AN ANALYSIS ON THE OPERATIONS AND FUNCTIONS OF A SHARĪʿAH COURT: THE CASE OF OTTOMAN ÜSKÜDAR (1547-1551)

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Abstract

Through a close reading of a single register found in the sixteenth-century court record series of Üsküdar, this article introduces the reader to the operations of the Sharīʿah court of Üsküdar and its records from 1547 to 1551. By approaching the court records as both "text" and "document," it explores the functions of the court, identifies the court officials, defines their roles, and delineates the role played by the *qāḍī*, his court and the local community in the administration of justice. This article can be read as a contribution to the newly emerging literature on variations in the Sharīʿah courts in the Ottoman Empire in terms of their operations. As the recent literature including this present study demonstrates, the duties of the local Sharīʿah court in the Ottoman Empire are neither singular nor monolithic. While some of the courts provided notarial and administrative services primarily, others acted as significant sites for dispute resolution. Hence their operations were primarily judicial. What emerges from this study is that the court of Üsküdar in the very middle of the sixteenth century primarily functioned as a "public registry."

Key Words: Court, Sharīʿah law, Ottoman, Üsküdar, Istanbul

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Introduction

This article can be read as a contribution to the newly emerging literature on variations in the sharīʿah courts in the Ottoman Empire in terms of their operations and functions. As Boğaç Ergene perceptively observes, almost every study based upon the sharīʿah court records, in its very beginning, reiterates more or less the same list of judicial and administrative functions of a sharīʿah court in a given historical context. Yet, as Ergene warns, "if we wish to attain a deeper insight of the role of the court in a provincial context, we need to be aware that this tendency eliminates as yet unrecognized distinctions in the function of different courts and, therefore, obscures the variations in their 'characters.'"[1] The main objective of this article, therefore, is to introduce the reader to the court of Üsküdar and the records it produced. In order to do this, I shall attempt to look at the activities of the court, explore its record-keeping practices, identify the court officials to the extent that the court registers allow, attempt to define their roles and functions, and to delineate the role played by the qāḍī, his court and the local community in administration of justice.

Before moving on to the declared aim of the present article, a reminder is in order. In exploring the court of Üsküdar and the records it produced, I limit myself to a close reading in its entirety of a single register, namely, USS 15 (Üsküdar *15 no'lu Şeriyye Sicili*). The reason behind setting this limit is that USS 15 is one of the largest registers found in the sixteenth century court record series of Üsküdar. It includes 2.212 entries recorded from 954 to 958 AH / 1547-1551 CE. Although this number does not reflect every single issue that came before the court within this four-year period, it still includes most of them, thus providing me with a sizeable body of data to work on.[2] Yet

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1 Boğaç Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden, Boston & Mass.: Brill, 2003), 32.

2 For the total number of socio-economic concerns that were brought to the court, either for registration or settlement, within this four-year period, two other registers, namely USS 14 (including cases from 953-955 AH / 1546-1548 CE) and USS 17 (including cases from 955 to 963 AH / 1548-1556 CE), from the Üsküdar's court register series has to be examined, and those cases that fall within the period have to be retrieved and added to the data I present here. In this study, nonetheless, I restrict myself to a single register, as this register provides me with

another reason why I took USS 15 as a case to dwell upon has to do with the time period it covers. This period is often indicated as the very beginning of the urban transformation that Üsküdar went through from being a semi-rural town serving as a gateway to the Ottoman capital and the capital's threshold for Anatolia in the 1520s to being a significant religious and commercial center with a religiously and ethnically heterogeneous population in 1600s.

It is suggested that Üsküdar was, like other environs of Istanbul, at least to some extent, resettled after the conquest of Constantinople. Nevertheless, it was during the second half of Sultan Süleyman's reign (r. 1526-1566) that it began to truly prosper, increased in size and turned into a religious and commercial center. As the existing scholarship on the development of the town notes, the reason why Üsküdar shifted from a semi-rural transient town to a growing city by the second half the sixteenth century had much to do with the establishment of major pious foundations by the members of ruling elites, including female members of the ruling Ottoman dynasty.[3] These pious foundations endowed by the members of the royal household and powerful bureaucrats funded the large-scale construction projects within the town, including but not limited to the building of mosques, charity kitchens, fountains and public baths, dervish lodges, hospitals, caravanserais, and medreses for education. These institutions, often built as complexes (*külliye*) not only supplied the various needs of local inhabitants at the time, but also made Üsküdar a place of attraction for many new arrivals, and hence led to the emergence of new neighborhoods around their vicinities.[4] For instance, according to the fiscal register (*tahrir defteri*) recorded in 1530, the town center (*nefs-i Üsküdar*) included eight neighborhoods and six surrounding villages. In the subsequent register, recorded mostly likely around 1561, however, we see the number of

sufficient data to work on. Nevertheless, in my future publications on the subject, I shall include all relevant data.

3 Sinem Arcak, "Üsküdar as the Site for the Mosque Complexes of Royal Women in the Sixteenth Century," (Master's thesis, Istanbul: Sabancı University, 2004).

4 For the neighborhood of Gülfem, a neighborhood developed around the Gülfem Hatun complex, see Nuray Urkaç Güler, "16. Yüzyılda Üsküdar'da Gülfem Hatun Mahallesi (1540-1600)," (Master's thesis, Istanbul: Marmara University, 2008).

neighborhoods raised to eighteen, while the number of surrounding villages remained the same.[5]

On the basis of the data provided by these two fiscal registers, the population of Üsküdar might be *estimated*.[6] Nevertheless, approximating the population of Üsküdar on the basis of fiscal registers is indeed complicated and risky because the *raison d'etre* of the fiscal registers in Ottoman state practice was to provide the imperial authorities with the number of taxpaying male adults, rather than census figures *per se*. As it has already been stated by Ottomanists, the categories enumerated in the fiscal registers exclude, for instance, women, children, slaves and various tax-exempt groups serving the Ottoman imperial state in various capacities.[7] This is not the right place to reiterate the contours of Ottoman historiography pertaining to the fiscal registers and how they should be used in Ottoman demographic research.[8] Nevertheless, what I want to underline is that the existing literature on sixteenth-century Üsküdar points out the fact that Üsküdar started to flourish not only as a center of trade, but also as a center of learning with its growing population, starting from the very beginning of the second half of the sixteenth century, if not a decade earlier. Furthermore, besides its own residents, Üsküdar, as the capital's gateway to Central and Eastern Anatolia, as well as a threshold for state officials, military personnel, merchants, and villagers on their way to the imperial capital, contained a transient population which sought temporary housing within the town. Üsküdar was also a place of transit for fugitive slaves. The presence of this transient population, as argued by Seng, can therefore neither be ignored nor excluded in any demographic analysis pertained to the town of Üsküdar.

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5 Ahmet Güneş, "16. ve 17. Yüzyıllarda Üsküdar'ın Mahalleleri ve Nüfusu," in *Üsküdar Sempozyumu I* (2004), 42-56.

6 Hanefi Bostan, for instance, estimates that Üsküdar had a population of approximately 2.400 inhabitants around 1530, and 4.800 in 1561. M. Hanefi Bostan, "Üsküdar," in *Türkiye Diyanet Vakfı İslâm Ansiklopedisi (DİA)*, XLII, 365. Nevertheless, Ahmet Güneş abstains from giving any numbers on the basis of these registers. Güneş, *op. cit.*

7 Ömer Lütfi Barkan, "Research on the Ottoman Fiscal Surveys," in *Studies in the Economic History of the Middle East*, ed. Michael A. Cook (Oxford: Oxford University Press, 1970), 163-171.

8 For comprehensive recent analysis in this regard, see Metin M. Coşgel, "Ottoman Tax Registers (*Tahrir Defterleri*)," *Historical Methods: A Journal of Quantitative and Interdisciplinary History* 37 (2004), 87-102.

Therefore, Seng (on the basis of the estimation put forward by Barkan for Istanbul) suggests cautiously that Üsküdar had a population of 28.000 in 1530s.[9]

Hence, having examined this scholarship on the socio-economic development of Üsküdar, I decided to focus on USS 15 to explore if and how this rapid urban transformation, often underlined in the studies exploring this history rather with a macro perspective, is indeed reflected in the court records of the town within a four-year period. Furthermore, the court records of Üsküdar are extremely rich not only in terms of numbers, but also in terms of their content.[10] Despite these rich sources, however, detailed analysis of Üsküdar's court operations and functions has not yet received due attention from scholars.

I. Approaching USS 15 as "Text" and "Document"

The Ottoman court records have been at the disposal of historians for almost five decades now, with the result that the scholarly works in this field are written in various languages and scholarly tradition is too extensive to explore in any comprehensive fashion and thus lies beyond the scope of this present work.[11] Nevertheless, what emerges

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9 Yvonne J. Seng, "The Üsküdar Estates (*Tereke*) as Records of Everyday Life in an Ottoman Town, 1521-1524" (PhD diss., Chicago, IL.: University of Chicago, 1991), 21.

10 More recently, some of these registers have been transcribed into the Latin script and published by İslâm Araştırmaları Merkezi (İSAM) in Istanbul. Furthermore, we have several MA theses written on the sixteenth-century court records of Üsküdar. These theses are not thematical explorations but rather they identify, categorize, and provide statistical analysis of the documents pertaining to the social and economic history of the town. See Ekrem Tak, "XVI. Yüzyılın İlk Yarısında Üsküdar'da Sosyal ve İktisadi Hayatın Göstergeleri: Üsküdar Kadı Sicilleri Üzerine Bir Çalışma," (Master's thesis, Istanbul: Marmara University, 2002); Kenan Yıldız, "Üsküdar'ın Sosyal ve İktisâdî Hayatı ile İlgili Üsküdar Kadı Sicillerindeki Kayıtların Tespit ve Analizi (H. 954-980/M. 1547-1573)" (Master's thesis, Istanbul: Marmara University, 2005); Müslüm İstekli, "Üsküdar'ın Sosyal ve İktisâdî Hayatıyla İlgili Üsküdar Kadı Sicillerindeki Kayıtların Tespit ve Analizi (H. 978-991, M. 1570-1584)" (Master's thesis, Istanbul: Marmara University, 2005); Nihat Yalçın**, "**1572-1587 (H. 980-995) Yılları Arası Üsküdar Mahkemesi Kadı Sicilleri'nin Sosyal ve İktisadi Açıdan Değerlendirmesi" (Master's thesis, Istanbul: Marmara University, 2009).

11 The quandaries surrounding *sijil*s as an historical source and the problems of *sijil* research have been the subject of several historiographical essays in recent years.

from the scholarly discourse based upon the court records is that, up until the mid-1990s, these historical sources have been used in the field primarily for quantitative analysis. However, later the pendulum shifted in the opposite direction, and they have been employed primarily for discourse analysis. My aim here is to devise a methodology that would combine the two. Indeed, reading *sijil*s as both "text" and "document," to use Najwa al-Qattan's terms, and employing both discourse and quantitative analysis, is an approach that has been adopted by other scholars in the field over the last decades. The valuable works of scholars such as Işık Tamdoğan, Iris Agmon, Leslie Peirce, and Boğaç Ergene, constitute the landmarks in this regard and my reading of the court records methodologically is very much informed by their works.[12]

There are many different variations of court registers at our disposal. Some registers include only transactions of a particular *waqf*, some include estate inventories and nothing else, while others can be of mixed content, as in the case of USS 15, which includes, but is not limited to, litigations and notarial attestations related to moveable and

These include 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, https://doi.org/10.1163/1568519982599616; Iris Agmon, "Women's History and Ottoman *Shariʿa* Court Records: Shifting Perspectives in Social History," *Hawwa* 2 (2004), 172-209; Iris Agmon and Ido Shahar, "Shifting Perspectives in the Study of Shariʿa Courts: Methodologies and Paradigms," *Islamic Law and Society* 15 no. 1 (2008), 1-19; Yavuz Aykan and Boğaç Ergene, "Shariʿa Courts in the Ottoman Empire Before the Tanzimat," *The Medieval History Journal* 22, no. 2 (2019), 203-228, https://doi.org/10.1177/0971945819897437.

12 Işık Tamdoğan-Abel, "L'écrit comme échec de l'oral? L'oralité des engagements et des règlements à travers les registres de cadis d'Adana au XVIIIe siècle," *Revue du monde musulman et de la Méditerranée* 75-76 (1995), 155-165, https://doi.org/10.3406/remmm.1995.2619; Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, N.Y.: Syracuse University Press, 2006); Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003), https://doi.org/10.1525/9780520926974; Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu, 1652-1744* (Leiden: Brill, 2003); Metin Coşgel and Boğaç Ergene, *The Economics of Ottoman Justice: Settlement and Trial in the Sharia Courts* (Cambridge: Cambridge University Press, 2016), https://doi.org/10.1017/CBO9781316662182.

immoveable property, loans and credits, marriage and divorce, estates, bequests and successions, transgressions and offences, as well as imperial orders issued by the central government. The USS 15 consists of 178 folio leaves (i.e., 356 pages) inside the covers, each measuring 31 x 18 cm. A record was numbered on the basis of an "entry" rather than a "case," because several entries could pertain to a single case. For example, the entry for a litigation against a woman engaged in an illicit sexual relationship (usually brought by the *subaşı* or the neighborhood representatives to the court) may be followed by an entry on the denial of the woman or her husband and yet another on the several bonds of surety posted by both the claimant and the defendant.[13] Identification of what constituted an entry was decided on the basis of the presence of a formalized introduction at the beginning of a record.[14] Therefore, entries related to fugitive slaves or stray animals, usually containing two parts (part one usually includes the registration of a fugitive slave or stray animal and part two usually includes a record of the handover of the slave or the animal in question to their owners if they could be located or their sale in cases in which the owner was not found) are considered to be a single entry. Entries that are incomplete, cancelled or damaged due to physical conditions in the archives were included as discrete entries. Although the register follows a certain chronological and thematic order in general, this practice is neither uniform nor absolute. In other words, the entries in the register neither follow a strict chronological order nor a thematic one. There are a number of entries related to the same case which were recorded apart from each other. What is more interesting and significant, however, is that these same entries are written down on the exact same date. To make the point more clear, let us consider two entries on Mihri Hatun, wife of a certain janissary, who was brought to the court by Sinān ibn ʿAbd Allāh who happened to be employed in a local mosque. Mihri Hatun was brought to the court on the charges of (public) defamation (*shatm*). The first entry on this case is found on *waraq* (folio) 15b, the second entry is on *waraq* 106a and the third on 155a.[15] All these three entries carry the same date (the middle of Muḥarram 957 AH or January / February 1550 CE), even though they

[13] For instance, a woman named Lâlezar from a certain neighborhood of Üsküdar appeared in the register three times to save her honor.

[14] The most common formula used is *vech-i tahrīr-i sicil budur ki* for the introduction of an entry.

[15] USS 15/15b/7; 106b/1-2; 155a/5.

were apart from each other in the bound register. Furthermore, there are only minor differences between these three accounts in terms of details of the dispute and the legal categories used. Such examples – and there are many of them – confirm the assumptions of scholars problematizing the record-keeping practices of the courts: "these accounts did not have an immediate relationship with the actual court proceedings."[16] Indeed, the loose chronological order seen in the court registers suggests that "the drafts prepared by the scribes were probably not transferred to the court registers immediately, but accumulated for some time until they were recorded in the registers in no particular order."[17] In those cases where we find only slight differences between the accounts of a specific trial, as is seen in the entries related to Mihri Hatun's hearing, the draft of the proceedings must have been passed on to the court register multiple times due to a scribe's negligence.

However, there are certain blocks in the register, starting with a title, which include cases related to a series of loans given by a particular *waqf*.[18] Similarly, the registration of fugitive slaves usually (but not always) starts with a title such as "Fugitive Slaves in Üsküdar (*ʿabd-i ābiq-ı der Üsküdar*)."[19] Furthermore, estate inventories were usually recorded at the end of the register.[20] Therefore, it won't be odd to suggest that there were constant attempts on the part of the court personnel at orderly record keeping and the emergence of "headings" in the very beginning of the second half of the sixteenth century can be seen as a step forward in this direction. Among the Üsküdar court record corpus of the sixteenth century, it is also possible to see the

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16 Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire*, 127.

17 *Ibid*., 129.

18 Indeed, there are 15 headings within the register. Among these, 12 introduce the financial transactions of pious endowments. For instance, page 117b starts with the following title: "[The following entries] are a copy of the financial/cash transactions of the endowments where Bashīr Khalīfah served as a trustee (*Beşir Halife'nin mütevelli olduğu vakıf akçelerinin muamelesi suretidir*)." These titles can be seen on pages 40a, 45a, 102a, 117b, 120b, 134a, 137b, 160a, 161b and 169b.

19 The headings after which the cases related to the fugitive slaves were recorded can be seen on pages 102 b, 130, 154 a, 155b and 166b.

20 Among 35 estate inventories recorded at the register, 33 are recorded after folio 100.

existence of special registers for certain special issues.[21] All these examples suggest that there were constant attempts to establish an order within disorder on the part of the court personnel to make these registers readily accessible.

II. Recording in Arabic and Turkish

When I started reading the entries in USS 15, I realized that not all the entries are written in Turkish; Arabic is used quite extensively throughout the register. Furthermore, at least one, if not more, of the scribes was bilingual. The same scribe wrote some cases in Turkish and others in Arabic.[22] There are 738 entries written in Arabic in USS 15, which makes up approximately one third of the total number of entries. Leslie Peirce, studying the two registers from the court records of Aintab in the sixteenth century, also notes that the registers that she worked on included entries in Arabic. Indeed, she states that although "Turkish was the principal language of the court records of Aintab ... about one-fifth of the cases [are] recorded in Arabic."[23] She observes that "disputes and voluntary statements of fact are always recorded in Turkish, while the use of Arabic is confined to routine notarial business – for example, purchases and sales, debt negotiations, and appointment of bail agents."[24] But why did the scribes, both at the court of sixteenth-century Aintab and that of sixteenth-century Üsküdar, use Arabic in addition to Turkish? According to Leslie Peirce, the usage of Arabic cannot be explained through resorting to the native language of the speaker at the court. Nevertheless, she does not push this argument further. I suggest that a plausible answer to this usage of Arabic in some cases might be found in the genealogy of what I call the gradual "Ottomanization" of legal discourse.

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[21] For instance, among the recently transcribed and published court registers of Üsküdar in the sixteenth century, volume 56, which includes cases from 1580 to 1581 CE, might also be considered a special register because a majority of the cases recorded in it are related to different communities living in the newly established neighborhood called "Maḥalle-i Maʿmūre."

[22] Examples can be seen 36a, 40b and 42a. For instance, page 36a contains six entries; five of them are in Arabic, and one is in Turkish. All the entries were recorded by the same scribe.

[23] Peirce, *Morality Tales*, 88.

[24] *Ibid*.

Najwa al-Qattan argues that the institutionalization of recordkeeping as a court practice led to an appropriation of many of the legal categories and linguistic formulas established within the *shurūṭ* literature. While registering any document at the court, the court personnel used these categories and formulae established within the genre, and thereby attempted to produce uniform and standardized discourse, both in theory and practice. That is why, for instance, sale and purchase deeds, loan and credit contracts, acknowledgments of any legal responsibilities, marriage contracts, guarantee and surety-ship documents, endowment deeds, and lawsuits are remarkably formulaic in structure and repetitive in legal terminology. The *sijil* as text, therefore, according al-Qattan, provides a window into detailed socio-economic transactions of everyday life against a framework of legal categories and linguistic conventions of the *shurūṭ* literature, privileging specific terminologies, values, and meanings, and remaining silent on others.[25]

The relationship between the *shurūṭ* literature and the judicial practice in the Ottoman Empire at different times and in different locales is yet to be thoroughly investigated. Despite the fact that we have at our disposal many *ṣakk majmūʿah*s – a technical term used by the Ottomans for "how-to-do manuals" intended for the court whose function was the same as that of the *shurūṭ* manuals – a thorough analysis of these *majmūʿah*s like the one offered by Wael Hallaq has not been undertaken either in Turkey or abroad.[26] Nevertheless, we

[25] Najwa Al-Qattan, "Dhimmis in the Muslim Court: Documenting Justice in Ottoman Damascus 1775-1860" (Ph.D. Diss., Cambridge, Mass.: Harvard University, 1996), 142-145. One of the best examples of this privileging and silencing may be seen, for instance, in the documentary attempts to impartially identify the litigants at the court as well as describe the property which has been sold or purchased, not to mention the physical qualities and defects of (fugitive) slaves and (found) animals.

[26] The relationship between the *shurūṭ* and judicial practice has been one of the most contested terrains in the modern historiography of Islamic legal studies. More often than not, this relationship is constructed by resorting to one of the most widely held arguments of modern Western historiography on the Sharia: that there is a "gap," "discrepancy" or "divorce" between theory and practice in Islamic law. Here is not the place to reiterate this discourse. Suffice it to say that this long-held assumption has been attacked by many revisionist historians of Islamic legal theory in the last two decades. We know now, through the well-documented and well-argued works of Wael Hallaq, that "a complex dialectical relationship did exist between model *shurūṭ* works and legal documents in judicial practice." Wael B.

have some introductory descriptive works providing summaries of these manuals.[27] My analysis here mostly relies on these works; hence my conclusions should be read tentatively. Within this scholarship, a recent article produced by Süleyman Kaya deserves attention because it presents the *ṣakk majmūʿah*s available to scholars from the sixteenth century to the end of the nineteenth century, giving summaries of each manual in terms of form, content and the language(s) in which it was written.[28] What appears from Kaya's study is that (as in the early and medieval periods) these manuals were prepared by qualified court personnel, including qāḍīs who had worked in the courts over many years or jurists who had produced works on different branches of the sharīʿah. The author of each manual almost inevitably writes an introduction to their work explaining why and how he authored the text and his education in legal studies as well as his work experience in the courts of law. The authors often explicitly state that their manuals contain real cases in which they were personally involved in the sharīʿah courts. While in the beginning, the authors of these manuals chose to write exclusively in Arabic, gradually they incorporated Ottoman Turkish (with some Arabic), and finally, at the beginning of the eighteenth century, they began producing most *majmūʿah*s exclusively in Ottoman Turkish. In addition to the gradual shift from Arabic to Ottoman Turkish, there appear to have been considerable extensions and modifications in the content and form of the *ṣakk majmūʿah*s. While formerly the manuals contained exemplary cases only on particular topics, later, topics of concern were extended so as to embrace a wider selection of topics discussed in *fiqh* books. A substantial though gradual shift is also observed in the form of the exemplary cases appropriated into the manuals. While in the beginning, exemplary cases were written in the form of summaries (*ḥujjah*s), gradually, longer court cases were appropriated (in the form

Hallaq, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice," *Islamic Law and Society* 2, no. 2 (1995), 109-134, https://doi.org/10.1163/1568519952599394.

27 Halit Ünal, "Şurut-Sukuk: İslam Hukukunda Belge Tanzimi", *Diyanet Dergisi* 26, no. 3 (1986); Süleyman Kaya, "Mahkeme Kayıtlarının Kılavuzu: *Sakk Mecmuaları*", *Türkiye Araştırmaları Literatür Dergisi* 3, no. 5 (2005), 379-416; Ümit Ekin, *Kadı Buyurdu Kâtip Yazdı: Tokat'a Dair Bir Sakk Mecmuası* (Istanbul: Bilge Kültür Sanat, 2010).

28 Kaya, "Mahkeme Kayıtlarının Kılavuzu."

of *iʿlām* and *maʿrūẓ*) in which detailed descriptions of the case at hand as well as legal processes and decision of the qāḍī, may be seen.

The first *ṣakk* (not *shurūṭ*) majmūʿah, *Biḍāʿat al-qāḍī,* was written by one of the most famous Ottoman jurists of the sixteenth century, Ebussuud Efendī.[29] Since all the judges and court personnel knew Arabic, Ebussuud says, he chose to write his manual in Arabic. Furthermore, he emphasizes the fact that he has written many legal works in the past; thus, his aim in this work is to demonstrate to judicial personnel how to register certain transactions at the court using concise legal terminology. Nevertheless, his manual, organized into ten chapters, does not cover all the categories explored in the *fiqh* manuals. Why did Ebussuud Efendī position his work within the *ṣakk* genre and did not call it *shurūṭ* and why did he choose to dwell upon only ten chapters of classical *fiqh* manuals are questions that require close reading of his text, which is beyond the scope of this study. Nevertheless, what I want to underline here is that, up until the beginning of seventeenth century, judicial personnel at the sharīʿah court seemed very comfortable with reading and writing in Arabic and using classical and medieval sources, including, but not limited to, the employment of *shurūṭ* manuals as a guide to adjudicating and registering everyday transactions in the court.[30] This, I suggest, also explains why almost 740 out of 2.212 entries in USS 15 are written in Arabic rather than in Ottoman Turkish. It must have been much easier (and perhaps even safer) to write certain cases in Arabic.

Nevertheless, this reliance on classical and medieval *shurūṭ* works seems gradually to have disappeared as the legal scholars from the Ottoman lands started to write *ṣakk majmūʿah*s in Ottoman Turkish.

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[29] Ebussuud, *Biḍāʿat al-qāḍī* (Istanbul: Süleymaniye Library, Laleli MS 3711) as quoted in Kaya, "Mahkeme Kayıtlarının Kılavuzu," 384-385. It appears that the first *shurūṭ* manual, *Rawḍat al-qāḍīn,* was written in the fifteenth century by Meḥmed ibn Isḥāq, and dedicated to Sultan Mehmed the Conqueror. The author writes in Arabic and situates his work within the genre of *shurūṭ* (not *ṣakk*) and covers all the categories within the *fiqh* manuals except the rituals.

[30] For the main *fiqh* texts that were studied as a part of the curriculum at madrasas by the Ottoman scholars up until the beginning of seventeenth century and the books that these scholars produced see Recep Cici, "Osmanli Klâsik Dönemi Fıkıh Kitapları," *Türkiye Araştırmaları Literatür Dergisi* 3, no. 5 (2005), 215-248; id., *Osmanlı Dönemi İslam Hukuku Çalışmaları: Kuruluştan Fatih Devrinin Sonuna Kadar* (Bursa: Arasta Yayınları, 2001).

This seems to have happened sometime around the beginning of the eighteenth century. From the *Badāʾiʿ al-ṣukūk* written by Meḥmed Sādiq ibn Muṣṭafá Ṣānīzādah, we understand that an Ottoman scholar was able to produce in Ottoman Turkish a *ṣakk majmūʿah* very similar to its medieval counterparts as described by Hallaq.[31] This particular work – and those written and published later – covers not only all the chapters (including the chapters on rituals) of the renowned *fiqh* and *fatwá* manuals of the medieval period but also appropriates various cases written in the form of *ḥujjah, iʿlām*, and *maʿrūż*. However, the "Ottomanization" of *fiqh* language in general and *shurūṭ* literature in particular – epitomized in *ṣakk majmūʿah*s – seems to have been a long process, so that the extent of this "Ottomanization" in terms of form, content and discourse can only be understood once these manuals are thoroughly explored.

III. The Court Personnel

The court records, more often than not, resist disclosing direct information about the identities and functions of the court officials, including the judge himself. As Leslie Peirce observes, "the judge, situated at the nexus of religion, state, and community, is, as an individual, virtually nameless and textually silent"[32] in the thousands of entries recoded in the court registers. In the 356 single pages of USS 15, the judge is named only three times. Unlike court registers from some other places and times, including Üsküdar's court registers from almost a decade later, the register that I examine does not include an explicit and direct introduction in its beginning that identifies the name of the judge and the date of his appointment. Nevertheless, in the folio numbered 51a, there is a very faint line between the two entries that reads, "it is the beginning of the tenure of the honorable (*mawlānā*) Faqīhī Efendī; the time of registration [is] the 12th day of the month of holy Ramaḍān in 956 AH (4 October 1549 C.E.)."[33] Who was this Faqīhī Efendī? Was he the judge of Üsküdar or was he the deputy judge (*nāʾib*) functioning under the authority of the judge of Gekbuze? One should note that Üsküdar appears to have been administered from Gekbuze until the 1540s, if not longer. Unfortunately, neither the biographical dictionaries of the period nor the register itself allows me

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31 For various examples see Hallaq, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice."

32 Peirce, *Morality Tales*, 91-92.

33 USS 15/51a.

to disclose further information on Faqīhī Efendī and the position he held at the court. First of all, there is no entry on Faqīhī Efendī serving as a judge of Üsküdar in the biographical dictionaries I consulted.[34] Added to this, we have only two instances (!) in the thousands of entries in which the judge of Üsküdar's court is referred to by name, not solely with his title.[35] In the first instance, the dire quality of the handwriting makes it almost impossible to identify the name of the judge.[36] Yet in the second instance, which was registered in February 1551 (mid-Ṣafar 958 AH), Faqīh ibn Qāsim, who was identified as the noble previous judge of Üsküdar (*Üsküdar'ın sâbık kadısı Mawlānā Faqīh ibn Qāsim*) came to the court to make an acknowledgment.[37] He came to the court along with Sulaymān ibn Dāwūd who happened to be the previous scribe of the late Dāwūd Pasha İmareti. In Sulaymān's presence, he made an acknowledgement that while he was serving as a judge in Üsküdar, he had asked Sulaymān ibn Dāwūd to quit his position due to the complaint from one of the trusties of the *ʿimārah*. Nevertheless, according to, Faqīh ibn Qāsim, Sulaymān appeared to have been innocent and he [by his action] had caused injustice to him (*ḥayf u ẓulm*) and for that reason he asked the current judge to ease his situation.

Compared to the judge, who is almost absent, nameless and voiceless in the thousand of entries I read throughout this study, the other functionaries of the court such as deputy judges (*nāʾib al-sharʿ),* summons officers (*muḥḍir*) and scribes (*kātib al-ḥurūf* or *muḥarrir al-ḥurūf)* are more visible in the text: that is to say, they were not solely identified with their titles. For instance, the entry above on the previous judge of Üsküdar provides an opportunity to at least partially identify the other court personnel present at the court once this acknowledgment took place by listing them among case witnesses

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[34] In the famous *Sijill-i ʿUthmānī*, for instance, there is no entry on Mawlānā Faqīhī Efendī. Yet there is an entry on a certain judge named Hāshim Chalabī from Üsküdar who at the same time was known as *faqīhzādah* (literally the son of Faqīh). Apparently, Hāshim Chalabī died in 1008 AH (1599-1600 CE). Considering his death, it seems unlikely that this Hāshim Chalabī is the Faqīhī Efendī who served the judge of Üsküdar starting from 956 AH/1549 CE. Nevertheless, considering his identification *faqīhzādah*, most likely he came from the same family. See *Sijill-i ʿUthmānī*, II, 651.

[35] These two entries can be seen in USS 15/62a/5 and USS 15/134b/5.

[36] USS 15/62a/5.

[37] USS 15/134b/5.

(*shuhūd al-ḥāl*). Thus from this list of case witnesses, we learn, for instance, that during the time of this acknowledgment, Bashīr Faqīh ibn Ḥusām was a scribe and ʿAbd Allāh Khalīfah ibn Eyice was a deputy judge. Indeed, considering the names inscribed among the rank of witnesses, it appears that neither was Bashīr Faqīh ibn Ḥusām the only scribe, nor was ʿAbd Allāh Khalīfah ibn Eyice the only deputy judge serving in Üsküdar during the four-year period covered in USS 15. It seems that there was more than one scribe and a deputy judge serving at the court simultaneously, and certainly a larger number of other officials such as court summons officers.[38]

Despite the fact that it is almost impossible to get any idea of the formal training of these court personnel and extent of their roles and functions in the legal process from the court registers, it is possible to provide bits and pieces of information on various roles they assumed in the community as well as other tasks they performed at the court. We know that by the second half of the nineteenth century, as a result of a series of legal reforms, there were substantial shifts in how a court case was recorded. For instance, compared to the earlier centuries, the court entries are not only more detailed, explaining the legal reasoning of the judge and the stance of the parties involved, but each entry also starts with a heading containing the identity of the registrar (*kātib)* and type of the case. This practice had not been in place in earlier centuries. We get bits and pieces of information about the scribes by reading very carefully between the lines. As I mentioned already, we often see them among the case witnesses (*shuhūd al-ḥāl)*. Among the case witnesses they were often registered as *kātib al-ḥurūf* or *muḥarrir al-ḥurūf*, but sometimes their name is also attached to their title. Then it is easy to identify their trajectory at least partially through looking at other transactions that they were involved in. Furthermore, at least one, if not more, of the scribes was bilingual. As mentioned above, the same scribe wrote some cases in Turkish and others in Arabic.[39] As for Bashīr Faqīh ibn Ḥusām, he appears to have served as a court scribe for at

[38] Among the deputy judges, I was able to locate Mawlānā Muṣliḥ al-Dīn, Bashīr Faqīh ibn Ḥusām and ʿĪsá Faqīh. Among the scribes, we see individuals such as ʿAbdī Khalīfah ibn Ece Khalīfah, Meḥmed ibn Sinān, Sulaymān Chalabī ibn Dāwūd, Mawlānā Ghaybī, Bashīr Faqīh ibn Ḥusām and ʿĪsá Faqīh. Among the court summoners, we see Ramaḍān ibn Ḥusayn and Muṣṭafá ibn Meḥmed.

[39] Examples can be seen 36a, 40b and 42a. For instance, in 36a, there are six entries written on this page. Five of them are in Arabic, and one is in Turkish. The entries were made by the same scribe.

least ten years, if not more.[40] Starting from 1550, we see him serving at the court as a deputy judge.[41] Yet another function that he assumed at the court pertained to bearing witness, an issue that I want to dwell upon next.

Any student who works with the court records can observe from the very start that every case in a court register contains, at its very end, the names of the *shuhūd al-ḥāl* (case witnesses) often three or four in number.[42] Different cases had different witnesses, even though some individuals performed this role quite often; these included, for example, Bashīr Faqīh ibn Ḥusām, whom I mentioned above, and İnehan ibn ʿUthmān, trustee of various *waqf*s in Üsküdar and active user of the court relating to various credit and property transactions. Case witnesses ranged across the social population of the city from local representatives of the imperial state to the established and

[40] He appears to be a court scribe as early as 946 AH/1539 CE, if not earlier. See, for instance, USS 11/48/1 and USS 11/50/11.

[41] USS 15/59b/1; USS 15/73b/2; USS 15/78b/5; USS15/131a/5.

[42] It should be underlined that there were two levels at which witnesses served at Ottoman court of law: "circumstantial witnesses" (*ʿudūl-i muslimīn*) and "case witnesses" (*shuhūd al-ḥāl*). While the former were identified in the main body of the record and the latter were consistently inscribed underneath the record. Circumstantial witnesses bore witness to happenings or facts pertaining to a case and spoke often in support of a given litigant, verifying his/her testimonial. Case witnesses, on the other hand, testified to the soundness of the proceedings as a whole. Hülya Canbakal, for instance, demonstrates that in the seventeenth-century Aintab people bearing honorific titles, the distinguishing sign of Ottoman elites, were prevailed in the pool of "righteous men," from which a large majority of the circumstantial and instrumental (or case) witnesses were actually recruited. Hülya Canbakal, *Society and Politics in an Ottoman Town: ʿAyntab in the 17th Century* (Leiden & New York: Brill Academic Publications, 2006), 130-141, https://doi.org/10.1163/ej.9789004154568.i-216. Further on the socio-economic status of witnesses and their role in legal process, see, for example, Ergene, *Local Court*, 27-29; Coşgel and Ergene, *Economics of Ottoman Justice*, 70-79, 141-142; Ronald Jennings, "Limitations of the Judicial Powers of the Kadi in 17th Century Ottoman Kayseri," *Studia Islamica* 49 (1979), 151-184, https://doi.org/10.2307/1595562; Peirce, *Morality Tales*, 97-98; Natalia Królikowska-Jedlińska, *Law and Division of Power in the Crimean Khanate (1532-1774): With Special Reference to the Reign of Murad Giray* (1678-1683) (Leiden & Boston: Brill, 2018), 142-145, https://doi.org/10.1163/9789004384323_006.

respected personalities of the community with no personal connection to the case, to parties with a personal connection to one of the litigants, including, but not limited to, parents, other relatives and neighbors. Also, as we saw in the case of Bashīr ibn Ḥusām, there are hundreds of instances in which officials of the court themselves were drafted as witnesses.

In general terms, despite the fact that case witnesses were usually drafted from the higher social classes – some of them being well-known jurists, locally appointed state officials or members of locally well-established families – other witnesses who accompanied the litigants clearly represented the entire spectrum of social classes in the larger community, even those who were positioned in the lower strata, including Gypsies.[43] As Hallaq notes, "As an aggregate act, their attestation at the end of each record summing up the case amounted not only to a communal approval of, and a check on, court proceedings in each and every case dispensed by the court, but also to a depository of communal memory that guaranteed present and future public access to the history of the case."[44]

IV. The Business of the Court (1547-1551)

Analysis of the court records in terms of what I call "form" (types of the documents) demonstrates a multifunctional role of the sharīʿah court in the Ottoman context. Categorization of the entries in terms of their form is related to the fact that not all the entries were written in the same way using the same legal categories and formulae; nor did they serve the same purpose or were all produced by the same institution. My analysis of what I term "form" includes administrative documents sent from the imperial court (such as *farmān* or *barāh*) to the sharīʿah court or from the sharīʿah court to the imperial court (such as *ʿarḍ*), price lists (*narkh*), estate inventories (*tarakah*s), legal opinions (*fatwá*s), registration documents that indicate withdrawal from litigation through peaceful settlement (*ṣulḥ*), as well as many records in the form of notarial attestations and law suits (See Table 1

[43] Faika Çelik, "'Community in Motion': Gypsies in Ottoman Imperial State Policy, Public Morality and at the Sharia Court of Üsküdar (1530s-1585s)," (PhD diss., Montreal: McGill University, 2014).

[44] Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 170, https://doi.org/10.1017/CBO9780511815300.

below). The category of "notarial attestations"[45] includes registration of purchase or sale of real estate and moveable property, the endowment of properties, acknowledgments of debts and repayments, renouncement of claims to certain properties, business partnerships, guild arrangements, manumissions, registration of fugitive slaves and animals, bonds of surety, marriage contracts, terms of divorce and child support, inheritance divisions, transfer of tax farms and offices. Similarly, a verbal or physical assault would at times wind up in the court register without this event bringing about any claim, suit or punishment prescribed by the judge. The victims would simply stipulate that the assault be recorded and recognized by the court, and an attested copy of the entry be handed to him for possible use in the future. The category of "lawsuits,"[46] on the other hand, includes all sorts of complaints and disputes brought to the court to be resolved and settled. Once the entries found in USS 15, both Arabic and Turkish, are analyzed in terms of their form, the following table emerges:

Tabloe1: Categorization of Entries in terms of "FORM" based upon USS 15

FORM	**Number**	**Percentage (%)**
Administrative	48	2.17
Estates	38	1.72
Fatwá	1	0.05
Lawsuits	403	18.22
Other (Damaged/Unclassified)	3	0.14
Price Lists	7	0.32
Registration	1.658	74.95
Waqf Deeds	5	0.23
Withdrawal from Litigation	49	2.22
TOTAL	**2.212**	**100**

[45] In the register, notarial attestations are recorded through the use of certain formulas. The most common formulas used at the beginning of each case are: "[X person] with his own will confessed and admitted that..." (*biʿṭ-ṭavʿ ve rıżā iḳrār ve iʿtirāf idüp didi ki ...*) or just simply "[X person] at the court of Sharīʿah admitted that ..." (*meclis-i şerʿde iḳrār idüp …*). The cases often close with one of the following formulas: "At the request of [X person], this is registered" (*ṭalebi ile tescīl olundı*); "At X's request, this is registered" (*ṭalebi ile ḳayd-ı sicil olundı*); "with X's request, it is recorded in the register" (*biʿṭ-ṭaleb ḳayd-ı defter olundı*).

[46] The most common formulas for the law suits are: "X person filed a complaint -- against Y-- to demand his right" (*ḥaḳḳım ṭaleb ederum deyu daʿvá ettikde*); "X person filed a complaint and stated that…" (*taḳrīr-i daʿvá ḳılup dedi kim…*) and "X person filed a complaint against them …" (*üzerlerine taḳrīr-i daʿvá ḳılup*).

What emerges from this table is that the court's notarial and administrative duties overrode its role in settling litigations. This finding is, in fact, not surprising. As many scholars have already underlined, and as stated by one of the prolific writers on Islamic legal history, Wael Hallaq, "the role of the court as a judicial registry was as important as, if not more important than, that of conflict manager."[47] For instance, in a survey of mid-eighteenth-century court business in Aleppo, Abraham Marcus demonstrates that no more than 14 percent of all cases were lawsuits, whereas the rest were mostly notarial attestations.[48] It should be underlined, however, that representing the Ottoman sharīʿah court as being primarily a "public registry" ignores the findings of recent literature pertaining to the various functions of the court in other times and places. For instance, one of the main findings of Ergene in his work on the courts of Çankırı and Kastamonu in the eighteenth century is that "Whereas notarial and administrative services occupied nearly all the time of the former, judicial services constituted the greater part of the latter's operations."[49] That is to say, the "administrative and notarial activities of the court of Çankırı overshadowed its judicial operations."[50]

Like the mid-eighteenth century court of Aleppo and the eighteenth century court of Çankırı, the sixteenth-century court of Üsküdar from 1547 to 1551 primarily functioned as a "public registry." Why were the sharīʿah courts not primarily used to resolve disputes compared to industrial societies in which the great majority of conflict resolution is carried out by the state court of law or settlement process controlled by state law? We now know that one of the significant reasons behind this is the existence of informal conflict resolution sites in Muslim societies. The extended family, the clan, religious communities, neighborhoods and the guilds all provided extensive social networks for informal conflict resolution. More often than not, the courts were considered to be the last resort to settle a conflict and mediation constituted a preferred mode of settling disputes.[51]

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47 Hallaq, *Sharīʿa: Theory, Practice, Transformations*, 35.

48 Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), 130.

49 Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire,* 32.

50 *Ibid*.

51 For the reasons behind this, see Hallaq, *Sharīʿa: Theory, Practice, Transformations*, 163.

Recent scholarship demonstrates that court fees were another reason to push possibility of conflict resolution outside the courtroom, especially for those who came from the poorer segments of society. We have very limited scholarship on the costs of accessing court services in different time periods of the Ottoman era, due to the fact that the court records themselves do not easily yield up such information. Boğaç Ergene, for instance, by closely reading the fees charged by the courts of eighteenth-century Kastomonu and Çankırı for dividing the estates of the deceased among their heirs, demonstrates that "division of estates by the court was more costly for the poorer parties than the richer ones."[52] On the basis of his findings, Ergene suggests that "if this kind of discrimination is generalizable to other court services, it would be rather naive on our part to expect to find that the poorer segments of the community utilized the courts regularly or as frequently as the richer parties employed them."[53]

Besides recording various transactions and settling disputes, the court also functioned as a site of mediation and communication between the "center" and the "province." This is shown, for example, by the fact that the court registers, including USS 15, often include documents that were not originally composed at the local court, but were dispatched from the imperial government or the provincial governor for fiscal, military, and administrative reasons. Once received, the court personnel recorded these orders for notarial purposes and transmitted them to the public or relevant parties. At times, the court also composed documents either as a response to these orders coming from the higher authorities or asking for the imperial government's guidance or approval regarding certain problems in the local context. These, what I call "administrative documents," which include imperial edicts, copies of warrants (*barāh*) and documents composed at the court to be sent to the higher authorities (*ʿarḍ*), are related to the mobilization and provisioning of troops, the collection of various (regular and irregular) taxes and, at times, directions about how these taxes were to be spent. Furthermore, there are also edicts that were sent as a response to an individual's petition to the imperial court. Entries of this nature constitute 2 percent

[52] Ergene, "Costs of Court Usage in Seventeenth- and Eighteenth-Century Ottoman Anatolia: Court Fees as Recorded in Estate Inventories," *Journal of the Economic and Social History of the Orient* 45, no. 1 (2002), 39, https://doi.org/10.1163/156852002320123046.

[53] Ibid.

of USS 15's total content. This number seems to be low compared to other places and times. This might be because of the propinquity of the court to the seat of the imperial center of power and the ease of communication between the court personnel and their nearby higher authorities.[54]

V. Analysis of Entries in terms of "Content"

While analysis of the entries in terms of "form" demonstrates multi-functionality of the sharīʿah court in a given context, it falls short of disclosing varieties of socio-economic concerns brought to the court either for notarial attestation or for conflict resolution. That is why I categorized the entries in terms of their content. Thus, the category "content" includes varieties of socio-economic concerns and transactions concerning everyday life in the community and brought to the court either for registration or legal settlement.

Table 2: Categorization of Entries in terms of "Content" based upon USS 15

CONTENT	Numbers	Percentage (%)
Estates and Claims on Estates	143	6.46
Fugitive Slaves and Stray Animals	151	6.83
Loans (Credit Transactions)	210	9.49
Market Control and Infringements	75	3.39
Marriage, Divorce or any related claims	47	2.12
Officials (Administrative Documents drafted at the court or sent by the imperial state)	38	1.72
Pious Foundations – Other	244	11.03
Pious Foundations – Loans	523	23.64
Property Transfers, Rent and Related Claims	299	13.52

[54] For instance, in her work on *ṣulḥ* (amicable agreement) cases that are registered in the records of two Ottoman courts – one in Üsküdar, the other in Adana – in the second half of the 18th century, Işık Tamdoğan makes the following observation: "The Adana registers include a relatively small number of cases of various legal types. Numerous administrative appointments and similar issues reflect the variety of non-legal functions performed by the court of a relatively remote province. The Üsküdar registers, by contrast, contain a large number of court cases of the same legal nature and only a few documents pertaining to administrative issues." Tamdoğan, "*Sulh* and the 18th Century Ottoman Courts of Üsküdar and Adana," *Islamic Law and Society* 15 (2008), 60, https://doi.org/10.1163/156851908X287307.

CONTENT	Numbers	Percentage (%)
Proxy and Guardianship	29	1.31
Slaves	38	1.72
Surety	163	7.37
Tax-farming	48	2.17
Transgressions (Assault, Murder, Adultery, Cursing, Trespass, Theft, … etc.)	188	8.5
Damaged, Incomplete, Unclassified within this list	16	0.73
TOTAL	**2.212**	**100**

Before providing a very brief reading of this table, two cautions are in order. Firstly, the categories drawn in the above table should not be read as being rigid and inflexible. There are various entries that could be listed under more than one category. For instance, consider the following entry:

> The reason of writing this registration is the following:
>
> Ḥājj ibn Yūsuf and his mother named Sultan from the village of İstavros asked Rayḥān the black slave of Aḥmad Sipahi from the above-mentioned village to come to the honorable sharīʿah court. [The mother Sultan, initiated litigation against him claiming that] "this above-mentioned black [slave] took my six year old son named Khiḍr as well as other little boys (*oğlancıklar*) named Ḥasan, Ḥusayn, and Muṣṭafá and put them in a carriage and brought them to the field. Then [apparently] he sent the other boys away and he performed an abominable act upon him (*fiʿl-i qabīḥ*). [After that] drenched in blood under his belly, my son [was found] hysterical (*belinden aşağısına kan revan olup akıl gitmiş*). Now I demand that this [situation] be examined." Upon inquiry the above-mentioned black acknowledged of his own will and without any pressure that "I put Khiḍr, Ḥasan, Ḥusayn, and Muṣṭafá into a carriage and took them to a field. After sending the other boys away, I was overwhelmed by my base self (*nafs*) and I committed an abominable act." This acknowledgment of the said person is registered in the month of Jumādá l-ūlá [Cemaziyelevvel] in the year 957 AH [May/June 1550 CE]
>
> Witnesses: ….[55]

[55] USS 15/62a/1.

I put this litigation case pertaining to rape committed against the six-year-old boy Khiḍr under the category of "Transgressions." Nevertheless, this case is also very much related to slavery, because the act was committed by Aḥmad's black slave, Rayḥān. Therefore, due to the overlapping nature of the contents of some of the entries, these frequencies should be read as approximates. Secondly, a detailed analysis of each of these categories is beyond the scope of this research. What I can provide here is an attempt at a delineation of what socio-economic and moral concerns made people resort to the court, hence offering insight into the role of the court in the local setting. Entries under each category could be approached both as a text and a document thus providing us with details not only of the development of the court's recording practices and legal lexicon, but also of the socio-economic resources of various communities and their interrelations. Furthermore, some of these entries provide a hallmark of negotiations and survival tactics once the issue at stake is an individual's honor.

What emerges from this table is that among the 2.212 entries registered in USS 15 covering the period from 1547-1551, 767 are related to administration of various *waqf*s' moveable and immoveable property. This number makes up almost 35 percent of the court's business within this period.[56] These documents disclose that *waqf*s supplied funds to support mosques, educational institutions, public baths, soup kitchens, and hospitals. Furthermore, they supplied funds to build urban infrastructure such as buildings, bridges, roads, and fountains. These *waqf*s largely drew their funds from the endowed commercial and agricultural property, such as shops, workshops, farms, orchards, watermills, bazaars or caravanserais, usually built nearby.[57] It is also essential to underline that many of the better-

[56] It should be underlined once again that USS 15 does not cover all the transactions registered in the court within this period. Nevertheless, it does include most of them.

[57] For instance, Nurbanu Sultan endowed the followings for her mosque complex in Üsküdar: In the surrounding district of the complex (Yeni Mahalle), a *han* with 22 rooms, 14 shops, a double public bath, 16 shops facing that public bath, a small house along with three shops, a house to be used as the *şemhāne* to produce candles, 17 shops each with a room and a backyard, a caravanserai, a slaughterhouse, six houses to be used as tanneries and rooms to be rented out to families. Besides these properties endowed in Üsküdar, Nurbanu Sultan also endowed a large number of immoveable properties such as shops and public baths

endowed *waqf*s used some of their revenue to generate capital, and in the process they functioned as financial institutions. Their role as main creditors to the inhabitants of Üsküdar is so pervasive that the loan transactions of, for instance, the well-endowed *waqf* of Salmān Agha[58] and Ibrāhīm Agha[59] can be seen in every court register in sixteenth-century Üsküdar. As a matter of fact, some of the registers were exclusively allocated to the registration of credit transactions of these two very powerful *waqf*s.[60]

Besides these waqfs, which were constituted through the endowment of immovable property, there were also "cash *waqf*s" that were institutionalized through the endowing of a sum of money, the principal of which would be lent out to creditors. The interest paid on the loans would go to support all sorts of social and pious causes.[61] In

in Istanbul. Furthermore, other properties in and outside Istanbul include farms, fields, vineyards, pastures and bread ovens. The *jizyah* tax collected from the non-Muslim inhabitants of Yeni Mahalle would also be transferred to the *waqf*. The *waqf* also owned and accumulated income from over 10.000 sheep annually. The milk and the wool of these sheep were endowed. Arcak, "Üsküdar as the Site for the Mosque Complexes of Royal Women in the Sixteenth Century," 47-57.

58 Selman Agha Zaviyesi was completed in 1506. It was located in the center of Üsküdar. An analysis on the transactions of the *zāwiyah* and its immoveable properties during the reign of Sultan Sulaymān can be seen in Tahsin Özcan, *Osmanlı Para Vakıfları: Kanuni Dönemi Üsküdar Örnegi* (Ankara: TTK Basımevi, 2003), 187-194.

59 The completion date of this *zāwiyah* is not known. What we do know, however, is that İbrahim Agha, who was one of the chief officials of Sultan Bāyazīd II, he endowed one caravanserai, 14 shops and one house for this *zāwiyah*. Özcan, *Osmanlı Para Vakıfları*, 165-186.

60 USS 21 and USS 28.

61 Whether the "cash *waqf*s" should be permitted or not created great controversy in the sixteenth century among some jurists and exploring this discourse is beyond the purpose of this study. Most Arab jurists saw this as allowing usury and rejected it as un-Islamic. Ottoman jurists in Istanbul, however, saw nothing wrong with the practice as long as the interest did not exceed 10 percent a year and the recipients of the charity were truly needy. For more on this, see 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, https://doi.org/10.1017/S0020743800000118; Murat Çizakça, *A Comparative Evolution of Business Partnerships: the Islamic World and Europe, with specific reference to the Ottoman Archives* (Leiden: Brill, 1996).

his well-documented work on "cash *waqf*s" in Üsküdar during the reign of Sultan Sulaymān (r. 1522-1566), Tahsin Özcan finds 150 "cash *waqf*s" functioning in Üsküdar during that time.[62] All in all, among various social and pious causes, these *waqf*s also provided significant amounts of credit to Üsküdar inhabitants from all walks of life. In USS 15, the waqfs' share in providing credit makes up almost 24 percent of the total entries – much higher than individuals in giving and taking loans among themselves – which accounts for almost 10 percent of the entries (See the Table 2 – Credit Transactions).

To state the obvious, notarial attestations and settlements of disputes pertaining to credit, either given by the major *waqf*s or by individuals, constitutes the main reason why inhabitants of Üsküdar frequented the court. As was the case noticed by Seng, in the early 1520s, so was the case in the 1550s: "The community of Üsküdar was linked by an underlying web of credit transactions."[63] Muslim and non-Muslim, male and female residents, poor and prosperous, ruling and subject classes entered into mutual credit transactions. Substantial numbers of loans were given as *qarẓ-i ḥasan* with the holding of collateral as security.

The register also contains disputes, claims, and registrations of the transfer of property. Of the 2.212 entries registered, 299 (almost 14 percent of the total) are related to moveable and immoveable property transfers among the inhabitants of Üsküdar. This number does not include any dealings with the *waqf* properties. For instance, there are various instances in which the immovable properties of the significant *waqf*s, such as shops, rooms, mills, and lands, were rented out or sold (in rare instances) to the inhabitants of Üsküdar. Nevertheless, I included these transactions on waqf property under the "Pious Foundations – Other" heading, which includes everything except the loan transactions related to the *waqf*s (See Table II above – Pious Foundations – Other).[64] All in all, credit transactions and property transfers among the inhabitants and visitors of Üsküdar (excluding the functions of *waqf*s in these two spheres) constitute the main reason for

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62 Özcan, *Osmanli Para Vakıfları*.

63 Seng, "The Üsküdar Estates (*Tereke*) as Records of Everyday Life in an Ottoman Town, 1521–1524," 295.

64 This category in fact includes anything on the repair of the *waqf* buildings, administration of the *waqf* personnel, as well as the management of *waqf*s' immoveable property. This category itself makes almost 11 percent of the entries.

their frequenting the court. Of the 2.212 entries, 509 are related to credit transactions and property transfers either in the form of notarial attestations or lawsuits. As argued by Seng, credit transactions and property transfers provided a nexus that made various social groups and communities communicate at the local level.

The court also registered and at times settled any claims regarding "family law." Marriage contracts and divorce settlements found their way into the court register, although fewer people in mid-sixteenth-century Üsküdar seem to have used the court as a legal resource for this purpose. There are only 47 entries regarding this out of a total of 2.212. Furthermore, registrations of the estates of the deceased as well as settlement of any claims regarding these estates constituted yet another chore for the court. Compared to marriage acts and divorce settlements, people seem to have sought the legal guidance of the court somewhat more frequently when faced with issues of inheritance.

Registration and litigations regarding fugitive slaves (*ʿabd-i ābiq*) seem to constitute yet another significant chore of the court of Üsküdar in the sixteenth century. For instance, Ekrem Tak demonstrates that from 1513 to 1516, 122 slaves were captured within the legal boundaries of Üsküdar. Nevertheless his research does not provide us a context within which we could position these numbers and hence make certain interferences about their percentage compared to the total cases registered in the court.[65] Similarly, on the basis of data found in USS 15, we could suggest that the ruling authorities in Üsküdar captured 131 fugitive slaves and 21 stray animals within the vicinities of the town. However, as I underlined in the beginning of this study, the total number of entries do not represent all the issues brought to the court within the four years that USS 15 covers. Therefore, it falls short of giving precise figures regarding the extent to which registrations and litigations concerning fugitive slaves constitute the workload of the court. However, as Table 2 demonstrates dealings on fugitive slaves constitute almost 7 % of the registered activities of the court emerged from USS 15. Nevertheless, what emerges from the existing scholarship is that the number of fugitive slaves that was brought to the court would fluctuate, being very high during certain

[65] Ekrem Tak, "XVI. Yüzyılın İlk Yarısında Üsküdar'da Sosyal ve İktisadi Hayatın Göstergeleri," 4.

years yet extremely low in others.[66] There could be many reasons behind this fluctuation and hence further research, I would suggest, is needed to propose diachronically and synchronically contextualized answers, an issue beyond the limits of the present study.

Finally, a word or two needs to be said on the category of "transgressions" which included 188 entries that might be somewhat anachronistically categorized under the rubric of "criminal law." These entries contain various litigations and registrations regarding murder, assault, theft, drinking alcohol, adultery, public cursing, and trespass. While some of these cases were brought to the court by the town's police (*subaşı*), the others were brought to the attention of the authorities either by neighborhood representatives or private individuals themselves. The incompleteness of the court records for serial analysis of criminal activities in a given context has already been noted by several scholars. Nevertheless, the *registered* cases that I categorize under the rubric of "transgression" offer us a wealth of information on the world of crime and how criminal justice was administrated in a growing city with a transient population.[67]

Conclusions

Like other local courts in the Ottoman Empire, the court that has been the object of our study constituted just one of the legal sites that people resorted to for settling disputes. As Leslie Peirce notes "The existence of other, perhaps cheaper, venues for dispute resolution and other authorities to whom one might appeal for decisions or for legal

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66 For a comparison, see for instance *ibid*.; Yıldız, "Üsküdar'ın Sosyal ve İktisâdî Hayatı ile İlgili Üsküdar Kadı Sicillerindeki Kayıtların Tespit ve Analizi," 54-60.

67 On the literature on crime and administration of criminal justice in the Ottoman context, see for instance, Eyal Ginio, "The Administration of Criminal Justice in Ottoman Selanik (Salonica) during the Eigteenth Century," *Turcica* 31 (1999), 185-209, https://doi.org/10.2143/TURC.30.0.2004297; see Tamdoğan, "Atı Alan Üsküdar'ı Geçti," in *Osmanlı İmparatorluğu'nda Asayiş, Suç ve Ceza,* ed. N. Lévy and A. Toumarkine (Istanbul: Tarih Vakfı Yurt Yayınları, 2007), 80-95 ; Suraiya Faroqhi, *Coping with the State: Political Conflict and Crime in the Ottoman Empire, 1550-1720* (Istanbul: Isis Press, 1995), 145-161; Fariba Zarinebaf, *Crime and Punishment in Istanbul 1700-1800* (Berkeley, CA: University of California Press, 2010), https://doi.org/10.1525/9780520947566; Marinos Sariyannis, ""Neglected Trades": Glimpses into the 17th Century Istanbul Underworld," *Turcica* 38 (2006), 155-179, https://doi.org/10.2143/TURC.38.0.2021272.

guidance in problematic moments meant that a good deal of the legal life of the province took place outside the court."[68] Therefore, our analysis of the functions of the Islamic courts in the Ottoman Empire reflects solely the *registered* portion of judicial life. For a complete picture, we have to move beyond the court and consider exploring alternative sites and strategies for dispute resolution.

This study, when juxtaposed with the existing literature in the field, demonstrates that the operations of Ottoman Sharīʿah courts differed from each other in a number of significant ways including but not limited to the balance between registration and litigation, the record-keeping practices and the breakdown of particular types of cases dealt with by the courts. We can observe these differences across space by comparing court records from different parts of the Ottoman Empire, and also across time by comparing the registers of the same court compiled during different time periods. In this regard, what emerges in this study is that Üsküdar's court in the very middle of the sixteenth century primarily functioned as a "public registry." Nevertheless, whether its function shifted from being *primarily* a "public registry" to a legal arena largely engaged in dispute resolution in the years to follow is a pertinent question that needs further research. Therefore, through its detailed examination of data recorded in one register covering the period from 1547 to 1551, the present study lays the groundwork for future comparative analysis of this kind.

The present study also explored the reasons behind the use of Arabic in recording some of the cases in the register. In the available scholarship there is a tendency to assume that in the Turkish-speaking parts of the Empire and in the Balkans, court records were kept almost exclusively in Turkish. Nevertheless, a cursory reading of the sixteenth-century Üsküdar court records suggests that we have some registers completely recorded in Arabic, while in some other registers – as in the case of USS 15 – Arabic was extensively used. I argue that a plausible answer to this usage of the Arabic language in some cases might be found in the genealogy of what I call the gradual "Ottomanization" of legal discourse.

DISCLOSURE STATEMENT

No potential conflict of interest was reported by the author.

[68] Peirce, *Morality Tales*, 91-92.

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