regardless, the Code is regarded as a significant step towards the equal access of men and women to property.

The Code is represented as an unprecedented and revolutionary piece of reform in the Tanzimat era (1839-1876). A Marxist approach might view the development of a capitalist economy and the relating commodification of land as an underlying motive of this "bourgeois" reform.[272] Another explanation might regard Ottoman reformers' attempts to westernize or even secularize the empire as the main reasons behind the reforms that gave equal rights to men and women, as well to Muslims and non-Muslims.[273] This current study argues that an egalitarian inheritance system already

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[271] For review of the literature see Zilfi, "Muslim Women in the Early Modern Era," 226-55.
[272] E. Attila Aytekin, "Agrarian Relations, Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," *Middle Eastern Studies* 45, no. 6 (2009): 935-51.
[273] Şerif Mardin, *The Genesis of Young Ottoman Thought: A Study in the Modernization of Turkish Political Ideas* (Princeton: Princeton University Press, 1962); Halil İnalcık, "Sened-i İttifak ve Gülhane Hatt-ı Hümayun," *Beletin* 28 (1964): 603-22; M. Şükrü Hanioğlu, *A Brief History of the Late Ottoman Empire* (Princeton: Princeton University Press, 2008); Gülnihal Bozkurt, "The Reception of Western

existed in the second half of the seventeenth century among Istanbulites. While the cosmopolitan aspect of the city—with its highly monetized economy as well as its integration within the Mediterranean trade network—might have led to the "commodification" of different types of properties, therefore necessitating a further integration of women in the market, the cultural aspects of the "sultanante of women" may have also played a role in viewing women as powerful figures who could run an empire as well as manage their properties.

The tradition of a nuclear family that granted equal property rights to sons and daughters was, therefore, not unprecedented, revolutionary, or a result of top-down reforms. It had deep roots in the lives of Istanbulite men and women, whose rights to use perpetually leased properties or family trusts were transferred equally to men and women of the next generations.[274] That is not to say that all properties in the capital were divided between men and women equally. There were alternative mechanisms of inheritance which had complicated results on women's access to property. More importantly, women were barred from taking the most lucrative economic and administrative positions. This study does, however, demonstrate that the egalitarian division of properties among sons and daughters was commonplace in this period. These trends were shaped indigenously within the social and cultural transformations of this period rather than being a result of any attempts to westernize, modernize, or secularize the empire.

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European Law in Turkey (From the Tanzimat to the Turkish Republic, 1839-1939)," *Der Islam* 75, no. 2 (1998): 283-95.

[274] By the late eighteenth and nineteenth centuries, perpetually leased properties formed a significant portion of Istanbulites' wealth. See Bozkurt, "Tereke Defterleri ve Osmanlı Maddî Kültüründe Değişim (1785-1875 İstanbul Örneği)," 90-94.

Through analyzing women's use of the sharia court, this study also analyzes the interconnectedness of cultural and legal biases on women's activities, on the one hand, and women's active role in maneuvering within the available legal options, on the other. Legal procedural practices, for example, excluded women almost entirely from exercising their right to testify in court. Women, however, benefitted from this legal practice by going beyond their familial ties in order to procure impartial male witnesses for their economic activities. These male witnesses could eventually testify in female solicitors' favor in prospective lawsuits.

The examination of Istanbulite Muslim women's marital disputes in this period demonstrates that while nuclear families were the predominant arrangement of family formation, women carefully balanced their ties with their conjugal and natal family members in order to secure their marital rights. Their decision to exercise a certain legal strategy depended on the extent of their access to the support of their natal family. Women of well-established families used the sharia courts in order to appoint legal representatives who could track their absentee husbands and make them either meet their marital responsibilities or agree to a divorce. When their non-cooperative husbands lived in Istanbul, these women used their familial ties to settle their marital disputes.

The fact that women did not have access to other schools of law besides the Hanafi school limited women's options to either add stipulations to their marriage contracts or to secure a divorce from their absentee husbands. Within this legal context, Istanbulite women used different strategies, such as securing an "oath of divorce" from their husbands in case they failed to meet their marital responsibilities. In this way, they

turned what was, in essence, a manifestation of patriarchy, to their benefit by securing the loyalty of their husbands, making them perform their marital responsibilities, or divorcing them if they failed.

Another legal limitation on women's access to their maintenance rights from their absentee husbands was the necessity to secure a judicial decision in their favor. Otherwise, women who borrowed on their husbands' behalf or spent from their own money in the period of their husbands' absence would not be reimbursed. This apparent limitation on women's access to property, however, resulted in the encouragement of women to actively use the sharia court, often immediately after their husbands left them. It demonstrates not only women's awareness about the niceties of the Islamic family law, but also their agency in turning a limitation into an opportunity. After securing a judicial decision in their favor, it was easier for them to litigate against their husbands whenever they returned to Istanbul or were found elsewhere.

The sharia court records, however, are mostly silent in regards to the women at the bottom of the social ladder. For these women, the sharia court was theoretically as accessible as to anyone else. Favorable judicial decisions could certainly be used to empower these women when their husbands returned to the capital. It seems, however, unlikely that such judicial intervention ameliorated the lives of the very poor women of the capital, whose chances to borrow on their missing husbands' behalf were minimal. This is why the single story of a poor convert, and possible ex-slave woman, named Fatma bint Abdullah—who decided to get married to a second husband while still married to the first—is illuminating. When the legal system failed to secure a divorce

from her first husband (who went missing for a period of eight months), when the chances to borrow from others was limited, and when she did not have any kin support in Istanbul, she had to resort to the extra-judicial and even illegal action of polyandry.

Trends of settling disputes over inheritance, which formed the most important source of women's wealth in the capital, demonstrate yet another aspect of the relationship between legal practice and social norms. My examination of the sharia court records demonstrates that Istanbulites did not allow the *feraid* rules to dictate their inheritance. The bypass of the *feraid* rules, however, did not lead to the disinheritance of women. In contrast, alternative mechanisms of inheritance were devised in order to retain properties within nuclear family members, including both men and women. Inheritance disputes usually occurred when non-nuclear family members were entitled to a portion of inherited properties. Such disputes, however, were usually settled through amicable settlements, leaving the bulk of the inherited properties to the nuclear family members of the deceased.

Records about widows' access to the estate of their deceased husbands, however, demonstrate a more complicated picture of the norms regarding gender, family, and property. Widows usually applied to the sharia court in order to be appointed the guardians of their minor children, which were almost always granted. Widows' guardianship over minor children, in practice, meant that they were in control of the majority or entirety of their husbands' estates. This practice, on the one hand, demonstrated the faith of the legal system, as well as the society, in women's management of a considerable amount of properties. On the other hand, it assumed

certain gender roles the widows had to play. For one, she had to have borne children with her husband. A childless widow was therefore easily compensated in return for relinquishing her inheritance rights to her husband's estate. Widows with minor children were expected to remain unmarried in order to retain their guardianship rights over their children. The Istanbulite widows with minor children in this period often chose the integrity of their nuclear family members, retaining custody and guardianship rights at the expense of remaining unmarried, or marrying relatives of their husbands.

Women's management of properties took several forms. Women with familial support usually sold off their shares in inherited real estate to acquire cash, jewelry, and other movable properties. After all, providing accommodation for family members was a manly responsibility. Yet, some women who had acquired certain properties during their lifetime, either through inheritance or marital rights, did not view real property simply as a saleable commodity for cash. Their decision to retain or sell real estate was influenced by their network of kin support. Kin ties provided a more secure source of support than marital ties. After all, divorce was commonplace and was particularly easy for men to exercise. Both legal norms and social practice expected kin members to extend support to the impoverished family members, particularly women whose access to the employment market was extremely limited. The absence of kin support, however, meant that women had to take their management of real properties more seriously. One common method of managing urban residential properties was turning them into a perpetual source of accommodation in the form of family trusts. By doing so, these women constructed their

own network of kin by including not only husbands and biological children, but, more commonly, non-relatives such as step-children, adopted children, and manumitted slaves.

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