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Legal pluralism for whose sake? Ottoman law, Greek jurists, and religious privileges

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At the turn of the twentieth century, Greek jurists insisted that the Ottoman Empire was legally pluralistic. While one jurist acknowledged the Sultan's 'political purpose' in respecting the Greeks' privileges, another denied Muslims any agency free from Sharia. The alleged incommensurability between the Christian and Islamic law was their common agenda. Greek historians, on the other hand, saw the privileges as the Turks' sign of goodwill, and emphasized the civilizational gap between the Catholic West and Ottoman East. Being a normative expression rather than a neutral description, legal pluralism functioned as a method of neglecting the Muslim quest for legal unity.

Keywords: Ottoman Empire; Orthodox Church; Ecumenical Patriarchate; Islamic law

Introduction

Since the end of the Cold War – with a turn to history in legal studies and with the imperial turn in historiography – law and empire have become a promising subject for both legal scholars and historians. The less the state's legal unity is taken for granted, the more the relationship between law and empire attracts the attention of researchers. The notion of legal pluralism has come to be seen, especially in the last decade or so, as key to understanding Eurasian polities.[1] Scholars have examined Islamic empires, in

1 L. Benton, *Law and Colonial Cultures: legal regimes in world history, 1400–1900* (New York 2002) and *A Search for Sovereignty: law and geography in European empires, 1400–1900* (New York 2010); J. Burbank and F. Cooper, *Empires in World History: power and the politics of difference* (Princeton 2010); P. F. Bang and C.A. Bayly (eds.), *Tributary Empires in Global History* (Basingstoke 2011); P. F. Bang and D. Kołodziejczyk (eds.), *Universal Empire: a comparative approach to imperial culture and representation in Eurasian history* (Cambridge 2012); J. Duindam et al. (eds.), *Law and Empire: ideas, practices, actors* (Leiden 2013); L. Benton and R. J. Ross (eds.), *Legal Pluralism and Empires, 1500–1850* (New York 2013); L. Benton and L. Ford, *Rage for Order: the British Empire and the origins of international law,*

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particular, as conglomerates of various institutions,[2] while Muslims under colonial rule – as well as Muslim minorities in Christian Europe – have become a fascinating object of legal studies.[3]

The Ottoman Empire, one of the longest-lasting Islamic empires in the world, has prompted many studies on the hybridity or flexibility in its legal system. Multiple works have explored such aspects of Ottoman legal pluralism as the Sultan's law versus Islamic law, mainland law versus laws in the tributaries, and imperial law versus local custom.[4] Not surprisingly, two of the most attractive Ottoman topics in

1800–1850 (Cambridge 2016); M. Koskenniemi et al. (eds.), *International Law and Empire: historical explorations* (Oxford 2017); M. Koskenniemi et al. (eds.), *International Law and Religion: historical and contemporary perspectives* (Oxford 2017); L. Benton et al. (eds.), *Protection and Empire: a global history* (Cambridge 2018).

2 D. Goffman and C. Stroop, 'Empire as composite: the Ottoman polity and the typology of dominion', in B. Rajan and E. Sauer (eds.), *Imperialisms: historical and literary investigations, 1500–1900* (New York 2004) 129–45; S. Kotkin, 'Mongol Commonwealth? Exchange and governance across the post-Mongol space', *Kritika: Explorations in Russian and Eurasian History* 8 (2007) 487–531; A. Mikhail and C. M. Philliou, 'The Ottoman Empire and the imperial turn', *Comparative Studies in Society and History* 54 (2012) 721–45; M. Melvin-Koushki, 'Early modern Islamicate empire: new forms of religiopolitical legitimacy', in A. Salvatore et al. (eds.), *The Wiley-Blackwell History of Islam* (Hoboken NJ 2018) 353–75.

3 P.-J. Luizard (ed.), *Le choc colonial et l'islam: les politiques religieuses des puissances coloniales en terres d'islam* (Paris 2006); M. Maussen et al. (eds.), *Colonial and Post-Colonial Governance of Islam: continuities and ruptures* (Amsterdam 2011); P. Sartori and I. Shahar, 'Legal pluralism in Muslim-majority colonies: mapping the terrain', *Journal of the Economic and Social History of the Orient* 55 (2012) 637–63; K. Tsitselikis, *Old and New Islam in Greece: from historical minorities to immigrant newcomers* (Leiden 2012); N. Clayer and X. Bougarel, *Les musulmans de l'Europe du Sud-Est: Des empires aux états balkaniques* (Paris 2013); J. Akiba, 'Empires and the Shari'a: a comparison of colonial Islamic legal systems', in S. Tabata (ed.), *Eurasia's Regional Powers Compared: China, India, Russia* (Abingdon 2015) 171–87; D. Motadel (ed.), *Islam and the European Empires* (Oxford 2016); E. Račius and A. Zhelyazkova (eds.), *Islamic Leadership in the European Lands of the Former Ottoman and Russian Empires: legacy, challenges and change* (Leiden 2018).

4 H. İnalcık, *Osmanlı'da Devlet, Hukuk, Adâlet* (İstanbul 2000); E. Kermeli, 'Central administration versus provincial arbitrary governance: Patmos and Mount Athos monasteries in the 16th century', *Byzantine and Modern Greek Studies* 32 (2008) 189–202; K. Barkey, 'Aspects of legal pluralism in the Ottoman Empire', in Benton and Ross (eds.), *Legal Pluralism and Empires*, 83–107; A. Anastasopoulos, 'Non-Muslims and Ottoman justice(s?)', in Duindam et al. (eds.), *Law and Empire*, 275–92; G. Kármán and L. Kunčević (eds.), *The European Tributary States of the Ottoman Empire in the Sixteenth and Seventeenth Centuries* (Leiden 2013); K. F. Schull et al. (eds.), *Law and Legality in the Ottoman Empire and Republic of Turkey* (Bloomington 2016); R. Murphey, 'Hybridity in Ottoman legal tradition as a source of flexibility in governing the empire: an overview with particular reference to the application of the ruler's executive judicial or *örfi* powers', in R. Murphey (ed.), *Imperial Lineages and Legacies in the Eastern Mediterranean: recording the imprint of Roman, Byzantine and Ottoman rule* (New York 2017) 35–48; Ph. P. Kotzageorgis, 'Δικαιικός πλουραλισμός (legal pluralism) στην Οθωμανική Αυτοκρατορία: οι χριστιανοί στα οθωμανικά και εκκλησιαστικά δικαστήρια πριν το Tanzimat', *Βαλκανικά Σύμμεικτα* 18 (2017) 7–28; M. Talbot, 'Separating the waters from the sea: the place of islands in Ottoman maritime territoriality during the eighteenth century', in A. Hadjikyriacou (ed.), *Islands of the Ottoman Empire* (Princeton 2018) 61–85; G. Kármán (ed.), *Tributaries and Peripheries of the Ottoman Empire* (Leiden 2020).

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this context are the Capitulations and the non-Muslim communities. Capitulatory extraterritoriality represents a typical case of legal pluralism, with foreigners refusing to comply with the law of the country in which they reside.[5] No less important is the status of Ottoman non-Muslims, the issue on which the present paper focuses.

Conventional wisdom readily explains away the non-Muslim communities in the Ottoman Empire as being an autonomous institution. Theorists frequently refer to the *millet* system as a functional (though illiberal) method of non-territorial multi-religious rule.[6] Yet Ottomanists have long since disputed the existence of such a thing as '*millet* system'.[7] By taking the early modern institution's persistence for granted, theorists of the *millet* system effectively juxtapose a Muslim confessional system with Christian (or post-Christian) modernity. Such an assumption can easily degenerate into an

5 A. İ. Bağış, *Osmanlı Ticaretinde Gayri Müslimler: Kapitülasyonlar, Avrupa tüccarları, beratlı tüccarlar, hayriye tüccarları (1750–1839)* (Ankara 1998); H. İnalcık, 'İmtiyâzât: Osmanlı dönemi', *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 22 (2000) 245–52; A. H. de Groot, 'The historical development of the Capitulatory regime in the Ottoman Middle East from the fifteenth to the nineteenth centuries', *Oriente Moderno* 22 (2003) 575–604; M. H. van den Boogert, *The Capitulations and the Ottoman Legal System: qadis, consuls and* beratlıs *in the 18th century* (Leiden 2005); E. Eldem, 'Capitulations and Western trade', in S. N. Faroqhi (ed.), *The Cambridge History of Turkey* vol. 3: *The Later Ottoman Empire, 1603–1839* (Cambridge 2006) 283–335; U. Özsu, 'The Ottoman Empire, the origins of extraterritoriality, and international legal theory', in F. Hoffmann and A. Orford (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford 2016) 123–37; W. Hanley, *Identifying with Nationality: Europeans, Ottomans, and Egyptians in Alexandria* (New York 2017); S. A. Stein, *Extraterritorial Dreams: European citizenship, Sephardi Jews, and the Ottoman twentieth century* (Chicago 2016); N. Fujinami, 'Arbitrating Capitulations: small versus barbarous in the 1901 Greco-Ottoman Consular Convention', *Jus Gentium: Journal of International Legal History* 5 (2020) 431–51.

6 W. Kymlicka, *Multicultural Citizenship: a liberal theory of minority rights* (Oxford 1995) 156–8, 183–4; M. Walzer, *On Toleration* (New Haven 1997) 17–18; V. Karavaltchev and P. Pavlov, 'How just was the Ottoman Millet system', *Journal of European Baptist Studies* 11 (2011) 21–30; J. Erk, 'Non-territorial *Millet*s in Ottoman history', in T. H. Malloy and F. Palermo (eds.), *Minority Accommodation through Territorial and Non-Territorial Autonomy* (Oxford 2015) 119–31; K. Barkey and G. Gavrilis, 'The Ottoman Millet system: non-territorial autonomy and its contemporary legacy', *Ethnopolitics* 15 (2016) 24–42; E. Cakal, 'Pluralism, tolerance and control: On the *Millet* system and the question of minorities', *International Journal on Minority and Group Rights* 27 (2019) 1–32; B. Z. Tamanaha, *Legal Pluralism Explained: history, theory, consequences* (New York 2021) 36–46.

7 Benjamin Braude's 1982 essay initiated the debate: 'Foundation myths of the millet system', in B. Braude and B. Lewis (eds.), *Christians and Jews in the Ottoman Empire: the functioning of a plural society*, vol. 1 *The Central Lands* (New York 1982) 69–88. For the recent discussions of the *millet* system, see the editor's introduction to B. Braude (ed.), *Christians and Jews in the Ottoman Empire: the abridged edition, with a new introduction* (Boulder 2014) 1–49; E. Gara, 'Conceptualizing interreligious relations in the Ottoman Empire: the early modern centuries', *Acta Poloniae Historica* 116 (2018) 57–91, esp. 66–72; A. Hadjikyriacou, 'Beyond the *Millet* debate: communal representation in pre-Tanzimat-era Cyprus', in M. Sariyannis (ed.), *Political Thought and Practice in the Ottoman Empire. Halcyon Days in Crete* IX: *a symposium held in Rethymno, 9–11 January 2015* (Rethymno 2019) 71–96, esp. 71–6; and H. Çolak and E. Bayraktar-Tellan, *The Orthodox Church as an Ottoman Institution: a study of early modern patriarchal berats* (İstanbul 2019) 19–60.

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Orientalist trope which denies any substantial change in Muslims' law. When it comes to Ottoman modernization, the *millet* system – or more broadly, legal pluralism – is an issue to be addressed, not to be presupposed. The Ottoman Empire was among the few Muslim states that remained sovereign throughout the long nineteenth century. Neither colonized nor a minority, Muslim Ottomans engaged in their own legal reforms and legal studies.[8] They had their own sense of legal unity, or lack thereof, not least with regard to non-Muslims.

Far from being secured by the so-called *millet* system, the status of non-Muslims provoked much debate in the late Ottoman Empire. The *Tanzimat* reforms of the mid-nineteenth century engaged in a top-down codification, selectively incorporating indigenous legal traditions. Against the long arm of the modernizing state, non-Muslim subjects of the Sultan had to claim their legal rights, especially when it came to the question of religion. Who defined what was religious in the multi-confessional Ottoman Empire was no simple matter, not least because the Great Powers' 'humanitarian' interventions on behalf of Ottoman Christians turned non-Muslims' status into an international question.[9] Western views often prevailed in this age of European hegemony, but Eastern and Western Christians did not necessarily have the same idea of Ottoman law. Living in the Sultan's realm – even after the Greek War of Independence and the establishment of the Kingdom of Greece – the Ottoman Greeks' own understanding of Ottoman law provides an insight into how modern jurisprudence functioned in a Muslim-majority but multi-religious environment. A case in point is the 'privileges question': the dispute between the Sublime Porte and the Ecumenical Patriarchate over the latter's jurisdiction. Greek nationalist historiography tends to see the privileges question – which came to a head first in the 1880s and 1890s and then again in 1909–1911 – as an expression of the 'Turkish yoke'. In fact, it was a legal issue, reflecting church-state relations in a

8 Z. Toprak, 'From plurality to unity: codification and jurisprudence in the late Ottoman Empire', in A. Frangoudaki and K. Çağlar (eds.), *Ways to Modernity in Greece and Turkey: encounters with Europe, 1850–1950* (London 2007) 26–39; Ş. Mardin, 'Heaven and the administration of things: some remarks on law in the Tanzimat era', in H. Islamoglu and P. C. Perdue (eds.), *Shared Histories of Modernity: China, India and the Ottoman Empire* (New Delhi 2009) 255–72; M. Â. Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet* (İstanbul 2014); N. Fujinami, 'Hasan Fehmi Pasha and the birth of Ottoman international legal studies', *Jus Gentium: Journal of International Legal History* 6 (2021) 145–63; E. Kaynar, 'La question du légalisme dans l'histoire ottomane et turque', in S. Akgönül (ed.), *La modernité turque. Adaptations et constructions dans le processus de modernisation ottoman et turc* (İstanbul 2021) 47–65. Bio-bibliographical surveys on modern Ottoman jurists are provided in H. B. Erk, *Meşhur Türk Hukukcuları* (n.p. 1958); B. Erozan, 'Türkiye'de uluslararası ilişkiler disiplininin uzak tarihi: hukuk-ı düvel (1859–1945)', *Uluslararası İlişkiler Dergisi* 11 (2014) 53–80; M. S. Palabıyık, 'International law for survival: teaching international law in the late Ottoman Empire (1859–1922)', *Bulletin of the School of Oriental and African Studies* 78 (2015) 271–92; and B. Aral, 'The Ottoman "school" of international law as featured in textbooks', *Journal of the History of International Law* 18 (2016) 70–97.

9 A. Heraclides and A. Dialla, *Humanitarian Intervention in the Long Nineteenth Century: setting the precedent* (Manchester 2015).

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specifically Ottoman setting.[10] The privileges question illuminates why and how the Greeks might challenge the Muslim-majority state's legal policy.

In what follows, I examine Greeks' ideas on their privileges and argue that they were the advocates of legal pluralism *avant la lettre*. First, I investigate two jurists' views. Whereas one Greek jurist (Miltiadis Karavokiros) acknowledged the Sultans' 'political purpose' in respecting Christians' privileges, another (Nikolaos Eleutheriadis) denied Muslims any agency free from Sharia. Alleged incommensurability between the Christian and Islamic law was their common agenda. Second, I compare Greek historians' views with those of the jurists. Two Greek historians, religiously orientated (Manouil Gedeon) and secular (Pavlos Karolidis) respectively, saw Greek privileges as a sign of good will on the part of the Turks, emphasizing the civilizational gap between Catholic West and Ottoman East. Arguably, historians were less enthusiastic to underscore the alleged incommensurability between Christian and Islamic law. Being a normative expression rather than a neutral description, legal pluralism justified – in the name of religion – Greek jurists' opposition to the Porte's (modernist) endeavour for legal unity. Contesting as it does the prevailing view of Muslim/non-Muslim relations in law, the privileges question – or the Greek insistence on and Muslim rejection of legal pluralism – helps us to have a nuanced understanding of what is religious in law.

Karavokiros: privileges granted with a Sultan's 'political purpose'?

Miltiadis Karavokiros (1860s–1928), from Kalymnos in the Dodecanese, settled in Ottoman Istanbul in the 1870s to become a prominent lawyer in the wealthy society of Constantinopolitan Greeks.[11] Although he has earned little more than passing reference in Ottoman studies, Karavokiros' works represent the Greeks' particular approach to Ottoman law at the turn of the twentieth century.

Karavokiros was perhaps most famous as the compiler of a dictionary of Ottoman law published in Turkish in 1894.[12] At first glance, it may appear that his dictionary simply provided a glossary of Ottoman law. A closer look reveals that Karavokiros did more than just present a neutral description of Ottoman legal terms. First, every entry in his dictionary was accompanied by the French *and* Greek equivalents – almost a meaningless effort if it was meant for Muslim readers, because few of them read Greek. Second, many entries provided specifically Greek usages in explaining the legal terms in question. To give but one example, the entry *vasiyet* (*testament* in French and διαθήκη in Greek)

10 H. Exertzoglou, 'Το "προνομιακό" ζήτημα', *Τα Ιστορικά* 16 (1992) 65–84; H. D. Kardaras, *Το Οικουμενικό Πατριαρχείο και ο Αλύτρωτος Ελληνισμός: μετά το Συνέδριο του Βερολίνου* (Athens 1996) ch. 4; V. Kechriotis, 'The modernization of the Empire and the community "privileges": Greek Orthodox responses to the Young Turk policies', in T. Atabaki (ed.), *The State and the Subaltern: modernization, society and the state in Turkey and Iran* (London 2007) 53–70.

11 M. Anastassiadou-Dumont, *Les Grecs d'Istanbul au XIXe siècle: Histoire socioculturelle de la communauté de Péra* (Leiden 2012) 202.

12 A. A. Yörük, 'İlk hukuk lügatlerimiz (1870–1928)', *Türk Hukuk Tarihi Araştırmaları* 2 (2006) 122–4.

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devoted most of its pages to the procedure regarding the Patriarchate, which was, of course, few Muslims' business.[13] Karavokiros apparently had Turkish-reading Greeks in his mind. His intention was more manifest in the Greek edition of his dictionary, published twelve years earlier. The Greek edition redirected many entries to one term, δίκαια (rights). Remarkably, Karavokiros allocated nearly one eighth of the total pages to this single entry.[14] Here Karavokiros catalogued the Ecumenical Patriarchate's rights, which he believed had regulated almost all the spheres of Orthodox Greeks' life under Ottoman rule. Both in Greek and in Turkish, Karavokiros intentionally if indirectly attempted to elucidate what the Greeks' 'age-old' rights and privileges were.

Many scholars now argue that, in the early modern Ottoman Empire, non-Muslim administration revolved primarily around fiscal concerns, with the prelates held responsible for the loyalty and tax payment of their flock.[15] By the eighteenth century, the Greek elite had become so intimately integrated in the Ottoman ruling apparatus that the Ecumenical Patriarchate yielded an immense influence in the core areas of the empire.[16] However, the rights of the Patriarchate fluctuated from time to time, until after the Reform Edict and the Treaty of Paris in 1856, when the religious privileges (*imtiyazat-ı mezhebiye*) of non-Muslims were guaranteed – or rather invented.[17] Privileges were consolidated in the early 1860s with written regulations for community administration (often called the *millet* constitution). Introduced under the strained conditions of the Crimean War (1853–6), religious privileges as a legal institution were a product of bargaining between the Porte, the Great Powers, and non-Muslims.[18] The

13 M. G. M. Karavokiros, *Lügat-ı Kavanin-i Osmaniye* (İstanbul 1310r [1894]) 554–61.

14 M. G. M. Karavokiros, *Κλεῖς τῆς συνήθους Ὀθωμανικῆς νομοθεσίας* (Constantinople 1882) 113–62.

15 M. M. Kenanoğlu, *Osmanlı Millet Sistemi: mit ve gerçek* (İstanbul 2004). For the Orthodox Christians in particular, see also H. İnalcık, 'The status of the Greek Orthodox Patriarch under the Ottomans', *Turcica* 21–23 (1991) 407–36; Ph. P. Kotzageorgis, 'About the fiscal status of the Greek Orthodox Church in the 17th century', *Turcica* 40 (2008) 67–80; T. Papademetriou, *Render unto the Sultan: power, authority, and the Greek Orthodox Church in the early Ottoman centuries* (Oxford 2015) and E. Gara and O. Olar, 'Confession-building and authority: the Great Church and the Ottoman State in the first half of the seventeenth century', in T. Krstić and D. Terzioğlu (eds.), *Entangled Confessionalizations? Dialogic perspectives on the politics of piety and community building in the Ottoman Empire, 15th–18th centuries* (Piscataway NJ 2022) 159–214.

16 M. Greene, *The Edinburgh History of the Greeks, 1453 to 1768: the Ottoman Empire* (Edinburgh 2015) esp. chs. 7–8; Y. Z. Karabıçak, 'Sultan's clergy: the Orthodox Patriarchate of Constantinople between Serbian communities and Ottoman government, 1797–1813', *Bulletin de correspondance hellénique moderne et contemporain* 2 (2020) 115–28.

17 P. Konortas, *Οθωμανικές θεωρήσεις για το οικουμενικό πατριαρχείο: Βεράτια για τους προκαθήμενους της μεγάλης εκκλησίας (17ος – αρχές 20ού αιώνα)* (Athens 1998); Çolak and Bayraktar-Tellan, *The Orthodox Church*.

18 J. Fairey, *The Great Powers and Orthodox Christendom: the crisis over the Eastern Church in the era of the Crimean War* (Basingstoke 2015). For more on the inter-imperial legal context, see also A. Koçunyan, 'The millet system and the challenge of other confessional models, 1856–1865', *Ab Imperio* 1 (2017), 59–85.

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Porte sought to check the expansion of what was religious but the non-Muslim communities effectively became 'states within a state' in the name of religion.[19]

The Ecumenical Patriarch Joachim III (1878–84 and 1901–12) – widely thought of as the last great Patriarch – recognized these facts.[20] But Karavokiros was confident of the continuity with the past when he espoused the Greeks' rights. Under the rubric of δίκαια in his dictionary, Karavokiros enlisted what were bestowed on the Ecumenical Patriarch Joachim II (1860–3 and 1873–8) and other prelates in the mid-nineteenth century. In so doing Karavokiros maintained, anachronistically, that the Greeks' rights had been acknowledged by all the Sultans beginning with Mehmet II (1444–6 and 1451–81), the Conqueror of Constantinople, who supposedly confirmed the Byzantine rights of the Orthodox prelates. Since then, Karavokiros argued, the Greeks' rights had been guaranteed by a kind of Constitutional Charters (εἶδος Συνταγματικῶν Χαρτῶν), i.e. the imperial rescripts (*berat*s), including the 1856 Reform Edict.[21]

An expert lawyer in the field, Karavokiros explained Ottoman legal pluralism by giving as an example the law of succession. Only with episcopal permission could Greeks marry, since marriage was a sacrament rather than a civil affair.[22] This is because, Karavokiros argued, the laws in force pertaining to the Greeks' private lives were derived from the Basilica laws or the *Hexabiblos* of Constantine Armenopoulos (1320–*ca*. 1385, a Byzantine jurist who compiled a wide range of Byzantine legal sources); from Patriarchal and synodical decisions and encyclicals; and from local custom.[23] Karavokiros' treatises on testate and intestate succession – written first in Greek and then in French – carefully examined the cases in which either Islamic or Byzantine law was applied according to one's religious affiliation.[24] Consequently, Karavokiros divided the groups overseen by Ottoman judicial organizations before 1856 into three: the Muslim population; the Greek community with religious privileges; and the communities of foreigners who enjoyed the Capitulations.[25]

19 M. Kenanoğlu, '19. yüzyıl Osmanlı hukuk sisteminde gayrımüslim cemaatlere tanınan adlî yetkiler ve bakmaya yetkili oldukları davalar', *Türk Hukuk Tarihi Araştırmaları* 5 (2008) 7–44; M. Ueno, 'Religious in form, political in content? privileges of Ottoman non-Muslims in the nineteenth century', *Journal of the Economic and Social History of the Orient* 59 (2016) 408–41.

20 D. Vovchenko, 'Triumph of Orthodoxy in the age of nationalism: the Ecumenical Patriarchate, the Sublime Porte, Russia, and Greece (1856–1890)', *Modern Greek Studies Yearbook* 28/29 (2012/13) 255–66, esp. 260.

21 Karavokiros, *Κλεῖς*, 128–9.

22 M. G. M. Karavokiros, 'Τινὰ περὶ τῆς ἐν τῷ γάμῳ ἐπισκοπικῆς ἀδείας ἐν Τουρκίᾳ πα ρ'ἅπασι τοῖς Ὀρθοδόξοις κατὰ τὸ κανονικὸν δίκαιον', *Ἐκκλησιαστικὴ Ἀλήθεια* 22 (1902) 75–7, 83–6, 100–1, 119–21, 131–3, 141–4, 193–5.

23 Karavokiros, *Κλεῖς*, 162.

24 M. G. M. Karavokiros, *Κῶδιξ τοῦ ἐξ ἀδιαθέτου καὶ ἐκ διαθηκῶν κληρονομικοῦ δικαίου* (Constantinople 1889) and *Le droit successoral en Turquie ab intestat et par testament, codifié d'après le Chéri et le droit byzantin* (Constantinople 1898).

25 M. G. M. Karavokiros, *Étude sur l'organisation de la justice en Turquie depuis les temps les plus reculés jusqu'à nos jours* (Paris 1903) 18–26.

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Recent studies have discovered many non-Muslims frequenting Sharia courts – despite, or even because of, the clerics' prohibition – for the sake of their personal interests. Muslim jurists rarely hesitated to give their opinion on Christians' personal status because, in their view, Sharia as God's order was universally applicable to all mankind.[26] Meanwhile, in the eighteenth century, secular Byzantine law as compiled in *Hexabiblos* became the 'official' code of the Great Church, endorsing the lay power's influence over the Christians' lives.[27] The lines of demarcation between the Islamic and Christian law, on the one hand, and between the imperial and church laws, on the other, were often blurred. But Karavokiros believed that religious affiliation had been and was the most basic marker in Ottoman law. He went so far as to openly criticize İbrahim Hakkı (1863–1918), a qualified legal counsellor at the Sublime Porte and future Grand Vizier.[28] İbrahim Hakkı had observed – almost in passing – in his administrative law textbook that non-Muslims' testaments not contradictory to Sharia became valid upon the prelates' approval.[29] Karavokiros regarded this statement as a sign of Muslim aggression against the Greeks' legitimate rights. From his point of view, there was no meaning left for the Patriarchate's privileges if the Greeks' testaments were valid only when they conformed to Sharia. Islamic and Church law were so different from each other – so Karavokiros' argument went – that the Sultan and the Porte had repeatedly announced the validity of church law pertaining to the Greeks when it came to inheritance and guaranteed their personal status as religiously determined.[30]

Karavokiros' otherwise religiously based theory of Ottoman law was, however, conditioned by the secularization that accompanied the 1862 General Regulations (*Εθνικοί Κανονισμοί*) – pseudo-constitutional charters for Orthodox Christians.

26 R. Gradeva, 'Orthodox Christians in the kadi courts: the practice of the Sofia Sheriat court, seventeenth century', *Islamic Law and Society* 4 (1997) 37–69; E. Kermeli, 'The right to choice: Ottoman justice vis-à-vis ecclesiastical and communal justice in the Balkans, seventeenth-nineteenth centuries', in A. Christmann and R. Gleave (eds.), *Studies in Islamic Law: a Festschrift for Colin Imber* (Oxford 2007) 165–210; E. Kermeli, 'Marriage and divorce of Christians and new Muslims in early modern Ottoman Empire: Crete 1645–1670', *Oriente Moderno* 93 (2013) 495–514; E. Muntán, 'Brokering Tridentine marriage reforms and legal pluralism in seventeenth-century northern Ottoman Rumeli', in Krstić and Terzioğlu (eds.), *Entangled Confessionalizations?*, 701–23.

27 D. Stamatopoulos, 'Confessionalization vs secularization paradigm? The Patriarchate of Constantinople and the problem of the management of the private sphere in the eighteenth and early nineteenth centuries', in K. Sarris et al. (eds.), *Confessionalization and/as Knowledge Transfer in the Greek Orthodox Church* (Wiesbaden 2021) 375–90.

28 On İbrahim Hakkı, see C. V. Findley, *Ottoman Civil Officialdom: a social history* (Princeton 1989) 195–209 and N. Fujinami, 'A constitutional reading of despotism: İbrahim Hakkı on Ottoman administrative law', *International Journal of Turkish Studies* (forthcoming).

29 İbrahim Hakkı, *Hukuk-ı İdare*, 2nd edn, I (İstanbul 1312r [1897]) 312.

30 M. G. M. Karavokiros, 'Τινὰ περὶ τῶν ἀπαιτουμένων ὅρων διὰ τὸ κῦρος διαθήκης χριστιανοῦ ὀρθοδόξου ὑπαγομένου εἰς τὸ Οἰκουμενικὸν Πατριαρχεῖον καὶ ὑπηκόου ὀθωμανοῦ', *Ἐκκλησιαστικὴ Ἀλήθεια* 21 (1901) 187–90, 198–9; Karavokiros, 'Τινὰ περὶ τῆς ἐν τῷ γάμῳ ἐπισκοπικῆς ἀδείας'.

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Composed after the 1856 Reform Edict, the Regulations transformed the Orthodox community as part of the overall restructuring of church-state relations in the Ottoman Empire. General Regulations – to the dismay of conservative clerics – admitted laymen in the administration of the Great Church, thus secularizing Greek church-state relations in the Ottoman Empire.[31] Having recognized the fundamental changes in the 1850s–60s, Karavokiros had to adapt to the shifting ground for interpreting Ottoman law, which was no longer strictly religious in nature.[32]

Accordingly, Karavokiros evaluated the Sultan's agency in respecting the Greeks' privileges. He contended that the Greeks' rights consisted of two categories: those established before and those bestowed after 1453. In so doing, he highlighted the 'political purpose' (πολιτικὸς σκοπός), by virtue of which Mehmet II supposedly confirmed the prelates' established rights.[33] Added to these after 1453 were the political rights bestowed and guaranteed by the Ottoman Sultans.[34] Karavokiros' thesis not only appreciated the Sultan's initiative in 1453 but also helped accommodate the state reforms after 1856 in the Greek narrative of their rights and privileges. In Karavokiros' opinion, Islamic and Byzantine law had coexisted throughout Ottoman history, but it was the Sultan's initiative that ultimately regulated the Muslim-Christian relationship in law. Karavokiros continued to argue in his later works that the Sultan had acted with a political purpose.[35]

In the last quarter of the nineteenth century, the 'golden age of Greek capital,' the Patriarchate's ecumenism and the despotic but reforming Sultan Abdülhamit II (1876–1909)'s Pan-Islamism played complementary roles.[36] Karavokiros' view suited the Hamidian regime that propagated religion as a pillar of Sultan's authoritarian rule by law. Karavokiros accepted the Ottoman reform, gave no less priority to imperial rescripts than Sharia, and thus celebrated the legal pluralism as established by virtue of Sultan's political purpose.[37] Not discriminatory against Islam and Muslims, Karavokiros' version of legal pluralism allowed him to dedicate his treatise to the Grand Vizier, in which Karavokiros defined the Ottoman case as one variant of legal pluralism in world history.[38] Karavokiros' idea was a legal expression of the Greek

31 D. Stamatopoulos, 'Η εκκλησία ως πολιτεία: αναπαραστάσεις του ορθόδοξου μιλλέτ και το μοντέλο της συνταγματικής μοναρχίας (δεύτερο μισό 19ου αι.)', *Μνήμων* 23 (2001) 183–220.

32 Karavokiros, *Κλεῖς*, 141–2, 158.

33 Karavokiros, *Κλεῖς*, 128, 145.

34 Karavokiros, *Κλεῖς*, 140.

35 Karavokiros, 'Τινὰ περὶ τῆς ἐν τῷ γάμῳ ἐπισκοπικῆς ἀδείας', 193–5; Karavokiros, *Étude*, 19; M. G. M. Karavokiros, 'Ζητήματα περὶ διαθηκῶν', *Ἐκκλησιαστικὴ Ἀλήθεια* 23 (1903) 352–5.

36 H. Hatziiosif, 'Η μπελ επόκ του κεφαλαίου', in H. Hatziiosif (ed.), *Ιστορία της Ελλάδας του 20ού αιώνα: Οι απαρχές 1900–1922*, I (Athens 1999) 309–49. On the Hamidian regime in general, see also S. Deringil, *The Well-Protected Domains: ideology and legitimation of power in the Ottoman Empire 1876–1909* (London 1998) and F. Georgeon, *Abdülhamid II: le sultan calife (1876–1909)* (Paris 2003).

37 Karavokiros, *Lügat*, 5–10; Karavokiros, *Étude*, 26–34, 56–70.

38 Karavokiros, *Étude*, 10–18.

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elite's accommodation of Ottoman modernity – or what Greek historiography calls Helleno-Ottomanism.[39]

In sum, Karavokiros found an essential difference between the Islamic and Christian law but deemed the Sultan's political purpose as no less important a source of law than Islamic precepts. Amidst the first round of privileges question in the 1880s–90s, Karavokiros' expert view, often written for the Patriarchate's official journal, *Ekklisiastiki Alitheia*, must have been highly valued among the Ottoman Greek elite. As if to endorse his authority, Karavokiros alone signed a report officially commissioned by the Patriarchate to identify the Greeks' privileges regarding inheritance.[40] Semi-officially representing the Patriarchate, Karavokiros endeavoured to convince Muslim and Greek decision-makers alike. Nevertheless, the privileges question – or the question how to react the Porte's attempt at legal unity – split the Orthodox community, which was already stricken with the antagonism between the supporters of Patriarch Joachim III (Joachimists) and their opponents (anti-Joachimists).[41] Not free from intra-communal politics – which continued to hurt the Great Church until the end of empire – Karavokiros' thesis eventually invited criticism from among his fellow Greeks.

Eleutheriadis: privileges ordered by Sharia?

In 1909, when the Ottomans were experiencing a reshuffling of power, discourse, and legitimacy following the Young Turk Revolution, Nikolaos Eleutheriadis (1867–1943) compiled the articles he had written since 1903 and published them as a book in Greek, with the title *The Privileges of the Ecumenical Patriarchate*.[42] A native of Lesbos but with a legal education in Athens and further abroad, Eleutheriadis is primarily remembered as an adversary of the Young Turks. He was, but his book was also a criticism of Karavokiros.

Eleutheriadis began his argument with the unexpected proclamation that Christianity had developed thanks to the Aryan traits of secular European peoples, while Judaism and Islam had remained static because of their Semitic origins.[43] European and Islamic law were so different from each other that European legal

39 E. Skopetea, *Το 'Πρότυπο Βασίλειο' και η Μεγάλη Ιδέα: όψεις του εθνικού προβλήματος στην Ελλάδα (1830–1880)* (Athens 1988) 309–24.

40 Ἐπιτροπὴ ἐπὶ τῆς συντάξεως διαθηκῶν, *I. Ἔκθεσις δικαιολογητική. II. Σχέδιον ὁδηγιῶν πρὸς σύνταξιν, κατάρτισιν, επικύρωσιν, κατάθεσιν καὶ ἐκδίκασιν διαθηκῶν ὀρθοδόξων χριστιανῶν ὑπηκόων ὀθωμανῶν. III. Ὑποδείγματα διαθηκῶν* (Constantinople 1901).

41 D. Stamatopoulos, 'Rum millet between vakıfs and property rights: endowments' trials of the Ecumenical Patriarchate's Mixed Council in the late Ottoman Empire (19th–20th c.)', *Endowment Studies* 2 (2018) 58–81. Karavokiros wrote an anti-Joachimist pamphlet in this context: *Οἱ παραβιασταὶ τῶν νόμων* (Leipzig 1904).

42 N. P. Eleutheriadis, *Τὰ προνόμια τοῦ Οἰκουμενικοῦ Πατριαρχείου* (Smyrna 1909). The French edition had been published a year before: *Les privilèges du Patriarcat Oecuménique* (Athènes 1908).

43 Eleutheriadis, *Τὰ προνόμια*, 25–40.

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principles were inapplicable in the East.[44] Islam ordered a peculiar relationship between the Muslims and Christians. The Covenant of Muhammad with the monks of Mount Sinai and the Pact of Umar with the Patriarch of Jerusalem (both allegedly made in the seventh century) determined how non-Muslims should be treated under Muslim domination. Even though he knew of the two documents' dubious authenticity, Eleutheriadis insisted that the right to dissolve these divinely prescribed *ahdname*s was at no Muslim ruler's discretion – because they formed part of Islamic law.[45] Whether coming from outside or residing in the ruler's territory, non-Muslims were to be treated according to Sharia; hence the resemblance of religious privileges to foreigners' privileges. While the Capitulations allowed extraterritorial consular jurisdiction, *berat*s accorded the Patriarchs ecclesiastical jurisdiction.[46] In any case – so Eleutheriadis' argument went – where Christians and Muslims coexisted, legal pluralism was unavoidable, a fact testified to by administration pertaining to Muslims in the European colonies.[47]

As discussed above, the Patriarchate's religious privileges represented a typical case of invented tradition on the part of the Greeks, but Eleutheriadis was intransigent in maintaining his strictly religious theory of Ottoman law. Inevitably, he had to deny the fact that Ottoman law and administration continued to evolve. Static law in a theocratic empire as it was, there was no chance of changing Ottoman law, according to Eleutheriadis. Neither the Gülhane Edict in 1839, the Reform Edict in 1856, nor the Constitution (*Kanun-ı Esasi*) in 1876 had altered the essence of Ottoman law.[48] Notwithstanding the superficial Europeanization, the Ottoman state remained inherently Islamic. Regardless of the appearance of legal dualism (δινομία), in fact Sharia was omnipotent and always superior to Sultan's law (*kanun* or *nizam*).[49]

Eleutheriadis was not shy to instruct Muslims what Islam was and should be. Alluding to Muslim jurists' opinions, especially those of Abū Ḥanīfa (699–767) – the eponymous founder of the Hanafi school of Sunni jurisprudence, to which many Ottomans belonged as the empire's 'official' doctrine – Eleutheriadis underscored the inseparability of church and state in Islam. As a Muslim sovereign, Mehmet II could not act but upon Sharia, which was *the* Constitution (Σύνταγμα) of any Muslim polity. Privileges had not been granted with some political purpose; they were predetermined religiously in the theocratic Ottoman Empire.[50] There was no continuity from the Byzantine *Golden Bull*s to Ottoman *berat*s because Christian and Islamic law were incommensurable.[51]

44 Eleutheriadis, *Τὰ προνόμια*, 14–15, 120–32, 232–6.
45 Eleutheriadis, *Τὰ προνόμια*, 70–102, 151–68.
46 Eleutheriadis, *Τὰ προνόμια*, 11–12, 135–47, 190–202.
47 Eleutheriadis, *Τὰ προνόμια*, 238–58.
48 Eleutheriadis, *Τὰ προνόμια*, 13, 26–30, 202–19, 258–60.
49 Eleutheriadis, *Τὰ προνόμια*, 171–87, 237–8.
50 Eleutheriadis, *Τὰ προνόμια*, 9–11, 18–19, 133–5, 147–51, 169–71, 187–90.
51 Eleutheriadis, *Τὰ προνόμια*, 190–5.

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Eleutheriadis must have known that his thesis of a static Ottoman law was erroneous. In 1896, he paid due respect to the Ottoman school of modern legal studies.[52] Eleutheriadis' Turkish-Greek dictionary for Greek high school students seemed less obsessed with Greek interests than Karavokiros'.[53] In his study of immovable property published in 1903, Eleutheriadis did not exclude the prospects for change in Ottoman law.[54] He even attributed the Greeks' rights to 'the magnanimity and munificence' of the Ottoman Sultans.[55] In his early days, Eleutheriadis had discussed such matters in a way not dissimilar to Karavokiros, but, in his 1909 book, he had become a theorist of static theocracy who denied Mehmet II any agency free from Islamic precepts. Eleutheriadis' entirely religious theory of Ottoman law resulted in an inclusive claim of Greek privileges, covering judicial, educational, and even administrative spheres.[56]

Eleutheriadis' theory was not only defiant of Muslims but also subversive of the Greek establishment that had usually sought a compromise with the Muslim elite. He explicitly disapproved of the ideas of Karavokiros and George Young, compiler of *Corps de droit ottoman*, an influential companion to Ottoman law.[57] Eleutheriadis' audacity did not escape the attention of the Greek public.[58] Eleutheriadis in 1909 anticipated a different type of audience than the one Karavokiros had appealed to in the 1880s and 1890s. In the second round of privileges question in 1909–11, Greeks witnessed a new phase of Ottomanism. As part of a long process that aimed at the rule of law, Muslims demanded a limitation (if not the abolition) of religious privileges – as well as the sultanic authority – for the sake of civic constitutionalism. Meanwhile, Greek politicians of middle-class origin resorted to 'religious' privileges to defend their socio-economic interests.[59] Eleutheriadis' theory provided the Greeks with a sweeping but functional answer to the challenge: Ottoman law was uniquely Islamic since the Muslims were essentially religious. Ottoman constitutionalism was doomed to failure because of unalterable Sharia – *the* Constitution of any Islamic state which was nothing but an ecclesia of Muslims. In an age of parliamentary politics under a weak Sultan who styled himself a constitutional monarch, Eleutheriadis rejected Sultan's political purpose. Only with privileges could Christians be exempted from being subject to 'barbarous' Islamic law, according to Eleutheriadis. His theory may have

52 N. P. Eleutheriadis, *Μελέται μουσουλμανικοῦ δικαίου ὀθωμανικῆς νομοθεσίας καὶ δικαίων τῶν ἐν Τουρκίᾳ Χριστιανῶν* (Mytilene 1912) 95.

53 N. P. Eleutheriadis, *Λεξικὸν τουρκο-ἑλληνικὸν* (Constantinople 1898).

54 N. P. Eleutheriadis, *Ἡ ἀκίνητος ἰδιοκτησία ἐν Τουρκίᾳ* (Athens 1903) 15–22.

55 Eleutheriadis, *Ἡ ἀκίνητος ἰδιοκτησία*, 84.

56 Eleutheriadis, *Τὰ προνόμια*, 197–8, 213–32, 260–76.

57 Eleutheriadis, *Τὰ προνόμια*, 5–9.

58 X., 'Βιβλιολογία', *Ἐκκλησιαστικὴ Ἀλήθεια* 30 (1909) 340–1.

59 N. Fujinami, 'Privileged but equal: the privilege question in the context of Ottoman constitutionalism', in D. Stamatopoulos (ed.), *Balkan Nationalism(s) and the Ottoman Empire*, III (İstanbul 2015) 33–59.

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found support among his fellow Greeks,[60] but few Muslims agreed with this peculiarly Greek view of Ottoman law.

Religious privileges in history, legal pluralism in context

Greeks on the two shores of the Aegean had conflicting views on Ottoman law. In Greece, a predominantly Orthodox state separated from the Ottoman Empire, few bothered to study Ottoman law. Jurists in Greece treated the Ottomans as barbarians *par excellence*, denying the benefit of *droit public européen* to this Islamic empire.[61] Ottoman Greeks took Ottoman law seriously, but jurisprudence was not the only method through which to defend the Greeks' rights. While jurists were preoccupied with determining the essence of Ottoman law, historians were willing to understand the Greeks' status in the Ottoman Empire in context.

An eminent church historian and the editor in chief of the Patriarchate's official journal, *Ekklisiastiki Alitheia*, Manouil Gedeon (1851–1943) presented his study on privileges to his mentor, Patriarch Joachim III. Gedeon examined the relations between the prelates and laymen, on the one hand, and between the church and state, on the other. In his argument on the limits of Byzantine law to ecclesiastical law, Gedeon praised the Ottoman Sultans for their respect for the Great Church. All the more so since the Roman/Byzantine emperors had carried out persecutions and iconoclasm, and the Venetians had routinely attacked the rights of the Greeks.[62] Gedeon even attributed the expansion of the Ecumenical Patriarchate's jurisdiction – namely, its incorporation of Slavic dioceses and its supremacy over the other Eastern churches – to the Sultan's initiatives.[63] Gedeon referred both to Islamic precepts and to the Sultan's benevolence – in a manner reminiscent of Karavokiros – but was less interested in defining the source(s) of Ottoman law, unitary or plural. Nor did he inquire into the Capitulations. To set the Orthodox Christians and their Western Catholic rivals in the same category was not Gedeon's business – albeit for the defence of privileges. Despite – or rather, because of – his devotion to Orthodox Christianity, Gedeon found the Byzantine and Ottoman law commensurable, at least to some extent.

In the late nineteenth century, in addition to Ottoman reforms, the rise of the bourgeoisie and of secular nationalism challenged the traditional authority of the clergy. Averse to both the bourgeoise and nationalism, Gedeon clung to what he considered the ideal of the ecclesia prior to 1862 General Regulations. On the one

60 E.g. Kostantin Çiçiliki, 'Devlet-i Osmaniye'de müsademe-i hukuk ve Roma hukuku,' *İlm-i Hukuk ve Mukayese-i Kavanin Mecmuası*, 17 (1326r [1910]), 380–90; 21–22 (1327r [1911]), 685–91; 23–24 (1327r), 902–6. Note his reliance on Eleutheriadis' 1909 book.

61 N. Fujinami, 'Georgios Streit on Crete: international law, Greece, and the Ottoman Empire', *Journal of Modern Greek Studies* 34 (2016) 321–42; Fujinami, 'Arbitrating Capitulations'.

62 See M. I. Gedeon, *Βραχεία σημείωσις περὶ τῶν ἐκκλησιαστικῶν ἡμῶν δικαίων* (Constantinople 1909) and its sequel, *Αἱ φάσεις τοῦ παρ' ἡμῖν ἐκκλησιαστικοῦ ζητήματος* (Constantinople 1910).

63 Gedeon, *Βραχεία σημείωσις*, 97–101.

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hand, he condemned the 'ethno-phyletic' Bulgarians for introducing a schism in the otherwise ecumenical Orthodox Church by founding an ethnic church of their own, the Exarchate, in 1870. On the other, he lamented the deplorable state of Patriarchate due to the 1862 General Regulations, which he believed were the product of influential Galata bankers' initiatives.[64] Gedeon illustrated the symbiosis between the Sultans and Patriarchs to commemorate the (already lost) ideal of ecclesia. The Great Church should be immune from lay power, be it Byzantine or Ottoman, not to mention Catholic. Ottoman Sultans since Mehmet II had respected this rule.[65] But Gedeon's position was precarious. The Ecumenical Patriarchate since the mid-nineteenth-century had been sustained by Galata bankers' money. The Joachimists – to whom Gedeon adhered – were conciliatory to the non-Greek elements.[66] He may have been a campaigner for the losing side, but Gedeon offered an alternative view of Ottoman law in relation to the privileges of Greeks.

Akin to Gedeon's argument were the views of Pavlos Karolidis (1849–1930), a renowned professor of history at the University of Athens. Karolidis referred to the similarity between the Capitulations and religious privileges but did so in support of the Turks who were disgusted by the foreigners' abuses of their privileges.[67] As a Turkish- speaker from Cappadocia, Karolidis was aware of the reality of multi-religious Ottoman East. At a time when Athens' irredentism challenged Constantinople's ecumenism, Joachim III embodied the Patriarchate's alliance with the Porte to defend their common tradition of universal rule.[68] It was no coincidence that Cappadocians like Karolidis lent their support to the Joachimists.[69]

At the same time, Karolidis was also an intellectual heir to Constantine Paparrigopoulos (1815–91), the founder of modern Greek historiography, who had endeavoured to prove the Greek nation's continuity from antiquity. Synthesizing the Hellenic and Ottoman Greek approaches to history, Karolidis wanted to promote harmonious relations between Greeks and Turks. Despite Eleutheriadis' claim to the

64 D. Stamatopoulos, *Το Βυζάντιο μετά το έθνος: το πρόβλημα της συνέχειας στις βαλκανικές ιστοριογραφίες* (Athens 2009) 41–50, 89–127. On Galata bankers, see also H. Exertzoglou, *Προσαρμοστικότητα και πολιτική ομογενειακών κεφαλαίων. Έλληνες τραπεζίτες στην Κωνσταντινούπολη: το κατάστημα »Ζαρίφης-Ζαφειρόπουλος«, 1871–1881* (Athens 1989) and M. Hulkiender, *Bir Galata Bankerinin Portresi: George Zarifi (1806–1884)* (İstanbul 2003).

65 Gedeon, *Βραχεία σημείωσις*, 39–50.

66 D. Stamatopoulos, *Μεταρρύθμιση και εκκοσμίκευση: προς μια ανασύνθεση της ιστορίας του Οικουμενικού Πατριαρχείου τον 19ο αιώνα* (Athens 2003).

67 P. Karolidis, *Ἱστορία τοῦ ΙΘ΄ αἰώνος μετ' εἰκόνων*, II (Athens 1892) 45–7; P. Karolidis, *Ἱστορία τοῦ Ἑλληνικοῦ ἔθνους*, VI (Athens 1932) 87–9, 306–7.

68 E. Kofos, 'Patriarch Joachim III (1878–1884) and the irredentist policy of the Greek State', *Journal of Modern Greek Studies* 4 (1986) 107–20; Kardaras, *Το Οικουμενικό Πατριαρχείο*, ch. 3; S. Anagnostopoulou, *The Passage from the Ottoman Empire to the Nation-States: a long and difficult process, the Greek case* (İstanbul 2004).

69 F. Benlisoy and S. Benlisoy, '"Karamanlılar", "Anadolu ahalisi" ve "aşağı tabakalar": Türkdilli Anadolu Ortodokslarında kimlik algısı', *Tarih ve Toplum Yeni Yaklaşımlar* 11 (2010) 7–22.

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contrary,[70] Karolidis did not set out to prove the alleged incommensurability between the European and Ottoman law. Rather, he appreciated – as Karavokiros and Gedeon did – Mehmet II's high regard for Greek privileges as derived from both his pragmatism and Islamic precepts.[71]

In sum, Greek historians, both religious and secular, had different methods and vocabularies in defending their rights than their jurist compatriots. Historians were not an isolated case. Uncomfortable with the dichotomy of civilized West versus barbarous East, many Orthodox Greeks preferred the autonomy of the East to subjugation to the West. Nevertheless, the jurists' shared belief was that Greeks could not live securely without privileges and that privileges could not be guaranteed without legal pluralism. Similarity between the Capitulations and religious privileges – originating as they did in an alleged incommensurability between the Christian and Islamic law – formed the kernel of Greek jurists' theories. In this way of thinking, Greek jurists followed the dominant understanding of law in Europe. European jurists usually divided Ottoman law into two mutually exclusive elements, namely, Muslim and non-Muslim law.[72] Europeans regarded a set of privileges – foreigners' privileges by virtue of the Capitulations, religious privileges of Christian churches, and the territorial autonomy of 'privileged' provinces – as the working institutions for Christian protection in an Islamic state.[73] It is no coincidence that Greeks counted in their list of privileges the autonomy of the Aegean islands.[74]

This does not mean that Greek jurists always imitated their European masters. As specialists in private law – Karavokiros in the law of succession and Eleutheriadis in the law of immovable property – the two Greek jurists were responding to the practical demands in Ottoman Greek society. Frequently quoting European authors, while at the same time boasting their first-hand knowledge of what was Ottoman-Islamic, Karavokiros and Eleutheriadis were proud of their jurisprudence as

70 Eleutheriadis, *Τὰ προνόμια*, 236–7.

71 P. Karolidis, *Ἱστορία τῆς Ἑλλάδος* (Athens 1925) 218–21, 287–8.

72 E.g. A. Heidborn, *Manuel de droit public et administratif de l'Empire Ottoman*, I (Vienne 1909) 37–40.

73 E.g. F. van den Steen de Jehay, *De la situation légale des sujets ottomans non-musulmans* (Bruxelles 1906). On privileged provinces, see A. M. Genell, 'Autonomous provinces and the problem of "semi-sovereignty" in European international law', *Journal of Balkan and Near Eastern Studies* 18 (2016) 533–49 and N. Fujinami, 'Between sovereignty and suzerainty: history of the Ottoman privileged provinces', in T. Okamoto (ed.), *A World History of Suzerainty: a modern history of East and West Asia and translated concepts* (Tokyo 2019) 41–69.

74 M. I. Gedeon, *Ἐπίσημα γράμματα τουρκικὰ, ἀναφερόμενα εἰς τὰ ἐκκλησιαστικὰ ἡμῶν δίκαια* (Constantinople 1910) 8, 101–10; M. G. M. Karavokiros, 'Τῶν Σποράδων νήσων τὰ δίκαια καὶ προνόμια', *Ἐκκλησιαστικὴ Ἀλήθεια* 33 (1912) 381–8, 397–406, 419–24, 427–32, 467–8; N. P. Eleutheriadis, *Οἱ μουσουλμάνοι ἐν Ἑλλάδι* (Athens 1913) 6, 16–17, 35. But see also V. Seirinidou, 'Communities', in P. M. Kitromilides and C. Tsoukalas (eds.), *The Greek Revolution: a critical dictionary* (Cambridge 2021) 84–6 for the reality of what these Greek jurists regarded as autonomy.

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distinguished from, if not superior to, its counterparts in the distant West and the Kingdom of Greece.[75]

Being indigenous did not necessarily preclude conflict. On the contrary, Greek jurists often disagreed with their Muslim colleagues. Muslims could hardly welcome the non-Muslims' privileges in the name of religion, not least because they contradicted the Ottoman pursuit of equality – which was introduced, as a prerequisite of becoming a modern state, at the expense of the Muslims' traditional superiority.[76] The bone of contention was why and how the Greeks should be privileged. Significantly, neither Muslims nor Greeks discussed the *millet* system on this occasion. The question was who defined what was religious in Ottoman law – or in other words, whether Ottoman law was (modernly) unitary or (religiously) plural. Muslim jurists reluctantly accepted religious privileges as an Ottoman expression of the liberal principle of religious freedom.[77] They believed that, as in other civilized states, the Ottomans as a sovereign nation must have legal unity irrespective of religion. Greeks advocated legal pluralism in the name of religion, which they believed had been an institutional guarantee in an Islamic empire. Asymmetrical as their assumptions were, Muslims and Greeks continued to contest each other until the very end of the empire.

Fall of empire, end of Ottoman Greek jurisprudence

In the final years of the empire, Ottoman Greeks were increasingly affected by nationalism, but not all of them surrendered to Athens' irredentism. With the Bulgarian question far from settled as late as the decade of 1910,[78] Gedeon – who had praised the Ottoman Sultans for having safeguarded the Orthodox Greeks' privileges – was less opposed to the Young Turks than he was to the Slavs. For pious Greeks, Muslims sometimes appeared as a lesser evil than the 'schismatic' Bulgarians. It is not surprising that Karolidis – an Ottoman parliamentary deputy from 1908 – tried to defend the Greeks' rights in alliance with the Committee of Union and Progress (CUP), a new decision-maker in Ottoman politics. He believed that only in cooperation with the strongest player among the Turks could the Greeks prosper.[79] Despite the

75 Eleutheriadis, *Τὰ προνόμια*, 16; M. G. M. Karavokiros, *Μελέτη συγκριτικὴ τοῦ κληρονομικοῦ Οθ. δικαίου πρὸς τὰ κληρονομικὰ ρωμαϊκὸν καὶ γαλλικὸν δικαία* (Constantinople 1915) 8.

76 J. G. Rahme, 'Namık Kemal's constitutional Ottomanism and non-Muslims', *Islam and Christian-Muslim Relations* 10 (1999) 23–39; M. Arai, 'Citizen, liberty and equality in late Ottoman discourse', in N. Clayer and E. Kaynar (eds.), *Penser, agir et vivre dans l'Empire ottoman et en Turquie: Études réunies pour François Georgeon* (Louvain 2013) 3–13.

77 Fujinami, 'A Constitutional Reading'.

78 N. Fujinami, '"Church Law" and Ottoman-Greeks in the Second Constitutional Politics, 1910', *Études Balkaniques* 43 (2007) 107–32.

79 N. Fujinami, 'Hellenizing the Empire through historiography: Pavlos Karolidis and Greek historical writing in the late Ottoman Empire', in D. Stamatopoulos (ed.), *Imagined Empires: tracing imperial nationalism in Eastern and Southeastern Europe* (Budapest 2021) 29–55.

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nationalist discourses claiming the contrary, pro-CUP Greeks were anything but exceptional.[80]

Caught between the establishment and the newly emerging middle-class activists in the Orthodox community, Karavokiros oscillated after 1908. In his new book on the rights and privileges of the Patriarchate, published in 1913 in Greek, Karavokiros referred to the Covenant of Muhammad and the Pact of Umar (which he had previously neglected) while avoiding mention of Mehmet II's political purpose (which he had championed before).[81] However, Karavokiros returned to his initial thesis when it came to Mehmet II's political purpose in his publications after 1914.[82] The state's law had been, he argued, authentic along with Sharia in the Ottoman Empire and changed over time. 'In view of the multiple laws valid in Turkey' (*ἐν Τουρκίᾳ ἰσχυόντων πολλῶν καὶ ποικίλων νόμων*), one needs to study the history of Ottoman justice.[83] Karavokiros did not think that the difference between the Western and Eastern law was insurmountable. He studied the Ottoman case as one variant of judicial systems in the world, together with the Jewish, Egyptian, Greek, Roman, French, and British examples.[84] Significantly, Karavokiros touched on the diversity of privileges granted to various non-Muslim communities, including the Armenians, Catholics, and Jews. This diversity stemmed from the different content and backgrounds of the various *berat*s,[85] a fact difficult to explain from Eleutheriadis' essentialist approach. Moreover, in his study on the Capitulations in 1915, Karavokiros sought to bring out the continuity in foreigners' privileges from the Byzantine to Ottoman times. Implicitly departing from the idea of an essential difference between Christian and Islamic law, Karavokiros defied Eleutheriadis' theory of discontinuity from the Byzantium to the Ottomans. In addition, Karavokiros gave a sympathetically overview of the Ottoman quest for reciprocity with the West that had led to the unilateral abolition of the Capitulations in 1914.[86]

The Balkan Wars (1912–13), World War I (1914–18), and the Turkish War of Independence (1919–22) fundamentally altered the Greeks' fate in the (former) Ottoman lands, bringing about a prolonged end to the Greek elite's Ottoman life. In those years – just as he had done under the Hamidian despotism – Karavokiros

80 V. Kechriotis, 'On the margins of national historiography: the Greek *İttihatçı* Emmanouil Emmanouilidis – opportunist or Ottoman patriot?', in A. Singer et al. (eds.), *Untold Histories of the Middle East: recovering voices from the 19th and 20th Centuries* (London 2011) 124–42.

81 M. G. M. Karavokiros, *Τοῦ Οἰκουμενικοῦ Πατριαρχείου τὰ δίκαια καὶ προνόμια* (Constantinople 1913) 103–4.

82 M. G. M. Karavokiros, *Τῶν ἐν Τουρκίᾳ Πατριαρχείων Οἰκουμενικοῦ, Ἀλεξανδρείας, Ἀντιοχείας καὶ Ἱεροσολήμων τὰ δίκαια καὶ προνόμια* (Constantinople 1914) 6, 117–19; *Τὰ δίκαια (νόμοι), τὰ δικαστήρια καὶ αἱ διμολογήσεις* (Constantinople 1915) 60.

83 Karavokiros, *Τὰ δίκαια*, 8.

84 Karavokiros, *Τὰ δίκαια*, 53–8.

85 Karavokiros, *Étude*, 34–49; Karavokiros, *Τῶν ἐν Τουρκίᾳ*, 130.

86 Karavokiros, *Τὰ δίκαια*, 110–85.

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presented a theory of Ottoman law that might find favour with both his fellow Greeks and Muslim Turks. As if to normalize the field, Karavokiros' comparative succession law, published in 1915 in Greek, investigated the issue from an unusually impartial perspective, placing Ottoman law in context and giving it its due in history.[87] Appreciating legal pluralism as a norm in the East – as opposed to legal unity as a modern principle – Karavokiros espoused the autonomy of the East, which had been sustained by the continuity from Byzantine to Ottoman law. Karavokiros' studies in the war years represented one of the highest achievements of Ottoman Greek jurisprudence.

Unfortunately for Karavokiros, his enterprise did not prevent the Porte from abolishing the non-Muslims' privileges. In 1917, the Decree on family rights (*Hukuk-ı aile kararnamesi*) deprived the Orthodox Church of its rights over the Greeks' personal status.[88] Muslims were so antipathetic to non-Muslims' privileges that the Greeks' rights – indeed their very existence – became a prey to the Turks' project of national unity. Muslims attempted to create a 'National Economy' (*Milli İktisat*) of their own at the expense of Greeks.[89] Muslim resentment of Greeks was exacerbated by the Greek invasion of Anatolia after 1919. With the Greek army defeated, Orthodox Christians in Turkey were, with a few exceptions, exchanged with the Muslims in Greece by the Treaty of Lausanne in 1923. The Ecumenical Patriarchate narrowly escaped removal from Constantinople and the remaining Greeks became a legal minority. Worse still, the interwar minority protection regime – which was supposed to guarantee the rights of Greeks in place of the abolished privileges – soon proved to be a mere scrap of paper.[90] Karavokiros stayed in Istanbul until 1926, while Gedeon had left for Athens in 1921. Karolidis departed Ottoman territory as early as 1912, after the outbreak of the first Balkan War, of which he was a fervent opponent. Until his death in 1930, he preserved his pro-Turkish attitude. Karolidis, Gedeon, and Karavokiros seemed to remain loyal to what they believed to be the East's tradition: multi-religious imperium in the Byzantine/Ottoman ecumene.

Eleutheriadis, by contrast, increasingly became a Greek nationalist. In his *Study of Islamic Law*, a collection of essays published in Greek in 1912, he appeared more Hellenic than Ottoman. Eleutheriadis described the Ottoman Greeks as a mere object of Athens' policy rather than a subject in themselves; saw the fanatically oppressive

87 Karavokiros, *Μελέτη*.

88 K. Dannies and S. Hock, 'A prolonged abrogation? The Capitulations, the 1917 Law of Family Rights, and the Ottoman quest for sovereignty during World War 1', *International Journal of Middle East Studies* 52 (2020) 245–60.

89 Z. Toprak, *Türkiye'de Milli İktisat 1908–1918* (İstanbul 2012).

90 A. Alexandris, *The Greek Minority of Istanbul and Greek-Turkish Relations 1918–1974*, 2nd edn (Athens 1992); E. Macar, *Cumhuriyet Döneminde İstanbul Rum Patrikhanesi* (İstanbul 2003); D. Kamouzis, *Greeks in Turkey: elite nationalism and minority politics in late Ottoman and early Republican Istanbul* (Abingdon 2021).

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Turks as dominating over their Greek victims;[91] and ignored Sultan Mehmet II's political purpose.[92] Eleutheriadis called attention to the international character of non-Muslims' privileges while at the same time neglecting the Ottoman Constitution or Muslim constitutionalism at large. This meant nothing short of denying Ottoman sovereignty vis-à-vis the (Christian) international society.[93] From Eleutheriadis' viewpoint, Christians' dual privileges of the church and as foreigners trumped any Islamic state's rights.

After the Balkan Wars, in the New Territories of Greece in Macedonia and Crete – newly conquered from the Ottomans – land tenure and related legal issues were so pressing that knowledge of Ottoman law was in great demand.[94] Eleutheriadis benefited from his fame as a specialist in Ottoman law and offered legal opinions on such issues as the *waqf*s and the ownership and usufruct of lands.[95] He spared no effort in legitimizing Greece's policy toward its Muslim subjects with a deliberate interpretation of treaties and laws for the benefit of Orthodox Greeks. According to Eleutheriadis, the alleged inseparability of church and state in Islam justified the privileges of Greeks in the Ottoman Empire, while ostensibly secular Greece had no obligation to respect Islamic institutions – even though the Orthodox Church remained highly influential in Greece.[96] Eleutheriadis insisted that the Ottomans had to guarantee Christian institutions, but the Greeks were free to transform the *waqf*s as they pleased. This was because, as he put it:

> an Islamic State, which, as Church, composes religious environment, is not able to include Christians in this religious environment and leaves them outside the Church of Islam, being obliged to allow them codifying their internal relationship in accordance with their manners, customs and especially their laws. But a European State is completely different from Church and has purely secular power.[97]

91 Eleutheriadis, *Μελέται*, 7–8.

92 Eleutheriadis, *Μελέται*, 30–41.

93 Eleutheriadis, *Μελέται*, 54–65.

94 These issues date back to the Greek War of Independence, but the Balkan Wars marked a new phase in the legal history of modern Greece. See Tsitselikis, *Old and New Islam* and G. Glavinas, 'Η πολιτική της Ελληνικής διοίκησης απέναντι στη μουσουλμανική γαιοκτησία των Νέων Χωρών την περίοδο 1912–1922', in *Ελληνική Ιστορική Εταιρεία, Πρακτικά ΚΖ΄ Πανελληνίου Ιστορικού Συνεδρίου 26–28 Μαΐου 2006* (Thessaloniki 2007) 461–77.

95 N. P. Eleutheriadis, *Τὰ δίκαια τῆς πολιτείας ἐπὶ τῶν ἐν Μακεδονίᾳ καὶ Ἠπείρῳ γαιῶν* (Athens 1915); *Τὰ μετὰ τὴν συνθήκην τῶν Ἀθηνῶν περὶ τῶν ἐν ταῖς νέαις χώραις ἐγκαταλελειμμένων κτημάτων* (Athens 1915) and *Γνωμοδοτήσεις περὶ κτηματικῶν ζητημάτων καὶ διαφορῶν ἐν ταῖς Νέαις Χώραις* (Athens 1916).

96 Th. A. Tsironis, *Εκκλησία πολιτευομένη. Ο πολιτικός λόγος και ρόλος της Εκκλησίας της Ελλάδος (1913–1941)* (Thessaloniki 2010).

97 Eleutheriadis, *Οἱ μουσουλμάνοι*, 3–13, 19–46; quotation from 11. The status of *waqf*s remains a thorn in the side of both Greece and Turkey: see K. Tsitselikis, *Τα βακουφία των ελληνορθοδόξων κοινοτήτων στον ευρωπαϊκό δρόμο της Τουρκίας* (Athens 2011).

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The status of Greece's Muslim citizens must be determined 'from the viewpoints of international law and the European understanding of law in general'. One needed not – indeed, should not – interpret it from Islamic viewpoints.[98] Frankly Eurocentric, Eleutheriadis' version of legal pluralism served the Christian interest at the expense of Muslims, whether in the Ottoman Empire, Greece, or international society at large.

Conclusion

Ottoman Greek scholarly opinion was far from uniform when it came to Ottoman law. Jurists and historians had different ideas. Karolidis extolled the tradition of coexistence between Greeks and Turks. A believer in the divinely prescribed truth of Orthodox Christianity, Gedeon advocated the immutable privileges of the Church that must be free from state intervention, be it Byzantine or Ottoman. Both historians described the Greeks' privileges as a sign of good will on the part of the Turks. In their opinion, civilizational gap between the Catholic West and Ottoman East ordered the Orthodox Greeks and Muslim Turks to unite against their common enemy, the Europeans. But Greek historians rarely won the sympathy of Muslims, not least because of their insistence on the privileges of the Patriarchate; yet little could infuriate the Ottoman Muslims more than the Greeks of their own lands turning Eurocentric. Eleutheriadis was not only Eurocentric but racist, as demonstrated by his Aryanist approach to Greek prehistory.[99] Insisting on the inseparability of church and state in Islam, he declared that there was no constitution but Sharia in an Islamic empire which was nothing but an ecclesia of Muslims. Eleutheriadis denied Muslims any agency free from Islamic precepts. No wonder his idea of static Islamic law alienated the Muslim public. More open to dialogue with Muslims was Karavokiros' thesis. He paid due respect to Ottoman reforms and appreciated the Sultan's rescripts as the empire's constitutional texts. Still, Karavokiros held firm in his belief that church law was an integral part of Ottoman rule so long as it concerned the Sultan's Orthodox subjects. Jurists' shared focus on private law, especially personal status law, reflected the Greeks' particular interest that necessitated legal pluralism. Marriage, succession, and inheritance had an economic as well as religious meaning in the world of the Greek bourgeoisie, where the family ties supplied the cultural and social capital necessary for success. Greeks needed a jurisprudence that safeguards their wealth and status in the name of religion. Offering a peculiarly Greek understanding of Ottoman law, Greek jurists had a role to play even after – or rather, precisely because of – the emergence of Muslim jurists who represented the state's interest in law.[100] Insisting on the allegedly

98 Eleutheriadis, *Οἱ μουσουλμάνοι*, 13–16.

99 N. P. Eleutheriadis, *Πελασγικὴ Ἑλλάς: οἱ Προέλληνες* (Athens 1931).

100 Anastassiadou-Dumont thinks differently when she argues that 'Dès les dernières décennies du XIXe siècle, il était manifeste que […] les spécialistes de la médiation entre les divers systèmes juridiques qui cohabitaient au sein de l'Empire n'auraient bientôt plus de raison d'être' (*Les Grecs*, 204–5).

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fundamental difference between the Christian and Islamic law, Greek jurists effectively denied the Porte its sovereign right to legal unity when they demanded religious privileges – although Karavokiros introduced some nuances by emphasizing what he argued had been the Sultan's political purpose.

The Greeks lost their privileges with the imperial collapse, but the legacy of Ottoman Greek jurisprudence is still alive. A conventional understanding of the *millet* system reiterates what Karavokiros and Eleutheriadis had argued in the late Ottoman period. It is interesting that two articles in the same issue of the same journal – which addresses 'La culture juridique dans les Balkans' – take Ottoman legal pluralism for granted, while each adheres to the different understanding of Ottoman law represented by Karavokiros and Eleutheriadis respectively.[101] Whether they faithfully describe the legal reality is another matter. Law has never been static or neutral; least of all in an age of Western hegemony when the notorious 'standard of civilization' was predominant. Few Europeans recognized the Muslims' ability to modernize their law.[102] Many Greek jurists followed suit. In the Ottoman Empire as in many parts of the world, law was a battlefield where the diverging parties fought one another. Given that legal pluralism functioned as a normative category rather than a neutral description, we need to examine the concepts used by contemporary actors – in this case, privileges – in context.[103] Greek views were not so much an objective representation of Ottoman law as a subjective argument for their vested interest in the name of religion. When placed in its proper context and history, the privileges question and the Greek involvement with Ottoman law provide an insight into what we now (perhaps too readily) call legal pluralism.

In conclusion, Greek jurists' views reveal the peculiarly Ottoman background of Muslim-Christian relationship in terms of modern law. One might ask: to what extent was the Greek case representative of the entanglement of modern jurisprudence with Islam? What did Greeks have in common with their counterparts in other multi-religious

101 Whereas D. G. Apostolopoulos refers to the Ottomans' 'raisons politiques' like Karavokiros in his 'La coexistence de deux espaces juridiques dans l'Empire ottoman (xve-xvie siècles)', *Études Balkaniques* 19–20 (2013–14) 89–100, D. Papastathi comes close to Eleutheriadis with her focus on Islamic law in her 'Observations sur la culture juridique des Grecs orthodoxes sous la domination ottomane (milieu du XVe – milieu du XIXe siècle)', *Études Balkaniques* 19–20 (2013–14) 101–34.

102 G. W. Gong, *The Standard of 'Civilization' in International Society* (Oxford 1984). For more recent studies, see J. Allain, 'Orientalism and international law: the Middle East as the underclass of the international legal order', *Leiden Journal of International Law* 17 (2004) 391–404; J. Allain, *International Law in the Middle East: closer to power than justice* (Aldershot 2005); A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge 2005) and M. Koskenniemi, 'Race, hierarchy and international law: Lorimer's legal science', *The European Journal of International Law* 27 (2016) 415–29.

103 Y. Z. Karabıçak does so when he analyses the confusion in the use of the term *millet* in the context of the Serbian and Greek uprisings in the early nineteenth century: 'Ottoman attempts to define the rebels during the Greek War of Independence', *Studia Islamica* 114 (2020) 316–54.

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empires? To answer these questions, we need further comparative studies that shed light on the variety of ways in which law and empire interacted in modern times.[104]

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104 Russian and Habsburg examples are particularly interesting. See R. D. Crews, *For Prophet and Tsar: Islam and empire in Russia and Central Asia* (Cambridge 2006); J. Burbank, 'The rights of difference: law and citizenship in the Russian Empire', in A. L. Stoler et al. (eds.), *Imperial Formations* (Santa Fe 2007) 77–111; M. Schulze Wessel, 'Religion, politics and the limits of imperial integration: comparing the Habsburg Monarchy and the Russian Empire', in J. Leonhard and U. von Hirschhausen (eds.), *Comparing Empires: encounters and transfers in the long nineteenth century* (Bristol 2012) 337–58; P. W. Werth, *The Tsar's Foreign Faiths: toleration and the fate of religious freedom in Imperial Russia* (Oxford 2014); R. A. Poole and P. W. Werth (eds.), *Religious Freedom in Modern Russia* (Pittsburgh 2018) and N. Wheatley, *The Life and Death of States: Central Europe and the transformation of modern sovereignty* (Princeton 2023).

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