Civilizational Exceptions: Ottoman Law and Governance in Late Ottoman Palestine

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In June 1899, the Ottoman Sultan issued an edict confirming the foundation in southern Palestine of a new subdistrict, and the building of the town of Birüssebi, the Ottoman name for Beersheba.[1] The Ottoman goal was to build a permanent administration designed exclusively for the local Arab tribal communities, known today as the Bedouin. Despite the law's requirement to establish a civil (*nizâmiye*) court alongside the Islamic (*şerîat*) court in Beersheba, the Ottoman Council of State decided in 1902 not to establish a *nizamiye* court. Instead, it allowed the local administrative council to sit as a judicial forum and carry the practice of mediation and conciliation among the Bedouin based on the local law and custom. The Beersheba administrative council was thus staffed by

1. Başbakanlık Osmanlı Arşivleri, The Ottoman State Archives, Istanbul, Turkey (hereafter BOA), BOA.DH.TMİK-S 25/62, 27 Mayıs 1315/June 8, 1899, letter from the minister of the interior to the Grand Vizier. On Ottoman Beersheba, see Yasemin Avci, "The Application of Tanzimat in the Desert: The Bedouins and the Creation of a New Town in Southern Palestine, 1860–1914," *Middle Eastern Studies* 45 (2009): 969–83.

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five Bedouin shaykhs who were authorized to serve as the council's members and as judges.[2] The legal exceptions granted in Beersheba stemmed from several imaginings and sociogeographic categorizations; in particular, viewing the Bedouin as backward, ignorant, and incapable of understanding state legal procedures. The geographic particularities of Beersheba as an internal frontier and a borderland against the British Empire in Egypt played an important role in the legal history of Beersheba. However, the Sultan or members of the Council of State could have scarcely imagined that within a few years' time, their vision of a division between savage and civilized would be shattered by the allegedly ignorant Bedouins themselves, who deftly challenged and navigated the ambiguous legal structures all the way to Istanbul. In following these legal cases, the article challenges some of the prevailing categories with which the secondary literature has understood both the Bedouin law and Ottoman legal reforms more generally, while also connecting these developments to a broader conversation on historical legal geography.

The foundation of Beersheba was part of Ottoman tribal policies, and more broadly of the Ottoman *Tanzimat* reform of the nineteenth century.[3] Borderlands and frontiers such as southern Palestine, often inhabited by tribal communities, constituted an important target of the reform, mainly for governance centralization. Sedentarization, property survey and registration, and state jurisdiction were central to the reform in these regions. Looking at the evolution of the Beersheba jurisdiction through local land disputes thus constitutes a rich focal point for examining the Ottoman reformed administration in Beersheba, and to learn about Ottoman imperial governance of that period. By looking at the Beersheba case, I was able to bring together some oppositional scholarly accounts of the Ottoman *Tanzimat* in general and of tribal communities and the Beersheba Bedouin history in particular.

Frameworks and discourses of modernization and top-down approaches have for long dominated many scholarly accounts of the *Tanzimat*, and of Ottoman administrative centralization. However, Ottoman social historians seriously challenged such approaches, proposing a more relational approach to interpret the reform.[4] Nevertheless, presumptions of imposition and

2. BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter from the Jerusalem governor to the ministry of the interior, 2 Mart 1318/March 15, 1902; BOA.İ.DH 1385/13, 14 Nisan 1317/ April 27, 1901.

3. The research time frame is treated as the Ottoman Tanzimat period with no particular distinction between the Hamidian and post-Hamidian period, including that of the Young Turks after 1908, despite some particular references to each period.

4. See, for example, Beshara Doumani, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700–1900* (Berkeley, CA: University of California Press, 1995); and Iris

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modernization continue to appear, even subtly, particularly in anthropological accounts of property relations and tribal regions in general, including that of Beersheba in the post-Ottoman period. There, state law and the institution of private property are discussed as state imposition that seeks to replace the local law and tribal property system. At the other end, there are oppositional scholarly accounts that highlight the autonomy of tribal communities, their "customary" law, their existence outside state structures, and their living in isolation from other communities.[5] The last two decades have witnessed an important growth in scholarship on tribal communities in the Ottoman period.[6] As this article will demonstrate, the legal history of such regions and communities remains under-studied, and dichotomies between state and autonomy, imperial and local are ultimately untenable.

This article suggests the integration of geographic analysis into the study of Ottoman legal history and thus connects legal history to the burgeoning field of legal geography. Recent studies have expanded knowledge of law and empire, and provided for significant scholarly and theoretical developments in the study of law, empire, and geography, including "legal pluralism" and "uneven geography."[7] These scholarly developments provide essential prisms to the study of Ottoman legal history, which remains comparatively under-studied with respect to European empires.[8] Within

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Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006).

5. For an important critique of such dichotomist approach see, Nora Barakat, "Marginal Actors? The Role of Bedouin in the Ottoman Administration of Animals as Property in the District of Salt, 1870–1912," *Journal of the Economic and Social History of the Orient* 58 (2015): 105–34; see also, Nora Barakat, "An Empty Land? Nomads and Property Administration in Hamidian Syria" (PhD diss., University of California–Berkeley, 2015). Barakat's account is significantly important as it poses a serious critique of the study of tribal communities, and their juxtaposition vis-à-vis the state or other "sedentary" communities. Barakt demonstrates how these communities were active participants in the making of the new property regime and Ottoman reformed administration in the late Ottoman Period in today's Jordan.

6. See, for example, Reşat Kasaba, *A Moveable Empire: Ottoman Nomads, Migrants, and Refugees* (Seattle, WA: University of Washington Press, 2009); Yonca Köksal, "Coercion and Mediation: Centralization and Sedentarization of Tribes in the Ottoman Empire," *Middle Eastern Studies* 42 (2006): 469–91; Selim Deringil, "'They Live in a State of Nomadism and Savagery': The Late Ottoman Empire and the PostColonial Debate," *Comparative Studies in Society and History* 45 (2003): 311–42; and Barakat, "An Empty Land?"

7. David Harvey, *Spaces of Global Capitalism: A Theory of Uneven Geographical Development* (London: Verso, 2006); Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press, 2010).

8. Ruth Miller, "The Legal History of the Ottoman Empire," *History Compass* 6 (2008): 286–96.

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Ottoman history, this absence is especially puzzling given how central law and landed property were to the *Tanzimat* reforms. Although the politics of difference, instituted autonomies, and adapted jurisdictions constituted an important part of Ottoman imperial governance, they were configured in part by geographic considerations. Hence, the distinct imperial path in the Beersheba frontier generated a judicial and administrative order that differed from other coastal, inland, or even other Ottoman frontier zones, and it constantly evolved in the shadow of the changing geography of Beersheba.[9]

Most of the available studies of Ottoman legal history revolve around the legal text and institutional reordering of the *Tanzimat* reform, mainly the creation of the *nizâmiye*[10] courts. Further, the vast majority of research on the judiciary is on the case law of the state-religious courts (known mostly as the *şerîat* or *sharia*), and its focus has been predominantly on the imperial center and on provincial centers and towns.[11] However, despite the growing studies of Ottoman sociolegal change, there remains a shortage in this field. The actual configuration of the legal reform in, and by, the judiciary, and particularly in frontier or remote provinces,

9. Cem Emrence, *Remapping the Ottoman Middle East: Modernity, Imperial Bureaucracy and Islam* (London, New York: I. B. Tauris, 2016). On some Ottoman frontier policies vis-à-vis the Kurdish tribal communities, see, for example, Janet Klein, *The Margins of Empire: Kurdish Militias in the Ottoman Tribal Zone* (Redwood City, CA: Stanford University Press, 2011).

10. It is a challenge to find an accurate English translation for the term *nizâmiye* that can capture the nature of this court. Scholars had used terms such as "secular," "regular," or "civil." See partial discussion of the terms and their translation in dictionaries in Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 83–84.

11. Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, CA: University of California Press, 1998); Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003); Reem A. Meshal, *Sharia and the Making of the Modern Egyptian: Islamic Law and Custom in the Courts of Ottoman Cairo* (New York: American University in Cairo Press, 2014); Agmon, *Family & Court*; and Dror Ze'evi, "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5 (1998): 35–56. It should be noted that the early study of the *şerîat* case law had focused on Islamic law as an unchanging text and on the role of the *qadi* as a technical one, and by undertaking a quantitative approach to the court's case law. However, the research went through various scholarly developments and recently began to move toward a sociolegal approach by treating the court as a social institution and by examining the broader context of its decisions and the various players of this institution. See Iris Agmon and Ido Shahar, "Theme Issue: Shifting Perspectives in the Study of Shari'a Courts: Methodologies and Paradigms-Introduction," *Islamic Law and Society* 15 (2008): 1–19.

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has not enjoyed sufficient attention, and the need to study the case law of the *nizamiye* courts remains.[12]

Studies of Ottoman Beersheba have typically discussed Bedouin customary tribal law and its governance of Bedouin affairs, as part of the focus on Bedouin autonomy. Their history was largely characterized as one of tribal fighting, raids on settled populations, and occasional Ottoman military punitive campaigns to subdue them.[13] The few studies that discussed the judicial order under the Ottoman administration have outlined in brief the Ottoman institution of a "tribal court," and the persistence of such legacy under the British Mandate of Palestine. Yet the very term "tribal court" itself is both misleading and historically inaccurate, as it was an authorization of the administrative council to take upon itself a judicial responsibility. But more problematic is the fact that there is no discussion of the nature of the "court," its founding or its operation as part of a broader legal landscape, its position within the Ottoman imperial workings of the relevant period, or the debates and views of the Ottoman administration throughout its operation.[14] Given how the *Tanzimat* catalyzed a number of sociolegal changes that continue to be relevant in post-Ottoman states, a critical assessment of the legal infrastructure of Ottoman Beersheba is long overdue.

This article explores the actual workings and implementation of the Ottoman legal reform and the administrative workings of the empire in frontier zones and toward tribal communities. It focuses on the formation of the judicial order concerning landed property in Beersheba between 1900 and 1917, a site within which property reform was hotly debated and contested. This is conducted by discussing a number of cases of

12. For important exceptions in the study of the reform in the frontier, see, for example, Thomas Kuehn, *Empire, Islam, and Politics of Difference: Ottoman Rule in Yemen 1849–1911* (Leiden: Brill, 2011); Thomas Kuehn, "Shaping and Reshaping Colonial Ottomanism: Contesting Boundaries of Difference and Integration in Ottoman Yemen, 1872–1919," *Comparative Studies of South Asia, African and the Middle East* 27 (2007): 315–31; and Martha Mundy and Richard Saumarez-Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I. B. Tauris, 2007).

13. Moshe Maoz, *Ottoman Reform in Syria and Palestine* (Oxford: Oxford University Press, 1968), 9; Seth J. Frantzman and Ruth Kark, "Bedouin Settlement in Late Ottoman and British Mandatory Palestine: Influence on the Cultural and Environmental Landscape, 1870–1948," *New Middle Eastern Studies* 1 (2011): 1–24, at 5; and Andrew Shryock, *Nationalism and the Genealogical Imagination: Oral History and Textual Authority in Tribal Jordan* (Berkeley, CA: University of California Press, 1997).

14. See, ʿArif al-ʿArif, *Al-Qada bayna al-badw* (Beirut: al-Muʾassasa al-ʿArabīyah lil-Dirasat wa-al-Nashr, 2004); Giedon M. Kressel and Joseph Ben-David, and Khalil Abu Rabi'a, "Changes in Land Usage by the Negev Bedouin since the Mid-19th Century," *Nomadic Peoples* 28 (1991): 28–55.

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inter- and intra-Bedouin land disputes and the pathways they took for resolution in Beersheba, Jerusalem, and Istanbul, as they appear in Ottoman sources. The reformed rule in Beersheba quickly became embroiled in conflicts and complexities of landed property, and the development of property administration that was far from linear. What began as a simple grant of autonomy, driven by particular sociolegal categorizations and mostly justified by civilizational discourses of "ignorance," "tribalism," and "savagery," quickly proliferated into legal complexity. A close examination of Bedouin litigation illuminates a number of jurisdictional questions and tensions that forced the Ottoman administration to respond in ways that it had not predicted. Bedouin actions upset the hierarchies of imperial and civilizational difference, forcing Ottoman officials to redraw them continually. The Beersheba account illuminates more broadly the construction and the evolution of legal orders in different imperial regions at a historical conjuncture of changing notions of governance, sovereignty, and territoriality.

Integrating the Frontiers: Ottoman State Making and Jurisdictional Tensions in Southern Palestine

From the late eighteenth century, the Ottoman government found itself challenged on a number of fronts both inside and outside the empire. The loss of a number of wars and territories to the Russian and Habsburg empires, together with internal secessionist movements in the Balkans and Greece, followed by Egypt's Mehmet Ali and his campaign in Syria (1831–40), all necessitated the need to institute control and authority. Legal and administrative changes by the Ottoman Empire were also a requirement of some European powers in various international treaties during the nineteenth century. These developments coincided with the global changes in notions of state, society, sovereignty, territoriality, governance, and world economy that had all impacted the Ottoman elite in driving efforts to re-fashion their empire. As a result, beginning in the 1830s, the Ottoman center reconsidered its governance mode and initiated a series of reforms that came to be known as the *Tanzimat*, which literally meant "ordering" and "organization." The reform went through different levels of legislation and of implementation, but an increased involvement in tribal regions and attempts of extending the new administration to these regions took place under the reign of Sultan Abdulhamid II (1876–1909).

The Ottoman reform marked a meaningful shift in the imperial workings toward modern state governance. As noted by Selim Deringil, it would be no exaggeration to say "that the modern state as it is understood today…

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was only constituted in the Ottoman Empire after the Tanzimat reforms of 1839."[15] The reform was mainly about redefining the center and provinces' relationships by replacing the older order of indirect rule with a centralized and direct one with an attempt to undermine the power of intermediary local and regional leaders. Essential to the reform was the extension of new judicial and administrative structures to territories remote from the imperial center (for example, eastern Anatolia, northern Albania, Yemen, Libya, and southern Syria, which comprised the Hijaz, today's Jordan, and the Beersheba region) to facilitate their integration under the centralizing Ottoman administration.

These loosely governed regions, such as peripheries and frontiers, bear sociogeographic characteristics that played an important role in designing their reform and in the evolving judicial order. They were mostly inhabited by tribal communities, frequently and wrongly referred to as nomadic groups. Further, their remoteness and topography, such as mountain and desert regions, made them to be usually associated with legal primitivism and for their inhabitants to be perceived as people who deserved special treatment so that "they might attain, and will be rewarded with, only the kind and amount of law that matched their level of development."[16] The Beersheba region was imagined by Ottoman officials as a desert and tribal region that was culturally and legally inferior, somewhat lawless, and often treated in this discursive and material vein. Hence, law and geography, discursively and materially, were mutually constitutive in the production of Beersheba's judicial order, and exploring both is useful to the study of Ottoman social change in the frontiers.

During both the imperial and postimperial periods, such regions and communities were subjected to various civilizational discourses and viewed as living in an extra-state space. Attitudes of the Ottoman elite and center toward tribal communities, as part of the periphery, were strongly negative. As Şerif Mardin notes, "the clash between nomads and urban dwellers generated the Ottoman cultivated man's stereotype that civilization was a contest between urbanization and nomadism."[17] Further, modern state's civilizational discourses of "backward," "savage," and "barbarian" began, as argued by James Scott, exactly where state's

15. Selim Deringil, *The Well-Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire, 1876–1909* (New York: Tauris, 1998), 9.

16. Benton, *A Search for Sovereignty,* 225; see also Kuehn, "Shaping and Reshaping Colonial Ottomanism."

17. Şerif Mardin, "Center-Periphery Relations: A Key to Turkish Politics?" *Daedalus* 102 (1973): 169–90.

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sovereignty and tax collections ended.[18] Impacted by such discourses, many studies of tribal communities in empires or modern states are largely colored by an approach of duality and presumptions of antagonism that leave the state's forms of presence, and the populations' interactions with the state, outside the region's history.[19] The enactment of law, unified and codified, became an important factor of reformed modern governance, but more important was the ability to apply and impose this law on regions deemed beyond the reach of the state. The imposition of law would bring authority and territory together and form the hoped-for sovereignty.[20]

Beersheba's law and geography were impacted not only by internal considerations but also by inter-imperial politics. Whereas internally the Ottoman government sought to establish more effective control over subjects and territory, taxation, and policing, externally it sought to defend its territory and establish political control against other political powers. As Lauren Benton rightly states, "Imperial officials and legal writers found that the problem of configuring sovereignty could not be addressed separately from pragmatic and theoretical questions arising from the entanglement of local legal politics and the challenges of inter-imperial contests."[21] The Bedouin communities saw themselves as the sovereign masters of their region. They had lived for centuries under relative autonomy and administered their relations based on their local law and practice, but they were not outside state structures.[22] The Ottoman center sought to better establish its jurisdiction, and was looking to transform these communities into disciplined and loyal imperial subjects. At the same time, Ottoman actions in Beersheba were animated by the fact that Beersheba turned into a political frontier and borderland against the British threat that emanated from the Egyptian frontier after the British occupation of Egypt in 1882. Therefore, the new geopolitical position of Beersheba

18. James Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven, CT: Yale University Press, 2009), 1–39.

19. Talal Asad, "The Beduin as a Military Force: Notes on Some Aspects of Power Relations between Nomads and Sedentaries in Historical Perspective," in *The Desert and the Sown: Nomads in the Wider Society,* ed. Cynthia Nelson (Berkley, CA: Institute of International Studies, University of California, 1973), 61–74.

20. Douglas Howland and Luise White, "Introduction," in *The State of Sovereignty: Territories, Law, and Populations,* ed. Douglas Howland and Luise White (Bloomington, IN: Indiana University Press, 2009), 1–18, at 6.

21. Benton, *A Search for Sovereignty,* 5.

22. Most scholarship dates the arrival of Bedouins to the area of today's Negev to the seventh century, whereas a small minority of Israeli researchers argue that most of today's Negev Bedouin arrived to the region during the eighteenth century. See Alexander Kedar, Ahmad Amara, and Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (Stanford, CA: Stanford University Press, 2018), 173–75.

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had also to be taken into account when extending the reformed Ottoman administration and jurisdiction.

The concept of legal pluralism has been widely utilized in the study of Ottoman legal history.[23] Studies pertained to subjects such as the Ottoman legal structure, the different religious groups of the *millet* system, the flexible application of law and jurisdiction in the state-*şerîat* courts, Islamic and state law, custom, and even Ottoman economic history.[24] Although legal pluralism might be a useful concept, it falls short in capturing the legal complexities of the Beersheba case, or other Ottoman regions, as it did not involve multiple legal systems that were neat, organized, and separate from one another, as legal pluralism may suggest.[25] The subsequent analyses, therefore, focus on patterns of jurisdictional conflicts as part of broader imperial shifts. This approach diverts the focus from rules and norms of the law toward "clusters of conflicts."[26] Looking at the legal sphere as a web of various jurisdictions would take us away from the binary and oppositional encounter of state law and non-state law or the need to define each legal system. It is particularly useful to avoid as much as possible the use of terms such as "custom," or "customary law," because of their ideological baggage as an exotic and/or despotic unchanging historical tribal artifact.[27] Equally important is the study of

23. John Griffiths defined "legal pluralism" to refer to a situation in which "the sovereign commands different bodies of law for different groups of the population varying by ethnicity, religion, nationality, or geography, and…the parallel legal regimes are all dependent on the state legal system." See John Griffiths, "What Is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986): 5–8.

24. See Ido Shahar, "Legal Pluralism and the Study of Shari'a Courts," *Islamic Law and Society* 15 (2008): 112–41; Karen Barkey, "Aspects of Legal Pluralism in the Ottoman Empire," in *Legal Pluralism and Empires 1500–1850,* ed. Lauren Benton and Richard J. Ross (New York: New York University Press, 2013), 83–108; Akif Tögel, "Ottoman Human Rights Practice: A Model of Legal Pluralism," *Yildirim Beyazit Law Review* 2 (2016): 201–20; Cihan Artunc, "Legal Pluralism, Contracts, and Trade in the Ottoman Empire," http://aalims.org/uploads/Artunc_aalims.pdf (May 15, 2018).

25. Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (New York: Cambridge University Press, 2002); and Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (New York: Cambridge University Press, 2010).

26. Lauren Benton and Richard J. Ross apply the term "jurisdiction" to describe "the exercise by sometimes vaguely defined legal authorities of the power to regulate and administer sanctions over particular actions or people, including groups defined by personal status, territorial boundaries, and corporate membership." Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in *Legal Pluralism and Empires,* 1–20, at 5–6; see also Benton, *Law and Colonial Cultures*.

27. Sally Falk Moore, *Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880–1980* (New York: Cambridge University Press, 1986); and Eric Hobsbawm and

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the formation of anomalous legal zones: zones of legal variation where particular laws are suspended and/or adapted to a particular geographic region and/or community.[28]

Studies of jurisdictional conflicts and legal pluralism often focus on newly conquered territories and subjects that came under imperial rule. The Beersheba region, however, had been part of the Ottoman Empire since the sixteenth century, but was to be brought under more direct rule by the establishment of a new administration. Nevertheless, while extending the Ottoman reformed administration, at the forefront were questions of the extent and nature of legal subordination and control, and accommodation of the existing law. State law and local law were contingent upon one another, and they were in constant motion. The persistent crossing, mixture, and challenges to judicial arrangements, and the multiplicity of judicial mechanisms in the Beersheba region were too messy to fit within organized pluralistic legal systems.

1. The "Rule" and the "Exception" of the Ottoman Legal Reform

More than an enactment of new substantive legal provisions, Avi Rubin rightly argues that it was legal codification and proceduralization, dominated by legal formalism that the Ottoman legal system witnessed during the reform.[29] Such processes "aspired to minimize, if not dispose of, doctrinal interpretation, custom, and judicial discretion in favor of the codified statute."[30] Further, the reform aimed at defining the judicio-administrative division and hierarchy, by demarcating the jurisdiction and power of each court or administrative body. The new legislation and the new imperial objectives necessitated a new judicial organization. In addition, the reform created a number of specialized governmental bodies, such as the Ministry of Justice, and a number of new positions and services, such as public prosecutor, judicial inspector, and examining magistrate, among others. It also led to establishing the professional legal education field and professional legal agents.[31]

Terence Ranger, ed., *The Invention of Tradition* (New York: Cambridge University Press, 1983).

28. Benton, *A Search for Sovereignty*, 6, fn. 12. Benton borrows the term from Gerald Neuman.

29. Avi Rubin, "Modernity as a Code: The Ottoman Empire and the Global Movement of Codification," *Journal of the Economic and Social History of the Orient* 59 (2016): 828–56.

30. Avi Rubin, "From Legal Representation to Advocacy: Attorneys and Clients in the Ottoman Nizamiye Courts," *International Journal of Middle East Studies* 44:2 (2012): 111–127, at 113.

31. Rubin, *Ottoman Nizamiye Courts*, 87–111. For a summary and presentation of the Ottoman legal and judicial reform, and a discussion of different sources, especially those

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There were a number of central laws that came to define the contours of the Ottoman reform. At the administrative level, two Ottoman provincial (*vilâyet*) laws from 1864 and 1871 came to replace the previous Ottoman administration system. Under the new law, the higher administrative unit was that of the province (*vilâyet*), divided into districts (*livâ* or *sancak*), and the district was divided into subdistricts (*kazâ*), which were then divided into regions (*nâhiye*), each with its own administration. As to the judiciary, each administrative level was to have, in addition to the state-*şerîat* court, also the newly founded state-civil *nizâmiye* courts. The initiative went through different phases before full-fledged reform in 1879 with the passage of three important pieces of legislation; namely, the Code of Civil Procedure, the Code of Criminal Procedure, and the Law of the *Nizâmiye* Judicial Organization.[32] Property was another central field of the reform. The Ottoman administration looked to establish a direct relationship with landholders and cultivators, both to increase tax collection and to undermine the power of tax farmers, and thus addressed questions of land tenure and sought to establish a land title registration mechanism. Therefore, it passed the 1858 Ottoman Land Code (OLC) and the *mecelle* Civil Code (1869–76) and the 1859 *Tapu* Law, considered the pillars of the land law reform that organized questions of land rights, title registration, and jurisdictions over land disputes.[33]

Each of the three administrative levels (subdistrict, district, and province) was to include an administrative and judicial council. The judicial council marked the beginning of the reformed court system, and stressed the separation of power among the imperial bodies, and it evolved to become the *nizâmiye* court. The formation of the *nizâmiye* courts extended from 1864 until 1879, whereas the formation and implementation of the judicial reform in general continued until the last days of the empire. Hence, by the end of the nineteenth century, each administrative level was to have both a *nizâmiye* and a *şerîat* court.[34] The resulting court system, centralized and hierarchical, consisted of three levels: the court of

published in Turkish language, see Avi Rubin, *Ottoman Nizamiye Courts;* Hümeyra Bostan, "Institutionalizing Justice in a Distant Province: Ottoman Judicial Reform in Yemen 1872–1918" (Master's diss., Istanbul Şehir University, 2013).

32. The Law of Municipalities was introduced in 1877. See Mundy and Saumarez-Smith, *Governing Property,* 50; and Rubin, *Ottoman Nizamiye Courts*, 28, 32.

33. On the pre-reform Ottoman land and land law system see Colin Imber, "The Law of the Land," in *The Ottoman World*, ed. Christine Woodhead (London: Routledge, 2012), 41–55; and Haim Gerber, *The Social Origins of the Modern Middle East* (Boulder, CO: L. Rienner, 1987).

34. Rubin, *Ottoman Nizamiye Courts*, 24, 28–29; and Mundy and Saumarez-Smith, *Governing Property,* 50–51.

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first-instance (*bidâyet*), operating on three administrative levels; the court of appeal (*istinâf*), operating in the provincial centers; and the court of cassation (*temyiz*) in Istanbul.[35] The Cassation Court, founded in 1879, played a significant oversight role regarding the performance of the lower *nizâmiye* courts.[36]

The Ottoman diversity of sociolegal practices created a tension between the aspiration of the ruling elite for uniformity in the sense of shared Ottomanism or a modern citizenry on equal standing, and the recognition of cultural distinctiveness. Generally speaking, the uneven implementation of the *Tanzimat* reform components across the imperial domain was dictated by various factors including the continuing role of local notables in imperial politics, and the will to gain the acceptance of the local population. While seeking to implement the reform, the Ottoman government sought to adapt the reform bodies and tools as much as possible to the local conditions as they were perceived by Ottoman officials, and thus to avoid any disruptions in the social fabric and political dynamics.[37] The Ottoman government acknowledged Bedouin legal difference and institutionalized it by allowing the administrative council to serve as a judicial forum instead of a *nizâmiye* court. The Bedouin ended up using their non-difference—as Ottoman citizens and bureaucratic subjects—to bring their land disputes to Beersheba, Gaza, Jerusalem, and as far as Istanbul. Beersheba and its inhabitants may have seemed remote in the eyes of the Ottoman center, but the legal path between southern Palestine and Istanbul was much shorter than Ottoman administrators envisioned and, indeed, would have liked.

2. Between Legal and Social Boundaries: An Exceptional Jurisdiction for a Special Community

"The primary objective of forming the Beersheba sub-district is to place the Bedouin on the path of civilization, and to gradually have them settle down, and thus all concessions should be made available for Bedouin settlement and construction of buildings."[38] (Council of State decision, 1900)

35. Each court was divided by the law into civil (*hukuk*) and criminal (*cezâ*) sections, although the actual separation between them at the subdistrict level was not very clear. Further, the law of the *Nizâmiye* Judicial Organization founded the councils of elders (*ihtiyar meclisi*) in towns and villages as peace tribunals to settle minor civil disputes upon the consent of parties involved. See Rubin, *Ottoman Nizamiye Courts*, 33.

36. Rubin, "Legal Representation," 114.

37. Rubin, *Ottoman Nizamiye Courts*, 23. See the Yemeni experience for an illustration of this policy, Kuehn, "Shaping and Reshaping Colonial Ottomanism."

38. BOA.İ.DH 1380/1318.N/18, 7 Teşrinisani 1316/November 20, 1900, decision of the Council of State.

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On 1902, Faraj Mansur, from one of Gaza's satellite villages, encroached onto the lands of the Bedouin A'bed al-Huweiti of the Tarabin of Beersheba. According to the Ottoman jurisdictional procedure, al-Huweiti had to bring his suit against Mansur to the Gaza *nizâmiye* court. However, the need to spend some time in Gaza for the hearings would entail expenses for al-Huweiti, and because of his poverty, he asked the governor of Beersheba to allow him to bring his case to Beersheba. Informed by the Beersheba governor of the issue, the Jerusalem governor wrote to the Ministry of the Interior asking that the Beersheba council, authorized in 1902 to hold judicial power in resolving Bedouin conflicts, be allowed to include also cases of non-Bedouin respondents. The Jerusalem governor mentioned that some of the nearby settled communities (*ahâli*) encroach repeatedly onto Bedouin lands, and, therefore, the case of al-Huweiti was expected to be repeated by others. This mixture of identities, of court systems, and of property relations created challenges for the Ottoman administration in determining the proper legal solution.[39]

Until the foundating of the new subdistrict and town of *Birüssebi,* in 1899, the Bedouin communities and large parts of southern Palestine belonged administratively to the Gaza district,[40] a district that was part of the Jerusalem governorate (*mutasarrıflık*), an independent governorate that had been subject to direct administration from Istanbul since 1872.[41] Until then, Bedouin judicial affairs were administered in several *fora*, but mostly in Bedouin and non-Bedouin communal jurisdictions, generally known as "tribal courts."[42] Some cases were heard in the nearby state-*şerîat* courts in Hebron, Gaza, and Jerusalem.[43] The choice of

39. BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter of Commission of Reform and Accelerated Transactions (known as the '*Tesrî-i Muâmelât ve Islâhat Komisyonu*,' hereafter "the Commission") to the Ministry of Imperial Land Registry, 4 Mart 1318/March 17, 1902.

40. BOA.DH.TMİK-S 25/62, 27 Mayıs 1315/8 June 1899, letter from the Minister of the Interior to the Grand Vizier.

41. David Kushner, "The District of Jerusalem in the Eyes of Three Ottoman Governors at the End of the Hamidian Period," *Middle East Studies* 35 (1999): 84–85.

42. Al-ʿArif, *Al-Qada bayna al-badw*. It should be noted, however, that we have no sources or evidence as to the actual cases and their adjudication in communal courts before the nineteenth century.

43. The Gaza *Şerîat* Court *Sijil/Register*, 1273–77 hijri- 1857–60. The few cases that appear in the state-*şerîat* court registry concerned Bedouin house purchase or sale in Gaza, and some economic activities with non-Bedouin. On Bedouin's adjudication before the Hebron court, see Susynne McElrone, "Villagers on the Move: Rethinking Fallahin Rootedness in Late Ottoman Palestine," *The Jerusalem Quarterly* 54 (2012): 56–68. On Bedouin use of the Syrian state-*şerîat* courts during the seventeenth to nineteenth centuries, see Astrid Meier, "Bedouins in the Ottoman Juridical Field: Select Cases from Syrian Court Records, Seventeenth to Nineteenth Centuries," *Eurasian Studies* 9 (2011): 187–211.

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which court to use depended on geographic proximity, the particularities of the case, the identity of the involved parties, and their efforts to exploit the court for their own purposes. Moreover, the Gaza administrative council served as another significant judicial forum in the late nineteenth century. In some cases, Ottoman officials, assisted by local Bedouin leaders, reconciled Bedouin conflicts in and out of Gaza.[44]

Yet with the founding of a special administration for the Bedouin and their detachment from Gaza, the judicial order and frameworks for conflict resolution changed. As noted, the Ottoman administration decided not to establish a *nizamiye* court and instead authorized the administrative council to serve as a judicial forum because of the *husûsiyet* (peculiarity) of both the *mevki* (place or region) and the *halk* (people). What was that peculiarity of the Beersheba region and of its Bedouin communities in the eyes of Ottoman officials? And how did these imaginations and sociogeographic categorizations impact official decisions? And finally, what does this art of governance indicate about Ottoman imperial workings and legal history during the *Tanzimat* reform in frontiers and borderlands?

Ottomans officials elaborated more on the peculiarities. They justified this difference in a number of ways, including Bedouin custom and tradition, Bedouin ignorance of state law and *nizâmiye* procedure, and the need for a gradual Bedouin transition to settlement and civilization.[45] Most Ottoman politics of the relevant period were enmeshed in strong civilizational discourses and representations of tribal savagery and backwardness, framed by Deringil as a form of European borrowed colonialism. Similarly, Ussama Makdisi argued for a form of Ottoman orientalism toward the Arabs, noting that the late nineteenth century imperial paradigm saw that the advanced imperial center had to reform and discipline the backward peripheries.[46] However, as the archival evidence show, such representations partially appeared on documents and may have been true at the discursive level but not for politics in reality. Ottoman representations need to be critically studied as part of Ottoman statemaking efforts and representing the Ottoman imperial rule as a form of colonialism would disguise its

44. BOA.ŞD 2280/10, 9 Haziran 1308/June 21, 1892, interrogation file of the Ministry of the Interior; Ahmad Amara, "Beyond Stereotypes of Bedouins as 'Nomads' and 'Savages': Rethinking the Bedouin in Ottoman Southern Palestine, 1875–1900," *Journal of Holy Land and Palestine Studies* 15 (2016): 59–77.

45. BOA.BEO 1644/123228, 29 Mart 1317/April 11, 1901; BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter of the Commission.

46. Ussama Makdisi, "Ottoman Orientalism," *American Historical Review* 107 (2002): 768–69; see also Deringil, "'They Live in a State of Nomadism,'" 311.

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complexity and the broader political context.[47] More than as a real belief on the side of Ottoman officials or an integral part of Ottoman policies, civilizational discourses were used for particular ends, to justify Ottoman practices, or possibly as an excuse for their failure to fulfill their legal obligations.

According to a letter of the Commission of Reform and Accelerated Transactions, the Bedouin, who were used to their own customs, were neither used to government administration nor knowledgeable about the legal principles and judicial procedures of the *nizâmiye* courts.[48] This position was also supported by the Ottoman Council of State, which stated that measures should be taken to make the Bedouin gradually more acquainted or familiar (*telif*) with the state administration and courts.[49] Justifications around property were also central to the Ottoman debate. The Ottoman Council of State explained that lands in Bedouin hands were not registered in the *tapu*, and that land sale and mortgages (*rehin ve ferağ*) were conducted in a "different manner." According to the document, land transactions were based on the local custom and tradition (*örf ve âdet*), and disputes were, from old times, resolved through conciliation and mediation (*sulh ve hüküm)*.[50]

The sharp distinction between Bedouin custom and state law may have been useful for Ottoman administrators in the Beersheba context, but it is less tenable to adopt either as an analytic category. Historians often distinguish between "state" and "customary" law, as well as between Islamic law (*şerîat*) and "secular" dynastic law. However, this sort of clean categorization draws "attention away from the complexities, confusions, and conflicts within 'state law' while also potentially exaggerating the homogeneity and insularity of 'non-state' or 'customary' law."[51] Bedouin custom and the operation of communal courts were also sanctioned by Islamic law, and although defined as an Islamic empire, the Ottoman Empire did not operate exclusively through Islamic law. Rather, there was an amalgamation of Islamic law, local practices and customs, and the dynastic law of the sultan.[52]

47. Mostafa Minawi, "Beyond Rhetoric: Reassessing Bedouin–Ottoman Relations Along the Route of the Hijaz Telegraph Line at the End of the Nineteenth Century," *Journal of the Economic and Social History of the Orient* 58 (2015): 75–104, at 78.

48. BOA.BEO 1644/123228, 29 Mart 1317/April 11, 1901; BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter of Commission.

49. BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter of Commission; see also BOA.DH.ID 124-2/71, 15 Kanunusani 1327/January 29, 1912.

50. BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter of Commission.

51. Benton and Ross, "Empires and Legal Pluralism," 4.

52. As Brinkley Messick accurately shows, Islamic law came to be narrowly defined as Islamic (divine) law, contrasted with "secular" law, and tied to discursive notions of "traditional" versus "modern" law. Instead, it should be viewed more broadly as a discourse of

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For Ottoman administrators, there was little difference between legal ignorance and a Bedouin seminomadic lifestyle, and an exceptional legal order would be a means of social engineering and a necessity for the reform's success. Tribal communities were a perfect fit for the Ottoman "modernization" projects. The communities and their space served in the eyes of the Ottoman government as a previously unutilized resource essential to the reform.[53] The state was aware of the agricultural activity and the potential of the lands that these communities had possessed and, therefore, looked to expand cultivation. Associating sedentary lifestyles with productivity, the success of the *Tanzimat* and the administration's goals depended, in the eyes of the government, on settling the tribal communities in one place. The *Tanzimat* marked a turn in Ottoman policy toward the tribes from coercion and exile to remote regions toward property registration and settlement in their traditional lands (pasture or agriculture), as they became an integral part of the "well protected domains."[54] To reach that end, the Council of State envisioned its decision not to establish a *nizamiye* court as a temporary but necessary step on the path toward better governance, and hoped by this step to "win the hearts of the Bedouin" and "to convince them of the government's just step."[55]

The Ottomans imagined and established clear legal boundaries alongside communal boundaries between the Bedouin and the non-Bedouin populations, and assumed separate spaces and distinctive property relations. However, the implication that the Bedouins lived in isolation from other communities or that they operated within a pure Bedouin property system would prove to be deeply flawed. Court cases in the exceptional district of Beersheba came to involve those from ostensibly less exceptional circumstances, namely townspeople, as demonstrated by the case of Faraj Mansur. This unfamiliar conflict of a Bedouin versus a non-Bedouin forced the concerned agents of various governmental bodies in Istanbul to inquire about the applicable local practice in such cases. According to the Jerusalem governor, whenever a non-Bedouin was involved in land dispute in Beersheba, he had to come himself to Beersheba or appoint an agent (*vekil*) on his

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rules, practices, and ideas, which are divinely sanctioned and span over several socioeconomic, political, and familial spheres. Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley, CA: University of California, 1996), 54–66.

53. Deringil, "'They Live in a State of Nomadism,'" 311.

54. Ottoman efforts for the settlement and sedentarization of tribes began in the eighteenth century and reached a peak in the mid-nineteenth century; see Kasaba, *A Moveable Empire*, 54. On changes and turns in Ottoman policy see Köksal, "Coercion and Mediation."

55. BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902, letter of Commission; see also BOA.DH.ID 124-2/71, 15 Kanunusani 1327/January 29, 1912.

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behalf. Thus, the Ottoman governmental bodies approved the expansion of the exceptional jurisdiction, until a *nizâmiye* court was established in Beersheba, conditional on the sultan's approval. Whereas the Council of State approved this arrangement, the higher authority, namely the Special Council, made its approval conditional on the presence of a professional judge (*nâib)* in the council's hearings so that it would better conform to the public interest. *Nâibs* were members of both the judicial and the administrative councils, and were authorized to preside over both the *şerîat* and the *nizâmiye* courts.[56] Finally, on February 28, 1905 the Sultan approved the Council of State's decision.[57]

Ottoman officials perceived this legal arrangement as "exceptional" (*istisnâî*) and temporary until a *nizâmiye* court was to be established in Beersheba. Bedouin cultural distinctiveness, real or imagined, and Ottoman strategic choices, justified the "exceptional" jurisdiction, and all tapped into the broader project of Bedouin settlement and civilization. Soon thereafter, Bedouin distinctiveness was challenged through the communities' actions, as what began as a simple grant of autonomy grew into a judicial complexity unforeseen by Ottoman administrators. In addition to the case mentioned previously pertaining to jurisdiction and social identities, very soon more jurisdictional tensions arose integrating questions across various webs of legal orders and political networks that shaped the form of the Ottoman *Tanzimat* in Beersheba. All of this required action by Istanbul, which led to continuous transformation of the existing jurisdictional arrangement and the reconsideration of many of the categorizations and dichotomies concerning the Bedouin and Beersheba. The Ottoman administration, however, did not neglect the prism of difference, and rather constantly redrew the boundaries of difference that they had instituted in Beersheba.

56. The decision did not elaborate on the *nâib's* position, but he was probably to preside over the hearings in the council. Also in many *nizamiye* courts at the subdistrict level, it was the *şerîat naib* who presided over the *nizamiye*. Rubin, *Ottoman Nizamiye Courts*, 34. Similarly, under the British rule in Palestine, the governor of the Beersheba subdistrict was authorized to preside over the tribal court of appeals that was established by the British; see, Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, NC: The University of North Carolina Press, 2006). On the reformed institution of the *naib* in general, see, Jun Akiba, "From Kadi to naib: Reorganization of the Ottoman Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies: State, Province, and the West*, ed. Colin Imber and Keiko Kiyotaki (London: I. B. Tauris, 2005), 43–60.

57. BOA.DH.MKT 120/20, 30 Kanunusani 1320/February 12, 1905; BOA.ŞD 2296/43, 12 Kanunesani 1317/January 25, 1902, letter from the minister of the interior to the Grand Vizierate, 2 Teşrinievvel 1318/March 17, 1902. There is an unclear time gap between the decision of the Council of State (December 26, 1903) and the approval of the Special Council (February 12, 1905).

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Bedouin Legal Art in an Imperial Space

Because the Beersheba council was not formally recognized as an equivalent alternative to the *nizâmiye* court of first instance, the question of where one might appeal its decisions was initially left ambiguous. Yet, cases brought by Bedouins began to challenge this absence of procedure and raised various jurisdictional questions instigating the ongoing conversation over the Beersheba judiciary and the need to resolve these questions. The following discussion seeks not only to note the local communities' actions in making their legal reality, but also to note the various socioeconomic and imperial networks, and the need to place tribal communities and regional legal histories in broader social and imperial circles.

In 1903, Salem Abu Huqeib decided to bring a land lawsuit into the Beersheba Administrative Council against Shaykh Ismaʿil Abu Mahfouz, both from the Tayaha confederation. In Beersheba, Abu Huqeib claimed that the land was to pass to him from his forefathers, but a few years earlier he had mortgaged half of his land to a Gazan. Salama, authorized to serve as agent in the case by his father, Shaykh Ismaʿil Abu Mahfouz, disputed the claims. In August 1903, the council decided in favor of Abu Mahfouz.[58] Dissatisfied with the decision, Abu Huqeib sought to appeal it, and brought his case to the Jerusalem Administrative Council. The available sources do not mention the decision or a possible authorization to bring the appeal to the council, but they nevertheless reveal an exciting account of the appeal.

In the appeal, neither party was represented by professional agents but rather by Bedouin fellows resembling a communal judicial forum. Abu Huqeib granted power of attorney to Shaykh Hasan Abu ʿAbdoun and Shaykh Abu Mahfouz continued to be represented by his son Salama.[59] However, the proceedings before the Jerusalem administrative council resembled that of a regular court. The appellant's agent submitted a number of documents to the council, including the appeal, a defense statement,

58. BOA.ŞD 3026/34, 16 Şevval 1324/21 Teşrinisani 1322/December 4, 1906, appeal decision of the Jerusalem Administrative Council, 12 Kanunusani 1319/January 25, 1904.

59. Salama was authorized to represent his father based on an absolute power of attorney from 1902 in the Beersheba *şerîat,* and a later power of attorney before the Jerusalem *şerîat* court. See Jerusalem *şerîat* court register, *wakalat* (power of attorney), 11 Şaban 1321/November 2, 1903. A copy of it appears in Salman Abu-Sitta, "The Denied Inheritance: Palestinian Land Ownership in Beer Sheba," *The Palestine Land Society* (2009): 1–34; see also, BOA.DH.ID 124-2/71, 15 Kanunusani 1327/January 29, 1912; and BOA.DH.ID 124-2/94, 18 Teşrinievvel 1328/October 31, 1912. The power of attorney of Abu Mahfouz was given on two different dates, 23 Şevval 1319/February 2, 1902 and 15 Zilkade 1319/February 23, 1902; see, BOA.ŞD 3026/34, 16 Şevval 1324/21 Teşrinisani 1322/December 4, 1906, appeal decision.

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and a list of witnesses. He asked to cancel the Beersheba decision and to issue a motion preventing Abu Mahfouz from using the land until the appeal was exhausted. Both parties criticized the Beersheba council's proceedings and decision.[60]

The ambiguous jurisdiction projected on the function and identity of the involved bodies. Despite not being a court, the Jerusalem council referred to itself in the decision as a court (*mahkeme*) and acted as such. The proceedings relied heavily on legal procedure, and it involved a rich trail of documents, a number of hearings, invitation of witnesses, and, further, the attendance of a representative from the land registry as required by the law. The Jerusalem council criticized the absence of such a representative from the hearings in the Beersheba council as required by law because of possible claims in this land to the imperial treasury. Following the hearing, the Jerusalem council reversed the decision of the Beersheba council. This time, Abu Mahfouz asked to bring the case one level up. He followed the administrative, not the judicial, hierarchy, and filed the case with the Council of State for cassation in Istanbul on March 17, 1904, approximately 2 months after the Jerusalem council's decision.[61]

At some point during the proceedings before the Jerusalem council, Abu Mahfouz appointed a new professional agent (*dâvâ vekili*), Salim al-Batarsa, to replace the son Salama. The council's operation as a professional court necessitated the hiring of a professional agent, pointing out Abu Mahfouz's legal ignorance. This feeling of legal ignorance was not particular to Abu Mahfouz or the Bedouin, but was a natural outcome of the Ottoman legal reform. The judicial reform of the *nizâmiye* was characterized by an unprecedented emphasis on procedural law. Such "'proceduralization' of the Ottoman judicial sphere and the associated ideology of legal formalism" had influenced the legal profession. This development made the legibility of the judicial practice hard for lay court users and for the traditional agents (*vekil*), thus limiting the judicial practice to

60. In the appeal, Abu Huqeib claimed that the land had been under the use of his ancestors for more than 200 years, and that it was registered in the *tapu* under Abu Huqeib's name. Responding to these claims, Salama Abu Mahfouz claimed that the question of *tapu* registration came before the Beersheba council, and had been duly rejected because this registration had been obtained during the Tayaha–Tarabin fighting and was therefore illegal. As for the source of their land rights, Abu Mahfouz claimed that his father had revived this land more than 50 years prior. Further, his father had dug three water wells on the land, and had been cultivating it since then. According to Abu Mahfouz, it was only in the last year that Hasan Abu ʿAbdoun had by force begun to cultivate half of the land. See, BOA.ŞD 3026/34, 16 Şevval 1324/21 Teşrinisani 1322/ December 4, 1906, appeal decision.

61. BOA.ŞD 3026/34, 16 Şevval 1324/21 Teşrinisani 1322/December 4, 1906, appeal decision.

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professional attorneys (*dâvâ vekili*). The gradual shift toward the appointment of professional attorneys had shifted the responsibility of the agent from representation to advocacy of the client's interests.[62] Such legal development also came to influence communities and legal orders such as Beersheba that were supposedly exempt from the application of state formal laws and judicial structure.

Advocate Al-Batarsa addressed his appeal to the "Council of State Cassation Court." No such body existed; there was an Ottoman Cassation Court and a Council of State, and the appeal was submitted to the latter. But the Ottoman legal landscape of exceptionalities forced a kind of creative agency. Perhaps unsurprisingly, the Jerusalem governor described the situation as being "unprecedented." The cassation documents included power of attorney, the appeal statement, as well as bail statement.[63] The Council of State complied with the request to look into the case, but what it ultimately decided is unknown. However, the Beersheba jurisdiction continued to take different forms, and a circuitous trajectory of appeals triggered a debate among Ottoman officials until being concluded in 1912.

In January 1912, the Ministry of the Interior discussed another case with the Ministry of Justice, described by them as an "unfortunate incident." For some time, the document stated, the Beersheba administrative council had been referring plaintiffs to the *nizâmiye* court in Gaza for appeal, using a referral that held the council's *zapt* (stamp/seal). However, the *nizâmiye* court refused to look into the appeals, and they were returned to the Beersheba council.[64] The document emphasized that despite the fact that the *nizâmiye* court had acted according to the legal procedures, there should nonetheless be an investigation to prevent the incident's reoccurrence.[65] Only a month later, in February 1912, another jurisdictional question that involved a Bedouin and a non-Bedouin followed. Similar questions on the proper forum for appealing the decision and for issuing a motion preventing the ploughing of the land arose.[66] These cases fueled

62. Avi Rubin, "Legal Representation," 115–18.

63. BOA.ŞD 3026/34, 16 Şevval 1324/21 Teşrinisani 1322/December 4, 1906, cassation statement to the Council of State, submitted on 4 Mart 1320/March 17, 1904.

64. BOA.DH.ID 124-2/71, 15 Kanunusani 1327/January 29, 1912, letter from the Ministry of the Interior to the Ministry of Justice.

65. Ibid.

66. The case was between Hasan Abu ʿAmar from the ʿAzazma and Treasurer (*amīn al-sundūq* (Ar.)) Tawfiq Effendi. The Beersheba Administrative Council ruled in favor of Tawfiq Effendi, who began soon after to plough the disputed land. Unhappy with the decision, Abu ʿAmar wanted to appeal the decision and obtain a motion preventing Tawfiq Effendi from using the land. See BOA.İ.ZAN 108/17, 6 Mayıs 1328/May 19, 1912.

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the ongoing debate among Ottoman officials, and finally a decision was made by the Ottoman government in 1912 that the appeal and cassation would go through the *nizâmiye* courts.

Several solutions to the arising jurisdictional questions came up during the debate, and the reasoning touched on various questions and principles of Ottoman governance and the *Tanzimat*. Those who defended the jurisdictional irregularities justified them by the fact that the Bedouin "had just entered the civilization path."[67] They suggested that the special situation of the Bedouin should be taken into account until they became familiar with the law and the governmental systems. Such civilizational claims may have served as an excuse for the judicial irregularities and the Ottoman inability to establish an organized judicial order. On the other hand, those who opposed the jurisdictional path argued that it was contrary to the existing laws, and that it would open the door for other Bedouin to approach the Council of State. In addition to keeping the council busy, this would create an administrative challenge concerning timing: whereas the Bedouin were used to quick decisions, at times within minutes, by the Beersheba council, appeals before the Council of State would take a long time.[68] The members of the Council of State had considered some suggestions. One opinion suggested making the decision of the Beersheba council final, with no right of appeal, whereas others suggested having the Jerusalem council look into appeals without cassation rights. Others suggested having the appeal and cassation taken to the *nizâmiye* courts as the law required. The final proposal was dismissed as not viable, because the Bedouin were incapable of using the *nizâmiye*. Meanwhile, the first option—abrogating any rights to appeal—was deemed unjust. The Jerusalem council suggested that the Council of State continue to serve, if needed, as a forum for cassation.[69]

The debate on the jurisdictional question made reference to the main principles, laws, and contours of the *Tanzimat* reforms. Members of the Council of State argued that maintaining the cassation power for itself was simply "not right" (*doğru değil*) and in contradiction to the principles of judicial hierarchy (*derecat mehâkemi kāidesi*) as well as being against

67. In Turkish "*dâhil-i temeddün oldukça*," see BOA.DH.TMİK.S 65/72, 23 Eylül 1322/ October 6, 1906; and BOA.DH-İD 124-2/94, 8 Teşrinievvel 1328/ October 21, 1912.

68. BOA.DH.TMİK.S 65/72, 23 Eylül 1322/October 6, 1906; BOA.DH-İD 124-2/94, 8 Teşrinievvel 1328/October 21, 1912; see also BOA, SD. 31 Mart 1328/April 13, 1912, decision of the Jerusalem Administrative Council sent to the Council of State.

69. BOA.DH.TMİK.S 65/72, 23 Eylül 1322/October 6, 1906, decision of the Council of State; see also BOA.ŞD 5 Kanunusani 1327/January 18, 1912, telegraph from the Jerusalem governor to the Ministry of the Interior; BOA.DH-İD 124-2/94, 8 Teşrinievvel 1328/October 21, 1912.

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the rule of separation of powers (*tefrik-i kuvve kāidesi*).[70] Similarly, the General Assembly *(Meclis-i Umûmî)* refused to allow the Jerusalem Administrative Council to sit as an appeal forum, preferring instead a judicial review by the *nizâmiye* courts until a *nizâmiye* was established in Beersheba.[71] This arrangement, according to the General Assembly, would comply better with the Law of Judicial Organization. Yet, as this resolution contradicted legal provisions, it needed the sultan's approval, which was granted on October 21, 1912.[72] The stress on such fundamental principles of the reformed Ottoman governance may also be attributed to the centralization and border-enhancement efforts that increased under the Yong Turks rule after 1908.[73] Nevertheless, these efforts at the relevant period did not lead to fully implementing the law and establishing a *nizamiye* court, but rather made the existing judicial order better comply with the law.

At last, the judicial route after the Beersheba council was clarified for the time being and became more in line with the objectives of the *Tanzimat*. The *nizâmiye,* instead of the various administrative bodies, would take up this responsibility. The decision left the jurisdictional status of southern Palestine exceptionally ambiguous and rather contradictory. On the one hand, the Beersheba council gained a de facto status as a *nizâmiye* court of first instance. However, if a Bedouin were too ignorant to approach a *nizâmiye* court of first instance, why, then, would he or she be able to do this at the level of appeal or cassation?

Beersheba judicial arrangements would not be perceived as exceptional if the broader Ottoman imperial workings of the period are examined. Before the Ottoman policies were handled in Beersheba, state agents had in mind other imperial, especially British, judicial experiences, and they themselves had dealt with similar jurisdictional questions in Yemen. With the renewed Ottoman control of Yemen in 1872, the central

70. BOA.İ.ZAN 108/17, 6 Mayıs 1328/May 19, 1912.

71. According to the law, the appeal should go to the Jerusalem *nizâmiye* appeal court and then to the Cassation court in Istanbul. When the council referred plaintiffs to appeal the decision in the Gaza *nizâmiye* court of first instance, the Beersheba council de facto considered itself to be operating as a council of elders (*ihtiyar meclisi*), whereas now the appeal would go to Jerusalem, thus promoting the status of the Beersheba council de facto to a court of first instance.

72. BOA.İ.ZAN 108/17, 6 Mayıs 1328/May 19, 1912, response of the Ministry of Justice to the Grand Vizier, on 13 Eylül 1328/September 26, 1912. Two weeks later, the decision was conveyed to the Jerusalem governor see, BOA.DH.ID 124-2/71, 15 Kanunusani 1327/ January 29, 1912.

73. BOA.DH.MUI 3/12-1, 6 Eylül 1325/September 19, 1909. BOA.BEO 3857/289215, 1 Şubat 1326/ February 14, 1911; BOA.BEO 3908/293068, letter from Vizierate to the Treasury, 11 Haziran 1327/June 24, 1911.

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government sought to apply administrative and judicial reforms. By 1879, the Ottoman government established a *nizâmiye* and *şerîat* courts in several districts and subdistricts in Yemen, which came to replace some of the applicable local laws and practices. Such steps, however, were met with resentment and objection. Seeking to familiarize the locals Yemenis with the Ottoman courts, the central government instructed the local administrators and governors to be considerate of the local custom, which led to some modifications initiated by the Ministry of Justice.[74]

The ministry abolished the *nizâmiye* courts, and gradually authorized the *şerîat* to take on some of the *nizâmiye* law and procedure. However, in Yemen, disputes arose mainly over which type of Islamic law was to be followed in the *şerîat* courts. As the local Zaydi communities were mainly Shia communities, they were concerned with the Ottoman Sunni Islam, and, therefore, sought to gain power through the appointment of judges from their school of religious thought. Later in 1911, the Daʿan Agreement between the Ottoman government and the local Zaydi Imam Yahya al-Mutawakkil endorsed the new judicial arrangement with divided authority.[75] The agreement divided the space based on sectarian geographic jurisdictions and established three different courts: one for Zaydis, one for Sunni Yemenis, and one for mixed cases. When discussing the judicial possibilities for Yemen, the Ottoman officials made reference to British and other imperial rules over native communities such as in India, Aden, and the Red Sea Region. Politics there were driven by the colonial politics of difference and by the will to minimize local opposition by maintaining local law and tradition.[76]

Unlike Yemen, in Beersheba difference depended not so much on sectarian difference but derived from intricate social, geographic, and legal imaginations and categorizations, which is to say that difference was less a matter of religion than one of civilization. Because of its similarity with the Beersheba case and its timing, Yemen's experience was probably in the minds of the Ottoman administrators. Looking not only to broader imperial spaces but also back into the temporal administrative continuum, it should be noted that a few months before the decision to found Beersheba and authorize a special jurisdiction, the Ottoman government had made a similar decision concerning the Gaza administration. In 1899 it decided, also in deviation from the law, to allow the Gaza

74. *Nezâret-i Adliye*—the Ministry of Justice—was first established as the Ministry of Trials (*Nezâret-i Deâvî*) in 1836, later to be reformed and renamed the Ministry of Justice in 1870, in charge of the judicial system; see Rubin, *Ottoman Nizamiye Courts*, 36–37.

75. On Yemen see Messick, *The Calligraphic State*; Kuehn, *Empire, Islam, and Politics of Difference*; and Bostan, "Institutionalizing Justice."

76. Kuehn, "Shaping and Reshaping Colonial Ottomanism," 328–30.

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Administrative Council to serve as a forum of Bedouin conflict resolution through established procedures for reconciliation "in line with the existing tradition."[77] Thus, the later-instituted judicial exception in Beersheba should be seen in light of the jurisdictional arrangement in Gaza. Indeed, in one of his 1905 decisions concerning Beersheba's jurisdiction, the Sultan made a reference to this 1899 decision.[78]

Bedouins operated within various overlapping jurisdictions. The parties to the abovementioned disputes chose to approach the Beersheba council and not the communal courts, which had continued to operate in parallel. Further, the Jerusalem and Beersheba *şerîat* courts, the Gaza *nizâmiye* court, the Jerusalem Administrative Council, and the Council of State, all constituted a significant part of the Bedouin jurisdictional orbit. Bedouin actions blurred the separating lines between the judicial and the administrative systems. Beyond Jerusalem, the jurisdictional ambiguity allowed the dispute to reach Istanbul, a possibility that had not existed prior to the Ottoman effort at legal expansion. The path of the Abu Mahfouz case, for example, shows a profound transformation of landed property relations in the region. Whereas intertribal and interconfederation land disputes were solved only a decade earlier through communal or Ottoman diplomatic mediation at the local level in Gaza, an individual dispute was suddenly able to reach Istanbul through the newly formed administrative and judicial channels.

Throughout the evolution of the judicial order and administration in Beersheba, state law and the administrative imperial apparatus retained for themselves legitimacy as the sources for ordering diversity and for allowing new jurisdictional venues. Although it did not seek to homogenize Bedouin law and custom by imposition, it co-opted them and their representatives within the new imperial system. At the same time, to the surprise of Ottoman bureaucrats who viewed them as inferior, the Bedouin complicated the Ottoman policies and practices in the region.[79] Moving among various conflict resolution mechanisms and administrative bodies, they contested the implementation of the reform and shaped it, in addition to shaping their own reality. Bedouin property relations were rather advocated based on local practices, and in claiming rights, no reference was made to the 1858 Ottoman Land Code. These property relations impacted the evolving judicial order. The Ottomans hoped that law would

77. BOA.DH.MKT 120/20, 4 Mart 1318/March 17, 1902. The decision, dated 14 Teşrinievvel 1315/October 26, 1899, was attached as a copy to a letter of the Ministry of Justice to the minister of the interior, 23 Ağustos 1319/September 5, 1903.

78. BOA.DH.MKT 120/20, 30 Kanunusani 1320/February 12, 1905; BOA.ŞD 2296/43, 12 Kanunesani 1317/January 25, 1902, letter from the minister of the interior.

79. Kuehn, "Shaping and Reshaping Colonial Ottomanism."

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reform the Bedouin, but by using the newly forming legal order the Bedouin reformed the legal system just as much. Bedouin legal maneuvering demonstrated the fallacy of presuming clear boundaries between Bedouin space and the rest of the Ottoman domains. Just as the economic worlds of the Beersheba Bedouin and of Gaza's townspeople were intertwined, so too were the jurisdictional zones that linked Beersheba to Jerusalem and even Istanbul, a circuit that Bedouins themselves would make as they ably pursued their own interests.

Conclusion

The Bedouin communities did not exist outside the state, and "tribal law" was not an exclusive legal domain that ruled their affairs. Nor did the Ottoman government institute a "tribal court" to rule based on custom. There was much more to this story. The Bedouin communities not only inhabited a complex economic and political borderland, but also had a multifaceted legal system. The changing geography of the region impacted the legal history of Beersheba, and the resulting legal reality is integrated and hybrid rather than being a pluralistic one of different legal systems. The new modes of governance, driven by centralization, sought at the level of legal text to eliminate sociopolitical and legal borders.[80] Eliminating the legal peculiarities may have been the long-term Ottoman goal; in the short-term, however, the Ottoman government institutionalized this, and other, legal differences and relied excessively on negotiations rather than impositions. As Maurus Reinkowski has accurately pointed out, the late Ottoman vision of the frontier reflected the "dilemma between the exigency of *realpolitik* and the ambitious Tanzimat reform policy."[81]

The Beersheba account is one example of how the Ottoman *Tanzimat* was diverse, dynamic, and constantly evolving, subject to various local and regional socioeconomic and political realities. Ottoman–Bedouin relationships were multilayered, and local communities were an active part of the reform; the state was in the region for centuries but had changed the nature of its presence; and the local communities' engagement with and use of the new state institutions helped shape the face of the *Tanzimat*. The various competing politics informed each other and took place within a legally and geographically variegated space.

80. Timothy Mitchell, *Rule of Experts: Egypt, Techno-politics, Modernity* (Berkeley, CA: University of California Press, 2002), 61.

81. Maurus Reinkowski, "Double Struggle, No Income: Ottoman Borderlands in Northern Albania," *International Journal of Turkish Studies* 9 (2003): 239–53.

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The Ottoman judicial system at large was flexible and at times ambiguous. It continued to operate with porous jurisdictional divides between the *şerîat* and the *nizâmiye* courts, alongside community jurisdictions in towns and villages.[82] The Beersheba experience was not a mere exception to an otherwise orderly legal system. From the Bedouin side, the legal order formed from two dynamic tensions: the Bedouin desire to retain autonomy and difference on the one hand, and their attempt to benefit from what the Ottoman government had to offer on the other. It is the actions and the decisions of Bedouin leaders and others at these junction points of socio-legal change that shaped the patterns of legal and state formations. What seemed early on by the Ottomans to be a strategic choice to leave the *nizâmiye* system out of Beersheba became a reality, enforced by the Bedouin and their agents. It is, therefore, politics rather than Ottoman "policy" that dominated this chapter of Beersheba history. The land disputes discussed demonstrate how the judicial order of Beersheba evolved in relation to complex property relations, local geographic and communal networks, and the broader administrative workings of the empire. Shifting the jurisdictional balance in favor of the *nizâmiye* jurisdiction and state law was principally a local demand rather than an Ottoman imposition, or a reflection of state power over tribal communities.

The dynamic understandings and categorizations of specific legal, spatial, and social realities at the beginning of the century left the legal order of the region in motion, an order that continued to be shaped through constant contestation and reproduction of conflicts for a century thereafter under the post-Ottoman regimes.[83] Although this perception of Bedouin difference was diminishing within the growing Ottoman administration, the British arrival after their occupation of Palestine would coincide with a reimagining of custom and law and a new formulation of a special legal sphere for the Bedouin. The Israelis followed the same steps for few years after 1948.[84] At the same time, the Ottoman legacy established a tradition of exception—and its contestation—that endured under

82. Rubin, *Ottoman Nizamiye Courts.*

83. Mundy and Saumarez-Smith, *Governing Property*; and Ahmad Amara, "The Negev Land Question: Between Denial and Recognition," *Journal of Palestine Studies* 42 (2013): 27–47.

84. The British maintained such exception in both Palestine and Transjordan. On the construction of a separate legal sphere for the Bedouin, defined as nomadic and tribal, in Jordan, see Joseph Massad, *Colonial Effects: The Making of National Identity in Jordan* (New York: Columbia University Press, 2001), 57–58; on Palestine, see Likhovski, *Law and Identity.* The British policy of exception and of incorporating Bedouin custom appear in the establishment of tribal courts and tribal courts of appeals, and in the enactment of special laws targeting the Bedouin, such as the Bedouin Control Ordinance, applied in both Palestine and Transjordan.

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subsequent British, and then Israeli, rule. The Ottoman also left the 1858 Ottoman Land Code that, until the present, continues to play a central role in the politics and geography of the Beersheba region and of Bedouin–Israeli relationships.[85]

85. On the current land dispute and house demolitions in the Beersheba region in Israel, the Negev, and the utilization of Ottoman and British legislation by Israeli government and judiciary see Kedar, Amara, and Yiftachel, *Emptied Lands.*

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