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The Legal Status of Tenants and Sharecroppers in Seventeenth- and Eighteenth-Century France and Ottoman Syria

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ABSTRACT By the middle of the sixteenth century, the role of the tenant farmer and sharecropper in both Syria and France witnessed important transformations which lent increasing relevance to the social and legal status enjoyed by these cultivators. In various regions of France after the sixteenth century, a rising class of bourgeois landholders increasingly appropriated agricultural lands from both peasant proprietors and nobles, leading to the spread of both sharecropping and leasing contracts. In Ottoman Syria, the appropriation of peasant lands and proliferation of tenancy arrangements was linked to an expanding state which sought to consolidate power and ensure the consistent flow of revenue. Thus, this paper will address how the socio-legal discourse on tenants and sharecroppers differed in a context where arable lands were appropriated by private rather than public forces. Issues that are examined include: perceptions of agricultural innovation; possession rights; and payment of rent and other dues.

While Islamic legal scholars articulated a discourse which sought to incorporate tenants and sharecroppers, French legal and social thinkers of the day championed the rights of the landlord above all else. Unlike their Syrian counterparts, French thinkers linked agricultural development and efficient production to private ownership of land. In Syria, on the other hand, jurists advocated a land tenure system in which the possession rights of cultivators were supported while landlord interests were not jeopardised. Thus, agricultural development in the Syrian case was articulated within a framework which conceded multiple layers of ownership. These ideas would have an important impact on nineteenth-century developments in both regions.

By the middle of the sixteenth century, the role of the tenant farmer and sharecropper in both Syria and France witnessed important transformations which lent increasing relevance to the legal status enjoyed by these cultivators. This paper will examine the rationale behind the socio-legal discourses of the time which defined the role of such individuals, particularly in relation to their landlords. My interest here is not in laying out the legal injunctions put forth by the courts and other legal agencies to regulate the role of tenant farmers and sharecroppers, but rather to understand whether the legal thought of the time sought to limit, represent, transform, accommodate, or defend such

cultivators. Thus, in many ways this is a comparison of intellectual thought in both regions. Nevertheless, it will become apparent that socio-legal treatises in both regions shaped and responded to the political, economic and agricultural circumstances of the time.

From the Ottoman perspective, the 'decline' paradigm[1] which has dominated historical scholarship on the empire until recently, has prevented scholars from constructively comparing developments in the empire after the sixteenth century to certain social, economic, and cultural processes which were evolving in an 'expanding' and 'modernizing' Europe. Ultimately, through a comparison of the legal discourses on tenants and sharecroppers in both regions, this paper will draw attention not only to the landlord/tenant relationship, but also to differing notions of agricultural development, ownership, and efficient production.

There are certain social and economic transformations and conditions in both Ottoman Syria and France during the period under consideration which make the two regions particularly suitable for comparison. To begin with, the rich agricultural terrain of both areas meant that various crops were grown; thus, one finds grain fields, orchards, vineyards and vegetable gardens in both France and Syria. Furthermore, small-holdings continued to prevail in both regions during the early modern period, in spite of increasing trends towards large estate formation.[2]

Secondly, sharecropping and leasing had become more prevalent in both regions after the sixteenth century as peasant proprietors were increasingly uprooted from the land. In various regions of France after the sixteenth century, a rising class of bourgeois landholders increasingly appropriated agricultural lands from both peasant proprietors and nobles. This not only challenged customary forms of land tenure which had existed for centuries, but also led to the spread of both sharecropping and leasing contracts.[3]

While the process of dislocation and transformation in France was driven largely by the dynamics of a rising urban merchant class, and, in some regions, by nobles themselves who increasingly turned towards the ownership of land, at a time of increasing population pressure,[4] the transformation of peasant proprietors into sharecroppers and tenants in the context of Ottoman Syria was the byproduct of an expanding state. In a bid to consolidate power and ensure the consistent flow of revenue to the public treasury, the early Ottoman state initiated measures geared towards bringing arable lands under state control. To begin with, the state, with the support of mainstream Hanafī (the official school of law under the Ottomans) jurists, expanded the state land system whereby tenant cultivators were accorded certain usufruct rights in return for working the land and paying necessary taxes and dues. Secondly, the state, again through the legal establishment, articulated and enforced certain measures designed to regulate the unauthorised use of arable lands, such as cultivation without a contract.

Beginning in the twelfth century and becoming more pronounced after the fifteenth century, the non-contractual use of arable lands came to require the payment of 'fair rent'. Prior to this period, those who made unauthorised use of landed property were only required to cease cultivation on the land and uproot any crops or trees that they had planted. The obligation to pay rent now became a way to ensure that certain arable lands gained profit from such unauthorised exploitation. In a bid to demarcate those properties

which were rent-yielding, jurists during the early Ottoman period began to assign a special legal status to certain properties by referring to them as mu'add 'li-l-istighlāl, or 'property reserved for profitable use'. In the case of arable lands, if the proprietor used the land in order to lease it to others, then the land was considered to be 'property reserved for profitable use'. Such lands or rent-yielding properties included waqf lands (religious endowments), orphan lands, 'private property reserved for profitable use', and state lands. All of these lands came to be protected from unauthorised use. In this hierarchy of lands, state lands and waqf lands were the most privileged, while small peasant holdings, particularly those that relied less on leasing and sharecropping arrangements, were the least privileged.[5] Ultimately, the regulations established by Hanafī jurists to govern the cultivation and use of waqf lands clearly worked in the state's interest by ensuring that the income arising from such properties was properly monitored. This was an issue of concern to the state, particularly given its desire to tax religious endowments efficiently.

Since legal scholars and other intellectual figures from both regions addressed the issue of the desired status of these agricultural producers as well as their legal rights and obligations, it is necessary to ask how did the legal discourse on tenants and sharecroppers differ in a context where arable lands were appropriated by private rather than public forces? Ultimately, the evolution of land tenure relations in both these regions was shaped by such discourses.

This research also fills in certain gaps in the intellectual history of both regions as well as the history of land tenure relations. While the rural history of early modern France has been dealt with quite extensively,[6] there has been limited research on the actual status of tenants/sharecroppers in the socio-legal discourse of the time.[7] Towards the middle of the sixteenth century, a growing interest in agriculture among humanist authors emerged, which ultimately elevated agriculture to an object of scientific study.[8] This was in part due to the urgent problems of declining agricultural production and economic hardship that faced society with the series of wars that plagued Early Modern France.[9] This increasing interest in agricultural issues and techniques was directly related to a concern with ensuring an adequate food supply, which in turn was crucial to the continued growth of the manufacturing sector of the economy.[10] With this growing interest in agriculture, thinkers of the period begin to address the question, which will be examined here, of who should spearhead agricultural progress. While my discussion of French tenants and sharecroppers relies largely on two legal treatises written during the sixteenth and eighteenth centuries respectively, I will also make reference to several social and agricultural treatises from the period which directly address the role of the tenant farmer.

The debate over the proper role of cultivators on agricultural lands in Ottoman Syria was limited to the legal literature of the time, particularly fatāwā (legal opinions) and legal commentaries. While agricultural treatises certainly existed in the Ottoman East during this period,[11] they were a much less popular genre. Furthermore, their focus is limited to the actual crops which grew on the land and the techniques used in cereal and vine/orchard cultivation; there is no discussion of the role that tenants and/or sharecroppers should play (or for that matter did play) on the land. Legal commentaries basically provide one legal scholar's analysis, discussion and sometimes critique of another legal scholar's

work. Thus, in reading commentaries, one is presented with the ideas of two jurists. A fatwa (singular of fatāwā), on the other hand, is a legal opinion issued by a jurist (muftī) on various legal matters including marriage and divorce, property, inheritance, religious rituals, and land tenure. Although not legally binding, such opinions, similar to commentaries, contributed to the doctrinal development of Islamic law. They also offered individuals an alternative to the courts for settling disputes. According to Judith Tucker, it is fair to assume that individuals of various backgrounds, rather than going to court, often approached muftīs to solve legal problems.[12] Many times individuals would also use a fatwa as supporting evidence in court.[13] Muftis themselves could either be officially appointed by the state (the Ottomans appointed muftis for most provinces) or non-official, practising their craft at the behest of the community.

In this study, I will utilise fatwa collections from both officially appointed muftīs and non-official muftīs of the Hanafī school of law. Representing the former is a manuscript collection of fātawā (*Fatawa bani al-'Imadi wa ghayrahum wa hiya fatawa Muhibb al-din al-'Imadi wa 'Imad al-din al-'Imadi*) issued during the seventeenth century by successive official muftis of Damascus, all of whom belonged to the al-'Imadi family. I will also make use of the fatwa collection of Hamid al-'Imadi (official muftī of Damascus from 1724–5), edited and commented on by the Damascene legal scholar Muhammad Amin ibn 'Umar Ibn 'Abidin (1784–1836) in *Al 'Uqud al-durriyah fi tangih al-fatawa al-Hamadiyya* (Ibn 'Abidin was not an officially appointed muftī). On the non-official side, I will utilise the fatwa collections of Khayr al-din al-Ramli (1585-1671), the seventeenth-century muftī of Ramla in Palestine, whose work is entitled *Kitab al-fatawa al-khayriyya li-naf' al-bariyya*. I will make reference to Ibn 'Abidin's legal commentary entitled *Radd al-muhtar al'a al-durr al-mukhtar*. Regardless of their status, these various muftīs played an important role as arbiters in their communities, responding to social and economic realities on the ground. In doing this, they often challenged Ottoman state law itself.

In recent years, scholars have increasingly utilised fatāwā and court records to reconstruct the nature of agrarian relations in different regions of the Ottoman Empire.[14] Although this new wave of scholarship has contributed to our understanding of Islamic law and peasant social and economic life between the sixteenth and the nineteenth century, it has provided little insight into how the Islamic religious establishment perceived the role of peasant cultivators in the context of existing social and economic relations. This is in part due to the nature of the court records themselves, which mainly provide a record of the buying and selling of property, the division of estates, and thus inheritance practices, the formation of business partnerships, and the arrangement of loans between individuals.[15] In the realm of Islamic legal history during the Ottoman period, the studies that have addressed the development of Islamic law as it pertains to land tenure, cultivation practices, and tenant/landlord relations have tended to focus either on the period up to the end of the sixteenth century[16] or on the nineteenth century,[17] largely neglecting the seventeenth and eighteenth centuries.[18] The existing legal literature on peasants furthermore has also tended to emphasise how such cultivators became increasingly disadvantaged after the sixteenth century as they were transformed from proprietors into sharecroppers, without examining sharecropping laws as they developed after this period.[19] This study, therefore, will examine the legal nature of sharecropping in Ottoman

Syria after the sixteenth century, and the extent to which it jeopardised the rights of tenant cultivators.

In order to examine how legal thinkers in both France and Syria defined the status of tenants and sharecroppers, particularly as related to issues of agricultural innovation and efficient production, I will focus on the rights and obligations assigned to such cultivators. Specifically, I will discuss how legal thinkers defined the relationship between landlord and tenant, the usufruct or possession rights of the tenant farmer, the role of the cultivator in farming the land, and the services and payments incumbent upon the tenant and/or sharecropper.

The French case

Landlord and tenant in sixteenth- and seventeenth-century treatises

By the late sixteenth century, as tenancy and sharecropping arrangements were becoming more widespread in France, we begin to see the publication of more treatises related to the status of such cultivators on the lands they worked. In his treatise *Traité des privilèges des Personnes vivans aux champs* (1574), Rene Choppin, a prominent lawyer in the Parlement of Paris in the late sixteenth century, takes up the question of land cultivation from a legal perspective. Originally published in Latin, Choppin's work is one of the earliest treatises dealing with the law as it pertained to peasant cultivators.[20] Relying on a combination of Roman law, customary law, royal ordinances and decisions of the Parliament of Paris, Choppin addresses such issues as the status of peasants, the types of services required of them, various forms of land tenure, inheritance laws pertaining to peasants, and the legal actions to be followed in the case of rural crimes and disputes.

Rather than being written from the sharecropper/tenant's perspective, Choppin's treatise is primarily directed towards both the nobility and the bourgeoisie. His discussion of the role of hired or tenant cultivators on agricultural lands is limited mostly to his chapter 'On Harvesters and the Wages of Rural Workers'. In his brief explanation of the status of rural wage workers, Choppin argues that this class of labourers was not only landless, but generally suffered as a result of low wages. Although he believes that these people should be paid daily rather than after the completion of their work (as the law stipulates), he also maintains that many agricultural labourers of his day are overpaid for the work and services they provide.[21] Although somewhat sympathetic to the difficult situation facing rural wage workers, Choppin is nevertheless critical of the transformations taking place in the economic role of larger scale tenant cultivators (fermiers) and their commercial relationship with the town-dwellers:

> In our times, fermiers, and generally all agricultural laborers, earn [an amount] strictly and rigorously out of proportion to their mediocre work. Indeed, for the temporary services which they provide, they ask for a large amount of money and are paid an entirely excessive amount for their labor.[22]

Interestingly, Choppin is reflecting on the increasing economic and commercial power which fermiers were attaining in this region during the mid to late sixteenth century. According to Jean-Marc Moriceau, by the end of the fifteenth century, these individuals

assumed a new professional title, marchand-laboureur (or merchant-farmer), which marked their particular stature as sellers of grain. With their connection to the expanding commercial market and their access to important seigneurial offices, these marchand-laboureurs came to resemble the urban bourgeoisie rather than the mass of laboureurs.[23] Fearful of the economic and social repercussions of the increasing commercialisation of grain, Choppin, in a bid to prevent hoarding and unregulated speculation, ardently argues for the strict regulation of the grain trade.[24]

Choppin maintains that in the interest of efficient production and profitable yields, proprietors (most of whom belong to the bourgeoisie and nobility) should manage their own landed domains,

> It is much worse when the bourgeois, who buys lands far from [where he lives], ... cedes control [of his lands] to sharecroppers and servants who are corrupt and disobedient to their master: in their corruption, they spend more time than the common laborer contemplating how to steal their master. As the ancients said, what is most fertile in the countryside is the eye of the master.[25]

Thus, Choppin perceives métayers (sharecroppers)[26] or other tenants as potentially dishonest and corrupt, caring little for the proper cultivation of the land. In fact, he specifically elaborates on the strict measures that should be taken in case such cultivators abandon the land: 'If a sharecropper after having worked the vineyard or the land and after having begun his work with his master then abandons the land, he should be condemned ... and pay a just price duly estimated for the loss inflicted on the land or vineyard.'[27]

Although Choppin is in favour of the aristocracy taking a more active role in the management of their rural properties, this was not the common role assumed by Parisian landowners at the time. According to Marc Venard in his study of the area south of Paris in the seventeenth century, landowners in the Parisian countryside were less interested in managing their own agricultural lands than they were in collecting rents from their tenants.[28]

Choppin's negative perception of tenants and sharecroppers is echoed in social and agricultural treatises of the time. Treatises such as Bernard Palissy's *Recépte Veritable* (published 1563), and agricultural manuals such as Charles Estienne and John Liebault's *Maison rustique* (1564, the English translation *The Countrey Farme* was published in 1616) and Olivier de Serres *Le théâtre d'agriculture et mesnage des champs* (1600) advocate a limited role for the tenant, arguing that landowners should assume responsibility for their agricultural domains. In fact, these works were geared towards both the nobility and the urban bourgeoisie, in hopes of encouraging them to engage in innovative agriculture (i.e. creating new tools,[29] being an effective manager of the farm and its labour, and having knowledge of ploughing and livestock[30]). There is a general distrust of tenants expressed by all of these writers. In their description of the role of the fermier, for example, Estienne and Liebault as well as de Serres significantly circumscribe the economic and agricultural activities pursued by these individuals. According to Estienne and Liebault, the fermier must be

> one that will ... rise first, and go to bed last; not haunting markets or fairs at towns ... not admitting of new ways or paths, and ... they may not work abroad ... [he] should not [be] given to play the

merchant for himself, nor to lay out his masters money in Cattell and other merchandise; for such business do turne away and hinder farmers from attending upon the affaires of the house.[31]

Thus, for Estienne and Liebault, a fermier involved in commercial market activity is likely to gain independence and thereby devote less attention to his 'household' duties. De Serres' opposition to the tenant's active role in commercial activity is tied in part to his implicit support for regulation of the grain trade, largely in order to prevent hoarding, particularly during times of economic stress.[32] The wisest path to take, however, according to De Serres is to avoid leasing to fermiers altogether. 'It is the prudent père de famille who thinks twice before committing himself to the mercy of the fermier.'[33]

The treatises of Palissy, De Serres and Estienne and Liebault echo Choppin's overall perception of the tenant/sharecropper as an unviable source of agricultural innovation on the lands he/she tilled. All of these thinkers advocate a more active role for the landowner in the management and cultivation of his lands. The significance of the ideas presented by these thinkers cannot be fully appreciated if one does not consider the intellectual impact which these works had on government and society. According to Beutler, the publication of several translations of *Maison Rustique* in the seventeenth and eighteenth centuries indicates that it had an audience across Early Modern Europe. Furthermore, sixteenth-century death inventories of the Parisian bourgeoisie have shown that many of these individuals possessed the works of Estienne and Liebault and De Serres.[34]

From the late sixteenth through to the end of the seventeenth century, moreover, the Crown itself implemented several of the recommendations put forth by these treatises. Indeed, Henri IV became the patron of Olivier de Serres' treatise, 'making it for a time his after dinner reading and recommending it to everyone he encountered.'[35] Like Choppin, Palissy, Estienne and Liebault, and de Serres, Henri IV believed agriculture to be the basis of wealth of all nations, and thus, along with his minister Maximilien de Sully, sought to promote increased agricultural productivity. Like these early modern thinkers, both Henri IV and Sully were critical of wastefulness and excessive consumption among the bourgeoisie and nobles.[36] Moreover, they were intent on strengthening the nobility. In an ordinance passed in 1601, the Crown lowered interest rates in an attempt to restore the estates of the nobility and encourage trade, manufacturing and investment in agriculture.[37] Finally, both Henri IV and Sully spearheaded the development of several new devices and techniques that facilitated cultivation.[38] During the late seventeenth century, Colbert encouraged agricultural diversification and also initiated techniques, mostly centred on livestock raising, intended to promote agricultural productivity.[39]

The rights and obligations of the lessee

The limited role that French legal and social thought (and even state reform policies) advocated for the fermier was hardly reflective of the actual role that such cultivators assumed during this period, particularly in the regions around Paris. Clearly, most proprietors did not follow the recommendation put forth by Palissy, Estienne and Liebault and De Serres to exploit their land directly.

The increasing prevalence of such cultivators and farm leases in general is perhaps best attested to by Robert Joseph Pothier's (1699–1772) *Treatise on the Contract of Letting and*

Hiring.[40] The treatise itself elaborates on the legal rights and obligations that bind lessors and lessees in leases of various kinds, referring predominantly to the Customs of Orleans, but making consistent reference to the Customs of Paris. Most of the legal cases, treatises, and ordinances referred to by Pothier date from the end of the sixteenth century until the beginning of the eighteenth century. In the following sections, I will specifically focus on those stipulations that refer to the leasing of agricultural lands.

Pothier clearly establishes the rights that lessees held by virtue of their contracts. At the most basic level, the lessee of agricultural lands is entitled to 'enjoyment of the thing let to him, during the whole period of the lease.'[41] Essentially, this means that the lessee is able to utilise all the land granted to him by the lessor in the contract, and, should this right be jeopardised, is entitled to financial compensation (from the lessor) for any damages incurred[42] or a remission of rent.[43] Furthermore, the rights that are granted to the lessee in the contract can be passed to his/her heirs.[44] Although the lessee does not have any rights to the forests that may adjoin agricultural lands, he/she could legally cultivate those lands that had 'never produced any fruits, and which were lying fallow when the lease was entered into, and he may, during the currency of the lease, after his cultivation of the ground, gather the fruits.'[45] Embedded in the law at this point is a realisation of the important role that tenant cultivators could and did play in increasing agricultural production.

Pothier's treatise makes an important distinction between different types of leases and/or usufruct arrangements that tenants could hold. In addition to referring to the nine year lease,[46] he also mentions two other types of tenants: the lessees for life and usufruct holders.[47] Pothier does not discuss in any detail the specific differences between simple leaseholders, who could be involved in a nine year lease or a lifetime lease, and usufruct holders although he states that some lifetime leases establish the tenant as a usufruct holder. He maintains that:

> It is not only a new owner . . . who can evict a lessee; that right to evict the lessee is likewise possessed by a usufructuary of the property who has been given the usufruct by the lessor . . . The reason is that in as much as usufruct (which is the right to gather the fruits of the property), is a right in the property itself, the usufructuary cannot be prevented by the lessee from exercising it, seeing that the lessee has no right in the property but merely a personal right against the lessor. This personal right of the lessee arises from the personal obligation which the lessor undertook in the lease.[48]

While a simple lessee is bound to adhere to certain obligations by virtue of the contract tying him/her to the lessor, the usufruct holder clearly enjoys certain possession rights over the property itself, allowing this individual more security of tenancy than a simple leaseholder. Thus, when referring to the lessee, Pothier clearly states that 'delivery of the property to the lessee, not only does not transfer ownership to him . . . but it, moreover, does not transfer to him any right in, nor even possession of the thing.'[49] The lessee not only lacks possession rights to the land, but also is not offered the opportunity to gain such rights either.

According to Moriceau, most farming leases between 1540 and 1800 were for nine years as opposed to three to six years, as prevailed during the period of the Hundred Years' War.[50] The length of leases began to increase most notably after the war as landlords,

concerned with the reconstruction and regeneration of their estates, sought to offer lessees favourable conditions, including lower rents and longer leases.[51] Moriceau points out that it was not uncommon for tenants to be offered perpetual or long term leases, which in turn allowed these families to maintain exploitation of the land for as long as two generations.[52] The length of leases, however, was always affected by the current economic situation so that during periods of crisis, leases tended to be shorter. Proprietors were always caught between the dilemma of securing their revenues, and thus periodically adjusting the rent, and ensuring the consistent and efficient cultivation of the land, an advantage which was usually gained when tenants were offered longer leases. The reference made by Pothier to both the nine year lease and the usufruct arrangement would seem to support the contention that tenancy agreements were generally concluded for longer periods of time than the three to six year leases. The whole notion of the usufruct holder is perhaps also an indication of the increasingly important and independent position assumed by certain tenant farmers, particularly in the regions surrounding Paris. Nevertheless, perpetual leases or leases for life conferring usufruct were not the general norm in seventeenth- and eighteenth-century France.[53]

The bulk of Pothier's treatise is devoted to laying out the limitations governing the lessee's actions. In its description of the rights and obligations of the lessees of agricultural lands, Pothier's treatise displays the same sort of distrust of the fermier, or, more specifically, his commercial activities, evident in Choppin's work. For example, the treatise specifically explains how the lessee must not alter the process by which the land is cultivated: 'the lessee of a farm must work the lands properly and in the right season. He is not allowed to overtax lands or to change the proper rotation of crops.'[54] This stipulation was found in many seventeenth-century leases. For example, in a lease drawn up in 1649 between a large noble landowner and a gros fermier in the Ile de France, it stipulates that the fermier must engage in the 'good and proper ploughing, cultivation and improvement [of the land], during the suitable season and without causing distress [to the land], [he] must . . . engage in the mowing and scything of the aforementioned [land] in a clear and good manner, [and] cover and look after the pits and ditches . . . in an efficient manner.'[55] Research by both Jean Jacquart and Moriceau has shown that fermiers in the Parisian countryside often adjusted and converted the traditional system of three-crop rotation implied in the above lease in the stipulation that the land must be worked properly and in the right season, in order to satisfy the market demands of the city.[56] Fermiers in the village of Sennely-en-Sologne did the same in spite of legal injunctions against it.[57]

Pothier's treatise also stipulates that the lessee is 'strictly forbidden to remove the farm's manures and straw; all the manures and straw being intended for the manuring of the farm . . . [T]his obligation is a matter of law, and is included in the obligation to enjoy the thing let in the manner a good paterfamilias would do so.'[58] In the absence of chemical fertilisers, pre-nineteenth century agriculture relied on a combination of manure and straw to fertilise the soil. Thus, proprietors often included stipulations in leases intended to limit their removal.[59] Nevertheless, Pothier's stipulation alludes to an important development during this period. By the late seventeenth century, fermiers seized on the economic opportunities opened up by the increasing commercialisation of straw and fodder. This stipulation was undoubtedly intended to limit the fermiers'

ability to engage in profitable, market activity, such as the selling of fodder and straw in the Parisien market. The commercial aspect of this enterprise is what seems to generate opposition here, because, as Philip Hoffman points out, selling straw, whether to butchers or to the Parisian aristocracy for their carriage horses, in exchange for manure to fertilise the fields, actually led to more efficient agricultural production and thus higher grain yields.[60] Clearly, for Pothier, the tenant acting as a proper paterfamilias does not engage in such activity.

Pothier's treatise provides a detailed description of the sort of carting services for which the lessee was responsible. It stipulates, for example, that the lessee 'shall cart whatever materials may be necessary for the repair of the farm-buildings.'[61] The cost of such carting services is the responsibility of the lessee unless the repairs have to be done in the midst of agricultural work, in which case 'the lessee is entitled to claim compensation from the lessor for what the cartage cost him, in excess of what it would have cost, had it been done at a more convenient time.'[62] It is specifically stated, furthermore, that the lessee need only do the carting necessary for repairs to the farm. This is an improvement over the obligations laid out in some sixteenth-century leases which required the labourer to transport certain products, at his expense, to the proprietor as payment.

In addition to requiring that tenants and sharecroppers render carting services at their own expense, Pothier lays out other legal injunctions that work against the tenant farmer's interests. With the purpose of protecting the landlord's financial interests, Pothier provides a detailed explanation of how the lessee's status on the land is limited by the lessor's rights to his movables and to the fruits grown on the land. According to the treatise, both the Customs of Paris and Orleanais 'give to lessors of farms a species of right of pledge, not only over the fruits growing on the farm, but even over the movables which the lessees have on the farm.'[63] Pothier points out that 'The Customs . . . having taken all imaginable care to secure payment of farm and house rents . . . would have revealed a lack of foresight, if they had not subjected to the lessor's right all the movables found upon the leased premises; for without that right, a lessor always would be liable to lose his rent.'[64] He goes on to explain in detail the rules governing the seizure of property, focusing mostly on the issue of the time within which the right of pursuit must be exercised and the rights of the lessee to dispose of his movables.[65] The significant attention which Pothier devotes to this issue of property seizures can be attributed largely to the increasing seizures of peasant property that took place after the Fronde, both to the north and south of Paris.[66] Although lessors legally had the right to seize the property of lessees if they were unable to pay the rent, in reality the immediate seizure of property was not always in the proprietor's interest. According to Moriceau, proprietors were often hesitant about disposing of their fermiers immediately, because it was difficult to find other tenants to replace them.[67]

On the issue of rent, Pothier lays out certain injunctions which are also not entirely reflective of actual practice. For example, the specific grounds on which the lessee can claim a remission of rent include:

> If a lessee has been prevented by force majeure from gathering the fruits during one of the years of his lease; for example, if the enemy has ravaged all the corn, still in blade, from the land held in lease, or if all the crops, which were still standing, have been destroyed by river floods, or by a

swarm of locusts, or by any like occurrence; in all these instances, the lessee is entitled to remission of rent for the year.[68]

Clearly, the law did not consider unfavourable market conditions sufficient reason for a remission of rent. Nevertheless, both Marc Venard and Moriceau maintain that it was not unusual for proprietors to give their tenants a remission of rent when grain prices fell.[69] Of course, this was not a concern in sharecropping arrangements where the landlord simply received half of the harvest.

Although the increasing prevalence of tenants and sharecroppers is recognised in French legal and social literature dating from the sixteenth century, there is a general reluctance to accept them as agents of agricultural innovation. This is expressed not only in the early perceptions of these cultivators as 'corrupt', 'dishonest', or inefficient, but also in the various limitations imposed upon them by Pothier's legal treatise. The limited role that French intellectuals assigned to the tenant farmer as a source of agricultural innovation was due to the reluctance they expressed towards leasing and sharecropping contracts in general. The following section will explore how Hanafī legal thinkers in Syria compared in their articulation of the tenant/sharecropper's role vis à vis the landlord.

Ottoman Syria in comparison

The negative image of tenancy arrangements in French treatises is largely absent in the context of Hanafī legal thought in Ottoman Syria. In fact, the sharecropping debate within Islamic law had been resolved in the tenth century when sharecropping came to be legally accepted. During the eighth and ninth centuries, Abu Hanifa, the founder of the Hanafī school of law, based his rejection of the sharecropping contract on the premise that no person may be made to work in an arrangement where his compensation will consist of only part of the fruits of his labour. Arguing that muzāra'a (sharecropping) and musāqāt (lease of a fruit tree, or an orchard for a certain share of the fruit) are transactions of ijāra (or leasing), he insists that the hiring of labour is only valid if the hire price is known and definitely fixed, a condition that does not exist in sharecropping arrangements where compensation is determined according to the amount of crop produced, which remains unknown until the crop is realised.[70] Thus, this initial rejection of the sharecropping contract was based on a concern for the fair treatment of the labourer. There is no inherent bias expressed in these early works, or even in later ones, against the tenant. The legal discourse from the classical period understood that the tenant/sharecropper/labourer was a necessary part of the functioning of the agrarian regime. Ultimately, even in their acceptance of the sharecropping contract, muftīs and legal thinkers were careful to incorporate certain mechanisms in the law that allowed the labourer some measure of security of tenancy, as will be discussed in the following sections.

Tenure and usufruct rights

According to Ottoman law, tenants could not own, sell, bequeath or transfer state or waqf lands. Evidence from the fatāwā, however, indicates that they often treated such lands as their own.[71] Although legal thinkers sought to ensure that tenants adhered

to such laws in order to protect the integrity of state and waqf lands, they also gave important rights to abiding cultivators who had legitimate contracts, engaged in the proper and consistent cultivation of the land, and sought permission from the state or waqf overseer when necessary. To begin with, muftīs such al-Ramli ardently protected the tenant/sharecropper's right to freedom of movement and judgement. Although al-Ramli emphasises that cultivators who abandon their lands lose all rights of reclaiming possession rights to the land in the future, he is quite adamant in his opposition to any attempts either to force the cultivator to return against his/her will or to impose retroactive fines on him/her for abandoning the land, particularly when the abandonment was due to subjugation. Such actions were often undertaken by the Ottoman state. Consider the following fatwa:

> Question: There is a sultānīyya [state] land or waqf in the hands of farmers who have cultivated the land for years. Do they lose the right of cultivation for other than a misdemeanor as long as they are steadfast in its cultivation and responsible for what is on [the land]? If one of its farmers decides to transfer his possession of the land to another farmer, is the farmer's cession of the land permissible and is the farmer to whom the possession is ceded allowed to have the sharecropping agreement? If one of these men leave the sharecropping agreement of his land share at rest for two years in order for the desired crop returns to be yielded, must he refrain from the land and will the proceeds of the land go to someone else? . . . .
>
> Response: The farmers should not refrain from the land except if doing so is aimed at being economical, and, in that case, the farmer's absence from the land is appropriate and it accomplishes good and he does not do anything but good so there is no objection to this action. The man to whom possession was ceded has the right to the sharecropping agreement. The farmers must not refrain from the land for other than a misdemeanor they may commit upon the land since they undertook proper cultivation of the land. And it won't be held against the person who leaves the land for one or two years in order for the desired crop to be yielded and he won't be forbidden and he won't have to pay another . . . And God knows best.[72]

Thus, a cultivator cannot be forced to remain on the land if he has decided that transferring its possession (not ownership since he does not legally own the land) or leaving the land for a specific period of time can yield economic benefit. As a landowner and cultivator himself, al-Ramli understood that such techniques as crop rotation were necessary to ensure efficient cultivation. Such rights, however, as the fatwa makes clear, depended upon the integrity of the sharecropper/tenant as a steadfast, efficient cultivator.

In addition to such rights, the occupancy rights offered to tenant cultivators through such arrangements as mashadd maska (right of usufruct) and kirdār (structures or trees added to the land by the tenant) provided them with an undisputed hold over the lands they tilled. Essentially, al-kirdār derived from what the peasants added to the land by their labour, in the form of repairs, buildings, or trees. Officially, cultivators were allowed to till state and waqf lands in return for part of the crop or payment of rent, but there were mechanisms which allowed the tenant to gain a hold over the land. Permanency rights on the land, however, were affected by certain factors, shaped in large part by how land laws distinguished between ownership of the land and those structures and trees added to the land by the cultivator. Growing trees, for example, was a long term project since it took several years for the fruit to be realised, so the state, in accordance with

sharī'a law, considered them private property. By recognizing private ownership of trees, Ottoman law, by association, usually recognised the cultivators' ownership of the land where orchards, groves and vineyards existed. Thus, it is of no surprise that most mulk (private) lands referred to in the fatāwā are in fact orchards or vineyards. Although grain fields and vegetable gardens were usually not considered the property of cultivators by sharī'a law, these lands, in practice, were often treated as such and passed on by fathers to their sons (and sometimes daughters), and sold (or leased) to other cultivators.[73] Thus, it was not uncommon for tenants on these lands to add trees and structures to the land during the course of their tenure. Abdul Karim Rafeq points out that many leases formally gave the lessee permission to construct buildings on the land, in accordance with the conditions of the contract and the permission of the administrator of the waqf. The building, like the trees, became the property of the lessee.[74]

Throughout his fatāwā on land tenure, al-Ramli emphasises the importance of the kirdār in consecrating the peasant's hold over the land he occupies and cultivates. This, however, does not entail the recognition of peasant ownership rights. This right, moreover, extends to all peasant cultivators, regardless of religious background. Indeed, al-Ramli maintains in his fatāwā that a dhimmi (or member of a religious minority) has usufruct rights similar to those of a Muslim, on both waqf and state lands, if he has consistently utilised the land for three years and/or has a kirdār on the land.[75]

Although not discussed in Pothier's treatise, the domain congéable in Lower Britanny, like the kirdār in Ottoman Syria, offered the tenant a security of tenancy not characteristic of many fixed term or sharecropping leases of the period. Under the domaine congéable, as T.J.A. Le Goff describes it, ownership of the land and of the structures and trees (édifices) on the land were separate. Under such arrangements, the tenant, who was the owner of the édifices, rented the land from the seigneur foncier. This form of tenancy worked to the lessee's advantage by allowing him a certain permanency on the land by virtue of the edifices he owned. Indeed, as Le Goff points out, landlords were hesitant about evicting their tenants (referred to as tenuyers) at the end of a lease contract largely because they were required by law to reimburse them for the value of the structures, trees, etc. on the land.[76] Thus, according to Le Goff, 'there was . . . both subjectively, in the mind of the peasant, and objectively, from a purely economic point of view, a strong element of peasant proprietorship in the domain congeable; there was a sense of ownership which was . . . encouraged by a certain permanence on the land.'[77] This would seem to resemble the usufruct holder mentioned by Pothier, but it is difficult to determine from the text if Le Goff is specifically referring to this type of arrangement, which was, after all, not common in the regions of Orleans and Paris at the time. Nevertheless, it is interesting to note the advantages enjoyed by tenants (be they in Ottoman Syria or Lower Brittany) when they had an actual stake in the land.

As indicated, the mashadd maska was equivalent to the right of usufruct (haqq al-tasarruf) over the land. While having kirdār on the land certainly strengthened a cultivator's maska rights, the latter was not dependent on the former.[78] Furthermore, the security which a maska holder enjoyed did not necessarily depend on the existence of a formal lease contract. Consistency in cultivation over a long period of time, fulfilment of specific legal obligations, such as the payment of dues, etc. and mutawallī/state

representative consent when needed, ultimately ensured that the maska holder's rights were not jeopardised.[79] Adhering to these necessary standards and obligations established a sort of de facto contract between the maska holder and the landlord. Finally, the usufruct rights embodied in the maska could legally be passed on to heirs as long as the landord's permission was obtained.[80]

Similar to Pothier's treatise, the legal literature of Ottoman Syria also indicates an increasing acceptance of longer term leases. The length of leases on state and waqf lands was an issue of concern for muftīs and legal scholars of the day. According to traditional Hanafī doctrine, waqf land, like mīrī (state) land and land belonging to orphan minors, could not be rented for more than three years in order to ensure that the rent rate would be reassessed for the benefit of the waqf or state. During the sixteenth century, this Hanafī law was rigidly applied in the lease contracts of waqf land. However, by the seventeenth and eighteenth centuries, there were leases which extended over a period of forty 'aqds, each 'aqd lasting for three years.[81] Indeed, judges and muftīs from various schools of law increasingly recognised such leases as valid.[82] Although muftīs realised and sought to temper the power that tenants acquired through long term leases, particularly on waqf lands, they (like French landlords) also understood the advantages that such arrangements offered for the maintenance of stable and efficient cultivation of the land. Thus, they generally sought to ensure a diligent tenant's security of occupancy.

Overall, the conditions regulating a tenant's security of tenure are more stringent in Pothier's treatise than in the Islamic legal sources of the period. Pothier makes no mention of a simple leaseholder being able to attain the position of usufruct holder. The two arrangements are portrayed as separate and almost unrelated, except in cases where the lifetime lease specifically establishes a tenant's usufruct, but Pothier points out that a lease for life could only be a simple lease. In the legal literature of Ottoman Syria, muftīs recognise not only the possibility of leaseholders assuming possession rights, but the commonality of such a likelihood, particularly when the tenant establishes a kirdār and engages in the proper and efficient cultivation of the land.

Agricultural innovation

Ultimately, tenants and sharecroppers in Ottoman Syria, by virtue of such rights as al-kirdār and mashadd maska, were held responsible for the application of efficient cultivation techniques, strengthening their role as agents of agricultural innovation. According to Huri Islamoglu-Inan in his study of cultivators in sixteenth-century Anatolia, farmers spearheaded the drive to intensify production in response to population growth. Their efforts included introducing new crops, such as legumes with nitrogen-fixing properties, and clearing forests by fire and axe, which often provided fertilisation and thereby lessened the dependence on draft animals.[83] In addition to promoting the efficient cultivation of agricultural lands, the wide range of crop rotation patterns used in the region served to increase the amount of marketed cash crops.[84] Thus, Ottoman Syria witnessed the increasing diversification and commercialisation of agricultural production, spearheaded in large part by tenant cultivators.

Their ability to employ such techniques was largely tied to the status that such cultivators enjoyed on the lands they worked. Islamoglu-Inan argues that the independent peasantry was maintained because of the intervention of administrative-juridical institutions in the class relations between the extractors and the producers of surplus.'[85] This did not necessarily mean, however, that agricultural innovations were implemented with any consistency by tenants and sharecroppers. Several factors worked against the implementation of efficient cultivation techniques, including the persistence of small scale cultivation up to and during the nineteenth century, and adherence to customary forms of farming. Nevertheless, the interesting point here is that these legal scholars formulated a complex set of laws that guaranteed that use rights entitled cultivators to certain property rights. This is perhaps most evident in the broad rights accorded tenants who assume cultivation of those lands in need of rejuvenation. In such cases, tenants were offered incentives to develop the land including freedom to dig, build and cultivate without obtaining permission from the landlord,[86] and the right to perpetual leases in return for maintaining the property.[87]

The overall attention given to the procedure and method of cultivation engaged in by the tenant is perhaps what makes Pothier's treatise most distinct from the Hanafī fatāwā issued in Syria during the same period. Although clearly concerned about the proper and efficient cultivation of state and waqf lands, Islamic legal thinkers offer no specific guidance as to how the cultivator should go about farming in order to ensure the highest possible yield, beyond certain general stipulations such as that the land be clear of debris and stone. The freedom given to sharecroppers and tenants in determining the proper techniques to be used in part results from necessity, since they felt more affinity to the land than the state officials or waqf administrators assigned to oversee such lands on behalf of distant landowners. Furthermore, in an environment where labour was more scarce, the muftīs were greatly concerned with stability of production. Given these circumstances, muftīs had a twofold agenda: ensuring security of occupancy for tenants and sharecroppers while protecting the interests of state and waqf lands from abusive or negligent officials and cultivators. In the following fatwa, al-Ramli is clearly opposed to state officials who abuse their powers on lands belonging to the state, referred to here as 'tīmār':

> Question: There is a tīmār land . . . which has farmers on it that have a kirdār . . . [the farmers] took control of it from their fathers for a period extending over sixty years. Does the tīmār holder have the right to remove the farmers and rid of their trees and plant what he wants on the land?
>
> Response: The person in charge of the tīmār does not have the right to remove the farmers and their trees . . . he does not privately own the land or have the right to remove the cultivators who came to have a kirdār of planted trees and the right of usufruct.[88]

Abusive officials could not only jeopardise the rights of usufruct holders, but also the interests of the state by hindering the consistent cultivation of the land.

Payment of rent, dues and laws regarding property seizure

Islamic legal thinkers held sharecroppers and tenants responsible for the payment of various dues and taxes and also, where appropriate, for the payment of fair rent. These

taxes and dues could be just as burdensome on cultivators as the carting services and dues expected of sharecroppers in seventeenth- and eighteenth-century France. The importance that the Ottoman state placed on agricultural production was largely due to its desire to ensure the efficient collection of taxes. Nevertheless, there is no mention in the fatāwā or legal commentaries of extra services which tenants and/or sharecroppers were required to fulfil, although such services were at times laid out in sharecropping agreements in various parts of the Islamic world.[89] Interestingly, the legal literature does not indicate that sharecroppers were subject to more, or, for that matter, less, burdensome taxes, dues, etc. than those cultivators engaged in leasing contracts. In fact, a tenant cultivator or sharecropper is entitled to a fair wage for any labour performed, even if a lease and/or sharecropping contract is illegitimate or declared null and void. In the latter case, the sharecropper would get a fair wage rather than the normal share in the yield.[90]

Pothier's primary agenda in articulating the laws relating to property seizure and rent is to protect the interests of the landlord. This is not completely out of line with what muftīs attempted to do in the context of Ottoman Syria. Like their French counterparts, tenants and sharecroppers in Ottoman Syria had certain obligations towards the state and waqf officials who were their landlords. These officials, while not owners of the land in the modern sense of the word, were, for all practical purposes, the ones in charge of the administration of such lands. However, such officials, like the French landholders in the Paris basin, were in most cases absentee landlords. Although this allowed cultivators an important degree of freedom, they were nonetheless expected to fulfil certain obligations towards these landlords. For one, cultivators were often obliged to pay the landlord a set portion of the crop yields every year.[91] The landlord, furthermore, was legally entitled to take possession away from any usufruct holders if they were to cultivate the land without the landlord's permission, fail to maintain proper cultivation, or in any way jeopardise the interests of the waqf or state land. Referring to a case in which the trees on a particular waqf land come under the control of villagers after the usufruct holder (from the same village) dies, al-Ramli maintains that the waqf overseer has the right to contest this action and take control over the land and its trees in order to ensure that the profits of the land go to the waqf. He argues that the overseer should enforce the payment of fair rent for the remainder of the period during which the deceased usufruct holder would have had possession of the land.[92]

In most cases, muftīs were hesitant about allowing the uprooting of trees and crops and the tearing down of buildings; they realised that this was usually harmful to the waqf. However, in cases where the tenant defies the law outright or abuses his/her privileges and the well being of the land, they do sanction such acts. As discussed earlier, trees and buildings added to the land by the tenant/sharecropper were usually considered to be the property of that particular cultivator, while the land was not. Therefore, the tearing down of trees and buildings was in many ways equivalent to a seizure of property. Unlike the French case, however, here seizure meant vacating the land so that the landholder or overseer could place a new tenant on the land. As expected, it was not unusual for landlords to confiscate any crops that happened to be present.

Finally, unlike Pothier's treatise, the legal discourse from seventeenth- and eighteenth-century Syria does not indicate that muftīs and/or legal thinkers were supportive of

remitting rent. This was largely due to the fact that throughout this period, surplus extraction through rent remained the favoured method of acquiring agricultural products and selling them on the market.[93] Although legal thinkers delineated the conditions under which taxes should not be collected, such as al-Ramli's argument for tax breaks in situations involving natural disasters,[94] they do not allow for such concessions in relation to the payment of rent. In fact, their predominant concern is to ensure that a fair rent is applied and collected. Thus, the waqf overseer or state official, if it can be legally justified as in the best interests of property, could raise rents during the course of a lease contract or after a particular lease contract had expired.[95] There is no mention anywhere in the legal literature of situations which justify a lowering of the rent. Muftīs did, however, attempt to ensure that the payment of fair rent was regulated so that cultivator rights were not jeopardised. They did this by setting limits on the size of rent increases and when they could be initiated. For example, according to the eighteenth-century Damascene muftī Ibn 'Abidin, in month to month leases, increases in the fair rent prior to the end of the month were not legally justified; any increase in the fair rent before this period would constitute breaking an existing lease.[96] Furthermore, he emphasises that the waqf overseer (mutawallī) must set the rent according to current market conditions, so that it should not be higher or lower.[97]

Conclusion

The status of tenant cultivators in early modern France and Syria was an issue of serious concern to legal and social thinkers of the time. The tension between reality and intellectual/legal discourses is evident in both the Syrian and French cases. In France between the sixteenth and the eighteenth century, legal and social thinkers were reluctant to accept or perhaps sought to reverse the increasingly important role which tenant farmers assumed in the countryside, both as agricultural producers and economic intermediaries between town and village. Meanwhile, muftīs and legal scholars from Syria struggled to maintain the integrity of state and waqf lands in the face of sharecroppers and tenants who increasingly came to treat the land as their own.

Scholars and intellectuals from both regions were concerned to ensure efficient production and security of the landlord's interests. For French thinkers of the period, efficient agricultural production hinged on the landlord's interests being protected. Distrustful of tenants and sharecroppers in general, they emphasised that efficient agricultural production hinged on the landlord's direct participation in the agricultural realm. Even when, as in the case of Pothier, intellectuals came to accept the legitimacy of leasing and/or sharecropping agreements, an overall wariness towards tenant cultivators persisted. For example, although Pothier does not overtly criticise the growing commercial role of fermiers as Choppin does, his work reflects an obvious bias towards the lessor. In his description of the legal limitations which inhibit the lessee's rights on the land, Pothier champions the lessor's right to security of rent above all else. In this context, efficient production hinged on the tenant/sharecropper refraining from various acts such as: abandoning the land, altering crop rotations, and removing manure and straw from the land. This latter stipulation was also meant to limit the

commercial/economic power of the fermier class. Overall, the ideas embraced by the legal treatises and agricultural works of the period supported a privatisation of property rights.

Much of the French legal and social literature discussed here was written prior to the heyday of the reform movement in France in the early eighteenth century. Interestingly, however, these early thinkers were in many ways a precursor to the ideas embraced by this movement. The reform movement was influenced by certain French administrators who embraced the notions at the heart of physiocracy. In addition to supporting the lifting of internal trade barriers, physiocrats were strictly opposed to the existence of common lands and advocated private property in agriculture. During the seventeenth and eighteenth centuries, most French villages had some land held in common. Although processes of enclosure had begun since the fourteenth century in some regions, such as Artois and French Flanders, the ownership of land was still not clearly defined by the seventeenth and eighteenth centuries. In fact, the French land tenure system could be characterised as one in which multiple layers of ownership continued to prevail. As Jean-Laurent Rosenthal explains, agricultural land 'was frequently in a state of well-defined use and poorly defined ownership. Both use rights and property rights were the result of centuries of interaction between a village and its seignior so that frequently ownership of the resource was unclear.'[98] French administrators were keen on initiating reforms that would transform the common land system and the property rights controlling it. These reforms proposed to divide common land between seigneurs, landowners and tenants. As Rosenthal points out, however, 'the reforms favored owners (seigniors or landowners) rather than users (villagers or tenants) because they had much greater political influence.'[99]

The discourse propagated by seventeenth-century French legal/social thinkers and agronomists tends to assume a less muddled scenario of property ownership; indeed, there is a clear distinction drawn between bourgeois/noble landowners and tenant farmers/sharecroppers. The notion that use rights allowed property rights to land is clearly not embraced by any of these intellectuals. Such an ideology tended to be espoused by those opposing reform as a legal and political attack against the advocates of private property. Although in the north of France the emergence of richer, commercially oriented farmers within the village community encouraged enclosure efforts as a means towards improving methods of production, there were many seigneurs and large farmers who were reluctant to change communal rights largely because they benefited from access to pasture.[100] The legal and social treatises discussed here do not embrace the latter position. Although these theoreticians do not speak directly for or against enclosure, they do favour clearly defined property rights. Thus, unlike their Syrian counterparts, legal thinkers in early modern France link agricultural development and efficient production to private ownership of land.

In their bid to protect the landlord's interests, Syrian muftīs and scholars were most concerned to delineate the often difficult distinction between usufruct rights and ownership rights, protect the status of state and waqf lands, and ensure the payment of fair rent by the lessee. These Islamic scholars sought to ensure efficient production by establishing standards/obligations for cultivators to meet, urging for the uninterrupted

cultivation of agricultural lands, and by generally protecting waqf and state lands from acts considered harmful to their financial/economic interests.

Perhaps the most distinct difference between the intellectual discourses of the two regions is the overall acceptance of tenants and sharecroppers in Hanafī legal thought during this period in Syria. Although muftīs and legal thinkers are careful to delineate the obligations and duties of tenant cultivators on state and waqf lands, they are also just as careful to point out their rights. As indicated, sharecropping and leasing in the Islamic world date back to at least the first century of Islam. In France, however, the most common form of tenure up to the end of the thirteenth century was serfdom,[101] with fermage and métayage becoming increasingly common after the Middle Ages. This issue must be taken into consideration when assessing the suspicious posture that French intellectuals assume towards tenants and sharecroppers.

The difference between muftīs and French legal and social thinkers in their perception of tenants and sharecroppers also hinged on the distinct role these individuals played in their respective societies. Approached by both elite and non-elite members of society, muftīs were quite accessible scholars. Thus, it is not surprising that fatāwā were in many ways a reflection of existing social and economic realities. French agricultural and legal treatises, however, were not usually written or issued for the common tenant and/or sharecropper. Although more affluent fermiers were probably aware of such manuals by the mid eighteenth century,[102] they were directed to the interests of the landlord class. Thus, they come across as much less accepting of prevailing social and economic realities in the agricultural realm.

In issuing legal opinions, muftīs also perceived themselves as protectors of the public welfare. This perhaps best explains why they devoted so much attention to explicating the status of tenants and sharecroppers on waqf lands, since religious endowments were theoretically for the good of the broader Muslim community. Although Islamic law has tended to affirm the principle of individual ownership, property is perceived as belonging to the community with the individual owner holding property essentially as an amānā, or entrustment, from God.[103] Furthermore, unlike in France, there was no social discourse in the Arabo-Islamic context that treated tenants and sharecroppers suspiciously. Agricultural manuals from the period addressed topics strictly related to choice of crops etc., and nothing more. Islamic law, particularly after the tenth century when the legality of sharecropping contracts came to be accepted, recognised sharecroppers and tenants as a necessary part of the land system and sought to ensure a balance between their rights and obligations.

Thus, in contrast to the situation in France, agricultural development and productivity is not necessarily tied to the private ownership of land. While French thinkers encourage a move away from common land arrangements and a strengthening of private property, Hanafī legal thinkers from Syria advocate a land tenure system in which possession rights of cultivators are supported and landlord interests are not jeopardised. Thus, agricultural development in the Syrian case is articulated within a framework of multiple layers of ownership or public ownership of land. This does not mean that the legal establishment was not supportive of private property, but rather that public property was not perceived as detrimental to agricultural productivity.

Ultimately, tenant farmers in early modern France, as research has shown, engaged in innovative agriculture, but they did this in spite of socio-legal, and, to a certain extent, policy discrimination. In Ottoman Syria, however, tenants and sharecroppers acted as agents of innovation because of a legal discourse which supported their role on the land. The security of tenancy enjoyed by Syrian peasants meant that many treated the lands they worked as their own. This 'morale of ownership,' as Robert Forster has found in his research on other areas,[104] contributed to agricultural productivity in the region. Clearly, our understanding of the social and economic history of peasant communities must integrate both legal and cultural history. Only then can the nature of agricultural development be fully appreciated.

Notes

1. Rifa'at 'Ali Abou el-Haj provides an explanation of this paradigm and its main tenets in his work *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries* (Albany, 1991).
2. Marc Bloch, *French Rural History: An Essay on its Basic Characteristics*, translated by Janet Sondheimer (Berkeley; Los Angeles, 1966), p. 142. Large estates were more characteristic of certain regions, such as the plain of Picardy, than others such as Normandy, where small peasant holdings were more common. In his study *The Social Origins of the Modern Middle East* (London,1987), Haim Gerber emphasises the prevalence of smallholdings in various eastern regions of the Ottoman Empire.
3. For a description of how this process occurred in the Ile de France, see Yvonne Bezard, *La vie rurale dans le sud de la région parisienne de 1450–1560* (Paris, 1929), pp. 69–70, and Jean Jacquart, *La crise rurale en Ile-de-France, 1550–1670* (Paris, 1974), pp. 221–53; in the Loire Valley, see Francois Lebrun, *Histoire des pays de la Loire: Orleanais, Touraine, Anjou Maine* (Toulouse, 1978), pp. 12–18, and Norbert Wach, *Histoire des habitants de l'Orleanais* (Paris, 1982), pp. 136–48; in Lorraine, see Guy Cabourdin, *Terre et hommes en Lorraine,* 1550–1635 (Paris, 1977), pp. 306–310; and in Anjou and Poitou, see Louis Merle, *La metairie et l'évolution agraire de la Gatine Poitevine* (Paris, 1958), pp. 53–6.
4. From the late sixteenth through the mid seventeenth century, there was steady population growth. See Emmanuel Le Roy Ladurie, *The Peasants of Languedoc*, translated by John Day (Urbana, 1974), pp. 53-56 and *The French Peasantry*, *1450–1660* (Berkeley, 1987), pp. 103, 122; and Jacquart, C*rise rurale*, pp. 44, 48, 609. Population pressure resulted in increasing land scarcity and a rise in the number of peasants moving to Paris to find work.
5. For a description of this transformation see Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasant's Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Peviods* (London, New York and Sydney, 1988), pp. 33–4, 37, 108.
6. Bezard, *La vie rurale*; Gerard Bouchard, *Le village immobile Sennely-en-Sologne au XVIIIe siècle* (Paris, 1972); Merle, *La metairie*; Jean- Marc Moriceau, *Les fermiers de l'Ile-de-France* (Paris, 1994); Pierre Goubert, *Beauvais et le Beauvaisis de 1600–1730: contribution à l'histoire sociale de la France au XVIIIe siècle* (Paris, 1960); Ladurie, *Peasants of Languedoc*; Jean Meuvret, *Le problème des subsistences à l'époque de Louis XIV* (Paris,1977); Michel Morineau, *Les faux-semblants d'un démarrage économique: agriculture et démographie en France au XVIIIe siècle* (Paris, 1971); and Pierre de Saint Jacob, *Les paysans de la Bourgogne du nord au dernier siècle de l'ancien régime* (Paris, 1960).
7. The exception being the work of Henry Heller, *Labour, Science and Technology in France, 1500–1620* (Cambridge, 1996).

8. Heller, *Labour, Science and Technology,* p. 65; André Bourde, *Agronomie et agronomes en France au XVIIIe siècle* (Paris, 1972), p. 47; and Corinne Beutler, 'Un chapitre de la sensibilité collective: la littérature agricole en Europe continentale au XVIe siècle,' *Annales: ESC* 28 (1973), 1284.
9. Jacquart, C*rise rurale*; Cabourdin, *Terre et hommes*; Wach, *Habitants de l'Orleanais;* Lebrun, *Histoire des pays*; Ladurie, *Peasants of Languedoc*, and *French Peasantry*; Daniel Hickey, 'Innovation and Obstacles to Growth in the Agriculture of Early Modern France: The Example of Dauphiné,' *French Historical Studies* 15 (1987), 208–40; and Philip Hoffman, 'Land Rents and Agricultural Productivity: The Paris Basin, 1450-1789,' *Journal of Economic History* 52 (1991), 771–805.
10. Heller, *Labour Science and Technology*, p. 65.
11. Abd al-Ghani ibn Ismail Nabulusi,'*Alam al-malaha fi 'ilm al-filaha* (Beirut: Manshurat, 1979); and Jafar ibn Muhammad Bayti, *Misbah al-fallah fi al-tibb wa-al-zira'a* (Beirut, 1997).
12. Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley; Los Angeles, 1998), pp. 20–1.
13. Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany, 1994), chapter 3.
14. See Gerber, *Social Origins*; Kenneth Cuno, *The Pasha's Peasants: Land Tenure, Society, and Economy in Lower Egypt 1740–1858* (Cambridge, 1992); Amy Singer, *Palestinian Peasants and Ottoman Officials: Rural Administration around Sixteenth Century Jerusalem* (Cambridge, 1994); Beshara Doumani, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700–1900* (Berkeley; Los Angeles; and London, 1995).
15. Tucker, *House of the Law*, p. 18.
16. Ziaul Haque, *Landlord and Peasant in Early Islam* (Islamabad, 1977); and Johansen, *Land Tax and Rent*.
17. Roderic Davison, *Reform in the Ottoman Empire: 1856–1876* (Princeton, 1963); Doreen Warriner, 'Land Tenure in the Fertile Crescent,' in Charles Issawi , ed., *The Economic History of the Middle East* (Chicago and London, 1966); Kemal Karpat, 'The Land Regime, Social Structure, and Modernization in the Ottoman Empire', in William R. Polk and Richard L. Chambers, eds., *Beginnings of Modernization in the Middle East* (Chicago; London, 1968); and Peter Sluglett and Marion Farouk-Sluglett, 'The Application of the 1858 Land Code in Greater Syria: Some Preliminary Observations,' in Tarif Khalidi, ed., *Land Tenure and Social Transformation in the Middle East* (Beirut, 1984).
18. Cuno's article 'Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Hanafi School,' *Studia Islamica* 81 (1995), 121–52 examines Islamic law as it relates to land tenure in seventeenth and eighteenth century Syria, but the focus of his study is the status of peasant proprietors rather than of tenants and sharecroppers.
19. Johansen, *Land Tax and Rent*.
20. Natalie Zemon Davis, 'Rene Choppin on Moore's Utopia,' *Moreana* 19–20 (1968), 92.
21. Rene Choppin, *Traité des privilèges des personnes vivans aux champs* (Paris, 1662), pp. 39–40.
22. Ibid., p. 39.
23. Moriceau, *Les fermiers*, pp. 127–32.
24. Choppin, *Traité des privilèges*, p. 32. See also Davis, 'Rene Choppin,' p. 93.
25. Choppin, *Traité des privilèges,* p. 40.
26. According to Davis, the seventeenth-century French edition translates 'servi ac villici' as 'metayers et serviteurs' ('Rene Choppin', p. 96). However, as she points out, there were virtually no serfs in Choppin's own region in the sixteenth century, and sharecropping was not the predominant form of cultivation.
27. Choppin, *Traité des privilèges*, p. 40.

28. Marc Venard, *Bourgeois et paysans au XVIIe siècle* (Paris, 1957). Bloch makes a similar assertion (*French Rural History*, p. 144).
29. Bernard Palissy, *Recépte veritable* (Geneve, 1988), pp. 173 and 61.
30. Olivier de Serres, *Le théâtre d'agriculture et mesnage des champs* (Paris, 1804), p. 51.
31. Charles Estienne and Jean Liebault, *Maison Rustique, or, The Countrey Farme*, trans. by Richard Surflet and Gervase Markham (London, 1616), p. 22.
32. De Serres, *Le théâtre*, pp. 137–8. See also Heller, *Labour, Science and Technology*, p. 168.
33. De Serres, *Le théâtre*, p. 57.
34. Beutler, 'Un chapitre,' pp. 1292, 1294.
35. Heller, *Labour, Science and Technology*, p. 167.
36. Ibid., pp. 162, 166.
37. Ibid., p. 166. Although the state did promote a discourse that favoured landowners rather than tenant farmers as the source of agricultural innovation, relations between landlords and the central government were certainly not devoid of conflict, particularly concerning taxation. See James Collins, *Fiscal Limits of Absolutism*: *Direct Taxation in Early Seventeenth Century France* (Berkeley, 1988), pp. 170–71, 194.
38. Heller, *Labour, Science, and Technology*, pp. 158–9.
39. Bourde, *Agronomie et agronomes*, pp. 118–19.
40. An increasing acceptance of lease holders is also evident in the works of Antoine de Montchretien, *Traicte de l'oeconomie politique* (Paris, 1889), a French soldier, dramatist, and economist who lived between 1575–1621 and originally published *Traicte de l'oeconomie* in 1615; and Louis Liger, *Nouvelle maison rustique* (Paris, 1708), a French agronomist of the seventeenth and early eighteenth century.
41. Robert Joseph Pothier, *Treatise on the Contract of Letting and Hiring* (Durban, 1953), p. 106.
42. Ibid., p. 109.
43. Ibid., p. 57.
44. Ibid., p. 106.
45. Ibid., p. 107.
46. Ibid., p. 64.
47. Ibid., p. 110
48. Ibid.
49. Ibid., p. 109
50. Moriceau, *Les fermiers*, p. 99. Venard points out that during the seventeenth century most leases were either for six or nine years (*Bourgeois et paysans*, p. 70). Sharecropping leases drawn up in Poitou during the sixteenth and seventeenth centuries, however, generally lasted for a period of five years. In comparison to the farming leases of the Ile de France, the shorter duration of the sharecropping lease in Gatîne allowed the proprietor more flexibility in adjusting the payments required of the sharecropper, indicating the more vulnerable position of the latter (Merle, *La métairie*, p. 166).
51. Moriceau, *Les fermiers*, p. 103.
52. Ibid., p. 107.
53. Robert Forster, 'Obstacles to Agricultural Growth in Eighteenth Century France,' *American Historical Review* 75, 6 (1970), 1610.
54. Pothier, *Letting and Hiring*, p. 74.
55. Farming lease from the seigneurie of Vemars (11th November 1649) reprinted in Moriceau, *Les fermiers*, pp. 803-804. Sharecropping leases were even more detailed in laying out stipulations to be followed by the sharecropper. See sharecropping and tenancy lease of Landroye (11th June 1567) reprinted in Merle, *La métairie*, pp. 211–12*; Farming Lease from the Border of the Village of Giraudiere, Parish of Verruyes* (1st April 1637) reprinted in Merle,

La métairie, pp. 216–17; and sharecropping lease from the métairie of Besancay (14th April 1643) reprinted in Merle, *La métairie*, pp. 218–20.

56. Jacquart, *Crise rurale*, pp. 326–7 and Moriceau, *Les fermiers*, pp. 354–5.
57. Bouchard, V*illage immobile*, pp. 154–5.
58. Pothier, *Letting and Hiring*, p. 75.
59. Moriceau, *Les fermiers*, pp. 417–18.
60. Hoffman, 'Land Rents,' p. 798
61. Pothier, *Letting and Hiring*, p. 81.
62. Ibid.
63. Ibid., p. 89.
64. Ibid., p. 93.
65. Ibid., p. 102.
66. Venard, *Bourgeois et paysans*, p. 81 and Moriceau, *Les fermiers*, pp. 580–3.
67. Moriceau, *Les fermiers*, pp. 600–1.
68. Pothier, *Letting and Hiring*, p. 61.
69. Venard, *Bourgeois et paysans*, pp. 101–3 and Moriceau, *Les fermiers*, p. 595.
70. Johansen, *Land Tax and Rent*, pp. 52–3; Haque, *Landlord and Peasant*, pp. 323–4; William J. Donaldson, *Sharecropping in the Yemen: A Study of Theory, Custom, and Pragmatism* (Leiden; Boston, 2000), p. 62.
71. Khayr al-Din ibn Ahmad al-Ramli, *Kitab al-fatawa al-khayriyya li-naf' al-bariyya*, 2 volumes (Cairo: n.p., 1275/1858, 1276/1859), 2: 153.
72. Ramli, *Al-fatawa al-khayriyya,* 2: 152. Al-Ramli issues other fatāwā emphasising the cultivator's right to freedom of movement and judgment (2:151, 153 and 1:92). A fatwā issued by 'Abd al-Rahman al-'Imadi in the seventeenth century goes further by stipulating that the children of sharecroppers and/or tenants cannot be forced to return to the land which their parents abandoned (*Fatawa bani al-'Imadi*, Maktabat al-Asad al-Wataniyya, Damascus, MS# 5864, p. 131).
73. Dror Ze'evi, *An Ottoman Century: The District of Jerusalem in the 1600s* (New York, 1996), p. 130.
74. Abdul Karim Rafeq, 'City and Countryside in a Traditional Setting: The Case of Damascus in the First Quarter of the Eighteenth Century,' in Thomas Philipp, ed., *The Syrian Land in the Eighteenth and Nineteenth Century* (Stuttgart, 1992), p. 313.
75. Ramli, *Al-Fatawa al-khayriyya*, 1:124.
76. T.J.A. Le Goff, *Vannes and its Region: A Study of Town and Country in Eighteenth Century France* (Oxford, 1981), pp. 158–60.
77. Ibid., p. 163.
78. Muhammad Amin ibn 'Umar Ibn 'Abidin, *Al-'Uqud al-durriyah fi tanqih al-fatawa al-Hamadiyya*. 2 volumes (Bulaq (al-Qahirah), 1882 or 3), 2:201.
79. Ibid., 2:202.
80. Ibid., 2: 202.
81. This was similar to copyhold tenure in England which, although on the decline by the mid seventeenth century, continued to be fairly widespread. Under the copyhold for lives, tenancy was granted for the lives of two or three named persons (and this did not include a widow who, after her husband's death, enjoyed use of the land as long as she remained unmarried). Such tenants enjoyed low annual rents and relative freedom in day to day activities from their distant landlords. See Joan Thirsk, ed., *The Agrarian History of England and Wales, 1500-1750* (Cambridge; New York, 1990), pp. 198–207.
82. Rafeq, 'Making a Living or Making a Fortune in Ottoman Syria', in Nelly Hanna, ed., *Money, Land and Trade: An Economic History of the Muslim Mediterranean* (London; New York, 2002), pp. 116–17. See also Ibn 'Abidin, *Hashiyyat Ibn 'Abidin: Radd al-muhtar al'a*

al-durr al-mukhtar (Damascus, 2000), 1:610. Under certain conditions, Ibn 'Abidin legally justified long-term leases or renewal of expired leases.

83. Huri Islamoglu-Inan, 'Peasants, Commercialization and Legitimation of State Power in Sixteenth Century Anatolia', in Caglar Keyder and Faruk Tabak, eds., *Landholding and Commercial Agriculture in the Middle East* (Albany, 1991), p. 67.
84. Faruk Tabak, 'Agrarian Fluctuations and Modes of Labor Control in the Western Arc of the Fertile Crescent, c. 1700-1850', in *Landholding and Commercial Agriculture*, p. 142.
85. Islamoglu-Inan, 'Sixteenth Century Anatolia', p. 63.
86. Ibn 'Abidin, *Al-'Uqud*, 2: 202.
87. Ahmad Dallal, 'Islamic Institution of Waqf: A Historical Overview', in Stephen P. Heyneman, ed., *Islam and Social Policy* (Nashville, 2004), pp. 26-7.
88. Ramli, *Al-Fatawa al-khayriyya*, 2:152. For a similar fatwā, see ibid., 1:88–89. Al-Ramli also rules against timār officials who seize the livestock of cultivators (ibid., 2:135).
89. Donaldson, *Sharecropping in the Yemen*, pp. 22–6.
90. Ibn 'Abidin, *Al-'Uqud*, 2: 186–7.
91. Ramli, *Al-Fatawa al-khayriyya*, 1:110 and fatāwā issued by muftī of Damascus Husam al-din al-Rumi (d. 1028 AH/1619 AD), *Fatawa bani al-'Imadi*, pp. 75, 122.
92. Ramli, *Al-Fatawa al-khayriyya*, 1:160.
93. Dina Rizk Khoury, 'The Introduction of Commercial Agriculture in the Province of Mosul and its Effects on the Peasantry, 1750–1850', in *Landholding and Commercial Agriculture,* p. 159.
94. Ramli, *Al-Fatawa al-khayriyya*, 1:88–9.
95. Fatāwā issued by Muhibb al-din al-Hanafi, seventeenth century, *Fatawa bani al-'Imadi*, pp. 215, 258, 259.
96. Ibn 'Abidin, *Radd al-Muhtar*, 1:595.
97. Ibid., 1:609–10.
98. Jean-Laurent Rosenthal, *The Fruits of Revolution: Property Rights, Litigation, and French Agriculture, 1700–1860* (Cambridge, 1992), p. 16.
99. Ibid., pp. 16–17.
100. 100. Ibid.
101. Bloch, *French Rural History*.
102. Moriceau, *Les fermiers*, p. 766.
103. Zubair Hasan, 'Distributional Equity in Islam', in Munawar Iqbal, ed., *Distributive Justice and Need Fulfillment in an Islamic Economy* (Islamabad; London, 1988), pp. 41–2, 57.
104. Forster, 'Obstacles to Agricultural Growth,' p. 1602.