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ARTICLE

A Prolonged Abrogation? The Capitulations, the 1917 Law of Family Rights, and the Ottoman Quest for Sovereignty during World War 1

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Abstract

The 1917 promulgation of a new Ottoman family law is recognized as a landmark moment in the history of Islamic law by scholars of women and gender in the Middle East. Yet the significance of the 1917 law in the struggle over religious jurisdiction, political power, and Ottoman sovereignty has been overlooked in the scholarship on both Ottoman legal reform and World War 1. Drawing on Ottoman Turkish, German, French, and English sources linking internal interpretations of the law and external reactions to its passage, we reinterpret adoption of the family law as a key moment in the geopolitics of World War 1. We demonstrate that passage of the law was a critical turning point in the wartime process of abrogating the capitulations and eliminating the last vestiges of legal extraterritoriality in the Ottoman Empire. The law is situated in its wartime political context and the geopolitical milieu of larger Europe to demonstrate that, although short-lived, the 1917 family law was a centerpiece of the wartime struggle to define extraterritorial rights of the Ottoman Empire, the Great Powers, and their protégés within the empire.

Keywords: capitulations; extraterritoriality; Islamic law; *Mecelle*; Ottoman Law of Family Rights; sovereignty; Tanzimat; World War 1

On 9 September 1914, Ottoman grand vizier and foreign minister Said Halim Pasha announced the abrogation of the capitulatory rights of foreign states in the Ottoman Empire, effective 1 October 1914. The memorandum describing the decision noted that "These privileges, which on the one hand were found to be in complete opposition to the juridical rules of the century and to the principle of national sovereignty, constituted on the other hand an impediment to the progress and the development of the Ottoman Empire."[1] The extraterritorial legal rights granted by the capitulations, generally to European countries, had indeed been an obstacle to Ottoman efforts to centralize state power and secure territorial sovereignty.[2] Although some of the countries granted capitulatory privileges were Entente members considered enemies of the state after the Ottoman Empire entered World War 1, the affected countries initially refused to accept the Ottomans' ability to unilaterally abolish the capitulations. This resistance was based on the belief that the Ottomans lacked the institutional infrastructure to abolish the capitulations due to the persistence of legal plurality in the realm of family law.[3] For Great Britain in particular,

[1]"Ottoman Circular Announcing the Abrogation of the Capitulations, 9 September 1914," in *Foreign Relations of the United States: 1914* (US Department of State), 1092–93; cited in *The Middle East and North Africa in World Politics: A Documentary Record*, J. C. Hurewitz, vol. 2: *British-French Supremacy: 1914–1945* (New Haven, CT: Yale University Press, 1979), 3–4.

[2]On the history of the capitulations, see Alexander H. DeGroot, "The Historical Development of the Capitulatory Regime in the Ottoman Middle East from the Fifteenth to the Nineteenth Centuries," *Oriente Moderno Nuova Serie* 83, no. 3 (2003): 575–604. For an analysis of the contemporary Ottoman interpretation of this decision, see Feroz Ahmad, "Ottoman Perceptions of the Capitulations, 1800–1914," *Journal of Islamic Studies* 11, no. 1 (2000): 1–20.

[3]Ottoman legal plurality was a pretext for the maintenance of legal extraterritoriality. See Umut Özsü, "Ottoman Empire," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender et al. (Oxford, UK: Oxford University Press, 2012), 442. On the reestablishment of mixed courts and capitulatory rights during the Allied occupation of Istanbul, see

the capitulations, the internationally binding character of Tanzimat-era reforms, and the 1856 Treaty of Paris "defined Ottoman sovereignty."[4] Under this rubric, if the Ottomans asserted that they could not or would not enforce the capitulations in a certain territory, then the Ottoman government risked forfeiting claims to sovereignty over that area. Ensuring extraterritorial protections was therefore a pretext for European intervention into Ottoman territory. The 25 October 1917 promulgation of the Law of Family Rights (*Hukūk-i Aile Kararnāmesi*; HAK) was intended to close the last major space of legal plurality in the Ottoman judicial system.[5] The proclamation of the HAK and the erosion of extraterritorial protection prompted bitter remonstrations from representatives of the Great Powers and their allies among non-Muslim religious leaders in the Ottoman Empire who were alarmed by the prospect of no longer having access to the legal avenues by which they encouraged mercantile activity and widened their spheres of influence in the Ottoman Empire throughout the 19th century.[6]

In this article we argue that the promulgation of the HAK was a critical moment in the prolonged effort to centralize Ottoman governance and eliminate extraterritoriality. Specifically, it should be understood as an important event in the effort to eliminate capitulatory agreements that remained an impediment to Ottoman state centralization and sovereignty during World War I. We also seek to draw attention to the significance of the proclamation of the HAK as a pivotal moment in the wartime geopolitics of Ottoman sovereignty in larger Europe.[7] That a new family law was promulgated in wartime is not a coincidence. For the Ottomans, World War 1 was a major moment of political transformation. Attempts by leaders of the Committee of Union and Progress (CUP) to reshape Ottoman society did not cease with the outbreak of the war; conversely, wartime "presented a suitable, even ideal, environment for the realization" of "the kind of radical transformation they deemed necessary for the creation of a modern, sustainable state."[8] The passage of the HAK in the midst of the war in 1917 should therefore be viewed in the context of radical political and social transformations aimed at consolidating Ottoman sovereignty during World War 1.

The Ottoman Empire's agency in the global geopolitics of World War 1 is often overshadowed by emphasis on the empire as a subject of contestation between Great Power states. Based on our reading of German and Austro-Hungarian sources analyzing the legislation, alongside domestic commentary from Ottoman sources such as parliamentary minutes and responses from Ottoman religious groups (including the Orthodox Patriarchate), we demonstrate that the passage of the HAK was a locus of the wartime struggle between the Ottomans, the Great Powers, and their allies in the empire over legal sovereignty and political power. We believe the Ottoman religious leaders and their Great Power protectors had a mutual interest in preserving the role of religious law and authority over matters of marriage, even when their motivations and interests diverged in other areas. We choose to analyze German and Austro-Hungarian sources because they illustrate the views of the wartime allies of the Ottomans who had greater access to the Ottoman government and were more directly involved in negotiating Ottoman foreign policy.[9] Our study of the HAK is a contribution to ongoing efforts to place the Ottoman War in the context of a wider Europe and further understanding of the relationship between domestic politics in the Ottoman Empire and the geopolitics of World War 1.[10] Following a brief

Daniel-Joseph MacArthur-Seal, "Resurrecting Legal Extraterritoriality in Occupied Istanbul: 1919–1923," *Middle Eastern Studies* 54, no. 5 (2018): 769–87.

[4]Michael Christopher Low, "Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims, and the Capitulations in the Ottoman Hijaz," *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 322.

[5]The name of the law is generally rendered in English as the Ottoman Law of Family Rights. In the Ottoman Parliament it was referred to by deputies as *Hukūk-ı Aile Kanunu* (the Family Law). The official title of the Ottoman law was *Hukūk-ı Aile Kararnāmesi, Münākehāt–Müfārekat*, or the Family Law Decree, Marriages–Divorces.

[6]Lâle Can, "The Protection Question: Central Asians and Extraterritoriality in the Late Ottoman Empire," *International Journal of Middle East Studies* 48, no. 4 (2016): 680–81. *Berat*s, or letters of extraterritorial protection, were crucial to this effort.

[7]On the concept of larger Europe, see Hans-Lukas Kieser, *Talaat Pasha: Father of Modern Turkey, Architect of Genocide* (Princeton, NJ: Princeton University Press, 2018), 32–33.

[8]Mustafa Aksakal, *The Ottoman Road to War in 1914: The Ottoman Empire and the First World War* (New York: Cambridge University Press, 2008), 13–14.

[9]On the role of marriage and family legislation in shaping Ottoman-Iranian relations historically, see Karen M. Kern, *Imperial Citizen: Marriage and Citizenship in the Ottoman Frontier Provinces of Iraq* (Syracuse, NY: Syracuse University Press, 2011).

[10]See, for example, Uğur Ümit Üngör, *The Making of Modern Turkey: Nation and State in Eastern Anatolia, 1913–1950* (Oxford, UK: Oxford University Press, 2011); Najwa al-Qattan, "When Mothers Ate Their Children: Wartime Memory and

overview of the HAK and its relationship to the history of Ottoman legal reform and the capitulations, we proceed to a detailed examination of reactions to the passage of the HAK of groups within the Ottoman Empire as well as representatives of the Great Powers.

Codifying Family Law: The 1917 Law of Family Rights

The *Hukūk-ı Aile Kararnāmesi* was ratified in October 1917, bringing the empire's diverse religious groups under a centralized system of family law for the first time.[11] It enjoyed a relatively short lifespan; the Ottoman parliament abrogated the HAK on 19 June 1919 following pressure from the Allied countries, responding to the discontent of non-Muslims as well as conservative Muslims who protested the reduced role of the shariʿa courts.[12] The main critique from conservatives was in response to the transfer of responsibility for concluding a marriage contract from the shariʿa courts to the state. Other reservations expressed by some conservatives regarded the expanded capacity of women to initiate divorces and the allowance for limitations on polygamy in marriage contracts.[13] The HAK was formally replaced in republican Turkey by the 1926 adoption of the Swiss Civil Code, but it formed the basis for personal status laws in Syria until 1949, in Jordan until 1951, and even longer in Lebanon and for Palestinian Muslims in Israel.[14] In 1916, the CUP created three commissions, known as the *İhzar-ı Kavanin*, and tasked them with drafting three legal codes: one for civil disputes, one for commercial relations, and a third for family matters.[15] The first meeting of the Family Law Commission took place on 22 May 1916 and was chaired by Mahmut Esat (Bozkurt) of Isparta.[16] The commission had planned to deal with issues related to child-rearing and spousal maintenance in addition to marriage and divorce, but the Ottoman defeat in the war prevented this effort from coming to pass.[17] The CUP government operated under the belief that the

the Language of Food in Syria and Lebanon," *International Journal of Middle East Studies* 46, no. 4 (2014): 719–36; Ryan Gingeras, *Fall of the Sultanate: The Great War and the End of the Ottoman Empire, 1908–1922* (Oxford, UK: Oxford University Press, 2016); and Melanie S. Tanielian, *The Charity of War: Famine, Humanitarian Aid, and World War I in the Middle East* (Stanford, CA: Stanford University Press, 2017).

[11]Law 3046, Hukūk-ı Âile Kararnâmesi, II. Tertip Düstur, Cilt 9 (25 Teşrinievvel 1333/25 October 1917), 762. Published in *Takvim-i Vekayi* on 31 Teşrinievvel 1333/31 October 1917. On 31 December, an amended version of the law, including administrative directives, was issued: Law 34, II. Tertip Düstur, Cilt 10 (30 Kanunuevvel 1333/31 December 1917), 52. Published in *Takvim-i Vekayi* on 1 Kanunusani 1334/1 January 1918.

[12]Halil Cin, *İslam ve Osmanlı Hukukunda Evlenme* (Ankara: Ankara Üniversitesi Basımevi, 1974), 305. Conservative Muslims critics during World War I were led by Sadreddin Efendi, a theology faculty member at the Darülfünun (renamed Istanbul University in 1933) who published prolifically in the newspaper *Sebiülreşad*. See Abdurrahman Yazici, "Osmanlı Hukuk-i Aile Kararnamesi (1917) ve Sadreddin Efendi'nin Eleştirileri," *EKEV Akademi Dergisi* 19, no. 62 (2015): 567–84; "Cankirli Sadreddin Efendi," in *Turkiye Diyanet Vakfı İslam Ansiklopedisi*, vol. EK–1 (Istanbul: Türkiye Diyanet Vakfı, 2016), 285–86; and Ahmet Yasin Küçüktiryaki, *Osmanlı Aile Hukuku: Gelenek ve Modern Arasında Hukuk-ı Aile Kararnamesi ve Sadreddin Efendi'nin Eleştirileri* (Istanbul: İz Yayıncılık, 2017).

[13]Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998), 418.

[14]On the adoption of the Swiss Civil Code, see Umut Özsu, "'Receiving' the Swiss Civil Code: Translating Authority in Early Republican Turkey," *International Journal of Law in Context* 6, no. 1 (2010): 63–89; and Ruth Miller, "The Ottoman and Islamic Substratum of Turkey's Swiss Civil Code," *Islamic Studies* 11, no. 3 (2000): 335–61.

[15]Nihan Altınbaş, "Marriage and Divorce in Early Twentieth Century Ottoman Society: The Law of Family Rights of 1917" (PhD diss., Bilkent University, 2014), 154.

[16]M. Akif Aydin, *İslam-Osmanlı Aile Hukuku* (Istanbul: İlahiyat Fakültesi Vakfı Yayınları, 1985), 163. Bozkurt was a lawyer, member of the Ottoman Parliament, and minister of justice in the early Republican period who had an academic interest in the history of the capitulations. See Mahmut Esat (Bozkurt), *Osmanlı Kapitülasyonları Rejimi Üzerine: Tarih ve Metinlerin Işığında Kapitülasyonlarin Hukuki Özellikleri* (Ankara: Türk Hukuk Kurumu, 2008), a translation of Bozkurt's 1928 French-language doctoral dissertation from the Université de Fribourg. The commission's other members were the *Fetvahane*'s chief clerk (*mümeyyiz*) and professor Hafiz Sevket Efendi, Mansurizade Said Bey of Mentese, Ali Bas Hanbe Efendi, a member of the *Şura-yı Devlet* and *vakıf* court judge Akhisarli Mustafa Fevzi Efendi. The Civil Code Commission, Family Code Commission, and Commercial Code Commission together were given 300,000 *kuruş* for their work. *Meclis-i Mebusan Zabıt Ceridesi* (hereafter *MMZC*), Term 3 Year of Session 3, vol. 1 (11 Mart 1333/11 March 1917), 179.

[17]Mehmet Ünal, "Medeni Kanunun Kabulunden Önce Türk Aile Hukukuna İlişkin Düzenlemeler ve Özellikle 1917 Tarihli Hukuk-i Aile Kararnamesi," *Ankara Universitesi Hukuk Fakultesi Dergisi* 34, no. 1–4 (1978): 210.

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reforms codified by the *İhzar-ı Kavanin* could serve as a remedy to the increasing number of Great Power protests about the erosion of their juridical privileges and add clarity to lingering legal questions over extraterritoriality.[18]

From its outset, therefore, the HAK was imbued with geopolitical significance and the belief that its passage could buttress Ottoman strength in the field of international law. Although the commission for the Ottoman Civil Law Code (*Mecelle-i Ahkam-i Adliyye*) had drafted unified commercial, civil, and criminal codes that came into force in 1877, the commission's work ended without addressing the sensitive area of family law. Between 1877 and the October 1917 passage of the HAK, family law remained the purview of religious courts, constituting a challenge to domestic centralization of state power and acting as a conduit for intervention by European governments in Ottoman affairs. The HAK's passage therefore empowered the Ottoman state over the Office of the Şeyhülislam (*meşihat*) and non-Muslim religious leaders who had claimed jurisdiction in the area of family law and eliminated the last venue of extraterritoriality in the Ottoman legal system.

The HAK introduced certain measures that have been interpreted as progressive from the perspective of women's rights, including higher minimum marriage ages, restrictions on polygamy, and a broader scope for annulment.[19] As a result, the HAK has been studied principally in the context of its status as the first unified family code in Islamic law, with a focus on its implications for marriage practices, gender relations, and women's status in the Islamic legal context. This body of scholarship emphasizes the HAK's importance as the first cohesive family status code in the history of Islamic law and its lasting impact on family codes in the modern and contemporary Middle East. Judith Tucker illustrates, however, that the HAK's new provisions were modest in scope and eliminated the wider interpretive latitude offered by the shari'a.[20] Yet this focus is symptomatic of the tendency to overlook the specific historical context in which the HAK emerged. Turkish-language historiography generally also takes an insular approach to understanding how and why the HAK came into being, examining intellectual differences between Islamists (*İslamcılar*), Westernists (*Garpcılar*) and Turkists (*Türkçüler*) in the Ottoman Empire.[21] Elif Mahir Metinsoy's study of Ottoman women in World War 1 correctly points to a few examples of how wartime exigencies informed certain provisions of the HAK; regulating divorce, for example, became more urgent as the war drew on due to an increasing number of women seeking divorces after their husbands did not return from the front.[22]

However, Iris Agmon's study of 19th-century Palestine illustrates the significance of families beyond the private sphere, arguing that the family occupies a unique position as the cornerstone of both society and politics.[23] More than any other arena of social or political life, the family "needed to be preserved from pollution by foreign influences" because of its role in shaping national identity.[24] This was especially true in the context of women occupying wider and more visible roles in Ottoman social and economic life during World War 1. Policies and programs such as the Pension for Families of Breadwinners

[18]Mehmet Emin Elmacı, *İttihat Terakki ve Kapitülasyonlar* (Istanbul: Homer Kitabevi, 2005), 109. Also see Muhammet Emin Kulunk, *Kapıtülasyonların Kaldırılması (1914)* (Istanbul: Yeditepe, 2011).

[19]Darina Martykanova, "Matching Sharia and 'Governmentality': Muslim Marriage Legislation in the Late Ottoman Empire," in *Institutional Change and Stability: Conflicts, Transitions and Social Values*, ed. Andrea Gémes, Florencia Peyrou, and Ioannis Xydopoulos (Pisa: Pisa University Press, 2009), 168–70; and Altinbas, "Marriage and Divorce," especially chs. 4 and 5.

[20]Judith Tucker, "Revisiting Reform: Women and the Ottoman Law of Family Rights, 1917," *Arab Studies Journal* 4, no. 2 (1996): 4–17. Also see Elizabeth Brownson, "Reforms or Restrictions? The Ottoman Muslim Family Law Code and Women's Marital Status in Mandate Palestine," in *Middle Eastern and North African Societies in the Interwar Period*, ed. Kate Fleet (Leiden: Brill, 2018), 239–58.

[21]Cin, *İslam*, 292–305; Ünal, "Medeni Kanunun," 195–231; Yılmaz Yurtseven, "1917 Tarihli Hukuk-i Aile Kararnamesi ve Osmanlı Aile Hukukuna Getirdiği Yenilikler," *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 11, no. 1–2 (2003): 199–250; Yazıcı, "Osmanlı Hukuk-i Aile Kararnamesi," 567–84.

[22]Elif Mahir Metinsoy, *Ottoman Women during World War I: Everyday Experiences, Politics, and Conflict* (New York: Cambridge University Press, 2018), 188–91. On wartime economic pressures that contributed to the HAK, see Ahmet Yasin Küçüktiryaki, "Osmanlı Devletinde Tanzimat Sonrası Aile Hukuku Alanındaki Gelişmeler ve Hukuk-i Aile Kararnamesi," *Hitit Üniversitesi İlahiyat Fakültesi Dergisi* 13 (2014): 185–87.

[23]Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006), 5.

[24]Martykánová, "Matching Sharia," 166.

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(*Muinsiz Aile Maaşı*), a separation allowance for the families of conscripted soldiers, aimed to maintain the socioeconomic integrity of Ottoman families in wartime as a means to promote stability in Ottoman society.[25] The CUP's idealized "national family," a smaller monogamous household, was meant to ensure morality and, in turn, national solidarity during the war.[26] Ottoman lawmakers likewise viewed the HAK as integral to the question of sovereignty and achieving it through greater control of the empire's land and resources.[27] Emanuel Emanuelidi Efendi of Aydin, an Orthodox Christian lawyer from Izmir known for his involvement in property and land legislation issues, was in charge of the committee to study the law.[28] He explained the importance of the HAK to the Ottoman parliament: "Family law, however, concerns the whole of national wealth (*serveti mülkiyyenin kaffei aksamına taalluk eder*) . . . the aforementioned law concerns social organization and therefore national organization."[29] The 1917 CUP party congress program further justified the creation of the commission to create a new family law. It argued that "the judicial code is not sufficient to meet the current needs of civilization," noting specifically that transforming religious courts into civil courts was a prerequisite for reforming the law.[30]

Eliminating Extraterritoriality: The Capitulations, the Mecelle, and the HAK

At its core, the debate over the HAK represented the conundrum of pluralistic imperial governance that the Ottoman Empire had struggled with since the Tanzimat. On one hand, a commitment to national sovereignty required civil law. On the other, the imperial governing structure of the empire was predicated on religious decentralization.[31] Why, therefore, was it not until 1917, in the midst of the violent contests over identity and sovereignty that marked World War 1, that the Ottoman Empire attempted to bring family law under centralized control? The codification of family law had clear importance for the Ottoman government; the justificatory memorandum (*Esbab-i Mucibe Lāyihası*) — an official document appended to the HAK justifying the law—claimed, "It is quite possible to discern a nation's quality of education and knowledge, the place it occupies in civilization, with an investigation of its familial organization."[32] On a practical level, there was also a clear need for a codified personal status law. The Ottoman justificatory memorandum explained that both laypeople and judges often were required to comb through *fetva*s , which could give contradictory guidance on the same issues, and noted the insufficiency of the *Mecelle* alone to govern family law:

[25]See Nicole Van Os, "Taking Care of Soldiers' Families: The Ottoman State and the Muinsiz Aile Maaşı," in Erik Jan Zürcher, ed. *Arming the State: Military Conscription in the Middle East and Central Asia, 1775–1925* (London: I.B. Tauris, 1999) and Kate Dannies, "Breadwinner Soldiers: Gender, Welfare, and Citizenship in the Ottoman First World War" (PhD diss., Georgetown University, 2019).

[26]Zafer Toprak, "The Family, Feminism, and the State during the Young Turk Period, 1908–1918," in *Première Rencontre Internationale sur l'Empire Ottoman et la Turquie Moderne*, ed. Edhem Eldem (Istanbul: Édition ISIS, 1991), 449–52.

[27]On the codification of Ottoman civil, criminal, and commercial codes under the *Mecelle* commission in the 19th century, see Osman Metin Öztürk, *Osmanlı Hukuk Tarihinde Mecelle* (Istanbul: İslâmî İlimler Araştırma Vakfı, 1973).

[28]Emanuel Emanuelidi Efendi (d. 1943 in Athens) was an Ottoman Greek lawyer and politician born in Kayseri. He represented Aydın in the Ottoman Parliament on a CUP ticket from 1911 to 1918 and was a member of the pro-Ottomanist faction in the parliament. After 1922 he was a member of Eleftherios Venizelos' Greek Liberal Party and served as governor of Western Macedonia and in Venizelos' cabinet as Minister of Social Care from 1928–1931. For a recent interpretation of Emanuelidi Efendi's role between Ottomanist and Greek Irredentist politics in the Late Ottoman Empire see Vangelis Kechriotis, "On the Margins of Nationalist Historiography: The Greek *İttihatçı* Emmanouil Emmanouilidis--Opportunist or Ottoman Patriot?" in *Untold Histories of the Middle East: Recovering Voices from the 19th and 20th Centuries*, ed. Amy Singer et. al. (New York: Routledge, 2010), 124–42.

[29]*MMZC* Term 3, Year of Session 4, vol. 1 (15 Teşrinisani 1333/15 November 1917), 30.

[30]The National Archives, London (hereafter TNA) WO 106/1419, transcript of *Congres General du Comite Union et Progres de 1333*.

[31]On the role of 19th-century state secularism in reproducing religious difference through the creation of "minorities" and the persistent nature of this dynamic in post-Ottoman states, see Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton, NJ: Princeton University Press, 2018), especially chapter 1.

[32]*Esbab-ı Mucibe Lāyihası*, in Sabri Şakir Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü Münasebetiyle Eski Aile Hukukumuza bir Nazar* (Ankara: İstiklal Matbaacılık ve Gazetecilik Kollektif Ortalığı, 1952), 19. For the full text of the Justificatory Memorandum, see Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü*, 18–31.

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> Due to the fact that the *Mecelle* does not contain any provisions on family law, in our country each of the different religious communities with respect to this matter applies their own uncoded religious rules and the shariʿa judges lack knowledge of these religious rules, it has been necessary for non-Muslims to give jurisdiction over issues like marriage, divorce, and spousal maintenance to religious leaders.[33]

The wartime government targeted domestic legal pluralism in its efforts to standardize laws. Nearly two weeks after the promulgation of the HAK, the Decree on Shariʿa Judicial Procedure (*Usul-u Muhakeme-i Kararnamesi*) was also issued, stripping both the patriarchate and the *meşihat* of legal privileges and subsuming the shariʿa and *nizamiye* courts under the justice ministry.[34] Such moves served to address European critiques of the abrogation of the capitulations as an illegitimate move on the basis that no legal framework to replace the capitulations existed.[35]

Legal pluralism had a long history in the Ottoman Empire and was difficult for the CUP to eliminate. Historically, Ottoman relations with foreign states were guided by capitulatory agreements. The Capitulations began as trade concessions granted to foreign merchants during the reign of Süleiman I (r. 1520–1566). These concessions—categorized as unilateral sultanic decrees in Ottoman statecraft—were initially granted from a position of Ottoman economic and geopolitical strength. From the mid-18th-century onwards, the system of capitulations came to serve as a foothold for the expansion of European extraterritoriality in the Ottoman Empire. Importantly, during this period European states increasingly framed these rights as bilateral treaties instead of sultanic concessions.[36] However, in practice, the system of capitulations was not superseded by international law but remained in place and constituted an ever-expanding venue for the exercise of extraterritoriality in the empire.[37]

The Treaty of Paris that ended the Crimean War is widely considered the moment at which the Ottoman Empire was brought into the European system of international law.[38] Ahmet Cevdet Pasha, one of the architects of the *Mecelle* and a member of the Tanzimat council, noted that, in the aftermath of the Crimean War, the Sublime Porte could not effectively administer commercial affairs in the empire. A central reason for this was the refusal of foreigners to submit to the jurisdiction of shariʿa courts in commercial disputes. Cevdet Pasha cited this situation as the beginning of a large-scale effort to eliminate Ottoman legal plurality, the existence of which was used as a pretext for European legal extraterritoriality.[39] Ottoman legal reforms during the 19th century shared the aim of addressing this by asserting Ottoman sovereignty and placing the Ottoman Empire as a political and economic equal among the Great Powers.[40] The 1840 and 1858 Penal Codes, the 1850 Commercial Code, the 1858 Land Code, and the 1863 Maritime Code were significant steps in this process. The adoption of the French Commercial Code in 1860 was particularly significant. This reform marked the establishment of the first *nizamiye* courts, which were bound to the ministry of commerce, making them the first secular courts outside the jurisdiction of the *meşihat*.[41] By using French laws, the Ottomans sought to circumvent

[33]*Esbab-ı Mucibe Lāyihası*, in Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü*, 18.

[34]Elmacı, *İttihat Terakki ve Kapitülasyonlar*, 113. On the Decree on Shariʿa Judicial Procedure, see Ahmet Akman, "Tanzimat Sonrası Osmanlı Usûl Hukukunda Gelişmeler," *MANAS Sosyal Araştırmalar Dergisi* 8, no. 1 (2019): 431–50.

[35]"The Attempt of Turkey to Abrogate the Capitulations," *American Journal of International Law* 8, no. 4 (1914): 873–876. Also see Philip Marshall Brown, *Foreigners in Turkey: Their Juridical Status* (Princeton, NJ: Princeton University Press, 1914) and Edward van Dyck, *Capitulations of the Ottoman Empire since the Year 1150* (Washington, DC: Government Printing Office, 1881).

[36]Özsü, "Ottoman Empire," 433.

[37]Hugh McKinnon Wood, "The Treaty of Paris and Turkey's Status in International Law," *The American Journal of International Law* 37, no. 2 (1943): 262–274.

[38]Aimee Genell, "Autonomous Provinces and the Problem of 'Semi-Sovereignty' in European International Law," *Journal of Balkan and Near Eastern Studies* 18, no. 6 (2016): 535–36.

[39]Cevdet Paşa, *Tezakir*, vol. 1, ed. Cavid Baysun (Ankara: Türk Tarih Kurumu Basımevi, 1953), 62.

[40]Sibel Zandi-Sayek, *Ottoman Izmir: The Rise of a Cosmopolitan Port, 1840–1880* (Minneapolis: University of Minnesota Press, 2012), 57.

[41]Berkes, *The Development of Secularism*, 162.

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Great Power opposition to the imposition of Islamic law on non-Muslims—and complaints from the ulema—and establish what Cevdet Pasha called "the legal foundation of the nation."[42]

These legal innovations laid the groundwork for the decade-long process of reform known as the *Mecelle-i Ahkam-i Adliyye*. Beginning in 1867, a commission led by Cevdet Pasha worked to codify Ottoman civil, criminal, and commercial laws. The new codes, comprising sixteen volumes and some 1,851 articles, were promulgated in 1876. From the perspective of foreign policy, the codification of Ottoman law via the *Mecelle*, and in particular centralized control over personal status law, was a move to limit extraterritoriality within the empire by limiting the jurisdiction of European legal institutions and their protégés in local communities.[43] 'Ali Pasha, an Ottoman grand vizier and foreign minister during the Tanzimat period, wrote on the necessity of adopting the *Mecelle*:

> And since the main complaint has regard to our courts, it would seem necessary to search for a solution to this problem and to translate the code known as the Code Civil just as is being done in Egypt and to put it into effect and provide its being used in mixed disputes and mixed courts . . . the integration of all subjects in matters other than religion and the elimination of rivalry and friction between them will also be the best way to dispel existing difficulties and strengthen the basis of the state.[44]

The culmination of the *Mecelle* was the Ottoman Constitution of 1876. In the wake of the Ottoman defeat in the Russo-Ottoman War of 1877–1878, however, Sultan Abdülhamit II prorogued the Ottoman parliament on 14 February 1878, effectively nullifying the limited legislative capacity it enjoyed under the constitution.[45] Although Abdülhamit's reassertion of palace authority differed greatly from the methods of Tanzimat period, he continued reforms initiated by the Tanzimat. The Hamidian administration took up, among other things, provincial reorganization, a comprehensive census, public works projects, and reforms in education.[46]

From the perspective of foreign policy, however, Abdülhamit's government continued to struggle with the conundrum of being both a nominal member of the Concert of Europe and a power with imperial ambitions (and the related legal ramifications). At the 1884 Berlin Conference, which delineated rules for European colonization of Africa, the Ottoman Empire "was not simply fighting for extra territory; it was fighting to maintain legal standing in the so-called family of nations" when it claimed that it was among the "civilized nations" to which the protections of international law and territorial integrity were applicable.[47] In spite of legal advancements during the Tanzimat, the delicate legal balancing act between asserting imperial power and defending against European imperial ambitions of the 19th-century Ottoman government reflected the still unsettled nature of the empire's legal status vis-à-vis the Concert of Europe.

The *Mecelle* commission disbanded without tackling the issue of family law, however, and it remained under the jurisdiction of religious courts. It also failed to receive significant attention under Abdülhamit. This result was reminiscent of the post–Crimean War situation, underscoring the Ottoman Empire's persistent status external to the European system of international law, despite ongoing efforts to reform the judicial system and engage with international legal frameworks.[48] The 1917 family code under the

[42]Cevdet Paşa, *Tezakir*, 63.

[43]Mixed courts were a major feature of this system. See Avi Rubin, "British Perceptions of Ottoman Judicial Reform in the Late Nineteenth Century: Some Preliminary Insights," *Law & Social Inquiry* 37, no. 4 (2012): 991–1012. On extraterritoriality with specific reference to Ottoman Jews, see Sarah Abrevaya Stein, *Extraterritorial Dreams: European Citizenship, Sephardi Jews, and the Ottoman Twentieth Century* (Chicago: University of Chicago Press, 2016).

[44]Quoted in Şerif Arif Mardin, "Some Explanatory Notes on the Origins of the "Mecelle" (Medjelle)," *The Muslim World* 51, no. 3 (1961): 276.

[45]Erik Jan Zürcher, *Turkey: A Modern History*, 2nd ed. (London: I. B. Tauris, 2004), 76.

[46]Carter Vaughn Findley, *Turkey, Islam, Nationalism, and Modernity: A History* (New Haven, CT: Yale University Press, 2010), 150–57.

[47]Mostafa Minawi, *The Ottoman Scramble for Africa: Empire and Diplomacy in the Sahara and the Hijaz* (Stanford, CA: Stanford University Press, 2016), 9–10.

[48]Aimee Genell, "The Well-defended Domains: Eurocentric International Law and the Making of the Ottoman Office of Legal Counsel," *Journal of the Ottoman and Turkish Studies Association* 3, no. 2 (2016): 255–75.

stewardship of the CUP was the final step in the empire's effort to eliminate legal extraterritoriality.[49] Control over personal status law was a core tool of Ottoman domestic and foreign policy. Johann Markgraf von Pallavicini, the Austro-Hungarian ambassador stationed in Istanbul, recognized this when he argued in November 1917, shortly after the ratification of the HAK:

> The new Turkish marriage law does not merely signify a judicial and social reform, but at the same time a tremendous push (*einen gewaltigen Vorstoss*) against the privileges of non-Muslim communities. Therefore, on the one hand, it has experienced a very different appraisal among the Muslims, and on the other hand, it has provoked a deep resentment among the non-Muslim spiritual leaders.[50]

Marriage, with its implications for social reproduction, was central to Ottoman concerns and a target of increased state control and legislation in the decades before World War 1.[51]

As World War 1 unfolded, policymakers continued to view marriage practices as central to the resilience of Ottoman society, and the belief that the social and economic disruptions of war had caused a decrease in marriage rates and an increase in instances of divorce was prevalent. From the domestic perspective, enhanced control over marriage meant closer surveillance of the population, oversight of the reproduction of the social order, and tighter regulation of the transfer of immovable property via dowry and inheritance procedures. *Kefãet,* the principle of economic parity between spouses, was preserved in the HAK, and was of particular relevance to the perpetuation—through marriage—of existing networks of wealth, power, and kinship that formed the foundation for the existing Ottoman social structure.[52] Control over the reproduction of the existing Ottoman social structure was a foundational concern of the Ottoman state both throughout the 19th century and particularly during World War 1 as the state worked to centralize control over a shrinking empire and ensure the predominance of the Turkish Muslim population. Marriage and its control were a central priority of state policy from the perspective of both domestic population policies and state sovereignty and geopolitics in the long 19th century, and particularly in the context of World War 1.

"The Stripping of all the Fetters": The HAK Challenge to Capitulations

In spite of the regulations brought about by the *Mecelle*, the Ottomans still faced the problem of the ramifications of the Capitulations for international law in their quest to fully eliminate extraterritoriality. European countries believed that the capitulations could not be effectively abrogated until the Ottoman system of mixed courts was replaced by a unified civil code.[53] European countries continued to use their authority under the Capitulations to retain privileges pertaining to their citizens living in the Ottoman Empire, which was viewed as an affront to Ottoman sovereignty by the CUP.[54] The declaration of the Ottoman constitution in 1908 prompted some Unionists to hope that European governments would be willing to negotiate an end to the Capitulations and view the Ottoman Empire as an equal, constitutional state.[55] These expectations did not come to fruition as a result of European

[49]Berkes, *The Development of Secularism*, 168–72.

[50]Haus-, Hof-, und Staatsarchiv, Vienna (hereafter HHStA) PA XII 467, no. 94/B (17 November 1917).

[51]On the development of marriage registration policies in the late 19th and early 20th centuries, see Alan Duben and Cem Behar, *Istanbul Households: Marriage, Family and Fertility 1880–1940* (Cambridge, UK: Cambridge University Press, 1991), 107–109 and Cengiz Mutlu, "Milli Mücadele'de Türkiye'de Azalan Nüfus ve İzdivac Meselesi," *Atatürk Araştırma Merkezi Dergisi* 85 (2013): 169–205.

[52]*The Hedaya, or Guide; A Commentary on the Mussulman Laws*, Vol. I, trans. Charles Hamilton (New Delhi: Nusratali Nasri, 1985), 95–96. The HAK reiterated the fundamental principle of *kefâet* in Muslim marriage. See articles 45–51 in II. Tertip Dustur, Cilt 9 (25 Teşrinievvel 1333/25 October 1917), 767–768. On the importance of *kefãet* in the preservation of social stratification, see Mona Siddiqui, "Law and the Desire for Social Control: An Insight into the Hanafi Concept of Kafa'a with Reference to the Fatawa 'Alamgiri (1664–1672)," in *Feminism and Islam: Legal and Literary Perspectives*, ed. Mai Yamani (New York: New York University Press, 1996), 49–68.

[53]Dora Gildewell Nadolski, "Ottoman and Secular Civil Law," *International Journal of Middle East Studies* 8, no. 4 (1977): 517–43.

[54]On the 19th century, see Salahi R. Sonyel, "The Protégé System in the Ottoman Empire," *Journal of Islamic Studies* 2, no. 1 (1991): 56–66.

[55]Doğu Ergil, "A Reassessment: The Young Turks, their Politics and Anti-Colonial Struggle," *Balkan Studies* 16, no. 2 (1975): 39.

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intransigence and insistence that the Ottomans lacked sufficient domestic legal oversight. Even though the Great Powers had been making similar claims since 1856, it was the context of World War 1 that allowed the Ottomans to finally carry out a program of radical reforms, including the HAK. Throughout the second half of the 19th century, European states formed a united front against the abolition of legal pluralism; strategic differences over influence in the Ottoman Empire did not stand in the way of their goal of preserving extraterritoriality.[56] World War 1 shattered this unified European alliance. Because Ottoman entrance into the war theoretically nullified capitulations granted to Entente countries, only Germany and Austria-Hungary, as Ottoman allies, were in an effective bargaining position to negotiate the future of the capitulations. Even they, however, were eventually forced to cede to Ottoman demands by 1917 and 1918.

Despite their status as Ottoman allies in World War 1, Germany and Austria-Hungary too fiercely defended their capitulatory rights. As late as August 1916, Pallavicini reported to Ottokar Czernin, the Austro-Hungarian foreign minister, that "Today's Turkish statesmen stand and fall with the question of capitulations."[57] Particularly in relation to Talaat, the Ottoman interior minister until 1917 and then grand vizier until the end of the war, Pallavicini believed that "deference to public opinion forbade him to give in" on the question of capitulations with the Ottomans' allies, as Talaat even threatened to recall Ottoman delegates from Berlin if the Ottoman allies failed to acquiesce to a reduction of their capitulatory privileges.[58] Pallavicini's observations suggest that the official abrogation was the beginning of a longer process of dismantling extraterritorial legal institutions during World War 1.

Well before the HAK was introduced, the Great Powers were concerned about the erosion of their legal status after the abolition of the capitulations. These countries did not view the Ottomans' unilateral abrogation as a settled pronouncement. Hans Freiherr von Wangenheim, the German ambassador to the Ottoman Empire, was "greatly disturbed" by the prospect of the abrogation.[59] Cavit Bey recounted in his diary that Wangenheim "looked unnatural, almost insane. . . . He was unable to talk, but was making sounds like barking" during a meeting after the abrogation. He even threatened to undermine Germany's ally, "shouting that we [the Ottomans] couldn't do such a thing without their consent. He said that if tomorrow the British and French declare war against us and start forcing the Straits, they would in no circumstance aid us."[60] On the Entente side, the British asserted that the "Capitulations being founded on synallagmatic instruments" implied that they could not be abrogated unilaterally and further demanded "due reparation for any prejudice" that resulted from Ottoman measures.[61]

In financial terms, the abrogation of the Capitulations meant that customs duties on imports were raised to 14 and 15 percent, whereas certain classes of clothing material, shoes, and liquor were subject to 100 percent tariffs.[62] According to Cemal Pasha's memoirs, however, in the months leading up to the Ottomans' entrance into the war in October 1914 when the empire was increasingly in need of funds: "We had derived no direct advantage from the fact that the Capitulations had been abolished by a provisional law, as the customs revenue had dropped to almost a quarter of what it was in normal times."[63] This was due largely to the sharp decline in foreign trade after 1914; tariff revenues had accounted for roughly 20 percent of government revenue before the war and declined significantly after the Ottoman entrance into the war.[64]

In the minds of some Ottoman legal scholars, declaring war on the Entente theoretically nullified Ottoman treaty obligations with those states. The Ottoman government thus demanded that other

[56]Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, UK: Cambridge University Press, 2010), 113.

[57]HHStA PA XII 466 Liasse LII, no. 8371 (15 August 1916).

[58]HHStA PA XII 466 Liasse LII, no. 7907 (31 October 1916).

[59]Henry Morgenthau, *Ambassador Morgenthau's Story* (New York: Doubleday, Page & Company, 1918), 116.

[60]Quoted in Ergil, "A Reassessment," 68.

[61]TNA FO 195/2460/4475, no. 5218 (1 October 1914). For contemporary French critiques of the abrogation, see H. Abi-Chahla, *L'extinction des Capitulations en Turquie et dans les régions arabes* (Paris: Picart, 1924).

[62]Nasim Sousa, *The Capitulatory Régime of Turkey: Its History, Origin, and Nature* (Baltimore: The Johns Hopkins Press, 1933), 195. In 1907, with the consent of European governments, the Ottomans raised tariffs on imports from 8 to 11 percent.

[63]Djemal Pasha, *Memories of a Turkish Statesman – 1913–1919* (New York: George H. Doran Company, 1919), 129.

[64]Şevket Pamuk, "The Ottoman Economy in World War I," in *The Economics of World War I*, eds. Mark Harrison and Stephen Broadberry (New York: Cambridge University Press, 2005), 126.

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19th-century treaties, including the Treaty of Paris of 1856, the Treaty of London of 1871, and the Treaty of Berlin of 1878, also be nullified in order to remove the "political shackles" they had imposed on the empire's sovereignty, in the words of Halil Mentese, who served as both foreign minister and justice minister during the war years.[65] The HAK further buttressed Ottoman claims; a report from the Austro-Hungarian Field Army Command in Istanbul indicated that although it believed the HAK contravened the 1878 Congress of Berlin guarantee of the "autonomy of Christian religious associations," it "undoubtedly represents an important step in the modernization of the Ottoman state and the Turkish society," revealing the Austro-Hungarian awareness that the Congress of Berlin had served as a check against Ottoman sovereignty.[66] By the end of 1917, therefore, the tenets of the 1878 Congress of Berlin, which had for decades served as a lynchpin for relations between the Ottoman Empire and the Great Powers, had become obsolete. Both the field command and Pallavicini understood that the HAK was designed to limit foreign extraterritorial rights, which had been a goal of the CUP years before 1917.

Some German legal scholars concurred with this view that the empire did, in fact, have the right to take action against the Capitulations, further obscuring the question of whether or not the unilateral abrogation was a settled matter of law. According to Max Kunke, the abrogation should have been accepted "in the face of the certainty that a state at war can be given the opportunity to free itself from burdensome and obsolete obligations."[67] Citing the capitulatory agreement of 1604, Kunke argued that the Capitulations were enforceable only during friendly relations; the Ottomans themselves likewise argued in a note dated 14 November 1916 that, as they were in a state of war with four of the signatory countries, the agreements were "definitively" annulled.[68]

As the reactions from Europe suggest, the unilateral Ottoman action addressed several unresolved issues related to international laws from which foreign governments had derived benefit, with family law and its corresponding extraterritorial privileges being one such issue. State officials, even among the Ottomans' wartime allies, viewed the abrogation as a detriment to their wartime aims and their vision for a post-war Ottoman Empire that would remain subject to European influence and control. When the Ottomans' allies refused to accept the annulment of the Capitulations, the Ottomans demanded compensatory territorial concessions in Bulgaria and Greece.[69] For Germany in particular, this interrupted the goal harbored by some high-ranking officers of making Ottoman Turkey a "German Egypt."[70] Austria-Hungary sought to work in tandem with Germany, as summarized by a note from the Austro-Hungarian foreign minister, which argued that the dual monarchy should "participate as extensively as possible" in German economic penetration of Ottoman Turkey.[71] The economic aims of Germany and Austria-Hungary were in direct contradiction to the CUP's national economy (*milli iktisat*) policy, in place since at least 1907, which involved empowering Muslim-Turkish economic interests and implementing exterminatory demographic policies to establish a dominant Muslim-Turkish bourgeois class in Istanbul and Anatolia.[72]

Germany and Austria-Hungary did not renounce their capitulatory privileges until 11 January 1917 and 12 March 1918, respectively.[73] Germany in 1916 agreed in principle to abandon its privileges, although debates over the special status of German religious and educational institutions in particular raged through the summer and fall of that year, as Talat threatened to resign from his post before giving

[65]Ulrich Trumpener, *Germany and the Ottoman Empire, 1914–1918* (Princeton, NJ: Princeton University Press, 1968), 135.

[66]HHStA PA XII 467, no. 47.207 (18 December 1917), appended to HHStA PA XII 467, no. 229/P (18 December 1917).

[67]Max Kunke, *Die Kapitulationen der Türkei, deren Aufhebung und die Neuen Deutsch-türkischen Rechtsverträge* (Munich: J. Schweitzer Verlag, 1918), 139.

[68]Ibid., 145.

[69]Trumpener, *Germany and the Ottoman Empire*, 122.

[70]Kieser, *Talaat Pasha*, 333.

[71]Alexander Will, *Kein Griff nach der Weltmacht: Geheime Dienste und Propaganda im deutsch-österreichisch-türkischen Bündnis 1914–1918* (Köln: Böhlau Verlag, 2012), 27.

[72]M. Şükrü Hanioğlu, *A Brief History of the Late Ottoman Empire* (Princeton, NJ: Princeton University Press, 2008), 166; and Fuat Dündar, *Modern Türkiye'nin Şifresi: İttihat ve Terakki'nin Etnisite Mühendisliği (1913–1918)* (Istanbul: İletişim, 2008), 204–7. See also Mehmet Beşikçi, *The Ottoman Mobilization of Manpower in the First World War* (Leiden: Brill, 2012), 59–62.

[73]Lucius Ellsworth Thayer, "Capitulations of the Ottoman Empire and the Question of Their Abrogation as It Affects the United States," *The American Journal of International Law* 17, no. 2 (1923): 228. See also Özsü, "Ottoman Empire," 444.

in to German demands.[74] Pallavicini believed the promulgation of the HAK was guided by goals similar to those underling the abrogation of the capitulations:

> The new marriage law is certainly not to be designated as a favorable operation, since it offends the religious feeling of a large segment of non-Muslims by intervening in purely religious questions; but for its part, it has codified the previously scattered provisions of the marriage law and after the abolition of the Capitulations, it signifies another momentous step in the realization of an important point of the Young Turk program, that of the stripping of all the fetters (*Abstreifens aller Fessel*) which had been imposed upon the empire over time through the privileges of enemies and non-Muslim organizations.[75]

He further thought that Halil Mentese was "likely to have little sympathy for concessions in relation to the new marriage law, which is his pet project (*sein Steckenpferd*)."[76] Pallavicini's appraisal—and his prediction that Halil would fail to address it—demonstrates that even if the Ottomans were willing to make concessions on certain aspects of legal jurisdiction, marriage was an area where compromise was not possible in the quest for legal sovereignty in the context of wartime. Germany, meanwhile, still had ways to exert geopolitical influence on the Ottoman Empire; in September and October 1917, Germany delivered to the Ottomans loans of 50,000,000 and 3,500,000 Ottoman liras respectively, funds critical to the Ottomans' ability to continue to fight in World War 1.[77] The fact that the Ottomans chose to address marriage in the midst of their reliance on German funds as well as the burgeoning disputes in Transcaucasia with Germany[78] reflects the importance that the Ottomans placed on securing sovereignty through the codification of family law and elimination of extraterritoriality.

A June 1918 letter from the German consulate in Adana, nearly seven months after the HAK was passed, further illustrates how the law threatened the Great Powers' ability to intervene in Ottoman domestic affairs, particularly in marriage between Ottoman citizens and noncitizens. Anxiety over such marriages spoke to a broader global concern with marriage across national, ethnic, and religious lines during this period. Will Hanley describes this as "nationality miscegenation" in his study of Ottoman Alexandria, calling attention to British fears over transferring the legal status of European women from "secular" to "religious" law after marriage to an Egyptian man.[79] The consulate suggested to Chancellor von Hertling that it would be desirable "if a general warning to German women could be issued by an official agency in Germany" outlining the potential dangers of "establish[ing] intimate relations with Turks or to marry." Noting the changes in capitulatory agreements between the Ottomans and Germany, the letter argued that "The legal claims derived from this union between Germans and Turks are as good as without protection as soon as the Turk has left Germany." If a complaint did arise, the German consulate would be "almost entirely dependent on the goodwill" of the Turks to try to rectify the matter.[80]

The consulate's letter reflected colonial anxieties concerning sexual relations between Germans and Turks: given "sympathy-propaganda for the Turks during the war, coupled with the moment of exotic stimulation (*mit dem Moment des exotischen Anreizes*), it is of course at least likely that cases of intimate relations with young Turks have increased." Quoting the account of a female German teacher's alleged encounter with a Turkish man named Hilmi, the letter reported:

> Hilmi assured me at the time that no formalities had to be fulfilled when marrying a Turkish citizen. The promise to live life together in love and faithfulness is considered the conclusion of a marriage. He said, 'I have to go to jail if I leave you; I give my word, I am a civil servant and must not lie (!!)'[81]

[74]Trumpener, *Germany and the Ottoman Empire,* 129.
[75]HHStA PA XII 467, no. 94/B (17 November 1917).
[76]HHStA PA XII 467, no. 6 (19 January 1918).
[77]Trumpener, *Germany and the Ottoman Empire*, 271–84
[78]See ibid., chapter VI.
[79]Will Hanley, *Identifying with Nationality: Europeans, Ottomans, and Egyptians in Alexandria* (New York: Columbia University Press, 2017), 143–47.
[80]Politisches Archiv des Auswärtigen Amts, Berlin (hereafter PAAA) Konstantinopel 289/R4146 (25 June 1918).
[81]Ibid.

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The letter again called for a general warning to German women, suggesting that "if it were firmly emphasized that when marrying a Muslim, they were the losing party in all circumstances, even the most favorable ones, this would create a protective barrier against Turkish advances."[82] If the German consulate report is to be believed, Hilmi's inaccurate portrayal of the legal ramifications of separation speaks to the lack of knowledge about the provisions of the HAK among Ottoman Turks, even though the law had been published in various periodicals. The (likely) exaggeration of the report, however, reflects the urgency with which German officials viewed the erosion of their extraterritorial rights and the ability of consulates to intervene on their citizens' behalf. It further speaks to sexual anxieties of the time; the German consulate in Adana viewed consular authority as a vehicle for controlling sexual relations of German women with foreign men. The corrosion of consular authority under the HAK, in this view, was so dangerous because it placed German women's legal and sexual status squarely under an Ottoman purview.

Annihilating Sacraments: The Secularization of Family Law

Family law had remained the last bastion of religious legal authority within an increasingly centralized and secular state system until the promulgation of the HAK. The codification of the empire's civil, criminal, and commercial codes in the 19th century had limited the scope of religious and foreign extraterritorial legal jurisdiction. Therefore, the passage of the HAK in 1917 was a controversial moment that marked a definitive check on the legal power of religious institutions and the exercise of Great Power influence through these institutions on the Ottoman Empire.[83] Halil Menteşe articulated this clearly in his memoirs when he suggested that the commission to create the HAK was imbued with the dual aim of "immediately" reducing the scope of Ottoman shari'a courts as well as the patriarchate's privileges "within the conditions of war."[84] This is a clear indication of the Ottoman state's view of the connection between the Orthodox patriarchate's authority over family law and the threat that this legal authority, as a proxy for foreign interests, posed to Ottoman sovereignty. It is not surprising therefore that the patriarchate launched sharp critiques of the HAK.

From the perspective of the patriarchate, the HAK represented not only the end to the sacrament of marriage as it had been practiced for centuries, but an end to the religious identity of the community. The patriarchate argued in a memorandum that "the nation will be uselessly troubled by the absence of the religion of their fathers, that in which they were born and raised, exposed to the annihilation of one of its sacraments."[85] Certainly, the civil structure proposed by the HAK and other reforms geared towards centralization and the imposition of civil law suggested a fundamental shift in the political role of religious authorities in the empire. The disconnect between discourses of religious sovereignty and territorial nationalism points to the central contradiction of trying to forge a sovereign "nation" from a diverse, decentralized, and pluralistic empire.

The reaction to the passage of the HAK from European protégés in the empire and Ottoman non-Muslims was clear evidence of the unsettled nature of the expanse of Ottoman legal jurisdiction. Reactions from these groups point to the conclusion that the HAK was viewed as a serious threat to clerical privilege insofar as it was buttressed by European political might and the historical religious independence of non-Muslims that the Great Powers protected in the empire. Reactions to the HAK emphasized its assault on religious tradition and authority, but the law's regulations incorporated extensive religion-specific mandates, preserving distinctions between Islam, Judaism, and Christianity on key points of family law. We might speculate therefore that the real issue at stake was the loss of the patriarchate's position as an intermediary between Ottoman Christians and the Ottoman state. For example,

[82]Ibid.

[83]Berkes, *The Development of Secularism*, 417–18. The HAK is exemplary of how shari`a law has historically been dynamic in its response to contemporary social, political, and economic issues; but its significance as a code has been overstated. Historical iterations of shari`a law are all codes unto themselves; the HAK marks a turning point into greater legal stagnation on issues of family law than had been witnessed up to the point of its passage.

[84]*Halil Menteşe'nin Anıları*, ed. İsmail Arar (Istanbul: Hürriyet Vakfı Yayınları, 1986), 227.

[85]Supplement to HHStA PA XII 467, no. 6 (19 January 1918), "Takrir et Memorandum du Patriarcat Oecumeénique relatifs à la question des mariages."

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the age of consent for marriage was set generally at seventeen for women and eighteen for men, but Christians needed to be twenty and twenty-two respectively, and even then could marry only with the consent of a guardian.[86] Separate sections dedicated to religion-specific requirements for marriageability and divorce applied to Christians and Jews.[87] Articles 40 through 44 were also specific to Christians. Article 40 stipulated that "the marriage of Christians must take place in accordance with religious rituals conducted by a spiritual representative."[88] Furthermore, the law stated that conditions specific to Islamic law, such as the principle of economic parity (*kefāet)* between spouses and dowry regulations, were not applicable to non-Muslims.[89]

The stipulation that Christians must marry in the presence of a spiritual leader seems to have reinforced the role of the church in Christian marriages. The patriarch emphasized guarantees for religious freedom in the Tanzimat reforms and the 1908 constitution, but did not mention the principle of equal citizenship. What the HAK appears to have done is to guarantee religious freedom while removing the church and other religious leaders from their traditional intermediary position as gatekeeper to the central state. The Ottomans cast themselves as protectors of Ottoman religious minorities through the HAK, while condemning the fragmented nature of religious marriage laws; non-Muslims, the Ottoman justificatory memorandum explained, were subjected to laws on marriage and divorce that were "not based upon firm and well-known regulations" and faced "subjective and arbitrary judgments" in cases dealing with these matters, constituting "an urgent need for which even a day's delay is improper."[90] The status quo, moreover, would "essentially run counter to the constitution and to the principle of justice applied for a long time by the Ottoman government."[91] The HAK somewhat backhandedly defined the proper role of the clergy as purely religious: "By means of saving [religious leaders] from preoccupation with such matters, for which there is henceforth no need, they are given the opportunity to be able to devote themselves to their religious duties even more."[92] And, indeed, article 156 drew particular acrimony from Pallavinici, as it transferred the purview of marriage, divorce, and spousal maintenance cases to qadi courts.[93] This further endowed the state and its agents with greater authority over the financial status of those living inside the empire.

Austro-Hungarian observers believed that the HAK would face challenges in its application throughout the empire. Following the passage of the law, the Austro-Hungarian vice-consul in Izmir reported in January 1918 that the local Catholic church would "wholly ignore" the new marriage law.[94] The Orthodox patriarchate's memorandum stated that, "Marriage is a purely religious sacrament completely separate from the state. This is why no one has ever attempted to intervene in a religious institution that is incumbent only upon bishops."[95] The patriarch went on to cite legal precedent dating back to the fall of the Byzantine Empire and the religious freedoms guaranteed under the Tanzimat as evidence for the HAK's transgression of Orthodox privileges. The official Ottoman justificatory memorandum cited ancient laws in defense of the HAK, suggesting that "the oldest Roman laws" on marriage served both civil and ecclesiastical functions, and that the Christian notion that marriages must be performed in the presence of a priest was only added after Christian expansion.[96] The patriarch even appears to have acknowledged that the freedoms granted to religious communities in the empire had amounted to an extra-imperial legal status for these groups. The patriarch quoted former grand vizier `Ali Pasha to drive home his point: "The Patriarchs encompass a variety of civil and religious rights to

[86]II. Tertip Düstur, Cilt 9 (25 Teşrinievvel 1333/25 October 1917), 763.

[87]For regulations specific to Jews, see articles 20–26 in II. Tertip Düstur, Cilt 9 (25 Teşrinievvel 1333/25 October 1917), 764–65 and for Christians, see articles 27–32 in ibid., 765. On divorce policies specific to Jews, see articles 59–62 in ibid., 769 and to Christians see articles 63–68 in ibid. and 78–79 in ibid., 771.

[88]Ibid., 766.

[89]On *kefāet* see articles 45–51 in ibid., 767–8. For dowry, see articles 80–91 in ibid., 771–72.

[90]*Esbab-ı Mucibe Lāyihası*, in Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü*, 18.

[91]*Esbab-ı Mucibe Lāyihası*, in ibid., 21.

[92]Ibid. On the role of secularism in framing clerical involvement in family life, see chapter 4 in Mahmood, *Religious Difference.*

[93]HHStA PA XII/467, no. 94/B (17 November 1917).

[94]HHStA PA XII 467, no. 1 (12 January 1918).

[95]Supplement to HHStA PA XII 467, no. 6 (19 January 1918), "Takrir et Memorandum du Patriarcat Oecumeénique relatifs aà la question des mariages."

[96]*Esbab-ı Mucibe Lāyihası*, in Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü*, 19.

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such an extent that one can truly say that (beyond the state) Christians are administered by an authority that is Christian rather than Muslim."[97] This statement is significant in its emphasis on the extraterritorial legal role held by religious institutions in the Ottoman Empire up until the passage of the HAK. Citing premodern legal precedents and Tanzimat-era declarations of religious equality, the patriarch's memorandum demonstrates a singular concern with the preservation of Orthodox political and religious sovereignty, without reference to the struggle for Ottoman territorial sovereignty vis-à-vis Europe.

With respect to Ottoman Jews, according to Pallavicini the grand rabbi of Istanbul argued that the HAK "upsets the existing social and religious order of Jewry," as he believed that the HAK did not introduce the type of civil marriage that could stand alongside marriages purely religious in nature.[98] The Ottomans, however, dismissed the notion that Jewish religious authorities had any role in marriage proceedings, asserting that "in the eyes of Jews too, in the course of a marriage spiritual authorities do not have duties that could be considered part of the laws of concluding [a marriage]."[99] Although observers both inside and outside the empire drew upon different vocabularies to critique the HAK, their foremost concern was arguing for the retention of their own political authority via legal autonomy, particularly in the area of family law.

Meanwhile, the Vatican critiqued the passage of the law for its undermining of the Catholic church's power in the Ottoman Empire, of which control over marriage was a foundational component. Cardinal Dolci, acting as a representative of the Catholic papacy, urged both the Austro-Hungarian and German delegations in Istanbul to oppose the marriage law. Roman Catholics were a relatively small non-Muslim group in the Ottoman Empire and never formed a *millet* comparable to Orthodox Greeks or Gregorian Armenians. Catholic religious rites were performed in missionary churches protected by Austro-Hungarian or French capitulations.[100] The fact that Roman Catholic religious practice in the Ottoman Empire was historically protected in part by capitulations granted to the Austro-Hungarian Empire may explain why Dolci, who lacked standing to challenge the HAK by himself, chose to lobby the Austro-Hungarians. Pallavicini informed Czernin that the HAK "does not speak of the Ottoman Catholics at all, which signifies a disregard for them," and "that the same [law] assigns the decision on the validity of a Catholic marriage concluded in the church to a secular authority, or alternatively, permits the separation of a Catholic marriage; both are absolutely unacceptable from the ecclesiastical point of view."[101]

In addition to his criticism of article 156 of the HAK, which stipulated the abolition of non-Muslim religious leaders' involvement in matters related to spousal maintenance and dowries, Pallavicini further rebuked article 43, which stated, "The authorized religious representative who is to perform the marriage should post a notice at the local court no less than twenty-four hours beforehand. Within an appropriate amount of time, the judge, together with an esteemed designated official, should record the concluded marriage in the designated register and forward it to the Marriage Council."[102] Transferring the conclusions and registrations of marriages into a secular entity provoked the ire of Christian leaders in Europe, as the HAK's provisions were seen as an unacceptable intrusion into a religious sacrament.

The Ottoman government's attitude toward the Vatican had already taken a negative turn after Italy joined the Allies, as the Porte considered the Vatican an ally of the Italian government. Dolci had also engaged in prior disputes on behalf of the Vatican with the Ottoman government over the fate of Vatican-owned property in Jerusalem.[103] In December 1917, the German ambassador noted, "This matter has been bothering me for weeks, as Msgr. Dolci overwhelmed me with requests to help him in his

[97]Supplement to HHStA PA XII 467, no. 6 (19 January 1918), "Takrir et Memorandum du Patriarcat Oecumeénique relatifs aà la question des mariages."

[98]HHStA PA XII 467, no. 6 (19 January 1918).

[99]*Esbab-ı Mucibe Lāyihası*, in Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü*, 20.

[100]Zandi-Sayek, *Ottoman Izmir*, 160.

[101]HHStA PA XII 467, no. 94/C (17 November 1917).

[102]II. Tertip Düstur, Cilt 9 (25 Teşrinievvel 1333/25 October 1917), 767. Pallavicini's critique can be found in HHStA PA XII/467, no. 94/B (17 November 1917).

[103]Roberto Mazza, "Churches at War: The Impact of the First World War on the Christian Institutions of Jerusalem, 1914–20," *Middle Eastern Studies* 45, no. 2 (2009): 216–22. The Vatican was not an independent state until 1929, but worked alongside and through the Great Powers towards its political aims.

efforts. The matter is of interest to us in that a conflict between the Vatican and the local [Ottoman] government at the present moment would be undesirable."[104] Dolci was not the only Vatican official to lodge complaints with Ottoman allies; the Archbishop of Sardinia also requested that the German embassy intervene to prevent performance of a Catholic marriage by an Ottoman civil official.[105]

The Vatican and the Ottomans' German and Austro-Hungarian allies alike recognized, however, that criticisms of the marriage law would be difficult to justify. Pallavicini's attitudes toward the CUP government rang loud and clear when he argued that "it cannot be in our interest to provoke such an impression on the Turkish people's well-known distrustful character, and in my opinion it would be to the detriment of the matter itself."[106] By 1917, the Ottomans were increasingly concerned with the extent to which Austria-Hungary was willing to restrict Ottoman territorial gains through the war, and, as his comments indicate, Pallavicini shared a mutual suspicion toward the Ottomans in his reactions to the HAK.[107] Dolci suggested to Pallavicini that because he believed the Ottomans had taken the German marriage law as a model for the HAK, it would be difficult to claim that the Ottoman government should be subjected to "recriminations" when the same law was accepted in Germany.[108] Halil Bey, serving at the time as the Ottoman justice minister, was evidently keen on this line of argument. Pallavicini believed Halil would support "the idea that the law in question could be revised in the sense of compulsory civil marriage, as in Germany, so that the ecclesiastical part of the question would be completely separated from the purely civil one."[109] The Ottoman justificatory memorandum also noted the similarities between the HAK and laws in Europe:

> Among the Western states that have codified their civil law, there are none that have granted jurisdiction to the ecclesiastical courts in this matter, and even in states that have no codified law, the jurisdiction granted to the ecclesiastical courts is within quite a narrow scope and is with the condition that judgments of these courts require the confirmation of local courts.[110]

The Ottoman Empire's passage of a civil family law underscores its self-image as an equal player in larger European efforts toward state modernization, centralization, and reform. As was the case with the Germans, Pallavicini sought to avoid a conflict between Istanbul and the Vatican and believed that his further involvement would only complicate matters: "The law apparently concerns only the Ottoman Catholics alone, which is why a political step (*Demarche*) on my part would be considered by the local government to be interference in Turkey's internal affairs" and that "in my opinion, it would be best to settle the matter directly between Rome and the Porte." Intervention on his part would give the impression "that we [Austria-Hungary] seek the protectorate over the Catholics."[111] Pallavicini's reluctance to intervene in Ottoman affairs illustrates the delicate line that the Great Powers needed to toe in attempts to maintain their privileges after the adoption of the HAK and the effectiveness of the HAK as a tool of foreign policy.

Conclusion

The day after the Ottoman government informed the international community of the unilateral decision to abrogate the capitulations—10 September 1914—was recognized as a day of celebration. It was considered as important as Constitution Day, observed on 23 July, which celebrated fulfillment of the promises of the 1908 constitutional revolution.[112] Indeed, contemporary and scholarly accounts alike emphasize the psychological effect that the Ottoman declaration had on the population. Cavit Bey, the

[104]PAAA Konstantinopel 289/R7030 (8 December 1917).
[105]PAAA Konstantinopel 289/R2595 (2 December 1917).
[106]HHStA PA XII 467, no. 94/C (17 November 1917).
[107]Trumpener, *Germany and the Ottoman Empire*, 163.
[108]HHStA PA XII 467, no. 105 (22 December 1917).
[109]HHStA PA XII 467, no. 6 (19 January 1918).
[110]*Esbab-ı Mucibe Lāyihası*, in Ansay, *Medeni Kanunumuzun 25 inci Yıldönümü*, 21.
[111]HHStA PA XII 467, no. 94/C (17 November 1917).
[112]Ahmad, "Ottoman Perceptions," 18.

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Ottoman finance minister, viewed the capitulations as having a "devastating and ruthless" character.[113] The memoir of one soldier described the abrogation of the capitulations as the lifting of a "great calamity."[114] Hüseyin Cahit, editor of the CUP organ *Tanin*, declared in the 10 September edition of the newspaper that the empire had been "freed" from the capitulations, which had "daily stained anew the honour and dignity of Ottomanism and that weighed us down so that we could scarcely breathe."[115] These depictions of the significance of the end to the capitulations went beyond propaganda. As we have argued above, during World War 1, the elimination of extraterritorial legal rights was central to the Ottoman quest for sovereignty that drove the empire's decision to participate in the war. As one contemporary editorial described it, "There can be no doubt that extraterritorial rights interfere with sovereignty, or at least with its unhindered exercise; that they are to be considered as marking a stage of transition to the full exercise of sovereignty."[116]

In this article, we have placed the HAK within its broader context of Great Power geopolitics and conflicts of the late Ottoman Empire and suggested that the law's passage in the midst of the First World War provides clues to its significance as a piece of legislation with serious implications for the empire's domestic and foreign affairs. This reimagination of the HAK lays the groundwork for an alternative interpretation of Istanbul's role in the wartime transformation of Europe, one that situates it as a hub of policymaking whose actions had implications for all of Europe. Family law, which had remained in the purview of religious authorities up until the middle of the war, remained an area in which Great Power legal extraterritoriality could be exercised. As such, the elimination of this venue for external intervention with passage of the HAK was both a landmark moment in the codification of Islamic family law and a final, significant moment in the abrogation of the capitulations. The HAK, at its core, was intended to reinforce Ottoman sovereignty in the midst of a world war, and its significance must therefore be understood in the broader context of the Ottoman internal and external struggle for sovereignty. Furthermore, the function of the HAK in this context draws attention to the intimate connection between family law and the statecraft of sovereignty. We view this study as an initial step in efforts to conceptualize issues often relegated to the "private" realm as central to the high politics and broader social history of World War 1 in the Ottoman Empire.

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[113]Elmacı, *İttihat Terakki ve Kapitülasyonlar*, 47.

[114]İbrahim Arıkan, *Osmanlı Ordusunda bir Nefer: Bir Mehmetçiğin Çanakkale-Galiçya-Filistin Cephesi Anıları* (Istanbul: Timaş, 2010), 21.

[115]Quoted in Ahmad, "Ottoman Perceptions," 18.

[116]"The Attempt of Turkey to Abrogate the Capitulations," *American Journal of International Law* 8, no. 4 (Oct. 1914): 873.

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