Law of the Forest: Early Legal Governance in Bosnia-Herzegovina during the Inter-Imperial Transition between Ottoman and Austro-Hungarian Rule, 1878–1901

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How does an empire consolidate governance in a region previously governed by another empire? What role does law play in the formation of imperial rule? These are some of the questions at the core of this article examining the formation of Habsburg imperial governance in Bosnia-Herzegovina following four centuries of Ottoman rule by focusing on the legal regulation of forest ownership and usage rights. Few other legal questions were as contested as the restructuring of forest management during the consolidation of the new state. While the Habsburg authorities were aware of the potential of Bosnia's abundant forests to generate revenues even before the occupation in 1878, it was after that date that opening forests for export-oriented commercial exploitation became a political and economic priority.[1] These endeavors were complicated, however, by the demands and needs of the local, predominantly agrarian, population that relied heavily on forest resources. Legal conflicts erupted, exposing clashes of different interests, including those of landowners, peasants, and the imperial state, as well as illustrating the tensions between the empire's transformative vision of nature and its ability to implement it. Bosnia-Herzegovina was the last Habsburg territorial acquisition before dissolution in 1918. Technically, while it remained under Ottoman sovereignty until 1908, in practice it came to constitute a multiple-empire space on Europe's political margins.

For decades, the history of Bosnia-Herzegovina under Habsburg rule has been treated within a singular imperial context. Only recently have historians

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1. Österreichisches Staatsarchiv, Kriegsarchiv, Vienna (AT- OeStA KA), KPS LB VII m, 45–11 (Bosnien, topographisch-statistische Übersicht, 1874).

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begun engaging with the region's Ottoman legacy and conceptualizing it as a dynamic Ottoman-Habsburg borderland, recognizing it as a fruitful locus for the study of legal developments in southeastern Europe.[2] Within the Habsburg historiography, specifically, several frameworks dominate the opus on Bosnia-Herzegovina, including modernization and industrialization campaigns, competing nationalisms, and the Habsburg "civilizing mission" in education and culture, a lens dominated by the enduring debate of whether Bosnia was a colony or not.[3] Common to all of these studies is their uncritical understanding of the late Habsburg empire as a consolidated *Rechtsstaat* with a strong legalistic tradition. Consequently, most historians studying Habsburg Bosnia treat law as a pre-given component of Habsburg governance, without problematizing the formation process of the region's legal regime. This paper challenges this assumption and examines the complex ways in which law became defined and embedded in Habsburg governance in Bosnia-Herzegovina.

By focusing on the Habsburg legal regulation of Bosnian forests and by understanding law as a socially- and politically-negotiated process, this article shows that the Habsburg authorities did not institute a uniform *Rechtsstaat* with clearly established legal codes and institutions. On the one hand, the Habsburg authorities sought to emerge as a legalist authority that cared about the legal implications of their claims over forest resources, and made them appear legally legitimate. On the other, legal principles could not always address the realities on the ground. Thus, this study uncovers the gradual and uneven evolution of legal politics, which had to adjust to complex social and environmental realities on the ground. Rather than immediate and top-down implementation of legal norms, it was the principle of trial and error that was the order of the day, revealing the continuous rephrasing and adaptation of legal initiatives. In addition, I demonstrate how crucial the changing socio-political contexts were for understanding the outcome of legal disputes. As the Habsburg authorities' primary agenda shifted from seizing forests for their material value to utilizing them for consolidating rule, legal settlements became instrumental for serving Habsburg political interests. Moreover, this study uncovers the significance and logic of the Ottoman-Habsburg legal entanglements, an arguably hybrid system that

2. Emily Greble, ed., "The Habsburg-Ottoman Borderlands: New Insights for the Study of the Nineteenth-Century European and Social Order," Forum, *Austrian History Yearbook* 51 (2020): 15–24. For the most recent analysis of the transformation of Islamic institutions in post-Ottoman southeastern Europe from the legal point of view, see Emily Greble, *Muslims and the Making of Modern Europe* (New York, 2021).

3. Among others, see Peter Sugar, *Industrialization of Bosnia and Hercegovina 1878–1914* (Seattle, 1963); Edin Hajdarpašić, *Whose Bosnia? Nationalism and Political Imagination in the Balkans, 1840–1914* (Ithaca, 2015); Robin Okey, *Taming Balkan Nationalisms: The Habsburg 'Civilizing Mission' in Bosnia 1878–1914* (Oxford, 2007); Robert J. Donia, "The Proximate Colony: Bosnia-Herzegovina under Austro-Hungarian Rule," in Clemens Ruthner, Diana Reynolds-Cordileone, Ursula Reber, and Raymond Detrez, eds., *WechselWirkungen: Bosnia-Herzegovina, Austria-Hungary, and the Western Balkans 1878–1918* (New York, 2015), 67–82; Benno Gammerl, *Subjects, Citizens, and Others: Administering Ethnic Heterogeneity in the British and Habsburg Empires, 1867–1918* (London 2017); Clemens Ruthner and Tamara Scheer, eds., *Bosnien-Herzegowina und Österreich-Ungarn: Annäherungen an eine Kolonie* (Tübingen, 2018).

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developed at the intersection of state-led initiatives, legal scholarship, and legal interventions of ordinary subjects.

The article also engages with the looming question of how to actively integrate the Ottoman past into the narration of European history.[4] By deconstructing Habsburg rule in Bosnia-Herzegovina as a "modern," "European" regime that developed in sharp opposition to its Ottoman predecessor, I demonstrate the symbiotic relationship between the Ottoman and Habsburg imperial pasts on European soil. In order to embrace the region's multiple historical contexts and agencies, the study empirically nuances the ongoing paradigmatic engagements of transitive perspectives on the history of southeastern Europe.[5]

Towards a History of Legal Contests and Entanglements

Contemporary legal historians tend to understand law as neither static nor neutral, emphasizing rather its contested nature, fluidity, and socio-political multi-layeredness.[6] Following the recent imperial turn, scholars have underlined the relationship between imperial legal politics and various socio-political conflicts.[7] By building on these methodological moves, this study focuses on the contested domain of the Habsburg legal regime in which legal codes for forest use were established. The law became an instrument of power, mobilized not only by the imperial state but also by locals, including landowners and peasants.[8] By examining the agency of the Bosnian population and its role in the process of codifying rights in forest use, this article contributes to the scholarship on "state-building from below."[9]

On a theoretical level, the article exposes law as an arena of competing interests, marked by conflict, mediation, and compromise, while being subjected to multiple influences, political disputes, and economic interests. Methodologically, and unlike previous studies that have mainly focused on law at work, I stress the implications of failed legal initiatives and legal

4. This question was originally posed by Mark Mazower, *The Balkans: A Short History* (New York, 2000), xi.

5. For most recent examples of these paradigmatic engagements, see Greble, *Muslims and the Making of Modern Europe;* Thomas Simon, ed., *Konflikt und Koexistenz: Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert: Serbien, Bosnien-Herzegowina, Albanien,* Band 2 (Frankfurt am Main, 2017); Leyla Amzi-Erdoğdular, "Afterlife of Empire: Muslim-Ottoman Relations in Habsburg Bosnia Herzegovina, 1878-1914" (PhD diss., Columbia University, 2013).

6. Stanley Diamond, "The Rule of Law Versus the Order of Custom," *Social Research* 38, no. 1 (Spring 1971): 42–72.

7. The body of literature within legal history of empire has become enormous. Among many others, see Lauren Benton, "Introduction," in "AHR Forum: Law and Empire in Global Perspective," special issue, *American Historical Review* 117, no. 4 (October 2012): 1092–1100; Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History 1400–1900* (Cambridge, Eng., 2001); Francis G. Snyder, "Colonialism and Legal Form: The Creation of 'Customary Law' in Senegal," *Journal of Legal Pluralism and Unofficial Law* 19 (December 1981): 49–90.

8. By peasants I mean sharecroppers; that is, peasants who did not own land, also known as *kmets*.

9. Pieter Judson, *The Habsburg Empire: A New History* (Cambridge, Mass., 2016), 5.

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disputes for the formation and reformulation process of legal systems.[10] The article offers a new approach to the historical study of legal regimes that is analytically sensitive especially to the early attempts to establish legal authority while uncovering their ambiguous character. As I show, studying these early legal initiatives calls for a methodological disentanglement of the multiple, conflicting interests of varying strengths as they sought to define the emerging legal sphere.

The notion of pluralism as a defining characteristic of the Habsburg legal regime in Bosnia-Herzegovina is central to the study. Legal pluralism was one of the core features of imperial politics globally, with empires embracing divergent legal norms, institutions, and cultures that both clashed and coexisted. The Habsburg empire was no exception.[11] Habsburg Bosnia-Herzegovina, meanwhile, while usually staying on the margins in studies by Habsburg historians, has slowly emerged as a locus for the study of legal developments in southeastern Europe. The field received fresh energies from a separate yet parallel debate among social and political historians working on the complex transformation of Balkan polities in the wake of the Ottoman withdrawal.[12] Legal pluralism has proved central to understanding broader issues of the post-Ottoman transition and questions about the afterlife of Ottoman legal norms.[13] There has been a particular focus on property law as central to state and nation building, showing how post-Ottoman southeastern Europe became a laboratory of interpretation and translation of Ottoman property regulation.[14] By analyzing "legal transplants" from the Ottoman

10. For analytical approaches that shift from studying law merely as a tool of power to exploring its process-making with case studies of British India see Gunnel Cederlöf, *Landscapes and the Law: Environmental Politics, Regional Histories, and Contests over Nature* (New Delhi, 2019); K. Sivaramakrishnan, *Modern Forests: Statemaking and Environmental Change in Colonial Eastern India* (Stanford, 1999).

11. Already in the late nineteenth century, the legal sociologist Eugen Ehrlich observed parallel practices of two conflicting legal regimes: Austrian official law and local legal customs in Habsburg Galicia. He called for conceptually acknowledging the law-creating role of customs as part of a legal reality, for which he also coined the term "living law." For more elaborate discussions on Ehrlich's concept of legal pluralism and his legacy in present legal practices, see David Nelken, "Eugen Ehrlich: Living Law and Plural Legalities," *Theoretical Inquiries in Law* 9, no. 2 (June 2008): 443–471. For the most recent discussion on legal pluralism in Austria-Hungary as temporal pluralism, see Natasha Wheatley, "Legal Pluralism as Temporal Pluralism: Historical Rights, Legal Vitalism, and Non-Synchronous Sovereignty," in Dan Edelstein, Stefanos Geroulanos, and Natasha Wheatley, eds., *Power and Time: Temporalities in Conflict and the Making of History* (Chicago, 2019), 53–79.

12. Fabio Giomi, "Forging Habsburg Muslim Girls: Gender, Education and Empire in Bosnia and Herzegovina (1878–1918)," *History of Education* 44, no. 3 (May 2015): 274-92; Hajdarpašić, *Whose Bosnia?*; Hajdarpašić, "Out of the Ruins of the Ottoman Empire: Reflections on the Ottoman Legacy in South-eastern Europe," *Middle Eastern Studies* 44, no. 5 (September 2008): 715–34; Nathalie Clayer and Xavier Bougarel, eds., *Les musulmans de l'Europe du Sud-Est: Des Empires aux États balkanique (XIX*e*–XX*e *siècles)* (Paris, 2013).

13. Michael Stolleis, Jani Kirov, and Gerd Bender, eds., *Konflikt und Koexistenz: Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert: Rumänien, Bulgarien, Griechenland*, Band 1 (Frankfurt am Main, 2015); Simon, *Konflikt und Koexistenz*, Band 2.

14. Jelena Radovanović, "Contested Legacy: Property in Transition to Nation-State in Post-Ottoman Niš" (PhD diss., Princeton University, 2020).

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legal system into successor states, scholars have shown how the Ottoman legal repertoire conditioned the codification process of post-Ottoman regimes in the Balkans, including the Habsburg regime in Bosnia-Herzegovina.[15] There, examinations of property relations have revolved around agrarian reforms, while forests have remained almost completely off the radar, despite being the financial foundation of the imperial state.[16] When forests are mentioned, their discussion is confined to normative approaches to legal history, including an emphasis on decrees and scholarly elites.

By exploring intersecting legal traditions in forest management, this article shows that legal pluralism was a far more dynamic and interactive legal phenomenon than has hitherto been acknowledged. It draws on a wealth of local court records, administrative reports, and debates by imperial lawmakers, demonstrating how not just lawmakers, but also other participants in the legal sphere including administrators, forest officers, and ordinary subjects invoked customs and Ottoman norms that favored their often-conflicting interests.[17] Thus, in contrast to the perceived knowledge that the maintenance of Ottoman and Islamic jurisprudence was carried out mainly by the Muslim population in order to preserve their political and legal autonomy, this article shows how Ottoman legal repertoires were mobilized by a far greater spectrum of actors, including the Habsburg officials and the local population, both Christian peasants and Muslim landowners. Finally, unlike previous literature, which often represents the Ottoman legacy as a period of stasis, I show how Ottoman legacies in terms of legal decrees and customs of land usage prevailed after the occupation, but also weakened in their integrity over time. As Habsburgs solidified their administrative hold, they also molded the Ottoman legal norms into their own legal repertoire and categories.

By examining how imperial rulers and local populations mobilized laws to further their political and economic ambitions, we gain insight into subject-ruler relations at the heart of imperial governance. Building alliances, however, was not a systematic, but a selective, instrument of governance. Against the backdrop of the wider Habsburg context, the logic of alliance building in Bosnia-Herzegovina bore some specific features. In other parts of the Monarchy, the imperial administration often clashed with local elites, whereas the peasants constituted the major base of loyal subjects.[18] In Bosnia,

15. Mehmed Bećić, "Osmansko tanzimatsko pravo i austrougarski pravni poredak u Bosni i Hercegovini," *Anali Pravnog fakulteta u Zenici* (2013): 187–201; Mehmed Bećić, "Primjena Medželle u post-osmanskoj Bosni i Hercegovini," *Godišnjak Pravnog fakulteta u Sarajevu* LVII (2014): 51–65; Fikret Karčić, "Građanski zakonik u Bosni i Hercegovini: Kodifikacija kao sredstvo transformacije pravnog sistema," *Zbornik Pravnog fakulteta u Zagrebu* 63 (2013): 1027–36.

16. Philippe Gelez, "Pauverté et modernité dans une province ottomane: La question agraire en Bosnie 1800–1918," (Habilitation, École des hautes études en science sociales, 2016).

17. For similar analytical approaches with case studies of Tsarist Russia and India see Stefan Kirmse, "Law and Empire in Tsarist Russia: Muslim Tatars Go to Court," *Slavic Review* 72, no. 4 (Winter 2013): 778–801; Gunnel Cederlöf, *Founding an Empire on India's North-Eastern Frontiers 1790–1840: Climate, Commerce, Polity* (Oxford, 2014).

18. Hannes Grandits, Pieter Judson, and Malte Rolf, "Towards a New Quality of Statehood: Bureaucratization and State-Building in Empires and Nation States Before

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the opposite was the case. There, the Christian Orthodox and Catholic peasants who formed the majority of the region's sharecroppers (*kmets*) and who were targeted by the aspiring Serbian and Croatian nationalist movements, challenged the imperial authorities in several uprisings, earning a reputation of being a threat to the new regime.[19] The provincial government in Bosnia-Herzegovina, the *Landesregierung*, turned to the Muslim estate owners as the main state-building partners and, as will be shown later, granted them concessions in the (forest) property regime.[20]

Finally, the paper also integrates nature as a factor in the discussion of Habsburg legal codification. The implementation of legal decrees depended on the concrete environmental realities on the ground. Environmental particularities, such as accessibility of forests in mountainous regions or timber quality in areas that attracted private entrepreneurs, played important roles in shaping not only legal regulations but also law's efficacy. I argue that variations in time and space limited the homogenization of imperial legal politics, exemplifying the correlation between law and nature, the latter tracing the limits of the former's commanding capacity and coherence.[21]

The discussion of the legal remaking of Bosnia's forests under the Habsburg regime unfolds chronologically. Beginning with the early occupation period (1878–81), I explore the fragmented character of the first legal initiatives, showing how their failures shaped the subsequent legal reforms. Then, I move to the analysis of the cadastral project (1881–84), an enterprise that shows both its holistic panoptic ambitions and the constraining effects of climate and environment on its implementation. Finally, the last section questions the assumption of the uniform land registry that emerged from the cadastral project, demonstrating that its implementation (1884–1901) was often arbitrary and regionally fragmented, shaped by the tensions between imperial interests and fractured local power structures.

The Ottoman Legal Context

Set in the mountainous western Balkans, the thinly populated border province of Bosnia-Hercegovina was famously rich in forests. Its forests covered 9,864

1914," in Włodzimierz Borodziej, Sabina Ferhadbegović, and Joachim von Puttkamer, eds., *The Routledge History Handbook of Central and Eastern Europe in the Twentieth Century: Statehood* (London, 2020), 41–116. For alliance building in Galicia, among others, see Kai Struve, *Bauern und Nation in Galizien: Über Zugehörigkeit und soziale Emanzipation im 19. Jahrhundert* (Göttingen, 2005). For Bukovina, see Fred Stambrook, "National and Other Identities in Bukovina in Late Austrian Times," *Austrian History Yearbook* 35 (January, 2004): 185–203.

19. Tomislav Kraljačić, *Kalajev režim u Bosni i Hercegovini 1882–1903* (Sarajevo, 1987), 504.

20. Robert J. Donia, *Islam under the Double Eagle: The Muslims of Bosnia and Herzegovina 1878–1914* (Boulder, CO, 1994); Kraljačić, *Kalajev režim*; Robin Okey, "A Trio of Hungarian Balkanists: Béni Kállay, István Burián and Lajos Thallóczy in the Age of High Nationalism," *The Slavonic and East European Review* 80 (2002): 234–66; Hajdapašić, *Whose Bosnia?*, 172–77.

21. Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York, 2009).

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square miles, or nearly fifty percent of its territory, comprising beech, oak, elm, fir, and pine. The higher altitudes had coniferous forests, with a mixed forest zone in the mid-altitudes and broadleaved forests in the lowlands.

Immediately upon occupation in 1878, the Habsburg authorities announced major forestry reforms. They promised the advent of European, "Western," and modern forest management that would mark a total break with the previous Ottoman, "Oriental," and "chaotic" forest exploitation, which, they argued, posed severe ecological threats to Bosnian forests.[22] Central to the reform was the attempt to create free access to forests for large-scale commercial timber exploitation. The newly acquired region was expected to become economically self-sustaining.[23] Given the government's restricted finances, the exploitation was to be entrusted to private enterprises from Austria-Hungary, Bavaria, and Italy.[24] However, the precondition for productive exploitation was unrestricted access to forests, which did not exist due to the legal uncertainty of property relations. Thus, concerns of securing access and infrastructure put legal and administrative reorganization high on the Habsburg-Bosnian agenda.

At the heart of this project stood two interrelated forest rights, which in turn spurred two different types of conflict. One was the problem of defining and demarcating state and private forests, and the other the question of restricting customary rights in local forest use. While the former concerned mainly Bosnian Muslim landowners who envisioned forests as their private property, the latter affected the local peasants and their livelihoods. These two issues evolved separately, but they eventually merged in the preparation of the land registry.

Habsburg attempts to regulate Bosnian forests were not a novelty. In the 1850s, the Ottoman central government similarly tried to take control over forest resources in the Bosnian province.[25] Governor Ömer Paşa Latas introduced major reforms to limit the political and economic power of the local Muslim landowners (*çiftlik sahibi*). By targeting their informal trade partnerships with Austrian merchants, he sought to prevent them from extracting valuable timber from the forests that the Ottomans considered state property.[26] His intervention marked the beginning of a protracted conflict of interests and ownership claims over forest resources between the imperial government and the local landowners.

22. Ludwig Dimitz, *Die forstlichen Verhältnisse und Einrichtungen Bosniens und der Hercegovina* (Vienna, 1905), 94–95; Ferdinand Schmid, *Bosnien und Hercegovina unter der Verwaltung Österreich-Ungarns* (Leipzig, 1914), 424–28.

23. Sugar, *Industrialization of Bosnia*, 128; Michael Palairet, *The Balkan Economies c. 1800–1914: Evolution Without Development* (Cambridge, Eng., 1997), 227.

24. Sugar, *Industrialization of Bosnia*, 239.

25. On political and legal *Tanzimat* reforms and their implementation in the Herzegovina region of the Bosnian province, see Hannes Grandits, *Herrschaft und Loyalität in der spätosmanischen Gesellschaft: Das Beispiel der multikonfessionellen Herzegowina* (Vienna, 2006).

26. For details, see Selçuk Dursun, "Forest and the State: History of Forestry and Forest Administration in the Ottoman Empire" (PhD diss., Sabançı University Istanbul, 2007), chapter 3.

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Similar dynamics were at work when the Sublime Porte issued the Ottoman Forest Regulation Law of 1870. The law represented a new socio-legal approach to forest management that sought to establish the sovereign's rule over forest resources at the expense of customary use.[27] Central to it was the legal category of forests on state-owned *miri* lands (*arazi-i miriyye*), which from then on encompassed all forests, except for freehold property (*mülk*) and forests on the lands of pious institutions (*arazi-i mevkufe*).[28] In the Bosnian *vilayet*, though, these reforms did not lead to changes in forest use; like the majority of *Tanzimat* era reforms, they remained unimplemented. Thus, once Austria-Hungary seized Bosnia-Herzegovina, it encountered a multitude of unresolved disputes over forests. These legal conflicts greatly informed how the new imperial authorities shaped their own legal strategies for appropriating state forests.

Multiple Trajectories of Rights in "Nature," 1878–82

When discussing the regulation of forest property rights, scholars usually highlight the role of the 1884 decree on forest ownership, considered the cornerstone of Habsburg governance of Bosnian resources.[29] But the decree was preceded by a lively debate and multiple legal initiatives that aimed at legally securing state-managed forest lands. These complicate any assumption about the top-down linear implementation of Habsburg legal rule. These cases and debates were pragmatic and far from systematic. More importantly, most of these early initiatives failed due to either limited administrative capacity or (unexpected) local reactions.

The first initiative from October 14, 1878 aimed to collect information on the socio-environmental conditions in Bosnia-Herzegovina, and as such it illustrates the challenges of bringing the forests under legal and administrative control. Through surveys of existing tree species, ownership relationships, and transportation infrastructure, Habsburg officials sought to assess potential sources of revenue.[30] It quickly became clear, however, that such an enterprise required intimate knowledge of the local geographical and social landscape, including property relations. These efforts, therefore, hinged on close collaboration with the local population. However, most of the Ottoman district officers (*kaymakams*) who remained in service proved reluctant to collaborate with the occupying authorities. They perceived any

27. Dursun, *Forest and the State*, 235.

28. The Ottoman classification of forest lands followed from the broader classification of landed property, which then encompassed the forest that was on the land. See Dursun, *Forest and the State*, 237.

29. Branislav Begović, *Razvojni put šumske privrede u Bosni i Hercegovini u periodu austro-ugarske privrede sa posebnim osvrtom na eksploataciju šuma i industrijsku preradu drveta* (Sarajevo, 1978), 11; Sugar, *Industrialization of Bosnia and Hercegovina*, 131; Dževad Juzbašić, *Privreda i politika u Bosni i Hercegovini pod austrougarskom upravom* (Sarajevo, 2002), 160.

30. Arhiv Bosne i Hercegovine, Zemaljska vlada za Bosnu i Hercegovinu, Sarajevo (hereafter ABiH, ZVS), 1878, K.K. XXXVI. Infanterie Truppen Division, Dokument Nr. 2014/4 (Beilage II, Übersetzung des Circulars A703 vom 14. Oktober 1878), November 11, 1878.

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territorialized resource control by a foreign ruler as a threat to traditional forest use from which they and the local population benefited. It is precisely this lack of local cooperation that led to the failure of the early attempts to record the forest funds.

Following the failed initiative, several other decrees followed.[31] One dating from December 31, 1881, is worth analyzing in detail because it illustrates some of the earliest examples of bottom-up legal engagement and legal pluralism.[32] The decree did not aim to bring all forests under uniform legal and administrative principles. Such a structural undertaking would have required consolidated imperial governance with a robust administrative apparatus of forest and legal experts, none of which existed at the time. The legal approach was fragmented because it was geographically restricted and ecologically conditioned; it affected only regions with good and easily accessible timber that could attract timber merchants' interest. The decree outlined a procedure by which the district administration in which the *Landesregierung* planned forest exploitation would have to make a public announcement and the public would have thirty days to present their claims of ownership rights. Any claims of property rights needed to be proven by presenting an Ottoman title deed (*tapu*), whose legal validity was examined by a district forest commission.[33]

This decree should be interpreted against the backdrop of contentious property relations in forests that lacked any physical signs of demarcation. Before any large-scale extraction, the authorities had to ascertain whether any of the locals could prove property or usage rights of the land. The Landesregierung saw the decree as a tool to legally indemnify extractive activities against potential land disputes with the local population that could lead to compensation payments by the government.[34] But the authorities failed to foresee the numerous applications that ensued and, not infrequently, initiated protracted trials. These proceedings, in turn, became arenas of negotiation between the Forest Department and local landowners, mostly Muslims, who claimed private ownership over forests.

While some of the local contenders submitted Ottoman property deeds in order to prove their claims, most of the Muslim elite either lacked any

31. Another decree was issued on August 1, 1879. Departing from the Ottoman ownership categories of forestlands, the new occupying power aimed now at demarcating private, state-owned, and *vakıf* forests, thus trying to give them practical meaning by a clear determination of boundaries. This also failed. For the decree, see "Circularerlass der Landesregierung in Sarajevo vom 1. August 1879, Nr. 14276, Fin 4160, betreffend die Ausscheidung der Privatforste von den Staats- und Vakufforsten," in *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen, 1878–1880*, Band 3, I. Theil (Vienna, 1881), 778–79.

32. "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 31. Dezember 1881, Zahl 26385, über das Verfahren zur Klarstellung des Eigenthums- und sonstigen Besitz- und Nutzungsrechte und Ansprüche an Waldgründe," in *Sammlung der Gesetze und Verordnungen für Bosnien und die Hercegovina*, Jahrgang 1881 (Sarajevo, 1881), 734–40.

33. Schmid, *Bosnien und Hercegovina*, 442.

34. Arhiv Bosne i Hercegovine, Zajedničko ministarstvo finansija, Sarajevo (ABiH, ZMF), 1883, Opšti spisi, Nr. 2545 (Bericht der Landesregierung für Bosnien und die Hercegovina), May 12, 1883.

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such documentation or was reluctant to present them.[35] In fact, for many, the absence of a tapu only provided an opportunity to claim ownership over larger areas than what a tapu would have actually shown. Rather than relying on documents, most of the landowners claimed property rights from time immemorial, inviting witnesses from among the villagers to support their claims. Not infrequently, this gambit proved successful, even though it circumvented the legal requirements that the Habsburg administration had tried to introduce, namely to show a forest tapu as legal proof for the claimed property rights over forest land.

The 1882 case of the Muslim landowner Avdo Kobilica perfectly illustrates how these early court proceedings did not simply serve as extensions of the imperial state's economic agenda. Instead, they also allowed the local landowners to strategically appropriate them for legalizing their own aspirations over property rights. Kobilica and his family engaged in a legal dispute with a forestry officer, Ferdinand Pjetschka, regarding forests in Dubovo Brdo near the town Kakanj in central Bosnia. Given the region's valuable timber and geographical proximity to the river Bosna, already in 1879, the Austrian forest experts estimated that these forests could be profitably exploited.[36]

But, in 1881, Kobilica prevented the building contractor Johann Banić, who had made a deal with the Forest Department to fell over one thousand oaks from the region, from accessing the trees. Claiming ownership rights over the same patches of forestland, the parties accused each other of intrusion. According to Pjetschka, Dubovo Brdo became state-owned land in the wake of the Ottoman Forest Regulation (1870). He framed state ownership of the forest as a legal legacy from the Ottoman empire in order to justify the contracts he signed with Banić. Moreover, Pjetschka tried to disqualify Kobilica's claim by bringing in local witnesses who questioned Kobilica's traditional usage of the contested forest. Kobilica, in contrast, based his argument on the legal principle of *ab antiquo*, supported with testimony from his own group of witnesses. He also submitted a tapu, claiming that it was the Ottoman government that had converted his customary usage rights into private ownership.[37] Both parties thus mobilized Ottoman regulations and legal documents to further their own causes. Moreover, both parties used local witnesses to prove their claims, which illustrates how local social divisions, hierarchies, and conflicts within village communities could shape the outcomes of ownership disputes.

After two years of intense negotiations, the case ended in two opposing verdicts from two different courts. While the local district court in Zenica

35. Such instrumental deployment of Ottoman documents by land-owning parties was also practiced during the Ottoman period. Ana Sekulić's excellent study of the Franciscan monastery in Fojnica illustrates the employment of Ottoman documents as a legal strategy for establishing legitimacy among the Catholic population. See Ana Sekulić, "From a Legal Proof to a Historical Fact: Trajectories of an Ottoman Document in a Franciscan Monastery, Sixteenth to Twentieth Century," *Journal of the Economic and Social History of the Orient* 62, no. 5/6 (2019): 925–62.

36. AT-OeStA, KA KPS LB K VII m, 46–4-503 (Ergebnisse der Forstexpertise in Bosnien und der Herzegovina während des Sommers 1879, 1880), 24–25.

37. All documents related to the court case of Avdo Kobilica, which went on for several years, are put together in a bundle under the title "Waldansprüche, Bezirk Zenica, Fall Avdo Kobilica" with the archival signature ABiH, ZVS, 1884, K. 38, šifra 42–34/20.

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convicted Kobilica for intrusion on state-owned forestland and ordered him to pay a fine, the Supreme Court in Sarajevo found that Dubovo Brdo was not state-owned land and therefore rejected the charge of intrusion and canceled Kobilica's fines.[38] Even though the Supreme Court's decision refrained from weighing in on the ownership question, it prevented any further commercial logging.

The opposing verdicts indicate the multiple layers and internal divisions within the legal system as well as the lack of any homogenous legal "ideology." The Kobilica case also highlights the reasons behind the failure of the 1881 initiative to lay the legal groundwork for extraction in state-managed forests. Forests designated for commercial exploitation by the Forest Department soon became contested zones. Their status had to be negotiated in the court, where the Forest Department no longer operated simply as a representative of the state but as one of the two competing parties. The outcome of this and similar cases undermines the image of the Forest Department as an unstoppable force against which any arguments were of little use. These jurisdictional conflicts and the discrepancy between the desired and the actual effects of the decree propelled a serious change in the structure of the legal arrangements that were to follow. Most significantly, legal initiatives after 1882 sought to invoke general, unbendable principles of law with varying degrees of success.

From *Waldservitut* to *Forstfrevel*: Legal Reshaping of Customary Rights

In addition to the claims of the estate-owners over forests, another major concern of the Landesregierung was the status of customary rights and usage of the state-administered forest resources by the local population. This encompassed legal codification of usufruct rights over forests, the existing legal practices regarding usage of resources, and cultural attitudes to forests and trees.

In Bosnia, most rights derived from custom and remained unchanged even during Ottoman reforms of commons in the wake of the Tanzimat. Customary forest practices were based on traditional local knowledge and included a variety of agricultural and economic practices. Timber was used for building and repairing houses, for manufacturing vehicles and farm implements, and for producing charcoal. Forests also served for animal grazing and as an important source of firewood.[39] From 1879 onwards, there were numerous attempts to re-shape social practices, demonstrating how indigenous practices surrounding forests in Bosnia-Herzegovina based on customary law challenged, both conceptually and practically, the efforts to centralize forest management.

From early on, Habsburg lawmakers and forest officers called for restricting, albeit not totally rejecting, the rights of customary beneficiaries.

38. ABiH, ZVS, 1884, K. 38, šifra 42–34/20 (Fall Avdo Kobilica, Odluka kotarskog suda u Zenici, Nr. 186), March 29, 1882; and (Odluka vrhovnog suda u Sarajevu Nr. 1898), May 13, 1882.

39. Dimitz, *Die forstlichen Verhältnisse*, 89.

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The Habsburg attitude is best illustrated in the proclamations by forest officer Johann Marhula who, after many years of administering and supervising Upper Hungarian private forests, spent two years in the period between 1879 and 1884 in Bosnia-Herzegovina (most probably 1881–82) as adviser to the Landesregierung on customary rights. In his view, customary rights were the major threat to the commodification of forest products into marketable goods. His argument in support of the intended utilitarian reforms developed alongside keywords such as "progressive," "rational," and "sustainability in forest management" that were set in opposition to traditional forest uses described as "unregulated" and "ecologically harmful." At the same time, he was also inclined to grant some forest access to the locals, pointing to its importance for daily subsistence.[40]

The legal reshaping of social practices and existing usage rights was the subject of numerous decrees that paralleled the process of legal codification of property relations in forests. These decrees had two major characteristics. The first was the conceptual shift from preexisting Ottoman legal categories and norms concerning usage rights into Austrian ones. Here, Habsburg lawmakers referred mainly to the Ottoman Forest use regulation, the *Orman kanunnamesi* of 1870, but they also engaged with local forest customs.[41] The central challenge in the legal translation was the fact that the Ottoman and Austrian legal systems departed from very different notions of what constituted usage rights in state forests.[42] The Ottoman regulation, to which the notion of custom remained fundamental, preserved commons in terms of unrestricted access to forests on abandoned lands, *arazi-i metruke*, including communal forests (*baltalıks*), meadows (*mera*), and pastures (*otlak*), which it considered as inalienable public goods to serve the primacy of public interest.[43] In the Austrian half of the Monarchy, meanwhile, many common rights disappeared in the aftermath of the 1853 abolition and regulation of Servitude rights (*Servitutenrecht*). For Habsburg jurists, who on the one hand were concerned about the Ottoman legal system but on the other tried to find a legal way to counteract the "wasting of wood" from state-owned forests, this constituted a problem on both the normative and practical levels. In theoretical legal discourses, customary practices were set as counterpoint to the major economic transformations of increasingly industrialized forest exploitation.[44] At the same time, they abandoned any attempts to apply the Austrian Servitutenrecht in Bosnia, fearing dramatic economic consequences for the local peasants. Instead, they proposed a gradual, case-by-case-based

40. ABiH, ZVS, 1884, K. 38, šifra 42–54/55, Nr. 3 (Brief vom Forstbeamten Johann Marhula), January 15, 1884.

41. Österreichisches Staatsarchiv, Allgemeines Verwaltungsarchiv, Vienna (AT-OesT-AVA), Nachlässe von Karl Freiherr von Krauss junior: IV, B. 5.7., Unterlagen und Berichte, Forst und Weide (Elaborat über Weidefrage in den okkupierten Provinzen mit Berücksichtigung der bestehenden Weidezinsverhältnisse), May 28, 1881.

42. *Erläuternde Bemerkungen zu dem Entwurfe eines Grundbuchs-Gesetzes für Bosnien und die Hercegovina* (Sarajevo, 1890), 12.

43. Dursun, *Forest and the State*, 220–21.

44. AT-OeStA AVA, Nachlässe von Karl Freiherr von Krauss junior: IV, B. 5.7., Unterlagen und Berichte, Forst und Weide 1881 (Antrag betreffend des Begriffes Forstfrevel und deren Behandlung), October 14, 1884.

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transformation towards more regulated access, including a gradual shift in legal norms from acknowledging the rights of usufruct, which were subject to imperial administrative supervision, towards criminalizing excesses in the utilization of forest resources.

Thus, while the first decrees from 1879 recognized the right of the local population to access resources in state forests, they also aimed to reduce human agency there. The decrees allowed peasants to obtain firewood only by collecting naturally fallen trees or deadwood, while strictly prohibiting them from felling young and healthy trees.[45] Similarly, the same group of decrees also granted villagers grazing rights in state forests but only within designated areas and at certain intervals that were determined by forest inspectors based on the amount of cattle per household. Sheep and goats were prohibited from grazing in the forests.[46]

In contrast to these early decrees, the elaborate instructions for forest administration dating from May 9, 1880 (Nr. 2975) and a later decree on usage rights from 1883 mainly discussed sanctions for breaching the rights of the *Waldservitut*—a holder of easement rights on forests owned by the state (or a private person). Formally, rights to pasture were now confined to strictly defined areas, which were considerably smaller than the pastures previously used by the locals, while the amount of timber procured for the Waldservitut became drastically reduced.[47]

It is from these discussions that the concept of *Forstfrevel* (an unauthorized person exploiting or damaging state-owned forests) emerged. Specifically, the instructions criminalized the use of forests beyond designated limits. Any overstepping was to be reported as a Forstfrevel infringement to the Forest Department and the forest police. Sanctions included a monetary fine as compensation for the "damage to the woods" or labor, usually towards the construction of forest paths.[48]

Even though the number of decrees concerning usage rights in forests may suggest vigorous legal systematization on the part of the imperial state, this was arguably not the case. Rather, by switching our attention from normative law to the practices on the ground, it becomes clear that the decrees themselves were a reflection of the setbacks the administration faced in the process of codifying usage rights. Numerous court reports blamed peasants for "violations of forestry law," citing various breaches.[49] Felling healthy trees appeared to be the most frequent violation, which the peasants justified

45. "Circularerlass der Landesregierung in Sarajevo vom 3. August 1879, Nr. 14451, Fin. 4223, betreffend das Holzbezugsrecht der Bevölkerung," in: *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze*, 779–80.

46. "Verordnung der Landesregierung in Sarajevo vom 15. August 1879, Nr. 9504, Fin. 2570, betreffend die Ausübung der Viehweide in Staatswaldungen," in: *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze*, 780–81.

47. Schmid, *Bosnien und Hercegovina*, 450.

48. "Dienstinstructionen für die forstliche Verwaltung von Bosnien und der Hercegovina. Genehmigt mit Erlass des gemeinsamen Ministeriums vom 9. Mai 1880, Nr. 2975 B. H.," in: *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze*, 798–852.

49. ABiH, ZVS, 1883, K. 29, šifra 17/2–18, Forst- und Waldangelegenheiten/ Waldstreitigkeiten.

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by arguing that there were simply no trees lying on the ground.[50] While the details of these trials are scarce and the perspective of the local population difficult to discern, the very fact that the trials took place suggests that the peasants did not have the same legal means as the Muslim notables. As said above, the notables held (or claimed to have held) and often successfully deployed Ottoman tapus. Peasants' customs, however, were anchored in "unwritten" practices and privileges, thus lacking an inscribed set of codes against which their claims could be assessed. A categorical formulation of *ab antiquo* rights became difficult to defend.[51] The trials and peasant tribulations thus underline the importance of socio-economic factors in shaping interactions with the imperial government.

Importantly, however, the peasants were not entirely politically helpless in the face of Landesregierung's reforms. The "weapon of the weak" was often the simple continuation of traditional usage practices, which frequently proved impossible to police.[52] Legal cases regarding Forstfrevel were not only protracted, but they also required concrete evidence, which was difficult to obtain.[53] Many infractions remained unreported, with the locals simply carrying on their practices.[54] Sometimes, peasants chose to directly confront the local administration and express their discontent about "mismanagement" or disregard for their ancient rights. That was the case with the inhabitants in the town of Maglaj in northern Bosnia's Zenica district, where a great fire damaged several houses in 1879. When the locals acquired building material from state forests, they refused to pay tax for the obtained wood. Continuous refusal to pay the tax eventually forced the administrators to yield to their demands.[55]

As local reports reveal, the day-to-day legal and administrative handling of breaches were often made on the spot, with a good deal of improvisation. This resulted in practical discrepancies that often created maneuvering space for the locals. The case of Gavro Panetlić from Vukovine, who cleared a forest area 100 meters long by 60 meters wide, exemplifies the arbitrary character of the administration. According to the Forest Department, the damage he caused merited a fine of 1070 fl or 1124 days arrest. The district court, however, drastically reduced the fine to 30 fl or 90 days arrest. Eventually, Panetlić neither paid the fine nor served time in prison.[56]

50. AT-OeStA AVA, Nachlässe von Karl Freiherr von Krauss junior: IV, B. 5.7., Unterlagen und Berichte, Forst und Weide (Bericht des Forstbeamten aus Maglaj an Karl Freiherr von Krauss), October 8, 1881.

51. Dursun, *Forest and the State*, 234.

52. For the concept of "weapons of the weak," see James C. Scott, *Weapons of the Weak: Every Day Forms of Peasant Resistance* (New Haven, 1985).

53. AT-OeStA AVA, Nachlässe von Karl Freiherr von Krauss junior: IV, B. 5.7., Unterlagen und Berichte, Forst und Weide (Das Justizdepartement in der Frage der Regelung der Forstangelegenheiten), October 17, 1881.

54. AT-OeStA AVA, Nachlässe von Karl Freiherr von Krauss junior: IV, B. 5.7., Unterlagen und Berichte, Forst und Weide (Bericht des Forstbeamten aus Maglaj an Karl Freiherr von Krauss), October 8, 1881.

55. Ibid.

56. AT-Oest AVA, Nachlässe von Karl Freiherr von Krauss junior: IV, B. 5.7., Unterlagen und Berichte, Forst und Weide (Brief des Bezirksvorstehers in Maglaj an Carl von Krauss), October 8, 1881.

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Due to understaffing and limited patrolling capacities, the authorities were unable to eliminate traditional uses of forests by simply classifying them as "illegal." Consequently, the early regulation attempts of Servitutenrecht were not practiced by a notion of a unified legal policy but were situational, making the Servitutenrecht appear as a fragmented right in access to forestlands.

Making Forests Legible: The Cadastral Project 1881–84

The key prerequisite for bringing forests and their utilization under state control was to make them "legible" by a cadastral survey. In the positivist manner of cataloguing nature, the cadaster provided a new type of geographical knowledge exemplified in maps, geodetic descriptions, and numerical measurements.[57] Significantly, and in line with Lauren Benton's observation that imperial and geographic knowledge are inextricable, the cadaster was closely related to efforts to systematize and record property relations.[58] The government saw the cadaster as a way to gain advantage over the interests of the local population, since it offered a scientific basis upon which to formulate state claims to nature. The cadaster was, in short, envisioned as a new source of power, an imperial panopticon over nature and its users.

In contrast to the initial surveying attempts that relied on local expertise, the cadaster was to be done professionally, with trained land surveyors and officials from different parts of the Monarchy. The newly founded commission under the joint Ministry of Finance in Vienna (1880–85) was to supervise the work of these professionals.[59] This cadastral project is arguably best understood in the context of a progressively professionalized imperial state bureaucracy, reflecting "scientification of the social" and the "professionalization of the political."[60]

The forest surveys were done by forestry experts whose primary task was to determine the *economic value* of the forest. The economic value was a combination of two main criteria. The first was the social and legal conditions of the existing patterns of forest utilization, especially the Waldservituten. The second criterion was the ecological conditions of the forests and their yield capacity, estimated according to habitat, age of forest stands, composition, and stock level.[61] While the survey reflected a new spatial ordering that materialized in the forest maps, it served primarily as an economic manual during

57. On the cadaster as a political means of a modernizing state in the context of the Habsburg Monarchy, see Kurt Scharr, "The Habsburg Cadastral Registration System in the Context of Modernization," in Hannes Siegrist and Dietmar Müller, eds., *Property in East Central Europe. Notions, Institutions and Practices of Landownership in East Central Europe* (New York, 2015), 100–16.

58. Benton, *A Search for Sovereignty*.

59. AT- OeStA KA, KPS LB K VII m, 46–4-500 F, 34, Protokolle der Beratungen der Kommission in Betreff der Einführung eines Grundsteuer-Katasters in Bosnien und die Hercegovina.

60. Raphael Lutz, "Die Verwissenschaftlichung des Sozialen als methodische und konzeptionelle Herausforderung für eine Sozialgeschichte des 20. Jahrhunderts," *Geschichte und Gesellschaft* 22, no. 2 (1996): 165–93.

61. *Bericht über die Verwaltung von Bosnien und der Hercegovina* (Vienna 1906), 488–89.

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price negotiations for long-term contracts for forest extraction between the Landesregierung and private entrepreneurs.[62]

The official report from 1906 presented the cadaster survey as a success story. Accordingly, the survey was completed by the end of 1884 and covered an area of 51,158,686.2 *dunam* arranged in 2,845,057 parcels.[63] However, the field reports sent to the Commission in Vienna during the surveying process between 1881 and 1884 reveal a different story: a project plagued by limited administrative capacity and lack of funding, all of which caused numerous setbacks.[64] The difficult terrain along with unforeseen challenges in the planning of the survey gave the cadastral endeavor a rather improvisational character.

Managing the staff proved difficult. Despite the appointment of surveyors, most the work was conducted by lower officials, who often lacked the required theoretical and practical knowledge, resulting in miscalculations and flawed results.[65] Coming from different parts of the Monarchy, the workforce was both difficult to coordinate and marked by major delays in arriving, which disrupted the planned work and increased the project's costs.[66]

There were also numerous environmental challenges. Densely wooded landscapes regularly lacked transportation infrastructure, making the mountainous terrains hard to access. Due to difficulties in assessing the mountains, the surveyors often resorted to creative solutions that cast doubt on the accuracy of the final figures. In many cases, general forest surveys relied on little more than estimations, lacking the required confirmation reports by forest experts.[67] Moreover, Bosnia's climate interfered with the surveyors' progress. Especially during the harsh Bosnian winters, parts of the planned work had to be postponed due to weather conditions. A general forest survey in a landscape marked by such complex ecological realities was hard to realize, and most of the staff was unprepared for these challenges.

Analyzing the effects of the cadastral survey calls for a balanced evaluation. Historian Philippe Gelez sees the cadaster as a semi-failure: while providing an important base for the land register, it failed to accomplish any fiscal goals.[68] But the survey did provide a new, if not always precise, reposi-

62. Among others see ABiH, ZVS, 1886, K. 45, šifra 5–64/549 (Zaključni šumski ugovori izmedju Zemaljske vlade i Morpurgo und Parente iz Trsta).

63. *Bericht 1906*, 488.

64. AT- OeStA KA, KPS LB K VII m, 46–4-501 F, 34, Protokolle der Beratungen der Kommission in Betreff der Einführung eines Grundsteuer-Katasters in Bosnien und die Hercegovina 1880–1885.

65. AT- OeStA KA KPS LB K VII m, 46–4-500 F, K.k. Katastral=Vermessungs=Direktion für Bosnien Nr. 2530 (Oberst Roskievic Promemoria über die Errichtung von Instruktions Abtheilungen für Adjunkte), November, 1881.

66. AT- OeStA KA KPS LB K VII m, 46–4-501 F, 34, (Protokoll der 35 Beratung der Kommission in Betreff der Einführung eines Grundsteuer-Katasters für Bosnien und die Herzegovina), December 19, 1884.

67. AT- OeStA KA KPS LB K VII m, 46–4-500 F, 34, (Protokoll der 34 Beratung der Kommission in Betreff der Einführung eines Grundsteuer-Katasters in Bosnien und die Herzegovina), December 15, 1884.

68. Philippe Gelez, "Les problématiques évolutions de l'estimation fiscale des biens fonciers en Bosnie-Herzégovine durant l'époque austro-hongroise (1878–1918)," in

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tory of knowledge regarding terrain ecology, even though the attempted rationalization of space did not automatically result in the desired expansion of imperial control. With regard to the land registry, meanwhile, the cadaster represented an important first step, since it served as one of the most important types of written evidence when settling conflicts over ownership rights in forestlands.

Land Registry and Forest Property Rights

The main purpose of the land registry was to conclusively determine property rights.[69] Procedurally, the local districts had to first settle ownership rights in forests before introducing the land registry.[70] On March 18, 1884, the Landesregierung passed the legal regulation on issuing title deeds on forestlands for the settlement of forest ownership rights. This decree was an important landmark in the legal codification of forest ownership and usage rights as it sought to define forestlands either as private or state-owned property, thus reflecting the ambition to systematize law in order to gain a uniform rule.[71] Private persons, whose claims to forest rights were considered legitimate, now received a title deed on forestlands issued by the Landesregierung as a valid proof of ownership rights, in contrast to the old Ottoman tapus.

As the internal instructions by the Landesregierung to the local districts reveal, claims to private property were to be subordinated to commercial goals, which the Landesregierung aimed to realize through state-administered forests:

> The purpose of this operation is not to wastefully allot forest lands. . . to private owners, but [ensure] an efficient and just distribution of forest land ownership in those cases where claims to private lands have to be taken into consideration according to the law and the given circumstances—but not, however, at the expense of the state and its economic interests, on which the future of the land depends.[72]

To this end, and in contrast to the previous decree of 1881, forest ownership rights and disputes would no longer be heard by courts. Instead, such claims were to be submitted to a central forest commission that was established as part of the newly founded Department of Land Registry, Forest Ownership,

Florence Bourillon and Nadine Vivier, eds., *La mesure cadastrale: Estimer la valeur du foncier* (Rennes, 2012), 61–72.

69. On the land register as a tool for reordering property relations in southeastern Europe, see Dietmar Müller, *Bodeneigentum und Nation: Rumänien, Jugoslawien und Polen im europäischen Vergleich, 1918–1948* (Göttingen, 2020).

70. Mehmed Bećić, "Pravni transplanti i pravni pluralizam. Transformacija stvarnog prava u Bosni i Hercegovina 1878–1918" (PhD diss., Sarajevo University, 2018), 324.

71. "Verordnung über die Verleihung von Tapien auf Grundstücke, welche zum Waldlande gehören," in: *Sammlung der Gesetze und Verordnungen für Bosnien und Hercegovina*, Jahrgang 1884 (Sarajevo, 1884), 82–86.

72. ABiH, ZVS, 1884, K. 38, šifra 42–54/5, Nr. 10226 (Amsterrinnerung dass die Ediktalaufforderung betreffend die Anmeldung der Eigenthumsansprüche auf Waldland für das Bezirk Prnjavor zu verlautbaren wäre), July 4, 1884.

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and Hypothecary Issues tasked to adjudicate ownership and usage rights.[73] The verdicts of the commission could be appealed to the Ministry of Finance, the body of last instance in this matter. By circumventing legal proceedings, the decision-making process opened a considerable space for collusion and corruption. This, I argue, not only gave the Landesregierung a lot of room to maneuver, but also made the process and its outcomes very arbitrary, thus challenging simplistic assumptions about uniform and coherent actions by the "the imperial state."

The commission's members were carefully chosen lawmakers, appointed by no less than the Finance Minister Benjamin Kallay. They were charged with defending the Landesregierung's interests in forestlands, while at the same time remaining attentive to local landholders' property interests.[74] Among the most prominent members, and indeed the head of the Commission, was the renowned Hungarian judge Vincenc Lekki, also Kallay's close confidant.[75] Lekki was known for his unquestionable loyalty to the Landesregierung, administrative experience on the ground that provided him with intimate knowledge of the region, including local power structures and ecological conditions, and familiarity with the Ottoman legal system, on which the legal arrangement relied conceptually.

The main basis for the Commission's work was the 1884 legal regulation of property rights in forests. Its outline and implementation showed an intricate interplay between the Ottoman Tanzimat's legal repertoire and the Austrian land registry, resulting in multi-normative legal arrangements. As mentioned above, regulations dating to 1881 show traces of legal pluralism surrounding forest legislation through multiple bottom-up engagements between the new administration and the local population. But three years later, in 1884, legal pluralism was central to the authorities' own legal reform as they actively engaged with the Ottoman legal legacy. This engagement involved translation and interpretation of Ottoman legal concepts regarding ownership, while at the same time the Ottoman legal repertoire was subjected to some crucial modifications. All this, in fact, was part of the Habsburgs' political strategy: they took on the mantle of a conscientious keeper of Ottoman legal traditions in order to strategically capitalize on the enduring Ottoman imperial allegiances and sentiments among Muslim landholders. Although, as I will show, much effort went into modeling the legal basis for forest ownership, it was the wider challenge of securing the Landesregierung's political legitimacy by means of alliance building with Muslim notables that ultimately framed the legislation and its revisions. Thus, the 1884 legal regulation represented a delicate balancing act between extraction of state revenues by taking control over forests and maintaining political stability in the region.

This is exemplified by the forest commission's task to legally validate Ottoman documents for property claims over forests. Here, the Landesregierung

73. Later on, the Department was split into two bureaus, one for the establishment of the land registry and another one for the regulation of forest ownership.

74. ABiH, ZVS, 1884, K. 38, šifra 42–54/5, Nr. 10226.

75. ABiH, ZVS, 1884, K. 38, šifra 42–54/5, Nr. 1060 I (Brief von Kállay wegen Änderungen der Verordnung in Bezug auf Anspruch auf Waldland), May 5, 1884.

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officially invoked a hitherto unimplemented Ottoman act issued on July 28, 1874. This dictated that any legal recognition of private property claims on what was previously classified as miri land required the individual to possess a tapu marked by the Ottoman imperial seal, the *tuğra*.[76] The 1874 act was premised on the notion that all (forest) land belonged to the Ottoman state and it was designed to extract a considerable amount of revenue while restricting the leasehold rights of individuals. The reality on the ground, however, of numerous unconfirmed property claims, made rigid implementation of this Ottoman legal principle by the Habsburg regime a potential generator of major social conflicts. For the Landesregierung, this meant prioritizing the economic demands of the local Muslim notables over abstract legal norms.

To the Ottoman requirement to show a tapu as a proof of miri ownership for private individuals, the Landesregierung now added a so-called *economic principle*. The principle stipulated that forests surrounded by a large complex of miri land administered by local landholders could be incorporated into the landholding even if the landholder did not possess a specific forest title deed, a move that the authorities strategically framed as *liberalization* of Ottoman legal norms due to economic necessity.[77] An approved forest property materialized bureaucratically in a new title deed. Instead of the *tuğra,* though, the Landesregierung embossed the document with the imperial seal, the double-headed eagle.

Another modification involved the Ottoman rights to miri forestlands.[78] Following the Ottoman *kanunname* (law codes), the category of miri implied the sovereign's absolute ownership over forest revenues.[79] A forest tapu was a record of transfer that endowed a private individual with leasehold rights over a certain area of forest in their possession but that legally remained state property.[80] Austro-Hungarian legal experts offered similar interpretations in their engagement with Ottoman legal thought. According to Eduard Eichler, the concept of miri implied a type of restricted ownership (*beschränktes Eigenthum*) and rights of use (*quoad usum*) that he interpreted as leasehold rights administered by the sovereign.[81]

76. "1908, maj 2.—Beč. Zajedničko ministarstvo financija poziva Zemaljsku vladu da u pregovorima o agrarnom pitanju ne popušta muslimanskom Egzekutivnom odboru preko direktiva," in Ferdo Hauptmann, ed., *Borba Muslimana Bosne i Hercegovina za vjersku i vakufsko-mearifsku autonomiju* (Sarajevo, 1967), 561–64.

77. "1908, maj 11.—Sarajevo. Zemaljska vlada obavještava Zajedničko ministarstvo financija o rezultatu pregovora s egzekutivnim odborom," in Hauptmann, *Borba Muslimana Bosne i Hercegovina*, 564–98, here 570.

78. For Ottoman *Miri*-regime among others, see Donald Quataert and Halil İnalcık, eds., *An Economic and Social History of the Ottoman Empire 1300–1914* (Cambridge, Eng., 1995), 103–78.

79. Huricihan İslamoğlu, "Property as a Contested Domain: A Reevalution of the Ottoman Land Code of 1858," in Roger Owen, ed., *New Perspectives on Property and Land in the Middle East* (Cambridge, Mass., 2000), 3–61, here 28.

80. Anton Minkov, "Ottoman Tapu Title Deeds in the Eighteenth and Nineteenth Centuries: Origin, Typology and Diplomatics," *Islamic Law and Society* 7, no. 1 (2000): 65–101, here 66.

81. Eduard Eichler, *Das Justizwesen in Bosnien und der Hercegovina* (Vienna, 1889), 36–37; for a detailed discussion on the interpretation of miri ownership by different imperial legal experts, see Bećić, *Pravni transplanti*, 312–20.

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The 1884 decree introduced also a major legal modification of this miri concept regarding the sovereign's legal authority over the individual's ownership rights. This primarily involved the land register. While it documented the private individual, who had a certain section of miri forestland recognized by the commission, the sovereign who originally granted these rights was excluded from the land register entry. The absence of the state implied major revisions to the principles of sovereignty, since it no longer possessed authority over property transfer for the property in question. Claims to miri proprietary rights, which the commission considered to be legitimate, were converted into absolute private ownership rights. Ultimately, what was earlier seen as leasing rights became the private property rights of Muslim landowners.

Customary Rights Revisited

The second major issue addressed by the 1884 decree was traditional forest use by peasants. That same year, Eichler lamented a situation of "dominating abuses" regarding forest use aggravated by the widespread local understanding of forests as *terra nullius* (free of ownership) and forest resources as being "for free."[82] Given Habsburg economic ambitions, the integrity of customary rights remained an obstacle to securing economic exploitation of the forests. In Bosnia—unlike other regions like Galicia, where authorities advanced their claims by abolishing the Servitutenrecht—usage rights were not entirely disregarded. In order to minimize access to state forests, however, usage rights were now legally relocated to the private forestlands. According to a subsection of § 10 of the 1884 forest land decree, it was the obligation of private forest landowners to grant all existing usage rights that the peasants enjoyed prior to the land register.[83] Thus, the Muslim landowners had to extend usufruct rights to their kmets; at the same time, the latter were banned from using state forests as they had previously.[84] Such legal reshaping of usage rights became a sphere riddled with conflicts and ambiguities. On the one hand, the regulation primarily served the administration's goal to detach common rights from state-managed forests. On the other, it threatened to compound social tensions between Muslim landowners and mostly Christian kmets, a complicated relationship that was soon to be framed in ethno-confessional terms.

Yet the 1884 regulation had only limited effect on traditional usage of forests as local practices continued in state-managed forests even after they were outlawed. Forstfrevel incidents increased not only due to stricter control by forest police, but also because of increasing prices on timber and demands for winter fodder for cattle, which made locals continue with the customary practices.[85] This in turn strained the administration's capacity to regulate them, which means that many of the infringements were simply ignored. In

82. AT-OeStA AVA, Nachlässe an Krauss sen. und jun., B. 5.7., Unterlagen und Berichte, Forst und Weide (Antrag betreffend der Begriffes Forstfrevel und deren Behandlung), October 14, 1884.

83. "Verordnung über die Verleihung von Tapien auf Grundstücke, welche zum Waldlande gehören," in: *Sammlung der Gesetze und Verordnungen*, Jahrgang 1884, 84–85.

84. *Bericht über die Verwaltung von Bosnien und der Hercegovina* (Vienna, 1910), 148.

85. *Bericht 1910*, 149.

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the words of the official report of the Landesregierung, the legal reshaping of traditional usage rights remained the "unfinished project."[86]

Over time, however, the methods of remodeling customs while securing the image of a legally-anchored regime changed. While in the beginning of the occupation the administrative shortcomings were considered a major obstacle for reshaping local practices, later on such shortcomings were framed as a legally conscious act of grace, thus turning it into an instrument for strengthening imperial legitimacy. That was the case in 1908, on the occasion of the sixtieth anniversary of the reign of Emperor Franz Joseph, when all until then reported Forstfrevel incidents in Bosnia-Herzegovina were abolished.

Beyond 'Neutral' Space: Mobilizing Forest Regulation for Political Interests

Surveying land and entering data into the registry varied over space and time as it proceeded successively and according to the imperial state's economic needs.[87] The process began in the northern regions of Bosnia, known for high-quality oak trees, and moved southward. This environmentally-conditioned order also had a political dimension. Northern Bosnia was not only rich in oaks but was also a place where the Landesregierung expected to meet the least resistance from Muslim notables. While the implementation started in the more cooperative districts of Prnjavor and Tešanj, it took more than ten years for the process to reach the final district of Travnik, a stronghold of Muslim local power holders.[88] By Travnik's turn, so hoped the government, the potential benefits of the land register would be accepted even among the initially less-receptive notables.

Seventeen years later, in 1901, the work was finally accomplished, with 17,107 petitions submitted for legal recognition of property rights over 11,171,852 dunam of forestlands. Out of that, 3,570,042 dunam were approved by the Forest Commission of the Landesregierung, while the Ministry of Finances approved another 138,826 dunam on appeal. In 1906, private forestlands totaled 616,018 Ha (24% of forestland), while 1,962,931 Ha (76% of forestland) were demarcated as state-owned forests.[89] As these figures illustrate, rights to forests on miri lands converted *into two different types of property*: private properties of locals and state-owned domains.

However, the fact that the majority of forests in Bosnia-Herzegovina became state-owned left a bitter aftertaste for many Muslim notables. Many protested, either by participating in the political programs of the Muslim political party or by petitioning the emperor through the imperial bureaucratic channels.[90] They argued that the designation of state forests occurred

86. *Bericht 1906*, 324–27.

87. Eichler, *Das Justizwesen in Bosnien und der Hercegovina*, 303.

88. Schmid, *Bosnien und Hercegovina*, 442–43.

89. "Zemaljska vlada obavještava Zajedničko ministarstvo financija o rezultatu pregovora s egzekutivnim odborom," in Hauptmann, *Borba Muslimana*, 571.

90. "1895. Početkom novembra—Molba Muharem-bega Teskeredžića—Dervišpašića iz Travnika i ostali veleposjednika iz okružja Travničkog i okružja Sarajevskoga, kojom

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at the expense of their own private property.[91] In turn, the Habsburgs argued that the new property regime only implemented the legal codes that the Ottoman authorities introduced prior to the occupation. The resulting disputes between Muslim notables and Habsburg authorities over allocated forest ownership rights were politically inflected, as exemplified by the dispute with Bakir-bey Tuzlić from the Tuzla district. In 1899, Tuzlić submitted several appeals after the Landesregierung denied half of his claim to 14,000 dunam of forestland in Majevica, the low mountain range in northeastern Bosnia.[92] The case received attention at the highest political levels and became a major topic of correspondence between the chief of civil administration, the *Civil Adlatus* Hugo von Kutschera, who was inclined to support Tuzlić's property claims, and Finance Minister Benjamin von Kallay in 1901.[93] This conflict over property rights coincided with the ongoing political mobilization of a traditionalist faction of the Muslim elite, whose growing socio-political grievances crystallized into a political struggle for the autonomy of Islamic religious institutions. The movement culminated in a memorandum in December 1900 that disputed Austria-Hungary's authority to govern Muslim religious matters while expressing loyalty towards the Ottoman empire.[94] It is important, nevertheless, to note that not all Muslim landowners pledged alliance to this movement. There were notables who saw the Austro-Hungarian occupation as an opportunity for socio-political survival.[95] The Muslim community was not monolithic.

Kallay, meanwhile, feared the Muslim autonomy movement's potential to alienate those members of the Muslim elite who had already shown some allegiance to the Austro-Hungarian authorities. As Bakir-bey Tuzlić was an active member of the movement, Kallay took advantage of his dispute with the state to undermine the movement.[96] In contrast to Kutschera's less rigid position, Kallay was willing to consider Tuzlić's claims, but only if the bey agreed to help re-direct the movement's representatives towards the occupying authorities' position during the political negotiations with the Landesregierung.[97]

The authorities showed more benevolence towards the Muslim estate-owner Salih Sakalović from the Tešanj district, who submitted a plea for a

mole da im se milostivo popravi ono što im je nepravo učinjeno te se i sada čini—podnesena caru," in Hauptmann, *Borba Muslimana,* 63–68.

91. Aydin Babuna, *Die nationale Entwicklung der bosnischen Muslime mit besonderer Berücksichtigung der österreichisch-ungarischen Periode* (Frankfurt am Main, 1996), 87.

92. "1899, Maj 4.—Sarajevo. Kutschera javlja Kallayu o putu po Posavini povodom žalbe begova iz Posavine na materijalne i posjedničke teškoće," in Hauptmann, *Borba Muslimana*, 83–88, here 85.

93. "1901. Januar 6.—Beč. Kallay saopćava Kutscheri svoj stav prema molbi Bakir-bega Tuzlića za dodjelu šume Jesenica," in Hauptmann, *Borba Muslimana*, 119–20.

94. Donia, *Islam under the Double Eagle*, 189; Babuna, *Die nationale Entwicklung der bosnischen Muslime*, 119–22; Bougarel, *Islam and Nationhood in Bosnia-Herzegovina*, 17–20.

95. Robert J. Donia, *Sarajevo: A Biography* (Ann Arbor, 2006), 97.

96. Husnija Kamberović, *Begovski zemljišni posjedi u Bosni i Hercegovini od 1878. do 1918. godine* (Zagreb, 2003), 463.

97. "Kallay saopćava Kutscheri svoj stav prema molbi Bakir-bega Tuzlića," in Hauptmann, *Borba Muslimana*, 119–20.

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piece of forest in 1899, the very same year as Tuzlić. Even though during the 1884 implementation process the forest commission designated the forestland in question as part of the state forest domain, Sakalović claimed it was part of his private estate. In contrast to Tuzlić, Sakalović was not part of the Muslim autonomy movement. Consequently, his demands were approved.[98]

A parallel reading of these two cases suggests that legal concessions did not materialize evenly. Outcomes were driven by pragmatism and political considerations as much as they were by legal principles, whether Ottoman or Habsburg. These cases illustrate the layered and often arbitrary nature of the imperial legal apparatus and its logic. The patterns by which the disputes were settled cannot be seen in isolation from the intricate interplay between the economic needs of the imperial authorities and their political needs to establish alliances with local subjects. These processes were uneven and fragmented. They pointed in different directions and were not at all as uniform as the imperial cadastral maps or the claims of impartial legal authority associated with the *Rechtsstaat* sought to imply.

The study of early attempts to exploit forest resources by means of legal interventions speaks not only to the historiography of Habsburg Bosnia-Herzegovina but also to the history of state and law formation in imperial settings. I depart from dominant modes of analyzing legal regimes, where historians, while demonstrating political, social, and cultural dimensions of law, tend to take law as a self-evident point of departure. By focusing on the process of law making, this paper engages with the question of how to write the history of a legal regime, when legal arrangements were yet to be formed, and highlights its open-ended trajectory. Moreover, these cannot be seen in isolation from Ottoman legacies, conflicting economic interests, and the imperial need to form alliances with the locals. Consequently, large-scale legal acts, exemplified here in the idea of the land registry, were shaped by multiple legal initiatives on the ground. In that sense, major Habsburg legal policies were not a starting point of imperial governance but a result.

By elevating the Bosnian experience of Austria-Hungary's governance in the nineteenth century, this study is also an invitation to rethink meta-narratives of the josephinist *Rechtsstaat* that often ascribe much more coherence and commanding capacity to law than can be empirically justified. In Bosnia, the legal uncertainties of the early period of governance turned the legal sphere into a laboratory with multiple, conflicting norms and created space and vocabulary for different interest groups to rally for their own interests.

The issues under study, however, were not unique to Habsburg Bosnia, and bear relevance for the study of legal regimes more broadly. I argue that to better elucidate the contingencies and socio-political complexities of legal regime(s), it is necessary to take into consideration a process-oriented historical perspective that accounts for the contextual character of legal governance. This also includes analytical engagements with legal initiatives that failed

98. ABiH, ZVS, 1889, K. 76, šifra 37–34/8, Nr. 74552 (Erlass des gemeinsamen Ministeriums betreffs der gestellten Anträge bezüglich der Verleihung von Waldparzellen im Bezikre Tešanj, Fall Sakalović Zahl 58980/89), August 26, 1889.

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and never got implemented in practice but nevertheless shaped the dynamics and trajectories of the law making process. Historical approaches need to go beyond the instrumentalist premise of law as a means for exercising power by the sovereign. Instead, we need to analytically embrace the legal sphere in its continuous re-shaping and acknowledge its multiple conditioning factors, including the shifting socio-ecological dimensions of local circumstances, the specific constellations of actors or interest groups, and not least the contingencies that shape legal possibilities.

Finally, the case of Bosnia-Herzegovina illustrates the often-neglected dimension of Habsburg legal pluralism in terms of its entanglements with the Ottoman legal repertoire. While some Ottoman legal arrangements like settlement of forests on miri lands were adopted and expected to be more comprehensible to the locals, other legal elements (like the regulation of customs) were interpreted as irrational judicial arrangements that made impossible any economic progress in the region. In both cases, this article shows that any understanding of the consolidation of Habsburg rule in Bosnia-Herzegovina necessitates analytical engagement with the region's Ottoman past, showing how the pretext of Ottoman governance played a crucial role for the formation of modern imperial governance on European soil.

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