

## Securing Soil, Building Harmony: A Review of Malissa Taylor's *Land and Legal Texts in the Early Modern Ottoman Empire*

### Toprağı Korumak, Uyumu İnşa Etmek: Malissa Taylor'ın *Land and Legal Texts in the Early Modern Ottoman Empire* Kitabının İncelemesi

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Fatih Doğan<sup>1</sup> 



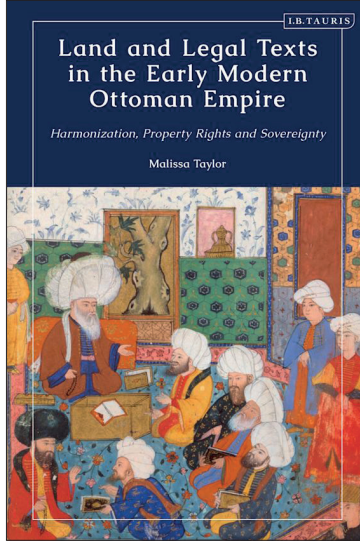
<sup>1</sup> Corresponding author/Sorumlu yazar:

Fatih Doğan (PhD Student),  
Sabancı University, Faculty of Arts and Social  
Sciences, İstanbul, Türkiye  
E-mail: fatihdoganm@gmail.com  
ORCID: 0000-0002-7332-3789

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Scholarship on Ottoman law has expanded significantly over the past decade, yet our understanding of property rights in relation to land, a crucial issue for a vast agricultural empire, has remained largely rudimentary. In *Land and Legal Texts in the Early Modern Ottoman Empire*, Malissa Taylor seeks to change that by tracing the evolution of property rights in the Ottoman Empire from the sixteenth to the nineteenth century. Challenging the idea that the *kanunnames* of Süleyman I (r. 1520–66) represented the pinnacle of the classical Ottoman land regime, Taylor argues that they instead marked the beginning of a new one. On her reading, property rights in the mid-sixteenth century were defined by the Ottoman state's twin desires to establish firmer control over land and to secure lands for peasants. The state owned the land but granted peasant-cultivators the right to possess (*tasarruf*) it "on loan or through rent from the treasury" (p. 19). The result was a "bundle of rights" connecting peasants to their land. So long as they actively cultivated their land, peasants enjoyed rights to lifelong tenure, to transfer the land to their children, and to engage in a range of transactions in relation to it (p. 21). Over the seventeenth and eighteenth centuries, these rights gradually "trickled up" to the military elite, culminating in the 1858 Land Code, which extended the rights peasants had enjoyed for centuries to all Ottoman subjects (p. 111).

At the heart of this gradual extension of land rights was a process Taylor dubs "harmonization," as Ottoman jurists, chief among them the *şeyhülislam* (chief mufti) Ebussuud (d. 1574), worked to reconcile the property rights accorded by sharia with the demands of the state and sultanic law. Where earlier Hanafi jurisprudence had held conquered land to be freehold property (*milk*), Ebussuud argued that upon conquest, all such lands immediately became the property of the imperial treasury (*miri* land). This radical shift in Hanafi doctrine greatly expanded the sultan's authority over land and the revenues derived from it. While peasants continued to enjoy the right to cultivate their lands, bequeath them to their heirs, and use them in various transactions, Ebussuud viewed these rights as deriving fundamentally from the will of the sultan, another break from established opinion in the Hanafi school, which had traditionally considered these rights as originating from a person's cultivation and continuous use of the land (p. 40).

Taylor traces the process of land rights trickling up to urban investors and military elites to the seventeenth century, when a combination of socioeconomic factors, the destruction of endowments by fires and earthquakes, and the treasury's need for cash led the state to lease out tracts of land to those outside the peasantry under lifelong contracts (*icareteyn*, *malikane*, and *gedik*). In return for a large up-front "rent" (*muaccele*) and fixed monthly or yearly payments (*müeccele*), urban investors and military elites secured a package of land rights very similar to that of "the peasants' bundle" (p. 13), including lifetime rights to use the land, bequeath it to one's sons, and enter into transactions with it.

After detailing how this process unfolded in the seventeenth and eighteenth centuries in the first two chapters, Taylor devotes the next three chapters to its theoretical underpinnings and spread. Citing examples from across the empire, from Istanbul and the Balkans to eastern

Anatolia, Egypt, Syria, and Jerusalem, she identifies two approaches that muftis adopted in answering questions related to *miri* land as defined by Ebussuud: autonomist and analogist. The former embraced “the sultan’s orders, registers and officials as the *only* source of law on *miri* land” (emphasis in the original), whereas the latter considered both *fiqh* and the sultan’s orders as the source of law, drawing analogies with existing rules of *fiqh*, especially concerning *waqf*, and often interpreting *miri* land transactions and attendant rights on that basis (p. 50). For Taylor, these two approaches are not exclusive: the same mufti could employ both, depending on the context. In the eighteenth century, for example, both provincial muftis and *şeyhülislams* were more autonomist in matters concerning interventions in tenants’ erection of buildings or planting of trees on their lands (p. 93), whereas the analogist approach prevailed in land transactions (p. 98).

In Chapter 3, Taylor discusses seventeenth-century jurists’ perspectives on one of the most significant texts of Ottoman land law, the *Kanun-ı Cedid*. A compilation of earlier *kanuns* and fatwas related to land law, the *Kanun-ı Cedid* was an autonomist text. It included fatwas confirming the sultan’s orders concerning *miri* land from the provincial mufti Üskübi (d. 1611) and the *şeyhülislams* Zekeriyazade Yahya Efendi (d. 1644) and Bahai Mehmed Efendi (d. 1654), while excluding the fatwas from those same figures that did not stress the importance of sultanic orders. The *Kanun-ı Cedid* similarly made no mention of the fatwas of contemporary “analogist” *şeyhülislams* such as Sunullah Efendi (d. 1612) and Esad Efendi (d. 1625).

After discussing the *Kanun-ı Cedid*, Taylor moves on in Chapter 4 to contrast it with a very different sort of text, the *Kanunname of Candia*, which was promulgated a few years before *Kanun-ı Cedid* following the conquest of Crete in 1669. Unlike the later text, the *Kanunname of Candia* deviated markedly from the land tenure law that Ebussuud had articulated a century earlier, such as by holding that conquered lands remained the property of the conquered subjects rather than passing to the state treasury, and rejecting as an innovation the imposition of a fee (*tapu*) for the right to cultivate land (p. 76). Taylor describes the *Kanunname of Candia* as a reaction stemming from “resistance to the institutionalization of the *miri* regime in the genre of *kanunname*” (p. 73) on the part of “*selefi*-oriented” figures like Vani Mehmed Efendi (d. 1684) and the Kadızadeli movement. Despite this significant deviation from the course charted by Ebussuud, Taylor maintains that the approach it represented remained restricted to Candia and the Aegean islands. Outside of these areas, the process of harmonizing sultanic and sharia law proceeded apace in jurisprudential texts produced by such figures as Mehmed Sakizi (d. after 1649), Şeyhzade Damad Efendi (d. 1667), and Haskafi (d. 1677) in roughly the same period, all of which enshrined the harmony tradition into the manuals of the Hanafi school, holding, on the basis of both sultanic and sharia law, that “conquered land came to the *beyt al-mal* [*sic*] from the moment of conquest” (p. 72).

Where the seventeenth century saw the production of influential texts from both the autonomous and the analogist sides, the eighteenth century was marked by greater legal

uniformity around the harmony tradition. This is a period Taylor dubs “the age of *mutasarrıfs*,” members of the military elite involved in cultivating land. In Chapter 5, she argues that as the peasants’ bundle of rights trickled up, members of the military elite became increasingly involved in land transactions even as the state retained ultimate control over the land itself. Simultaneously, the harmony tradition spread to scholars in the provinces, and particularly to Syria, thanks to the wide circulation of the *Kanun-ı Cedid* and such texts as Sakızı’s *Surrat al-Fatawa* and Haskafi’s *al-Durra al-Muntaqa*. Written as they were in Arabic, these latter texts, Taylor argues, were particularly important in spreading Ebussuud’s understanding of *miri* land among muftis in Syria in the eighteenth century. Building on them, the Damascene jurists Hamid al-Imadi (d. 1758) and Ali al-Muradi (d. 1771) connected local land practices to Ottoman conceptions of property within the harmony tradition (p. 92), thereby bringing Rumi and Arab scholars much closer together in their legal thought regarding land rights.

The gradual trickling up of land rights and expansion of the harmony tradition culminated in the 1858 Land Code. In Chapter 6, Taylor presents the Land Code as “a singular, homogenized voice” (p. 106) that, after centuries of harmony between sharia and sultanic law, dispensed with sultanic orders and based its tenets solely on sharia and *fiqh* (p. 121). As “an initial foray into codifying Hanafi *fiqh*” (p. 114) about a decade before the *Mecelle* (1868–76), the Land Code took the bundle of rights that had trickled up from peasants to *mutasarrıfs* and extended it to all groups regardless of social class. Rather than different groups with different privileges, the Land Code defined one standard group of tax-paying subjects who enjoyed all the rights of *mutasarrıfs* and peasants (p. 113). And critically, it was a product entirely of internal dynamics rather than external impositions.

Taylor deserves praise for her use of so many Arabic and Turkish jurisprudential and administrative texts—including a wide pool of *fermans*, *kanunnames*, fatwas in Turkish and Arabic, and Hanafi jurisprudential writings—to build a coherent narrative and establish connections to the larger developments within the Ottoman Empire over the course of four centuries. Drawing on these sources, she convincingly connects seventeenth and eighteenth-century developments on land rights to the earlier doctrinal framework of Ebussuud. While this is her most significant contribution, the conceptual tools she develops to make her argument, such as harmonization and the autonomist and analogist perspectives, are also themselves valuable contributions to the existing scholarship, offering readers a fruitful way to reckon with jurists and their views outside the traditional framework of center-periphery relations, to detect multiple attitudes in the same mufti, and to assess how the intensity of different perspectives rose or fell over time.

However, Taylor’s analytical tools do not always operate smoothly. Though the autonomous and analogist perspectives are critical concepts for her book, she first mentions them only at the beginning of Chapter 3 (p. 50), which leaves her reader confused as to whether these concepts derive from Ebussuud’s initiatives and are thus applicable only starting from the seventeenth

century, or whether they are universal categories that apply to earlier periods as well. Similarly, the relationship between the harmony tradition and the analogist and autonomous approaches remains obscure. After explaining these concepts in Chapter 3 and using them to analyze the views of muftis in the first half of the seventeenth century, Taylor seems to abandon them in the next chapter in her discussion of the *Kanunname of Candia* and the texts of Haskafi and others in the mid-seventeenth century, only to return to them again in Chapter 5 before switching to a new Arab-versus-Rumi approach (p. 95), all without offering the reader any explanation.

Furthermore, although the concept of sovereignty is included in the book's title, it is not explored as extensively in the book as property rights and harmonization. Taylor rightly speaks of it within larger Eurasian sovereignty patterns of the sixteenth century (pp. 33–34), and refers to Bodin and Hobbes on rare occasions on this matter (pp. 11–12), yet greater clarity about just what she means by sovereignty in the Ottoman context would have been helpful. Similarly, she establishes no connection between sovereignty and the 1858 Land Code's visible inclination toward *fiqh* and absence of sultanic orders. Greater clarity would also have been welcome on her use of the label "selefi" to describe the Kadızadelis and Vani Mehmed Efendi, as she offers no word on where this concept came from or what it means.

Taylor's command over the sources she examines is impressive, as is her argument regarding property rights from the sixteenth century onward in relation to the state, its deputies, and peasant cultivators. However, in making her argument, she necessarily focuses on some details more than others. In particular, I have in mind her focus on the deputy, often the *sipahi* who presided over a timar (p. 23), as the *sahib-i arz*—literally, the *sahib*, or "master," of the land. Yet in the sixteenth-century *kanunnames* she discusses, including both the *Kanunname-i Cedid* and the *Kanunname of Candia*, the deputy also had another important dimension, as the *sahib-i reaya*—or master of the peasants upon the land. Where the *sahib-i arz* had authority over the land worked by peasant cultivators, as the *sahib-i reaya*, he also had a claim to their labor, one that extended to workers who might leave his lands to cultivate those overseen by another deputy. The result was a system in which peasant land rights were inextricably bound up with the rights and authorities of local deputies. Taylor silently separates the legal status of land from that of labor to tell a story about how land rights developed independently and were gradually universalized. Though the result is compelling, it raises the question of just how it was that rights to peasants' labor were disentangled from the issue of land ownership, to which they had once been so central. That is not Taylor's focus, and perhaps she could be forgiven for addressing it only in passing (pp. 9n31, 19–20), but this omission does leave me wondering how a more expansive treatment of the sixteenth-century system of land tenure and peasant rights would have affected her narrative.

These criticisms aside, Taylor does a praiseworthy job exploring the transformation of Ottoman notions of property in relation to land, putting various voices within the empire into dialogue and convincingly inviting to reconsider the traditional view of the sixteenth century

as the pinnacle of the old order and the nineteenth century as a sharp break from the past. Her research stands out for its deft employment of both Arabic and Turkish fatwas and for the way it presents their relationship with *kanunnames* within a compelling narrative. The book's argument about the evolution of property rights represents a significant contribution to the fields of Ottoman and Islamic legal history, and the insights it offers into relations between the state, elites, and scholars will reward readers of Ottoman political and social history as well.