

BOOK REVIEW

Lâle Can, Michael Christopher Low, Kent F. Schull and Robert Zens (eds.), *The Subjects of Ottoman International Law*, Indiana University Press, 2020, 282pp, \$25.00, ISBN 9780253056610
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The history of the Ottoman Empire has not been sufficiently explored by historians and legal scholars. In recent years, the study of this topic has, however, experienced an upsurge with the publication of a range of significant works,¹ including special issues on Ottoman international legal history.² The latest of these publications, *The Subjects of Ottoman International Law*, expands on the articles in a special issue of the *Journal of the Ottoman and Turkish Studies Association* and contains three additional contributions.³

The Subjects of Ottoman International Law focuses on the Ottoman use of international and domestic law to defend the vital interests of the Empire against European states' legal penetration of its sovereignty. The Ottomans were interested in adopting a unique understanding of international law to equip Ottoman jurists and bureaucrats with the skills necessary for regulating the complex interrelation between the Ottoman Empire and its subjects, namely its citizens and nationals, under the protection of European states. The Ottoman jurists deliberately constructed a new legal framework of citizenship and migration for managing multiple communities under Ottoman rule. The Muslim and non-Muslim subjects living under Ottoman rule were provided with the option of selecting either Ottoman courts or the European consular courts, which was deemed a challenge to Ottoman sovereignty. Through the topics of extraterritoriality, sovereignty, and nationality, the contributors to the volume demonstrate an Ottoman understanding of international law in 11 chapters.

In their introduction, the editors Can and Low explain the *raison d'être* of the volume:

[T]his collection endeavours to reconstruct an Istanbul-centered history of “the law of nations” (hukuk-ı düvel) as it evolved over the course of the long nineteenth century. It also seeks to capture the messy, improvised process of incorporating international legal norms into existing patterns of domestic Ottoman governance.⁴

¹U. Özsu, *Formalizing Displacement : International Law and Population Transfers* (2015); M. Minawi, *The Ottoman Scramble for Africa: Empire and Diplomacy in the Sahara and the Hijaz* (2016); P. Dumberry, ‘Is Turkey the “Continuing” State of the Ottoman Empire under International Law?’, (2012) 59 *Netherlands International Law Review* 235; D. Rodogno, ‘European Legal Doctrines on Intervention and the Status of the Ottoman Empire within the “Family of Nations” Throughout the Nineteenth Century’, (2016) 18 *Journal of the History of International Law* 5; M. S. Palabiyik, ‘The Emergence of the Idea of “International Law” in the Ottoman Empire before the Treaty of Paris (1856)’, (2014) 50 *Middle Eastern Studies* 233.

²U. Özsu and T. Skouteris, ‘International Legal Histories of the Ottoman Empire: An Introduction to the Symposium’, (2016) 18 *Journal of the History of International Law* 1; K. F. Schull et al., ‘Introduction’, (2016) 3 *Journal of the Ottoman and Turkish Studies Association* 221.

³Schull et al., *ibid.*

⁴L. Can and M. Low, ‘Introduction’, in L. Can et al. (eds.), *The Subjects of Ottoman International Law* (2020), at 3.

As such, the book challenges the Eurocentric historiography of international law and overturns the ‘well-worn paths’ that the history of international law has been written as a history of rules developed by the European countries while ignoring the non-European contributions.⁵ The authors walk on ‘the road less travelled by and make a far-reaching contribution to the incomplete and Eurocentric history of international law’.⁶ They continue along the path trodden by Arnulf Becker Lorca about the mixed origins of international law.⁷ The contributors to the volume demonstrate the non-European understanding of international law by highlighting the perspective of the Ottomans as a state in the ‘semi-periphery’.⁸

Following the editors’ 16 page-long comprehensive introduction, Will Smiley examines the incorporation of prisoners’ rights in the treaty-making practice between the Ottoman Empire and Russia in the second chapter.⁹ Based on Ottoman and Russian archival sources, Smiley provides the development of the ‘prisoners of war status’ in diplomatic practices and treaty law of two Eurasian empires whose legal traditions were different from their European counterparts.¹⁰ In the third chapter, Aimee Genell inquires into the establishment of the Office of Legal Counsel (Hukuk Müşavirliği İstişare Odası) in the Ottoman Foreign Ministry through Ottoman archival sources. The staff of the Office was tasked to produce opinions and reports for Ottoman bureaucracy, and to legally respond to the unequal treatment of the Empire by European states.¹¹ Genell presents the tendency of Ottoman adherence to international law, as well as the idea to form such an Office, developed out of the desire to secure the state’s sovereignty and prevent European intervention in its affairs.

The Ottoman Empire was well-known for its complex and remarkably pluralist polity, including large non-Turkish and non-Muslim autonomous communities known as *millet*.¹² With the proliferation of the European protégé regime in the nineteenth century,¹³ the consular protection of Ottoman subjects based on the principles outlined in the Capitulations became a sovereignty problem for the Ottoman Empire.¹⁴ Indeed, the Ottoman jurists produced various regulations and exemptions for the subjects who obtained the privilege of going to foreign consular courts, with the aim of preventing foreign interference through these courts. The subsequent three chapters in this volume extensively engage with this issue of extraterritoriality in the Empire’s legal system and explain it in relation to international law.

In Chapter 4, Will Hanley makes an inquiry into the Ottomans’ perception of the concepts of nationality and citizenship, and how they tried to utilize the nationality law to eliminate the influence of European powers over their subjects entitled to the status of protégé.¹⁵ Hanley connects

⁵M. Koskeniemi, ‘A History of International Law Histories’, in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), at 970.

⁶B. Fassbender and A. Peters, ‘Introduction’, *ibid.*, at 2; A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

⁷A. Becker Lorca, *Mestizo International Law: A Global Intellectual History, 1842-1933* (2016).

⁸For discussion on the Ottoman Empire’s status as a semi-peripheral state see U. Özsu, ‘The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory’, in A. Orford and F. Hoffman (eds.), *The Oxford Handbook of The Theory of International Law* (2016), at 124.

⁹W. Smiley, ‘Freeing “The Enslaved People of Islam”: The Changing Meaning of Ottoman Subjecthood for Captives in the Russian Empire’, in Can et al., *supra* note 4, at 35.

¹⁰For a monograph-length treatment of the topic see W. Smiley, *From Slaves to Prisoners of War: The Ottoman Empire, Russia, and International Law* (2018).

¹¹A. Genell, ‘The Well-Defended Domains: Eurocentric International Law and the Making of the Ottoman Office of Legal Counsel’, in Can et al., *supra* note 4, at 52.

¹²E. Aviv, ‘Millet System in the Ottoman Empire’ (2016), *Oxford bibliographies*, available at www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0231.xml.

¹³S. R. Sonyel, ‘The Protégé System in the Ottoman Empire’, (1991) 2 *Journal of Islamic Studies* 56.

¹⁴U. Özsu, ‘The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory’, in Orford and Hoffman, *supra* note 8, at 127–9.

¹⁵W. Hanley, ‘What Ottoman Nationality Was and Was Not’, in Can et al., *supra* note 4, at 74.

the origin of the 1869 Ottoman Nationality Law (Tabiiyet-i Osmaniye Kanunnamesi) to Capitulations, and claims that the 1869 Law was aiming to eliminate the influence of European powers which ultimately led to an increase in the number of its subjects who chose to naturalize with a foreign state. Michael Low (Chapter 5) and Lâle Can (Chapter 6) explore the status of non-Ottoman Muslims after the Nationality Law. Low primarily relies on documents from the Ottoman archives, such as the records of consular courts dealing with cases of non-Ottoman Muslims in Hijaz. Contrary to the conventional view that Muslim residents in Ottoman Hijaz were excluded from the extraterritorial privileges granted by the Capitulations regime, Low demonstrates that Ottoman Muslims in Hijaz frequently sought European Consular protection.¹⁶ In the case of Ottoman subjects in Central Asia, the Ottoman jurists provided a different status for non-Ottoman Muslims to prevent them from claiming European nationality and extraterritoriality.¹⁷ These case studies illustrate how the Ottoman jurists intend to preserve Ottoman sovereignty through nationality law and thereby the Caliphate's protection. However, it does not become sufficiently clear why other subjects of the Empire located in other regions are also not analysed.

The book also addresses the Ottomans' legal, administrative, and consular efforts to maintain ties with overseas Muslims. These efforts can be found in Faiz Ahmed's accounts on the legal and consular rivalry between the British and Ottoman empires to control Muslims living in the Indian subcontinent. While the Ottomans were expanding their consular presence to Afghans and Indian Muslims who were able to activate the Sultan-Caliph's protection, the British Foreign Office was shifting the lines of extraterritoriality to include these subjects under protected status.¹⁸ Jeffery Dyer extends this discussion to the professional background of the consular staff whose competence in diplomacy and international law was vital to safeguard Ottoman sovereignty rights in the Indian subcontinent.¹⁹ Dyer's essay demonstrates how the Ottomans used the latest instruments of international law and diplomacy to navigate their complex relations with a Muslim world populated by subjects of European colonial rule. Lastly, Stacy Fahrenthold's chapter draws on how the Ottoman Nationality Law was ineffective in turning its subjects into citizens in the case of Ottoman Syrians who migrated to the US.²⁰ In this respect, this part of the book underpins the argument that international law was an essential instrument for the Ottoman Empire to defend and strengthen sovereignty over its subjects.

It is remarkable to see how the Ottomans and European colonial powers were deploying international legal tools and arguments to navigate their interests during the high age of imperialism.²¹ It is also noteworthy that the cases in this volume, together, point to the interconnection between colonialism and extraterritoriality, consular protection, and jurisdictional disputes. Nonetheless, the Ottomans soon began to realize that the power of international law was simply not enough to eliminate extraterritoriality and change the Empire's position within the 'family of nations'. As an Ottoman deputy noted in a parliamentary debate on the eve of the First World War:

¹⁶M. Low, 'Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims, and the Capitulations in the Ottoman Hijaz', *ibid.*, at 96.

¹⁷L. Can, 'The Protection Question: Central Asians and Extraterritoriality in the Late Ottoman Empire', *ibid.*, at 104.

¹⁸F. Ahmed, 'The British-Ottoman Cold War, c.1880-1914: Imperial Struggles over Muslim Mobility and Citizenship from Suez Canal to the Durand Line', *ibid.*, at 146.

¹⁹J. Dyer, 'Pan-Islamic Propagandists or Professional Diplomats? The Ottoman Consular Establishment in the Colonial Indian Ocean', *ibid.*, at 171.

²⁰S. Fahrenthold, "'Claimed by Turkey as Subjects": Ottoman Migrants Foreign Passports, and Syrian Nationality in the Americas, 1915-1925', *ibid.*, at 217.

²¹To examine a similar rivalry in Africa see M. Minawi, *The Ottoman Scramble for Africa* (2016).

[I]t does not matter however many books we write on international law or however many human rights laws we implement. In order to get states to respect these we must still possess additional means, means of coercion. Every state has adopted this position and for that reason builds up its [military] strength.²²

It is notable that the contributors primarily reflect on specific sovereignty problems of the Empire in the nineteenth century and thus engage with international legal history in a very limited and specific way. One element missing in the volume is the comparison of the Ottoman and European perspectives on certain key concepts such as sovereignty, territory, citizenship, extraterritoriality, and subjecthood. Unfortunately, the attempt to provide an Istanbul-centred account of the history of international law conducted in the volume ends up by merely touching upon some of the sovereignty problems without considering how a non-Eurocentric perspective on those problems would contribute to the discipline of the history of international law.

A few observations on the method are worth making. First, the volume suffers from a fragmentation of the various narratives and a failure to bring consistent arguments, as is the case for many edited books. For example, while most of the chapters provide Ottoman perspectives on international law, some expand into non-Ottoman perspectives,²³ which scantily contributes to the book's aim of reconstructing an Istanbul-centred history of international law. Moreover, the chapters take different routes with different individual accents. Each chapter of the volume speaks for itself in terms of method and approach. While some of the chapters are based on case studies, others adopt a more contextual or comparative historical approach. As contributors are all historians, they mostly engage in an 'international law in history' type of analysis, regarding law as a phenomenon that is part and parcel of a wider historical context.²⁴

In his afterword, Umut Özsu closes the volume by assembling the stories and narratives of individual chapters into an integrated study of international law, which helps the reader to identify the main contributions of the volume as a whole.²⁵ Özsu ably revisits the turn to history in the field of international law and draws attention to the scarcity of contributions from the perspective of 'Ottoman international law'.²⁶ Özsu also points to the attribution of a more prominent role to 'law' in an age when new means and categories of citizenship came into existence in the nineteenth century Ottoman Empire.

To conclude, this volume explores a number of cases where Ottoman perspectives on international law can be traced and therefore fits in a broader context of recent scholarship on 'the turn to history'.²⁷ It successfully reflects the Ottoman appreciation of international law as a tool to respond to the decay of the Empire's sovereignty and to confront the imperial interests of its rivals.

²²M. Aksakal, 'Not "by those old books of international law, but only by war": Ottoman Intellectuals on the Eve of the Great War', (2004) 15(3) *Diplomacy and Statecraft* 507, at 516.

²³J. Stephens, 'An Uncertain Inheritance: The Imperial Travels of Legal Migrants, from British India to Ottoman Iraq', in Can et al., *supra* note 4, at 124; Fahrenthold, *supra* note 20.

²⁴M. Craven, 'Introduction: International Law and its Histories', in M. Craven, M. Fitzmaurice and M. Vogiatzi (eds.), *Time, History and International Law* (2007), at 7; R. Lesaffer, 'Law and History: Law between Past and Present', in S. Taekema and B. van Klink (eds.), *Law and Method. Interdisciplinary Research into Law* (2011), 133–52.

²⁵U. Özsu, 'Afterword: Ottoman International Law?', in Can et al., *supra* note 4, at 239.

²⁶M. Arvidsson and M. Bak McKenna, 'The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries', (2020) 33 *Leiden Journal of International Law* 37–56.

²⁷For an illustration on some of the monographs and edited volumes see M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001); A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (2005); I. de la Rasililla, *International Law and History: Modern Interfaces* (2021); J. d'Aspremont (ed.), *The History and Theory of International Law* (2020). See further the *Journal of the History of International Law/Revue d'histoire du droit international*.

Therefore, it can be said that the book could serve as a showcase for new inquiries into the fields of extraterritoriality, sovereignty, subjecthood and also for further studies of institutions like the Office of Legal Counsel. The volume thus points to the need for further research on ‘Ottoman international law’.

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