BETWEEN THE *ḳĀNŪN* OF QĀYTBĀY AND OTTOMAN *YASAQ*: A NOTE ON THE OTTOMANS' DYNASTIC LAW

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This article is an attempt to examine some understudied dimensions of Ottoman dynastic law (*ḳānūn*) against the backdrop of the Ottomans' conquest of the Arab lands in 1516–17 and the incorporation of this new territory into their empire.[1] To this end, I focus on two discourses that accompanied the Ottoman conquest of Syria and Egypt and that cast light on the nature of Ottoman dynastic law: the first is the Ottomans' recurring reference, in the decades following the conquest, to the *ḳānūn* (and, at times, *ḳānūnnāme*) of

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[1] Many aspects of this conquest have been studied in detail over the years; see, for example, Muhammad Adnan Bakhit, *The Ottoman Province of Damascus in the Sixteenth Century* (Beirut: Librarie du Liban, 1982); Doris Behrens-Abouseif, *Egypt's Adjustment to Ottoman Rule: Institutions,* Waqf*, and Architecture in Cairo, 16th and 17th Centuries* (Leiden: Brill, 1994); Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003); Astrid Meier, 'Perceptions of a New Era? Historical Writing in Early Ottoman Damascus', *Arabica*, 51/ 4 (2004): 419–34; Benjamin Lellouch*, Les Ottomans en Égypte: Historiens et conquérants au XVIe siècle* (Paris: Peeters, 2006); Timothy J. Fitzgerald, 'Ottoman Methods of Conquest: Legal Imperialism and the City of Aleppo, 1480–1570' (PhD diss., Harvard University, 2009); Reem Meshal, 'Antagonistic Sharīᶜas and the Construction of Orthodoxy in Sixteenth-Century Ottoman Cairo', *Journal of Islamic Studies*, 21/ 2 (2010): 183–212.

the late fifteenth-century Mamluk sultan Qāytbāy (r. 1468–96);[2] the second is the denunciation by Arab observers, most of them jurists, of the new Ottoman administrative regulations as *yasaq* (or *yasa*), a highly charged, fairly negative term in the Mamluk context that alludes, at least in part, to the legislation of Chinggis Khān and his successors.[3] Each of these discourses reflects a set of sensibilities—the former those of the conquerors, and the latter those of the conquered. The Ottoman conquest and annexation of the Arab lands brought these sensibilities to the surface and into a more intense dialogue.

In recent years there has been a renewed interest in the role that legal actors who were not necessarily members of the learned circles, and particularly the sovereign (namely, the sultan), played in the

[2] Several studies have noticed the Ottoman reference to the *ḳānūn* of Qāytbāy. See, for example, Halil İnalcık, art. 'Ḳānūnnāme', *EI²*; Behrens-Abouseif, *Egypt's Adjustment*, 35–45; Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford, CA: Stanford University Press, 1997), 44; Meshal, 'Antagonistic Sharīᶜas', 192–3. It is worth pointing out that some scholars, like İnalcık, believe that there was indeed a *ḳānūn* of Qāytbāy, while others, like Behrens-Abouseif, argue that such a *ḳānūn* never existed.

[3] On the response of the Arab jurists, see Bakhit, *The Ottoman Province of Damascus*, 125; Behrens-Abouseif, *Egypt's Adjustment*, 74–6; Michael Winter, 'Ottoman Qāḍīs in Damascus in 16th–18th Centuries' in Ron Shaham (ed.), *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish* (Leiden: Brill, 2007), 89–90; Abdul-Karim Rafeq, 'The Syrian *ᶜUlamāᵓ*, Ottoman Law, and Islamic *Sharīᶜa*', *Turcica*, 26 (1994): 9–32; idem., 'The Opposition of the Azhar *ᶜUlamāᵓ* to Ottoman Laws and Its Significance in the History of Ottoman Egypt' in Brigitte Marino (ed.), *Études sur les Villes du Proche-Orient XVIe–XIXe siècle: Hommage à André Raymond* (Damascus: Institut Français d'Études Arabes de Damas, 2001): 43–54; Meshal, 'Antagonistic Sharīᶜas', 183–212.

administration of law in the Mamluk and Ottoman contexts.[4] This article joins this growing literature by concentrating on the relations between several key concepts: *ḳānūn*, *yasa* (or *yasaq*/*yasağ*), and *siyāsa*. Commonly, all three concepts were treated as separate from, and in some cases contrasted with, the law that was formulated by the jurists (Sharīᶜa or *fiqh*). In any case, the concepts represent in modern scholarship 'policy-based' intervention in the administration of law. By looking at the changing relationship between these concepts during the transition from Mamluk to Ottoman rule in Syria and Egypt, I hope to emphasize some important dimensions of these terms that have not received, to my mind, sufficient attention in modern historiography. I argue that in the context of the fifteenth and sixteenth centuries (and possibly in earlier and later centuries as well), *ḳānūn* and *yasa* on the one hand and *siyāsa* on the other represented different forms of sultanic, or 'policy-based', legislation. Furthermore, I hope to demonstrate that the Ottoman *siyāset* was markedly different discursively and institutionally from the Mamluk *siyāsa*.

My main argument is that the different sixteenth-century sensibilities stem from different understandings of the sultanate, the dynasty, and the role of the sultan as legislator. More specifically, the difference, I suggest, is rooted in the legal claims that post-Mongol dynasties, including the Ottomans, made. These claims were radically different from those made by earlier Islamic rulers and

[4] See, for example, Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2011); Yossef Rapoport, 'Royal Justice and Religious Law: Siyāsah and Sharīᶜah under the Mamluks', *Mamluk Studies Review*, 16 (2012): 71–102; James E. Baldwin, 'Islamic Law in an Ottoman Context: Resolving Disputes in Late 17th/Early 18th-Century Cairo' (PhD diss., New York University, 2010).

sovereigns, as they were based on a relatively new independent source of authority—the post-Mongol dynasty. But beyond the rhetorical emphasis on the dynasty's ancestral origin, the rise of Ottoman (and, more generally, post-Mongol) dynastic law ushered in a new relationship between the Ottoman dynasty and different fields of law and earlier legal discourses, such as *fiqh* and *siyāsa*.[5] Hussein Agrama's explanation of the legal dimension of the sovereignty of the modern Egyptian state as an act of 'drawing the lines' between legal and religious spheres and legal discourses is particularly illuminating for understanding the role of *ḳānūn* in the Ottoman notion of sovereignty: 'Th[e] sovereign power of decision is, and has been, an expression of the state's sovereign powers. This sovereign power of decision, in turn, is typically vested in state legal authority and the structures of the rule of law.'[6] In the following pages, I investigate how the Ottoman *ḳānūn*, as a practice of sovereignty that enabled the Ottoman dynasty to 'draw the lines', differed doctrinally from earlier, and specifically Mamluk, forms of sultanic legislation.

One of the important ramifications of the new relationship between the dynasty and the different fields of law in the post-Mongol period is a radical change in the relationship between the ruling dynasty and the jurists. This change is key to understanding the opposition of many jurists from the Arab lands to Ottoman dynastic law and the manner in which they framed this opposition. Their rejection of the new sovereign's legislation and claims is

[5] Guy Burak, 'The Second Formation of Islamic Law: The Post-Mongol Context of the Ottoman Adoption of a School of Law', *Comparative Studies in Society and History*, 55/3 (2013): 579–602.

[6] Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago, IL: University of Chicago Press, 2012), 226.

especially noteworthy, as many late Mamluk jurists did not categorically deny the permissibility of the sultan's adjudication and issuance of regulations and rules (although some of their colleagues clearly did).[7]

YASA, *SIYĀSA*, *ḲĀNŪN*: INTRODUCTORY COMMENTS

Before we turn to our discussion, it would be useful to briefly set the historiographical and historical scene for the sixteenth-century encounter between the Ottoman and Mamluk legal worldviews by saying a few words about *siyāsa* and *yasa* in the historiography of the Mamluk sultanate and another few about the Ottoman *ḳānūn*.

The nature of *siyāsa* in the late Mamluk sultanate has been the focus of several recent studies. In her study of the office of the *muḥtasib* (the market inspector) in Mamluk Cairo, Kristen Stilt has defined *siyāsa* as the sultan's authority to issue laws and regulations not explicitly addressed by the jurists in order to serve the needs of the public. These 'policy-based orders', Stilt has rightly stressed, should not be categorically contrasted with the law of the jurists (Sharīᶜa or *fiqh*).[8] More recently, Yossef Rapoport has further historicized the relationship between the *siyāsa* and Sharīᶜa over the course of the Mamluk period, and has traced in particular the rise during the fourteenth and fifteenth centuries of *siyāsa*-based legal institutions (*siyāsa* courts), which acquired jurisdiction over cases 'that had little direct effect on public policy, such as reclamation of debts and matrimonial cases'.[9] Of particular relevance for our purpose here, Rapoport has demonstrated how in the late fifteenth century, during the reigns of Qāytbāy and Qānṣūh al-Ghawrī (r. 1501–16), sultans intervened in disputes between jurists and even

[7] Rapoport, 'Royal Justice and Religious Law'.

[8] Stilt, *Islamic Law in Action*, 30–3.

[9] Rapoport, 'Royal Justice and Religious Law', 75.

considered themselves the interpreters—not only the enforcers—of Islamic law. Furthermore, Rapoport's study reveals the wide range of different jurists' interpretations of the relationship between *siyāsa* and Sharīᶜa: while some jurists (as well as some state officials) argued that the *siyāsa* and Sharīᶜa were inherently compatible, others argued that they were compatible only under certain circumstances, or were completely incompatible.[10]

Among the latter were those jurists who argued that *siyāsa* is a Mamluk version of, or at least is influenced by, the *yasa* of Chinggis Khān. The long discussion among scholars in the field of what David Morgan aptly calls '*yasa* studies', which is concerned with the nature of the *yasa* of Chinggis Khān (to the extent that such a *yasa* indeed existed), should not detain us here. Suffice it to say that the *yasa* of Chinggis Khān was apparently a corpus of customs, rules, and administrative practices attributed to Chinggis Khān.[11] This corpus apparently changed over the centuries, but the Khān's descendants continued to legitimize it by referring to the fundamental role of their ancestor as legislator. As to the impact the *yasa* of Chinggis Khān and other Mongol legal practices had in the Mamluk realms, David Ayalon has shown in his classic study that, in all likelihood, there was no *positive* impact of the *yasa* on the Mamluk *siyāsa* in particular or on the Mamluk state administration in general. Nevertheless, as Ayalon himself pointed out, several fourteenth- and fifteenth-century Mamluk chroniclers, such as Khalīl b. Aybak al-Ṣafadī (d. 1363), Aḥmad b. ᶜAlī al-Maqrīzī (d. 1442), and Aḥmad b. Muḥammad Ibn. ᶜArabshāh (d. 1450), accused Mamluk amirs of

[10] Ibid.

[11] David Morgan, 'The "Great Yasa of Chinggis Khan" Revisited' in Reuven Amitai and Michal Biran (eds.), *Mongols, Turks, and Others: Eurasian Nomads and the Sedentary World* (Leiden: Brill, 2005), 307. In this article, Morgan surveys the different views on these issues.

following the *yasa* of Chinggis Khān or considered certain Mamluk practices as *yasa*-inspired.[12] Ayalon discarded the factual content of these accusations, and explained:

> The *yāsa* and other Mongol customs and institutions must have been losing ground in the territories governed directly by the Mongols. How much more so outside these territories. The mention of the *yāsa* in any context (including the purely Mongol context) steadily declines in the Mamluk chronicles, until it completely disappears long before the end of the Mamluk rule.[13]

I shall return to some other aspects of Ayalon's argument in the third section of this article. At this point, I am mostly interested in highlighting that Ayalon completely disregarded the fact that the Mamluk chronicles he consulted were also (or, perhaps, mainly) voicing their discontent with certain administrative-legal practices, and, perhaps, with certain claims made by state officials. Further, the '*yasa* anxiety' of different Mamluk authors echoed and responded to the legal claims that post-Mongol dynasts throughout the eastern Islamic lands were advancing over the course of the fourteenth and the fifteenth centuries. In other words, regardless of the historical accuracy of the Mamluk chroniclers' accounts, it seems necessary to pay attention to when, why, and against whom the '*yasa* argument' is raised. Paying attention to these issues is important because it casts light on the negative role the *yasa* (however it was defined) played in shaping *siyāsa*—that is, on the way that *yasa* was used to describe

[12] David Ayalon, 'The Great Yāsa of Chingiz Khān: A Reexamination (Parts A–C2)' *Studia Islamica*, 33 (1971): 97–140; 34 (1971): 151–80; 36 (1972): 113–58; 38 (1973): 107–156.

[13] Ayalon, 'The Great Yāsa of Chingiz Khān: A Reexamination (Part C2)', 141.

what *siyāsa* should not be. Moreover, it can shed light on the ways in which *yasa* was perceived during the Mamluk period and during the first decades of Ottoman presence in the Arab lands.

Like other post-Mongol dynastic laws, Ottoman dynastic law, *ḳānūn*, bore certain similarities to the Chingissid *yasa*. It was a set of edicts, regulations, and practices, parts of which were written down, codified, and promulgated in the form of codes (*ḳānūnnāme*s). Other elements of Ottoman dynastic law, it appears, were not fully codified.[14] Regardless, the Ottoman legal corpus and practices were associated with, and drew their legitimacy from, the Ottoman sultan and, more generally, the Ottoman dynasty (hence I refer to it throughout this article as dynastic law). Accordingly, some of the edicts and practices were issued in the name of a specific sultan, while others were labeled the 'Ottoman *ḳānūn*' (*Ḳānūn-i Osmānī* or

[14] On *ḳānūn*, see Halil İnalcık, 'Ḳānūnnāme'; Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973); Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Âli (1541–1600)* (Princeton, NJ: Princeton University Press, 1986), 191–200; Imber, *Ebu's-Su'ud*; F. Babinger, art. 'Nishāndjī', *EI*^{2}; Molly Greene, *A Shared World: Christians and Muslims in the Early Modern Mediterranean* (Princeton, NJ: Princeton University Press, 2000), 27–32; Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500–1900* (Berkeley, CA: University of California Press, 2006), 50; Snjezana Buzov, 'The Lawgiver and His Lawmakers: The Role of Legal Discourse in the Change of Ottoman Imperial Culture' (PhD diss., University of Chicago, 2005); Timothy J. Fitzgerald, 'Ottoman Methods of Conquest, 188–95; Başak Tuğ, 'Politics of Honor: The Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia' (PhD diss., New York University, 2009), 40–96.

Ḳānūnnāme-i Āl-i Osmān).[15] As will be further discussed below, due to its association with the Ottoman dynasty, *ḳānūn* and its implementation were markers of Ottoman sovereignty. Lastly, Ottoman dynastic law was a product of the dialogue the Ottoman dynasty maintained with the Chinggisid legal and political legacy, as is suggested by the fact that Ottoman sources at times referred to Ottoman dynastic law as *yasağ*.[16] But as opposed to the Mamluk sultanate, where *yasa* (or *yasak/yasaq*) was considered by and large negatively, in the Ottoman domains the concept did not carry such negative connotations.

The Ottoman understanding of *ḳānūn* is different from the Mamluk perception of the term (which I refer to as *qānūn*).[17] Before we turn to sixteenth-century Ottoman Syria and Egypt, it would therefore be helpful to outline in fairly broad strokes how the term *qānūn* was employed in Arabic sources from the Mamluk sultanate.[18] Since this article's geographical and chronological focus is the sixteenth-century Arab Middle East, I pay closer attention here to the pre-Ottoman, Mamluk use of the term *qānūn*. Telling the history of the developments outlined in this article from a more Anatolian

[15] Consider, for example, two quite famous compilations: Ayn-i Ali Efendi, *Ḳanunname-i Âl-i Osman* (Ankara: Resimli Posta Matbaası LTD Şirketi, 1962) and Hezârfen Hüseyin Efendi's *Telhîsü'l-beyân fî Kavânîn-i Âl-i Osmân* (Ankara: Türk Tarih Kurumu, 1998).

[16] Burak, 'The Second Formation of Islamic Law'.

[17] Both *ḳānūn* and *qānūn* are spelled exactly the same in Arabic and Ottoman Turkish. The difference in transliteration reflects the various contexts in which the term circulated and the different meanings that were attached to the term in these contexts.

[18] This is not, of course, an exhaustive philological inquiry into the history of this concept, a history that may begin with the adoption/translation of the term from Greek sources in late antiquity.

perspective may shed light on the factors that led the Ottoman dynasty and its ruling elite to adopt the Arabic term *qānūn* and apply it to Ottoman dynastic law. Although this article tangentially touches on this issue, it clearly deserves an independent study. In any case, the multiple trajectories of the word *qānūn* between the Arab Middle East and Anatolia in the fourteenth and fifteenth centuries necessitate paying closer attention to the subtleties in the ways the concept was employed in different contexts.

The Mamluk sources, for the most part, use the word *qānūn* to denote a principle, standard, or common practice. The fourteenth-century lexicographer Ibn Manẓūr (d. 1311 or 12) explains: 'The *qānūn* of any thing is its manner [*ṭarīquhu*] and its scale [*miqyāsuhu*]'. Slightly later he adds: 'The *qānūn*s [*qawānīn*] are the principles [*uṣūl*].'[19] The early fourteenth-century encyclopedist Aḥmad al-Nuwayrī (d. 1332?) and the earlier documents and works on which he relied seem to follow Ibn Manẓūr's definition. 'The damage of ignorance is more common than the damage of evil', writes al-Nuwayrī, 'for the principle of evil [*qānūn al-sharr*] is known, whereas the principle of ignorance [*qānūn al-jahl*] is not'. A few volumes later, al-Nuwayrī cites a letter the Mamluk sultan al-Manṣūr wrote to his son, instructing him to follow the Sharīᶜa, 'the principle of truth that one should follow, and the rule that one has to adhere to' (*qānūn al-ḥaqq al-muttabaᶜ wa-nāmūs al-amr al-mustamaᶜ*). In another instance, al-Nuwayrī uses the term *qānūn* to refer to a local practice: in the context of his discussion of the taxation of Egypt, he mentions the '*qānūn* of Egypt' (*qānūn al-diyār*

[19] Muḥammad b. Mukarram Ibn. Manẓūr, *Lisān al-ᶜarab* (Beirut: Dār Ṣādir, 1955–6), xiii. 349–50. (The translations here and hereafter are mine, unless otherwise indicated).

al-Miṣriyya).[20] In several instances, Mamluk authors used the term *qānūn* in the context of a political-administrative practice. For example, in his famous encyclopedic manual for scribes written in the late fourteenth or early fifteenth century, Aḥmad b. ᶜAlī al-Qalqashandī (d. 1418) mentions the 'standards of chancery' (*qawānīn diwān al-inshāᵓ*).[21]

As these examples demonstrate, the Mamluk *qānūn*, unlike the Ottoman *ḳānūn*, is not associated with a written legal code nor carries the meaning of sultanic/dynastic law. At the same time, the Mamluk (and probably earlier) understanding of *qānūn* left enough room for the Ottoman dynasty to adopt and adapt this term to mean the Ottoman way of conduct, or *ḳānūn*.[22] The shift in meaning may seem subtle and perhaps even insignificant, but for many in the sixteenth century, this change turned out to be quite radical.

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[20] Aḥmad b. ᶜAbd al-Wahhāb al-Nuwayrī, *Nihāyat al-arab fī fūnūn al-adab* (Cairo: Dār al-Kutub al-Miṣriyya, 27 vols., 1923–85), vi. 112; viii. 118, 246–7.

[21] Aḥmad b. ᶜAlī al-Qalqashandī, *Ṣubḥ al-aᶜshā fī kitābat al-inshāᶜ* (Cairo: al-Muᵓassasa al-Miṣriyya al-ᶜĀmma li-l-Taᵓlīf wa-l-Tarjuma wa-l-Ṭibaᶜa wa-l-Nashr), i. 101. It is worth pointing out that the term *qānūn* appears in earlier chancery manuals as well. See, for example, the manual penned by the Fatimid scribe Ibn al-Ṣayrafī (d. 1147), *al-Qānūn fī diwān al-rasāᵓil wa-l-ishāra ilā man nāla al-wizāra* (ed. Ayman Fuᵓād Sayyid; Cairo: al-Dār al-Miṣriyya al-Lubnāniyya, 1990).

[22] This change in meaning is similar to the change the term *ᶜurf* underwent in the Ottoman realms. Although it retained, in some contexts, the meaning of customary practice, it also acquired the meaning of an Ottoman imperial/dynastic practice, as the term *ehl-i 'örf* and the title of Meḥmet II's legal code (*Ḳānūnnāme-i sulṭānī ber muceb-i 'Örf-i Osmānī* [eds. Robert Anhegger, Halil İnalcık; Ankara: Türk Tarih Kurumu Basımevi, [1956]) imply.

THE *ḳĀNŪN* OF QĀYTBĀY

In 1519, three years after the provinces came under Ottoman rule, the Ottoman sultan Selīm I (r. 1512–20) issued a legal code (*ḳānūnnāme*) for the Cilician province (*livā*) of Sis and the Syrian province of Tarsus. The code was intended to regulate taxes and other agricultural issues. Interestingly, the title of these codes attribute at least some of these regulations to a legal code (*ḳānūnnāme*) that was issued by the Mamluk sultan Qāytbāy (the full title reads 'On the Declaration of the *Ḳānūnnāme* of Sultan Qāytbāy in the Province of Sis/Tarsus' [*Der Beyân-i Ḳanūnnâme-i Sultan Ḳayıtbay der Livâ-i Sīs/Tarsus*]).[23]

The attribution of a legal code to the glorious Mamluk sultan was quite rare. More common was the reference to his *ḳānūn*, without making clear reference to a written legal code. In 1523, three years after he ascended the throne, Selīm's son, Süleymān (r. 1520–66), issued a legal code for the province (*livā*) of Adana, in which he made reference to the *ḳānūn* of Qāytbāy (*Ḳayıtbay kanûnu*).[24] Similar references were also made in his 1524–25 legal code for Egypt and in his 1548 code for the province (*vilāyet*) of Damascus.[25] In other Ottoman *ḳānūnnāme*s issued during Süleymān's reign,

[23] Ahmed Akgündüz, *Osmanlı kanunnâmeleri ve hukukî tahlilleri* (Istanbul: Fey Vakfı Yayınları, 9 vols., 1990–96), iii. 487–91, 493–5.

[24] Ibid, v. 595.

[25] On the compilation of the *ḳānūnnāme* for Egypt, see Kaya Şahin, *Empire and Power in the Reign of Süleyman: Narrating the Sixteenth-Century Ottoman World* (Cambridge: Cambridge University Press, 2013), 53–9.

certain practices are described as the custom (*ʿādet*) during Qāytbāy's reign.[26]

The reference to Qāytbāy's *ḳānūn* or *ḳānūnnāme*s follows the trend, in the decades following the early sixteenth-century conquest of vast territories in eastern Anatolia, of the new rulers legitimizing certain practices, laws, and regulations by tracing them to the famous Akkoyunlu sultan, Uzun Ḥasan (d. 1478). A contemporary of Qāytbāy and of the Ottoman sultan Meḥmet II, Uzun Ḥasan was the most prominent ruler of the Akkoyunlu dynasty and one of the most eminent Muslim rulers of the time.[27] In the eyes of the Ottoman conquerors of the former Akkoyunlu territories, Uzun Ḥasan was a luminary legislator. Their appreciation is reflected in the titles they gave, during the sixteenth century's second decade, to legal codes for the newly established Ottoman provinces in eastern Anatolia, such as the provinces of Çermin, Çüngüş and Hisaran, Harput, Mardin, and Urfa. The codes repeatedly state that certain laws and regulations are 'in accordance with the *ḳānūn* of Ḥasan Padişāh [Uzun Ḥasan]' (*ber mûceb-i kanun-ı Hasan Padişah*).[28]

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[26] Akgündüz, *Osmanlı kanunnâmeleri*, vi. 110. '*Ve Ḳayıtbay zamanında âdet-i câriye bu vech ile idi ki* . . .'

[27] On Uzun Ḥasan, see John Woods, *The Aqquyunlu. Clan, Confederation, Empire: A Study in 15th/9th Century Turko–Iranian Politics* (Minneapolis, MN: Bibliotheca Islamica, 1976), 99–137.

[28] Akgündüz, *Osmanlı kanunnâmeleri*, iii. 236–8, 259–85. The titles of the *ḳānūnnāme*s for these provinces draw a clear distinction between the Ottoman *ḳānūn* and that of Uzun Ḥasan. The formula (in Persian) reads: 'A detailed description of the *ḳānūnnāme* of the province [of so-and-so] according to the Ottoman *ḳānūn*, and [certain general taxes or the revenues of certain provinces] should be levied according to the *ḳānūn* of Ḥasan Padişah [Uzun Ḥasan] following the choice of the inhabitants of this province and with the approval of [so-and-so] the governor [of the

By ascribing certain laws to the Mamluk sultan, the Ottomans clearly sought legitimacy. It is worth adding that Qāytbāy's fame as a just and competent legislator was not an Ottoman innovation. An anecdote recorded by the late Mamluk Egyptian chronicler Ibn Iyās (d. 1524) suggests that many of their newly incorporated subjects shared this view: on the eve of the Ottomans' catastrophic defeat of the Mamluk armies, during the reign of Qāytbāy's successor Qānṣūh al-Ghawrī, the holy man Shaykh Abū l-Saᶜūd attributed the pending defeat to al-Ghawrī's corrupt and arbitrary policies and laws. To prevent the defeat, he recommended, 'From this day they [the Mamluk ruling elite] would not abuse the masses or treat them unjustly or impose arbitrary measures upon them. They would abolish all al-Ghawrī's oppressive schemes, including the monthly and weekly imposts on shops. The state of affairs prevailing under al-Ashraf Qāytbāy would be restored.'[29]

The view of Qāytbāy as an ideal, just legislator, as in Abū l-Saᶜūd's admonition of al-Ghawrī, stands in contrast to the accusations of corruption and injustice that tainted the Ottoman description of their Mamluk predecessors. The Ottoman imperial codes from the first three decades following the conquest (and even later) used the term 'Circassian' (*çerākise*) to refer to the Mamluks in general; in some cases the term is neutral, but in others the Mamluk laws and practices are described as unlawful innovations (*bid'atlar*) that should be abrogated. For example, in the 1551 legal code for the

province] and the qāḍī of province [so-and-so] in accordance with a sublime edict.' (*ber mûceb-i kanun-ı Ḥasan Padişah şüde bi-ihtiyâr-ı ahâlī-i vilâyet-i mezkûre ve bi-ma'rifet-i . . . mîr-i mîrân ve be kâdî-i . . . ber-mûceb-i hükm-i âlîşân.*)

[29] Translated in Carl F. Petry, *Twilight of Majesty: The Reigns of the Mamlūk Sultans al-Ashrāf* [sic] *Qāytbāy and Qānṣūh al-Ghawrī in Egypt* (Seattle, WA: University of Washington Press, 1993), 231.

province of Ḥimṣ, Süleymān ordered the abrogation (*ref' olunub*) of certain unlawful innovations that were introduced during the late Mamluk (*çerākise*) period.[30]

As to the content of the laws ascribed to Qāytbāy, they were mostly related to commercial and agricultural taxes: in the 1523 *ḳānūnnāme* for the Ottoman province of Egypt (Mısır Eyāleti), fees (*rüsūm*) for the maintenance of the irrigation systems as well as for land measurement (*misāḥat*) were levied according to Qāytbāy's *ḳānūn*, and in Damascus, as late as 1548, the market inspection (*iḥtisāp*) was said to follow the *ḳānūn* of Qāytbāy, as was the administration of the city's horse market.[31] At the same time, however, other issues that were regulated by Ottoman *ḳānūn*, such as criminal issues, were not handled according to the Qāytbāy's *ḳānūn*; for example, in the aforementioned 1519 legal code for the province of Sis—the same legal code that referred to the *ḳānūnnāme* of Qāytbāy—the Ottoman sultan ordered that certain criminal issues be handled according to the 'Old Ottoman *Ḳānūn*' (*Kanûn-i Osmâniye mürâca'at olınub*).[32]

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[30] Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukī Tahlilleri*, v. 680. See also Buzov, 'The Lawgiver and His Lawmakers', 43–4; Meshal, Antagonistic Sharīᶜas', 193.

[31] Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukī Tahlilleri*, vi. 110–11, 125; vii. 1, 27. Sometimes, the term 'Circassian' is more neutral: for instance, the 1559 *ḳānūnnāme* for the province of Malatya concerning taxes on silk and luxury goods (*metâ'*) states that these taxes should be levied according to the old manner (*üslûb-ı sâbıḳ*), which is said to have originated in the Mamluk period (*Çerâkise zamanından ilâ hâze'el-ân*): ibid, vi. 280.

[32] Ibid, iii. 451. This pattern is quite similar to the pattern we have observed in the legal codes from eastern Anatolia, in which the Ottoman *ḳānūn* and that of Uzun Ḥasan coexisted in the same *ḳānūnnāme*.

By the 1550s, Qāytbāy's name, like that of his Akkoyunlu counterpart, disappeared from the Ottoman provincial legal codes.[33] This is not to suggest that the content of the regulations necessarily changed over the course of the incorporation of the new provinces into the empire, although some clearly did. The key point is that they were no longer attributed to pre-Ottoman legislators. The abrogation of Qāytbāy's laws and/or disappearance of his name was gradual, but began in the earliest Ottoman codes for provinces that were part of the former Mamluk sultanate. In the 1523 *ḳānūnnāme* for Egypt, for example, the Ottoman sultan (*emr-i padişāhī*) abrogated certain Mamluk administrative practices.[34] Although it is not always stated why Qāytbāy's regulations were canceled, at least in some cases, as in the 1523 legal code for the southeastern Anatolian province of Adana, the abrogation followed a petition of the recently incorporated subjects.[35]

The abrogation of pre-Ottoman laws, or at least those laws ascribed to eminent pre-Ottoman legislators, marks an important step in the incorporation of the newly conquered provinces into the empire. More generally, the imposition of the Ottoman *ḳānūn* and the abrogation of pre-Ottoman laws were part of Ottoman rituals of sovereignty in the sixteenth century (and also, in all likelihood, in the fifteenth century). The Ottoman chronicler Ḥadīdī, who wrote in the early sixteenth century, roughly at the time of the legal codes that concern us here, repeatedly states in his rhymed chronicle of the Ottoman dynasty that the implementation of the Ottoman *ḳānūn* in a recently conquered province epitomized its conquest. (On the

[33] Ömer Lütfi Barkan, 'Osmanlı Devrinde Akkoyunlu Hükümdarı Uzun Ḥasan Beye Ait Kanunlar', *Tarih Vesikaları*, 2 (1941): 91–106, 184–97.

[34] Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, vi. 125–6.

[35] Ibid, v. 595.

fifteenth-century conquest of the Karamanid territories, he says: 'Let the possessions of Karaman be subjected [to Ottoman rule]/Let the Ottoman *ḳānūn* be formulated/established' [*Karaman mülkini eyle musahhar/Ola kanûn-ı Osmânî muḳarrer*].)[36] Similarly, in his account of the Ottoman conquest of Baghdad in 1535, Naṣūḥü's-Silāḥī relates that the Ottomans abrogated the 'false *ḳānūn*s' (*ḳevânîn-i 'âṭile*) of the heretic Safavids.[37] And in his chronicle of the acts of Sultan Selīm I (his *Selīmnāme*), the sixteenth-century chronicler Celāl-zāde Muṣṭafā (d. 1567) portrays the 'well-ordered Ottoman *ḳānūn*s' (*ḳevānān-i nāẓim-ayin-i ᶜOsmānī*) as a source of order for the emerging bureaucracy, since through these laws the registers of the Arab lands were 'corrected and organized'.[38]

There are similarities between how the Ottomans invoke the *ḳānūn* of Qāytbāy and that of other pre-Ottoman legislators. But there is also a major difference between Qāytbāy and, for example, the Akkoyunlu dynasts: unlike the latter, who employed the term *yasa*, which is closely related to dynastic law, in the fifteenth century,[39] Qāytbāy never issued a *ḳānūnnāme* or even had a *ḳānūn*

[36] Hadîdî, *Tevārih-i Āl-i Osman (1299–1523)* (ed. Necdet Öztürk; Istanbul: Edebiyat Fakültesi Basımevi, 1991), 281. The exact phrase also appears on pages 320 and 327.

[37] Naṣūḥü's-Silāḥī (Maṭrāḳçī), *Beyān-ı menāzil-i sefer-i ᶜIrākeyn-i Sulṭān Süleymān Hān* (ed. Hüseyin G. Yurdayın; Ankara: Türk Tarih Kurumu, 1976), 48b.

[38] Celâl-zâde Mustafa, *Selim-nâme* (eds. Ahmet Uğgur, Mustafa Çuhadar; Istanbul: Millī Eğitim Bakanlığı Yayınları, 1997), 337.

[39] See, for instance, Abā Bakr Ṭihrānī (f. 1423), *Kitāb-i Diyārbakriyya: Tārīkh-i Ḥasan Bīk-i Āq Quyūnlū va aslāf-i ū va ānchah bidān mutaᶜalliq ast az tavārīkh-i Qarāquyūnlū va Chaghātāy* (eds. Necati Lugal, Faruk Sümer; Ankara: Türk Tarih Kurumu, [1962] 1993), ii. 365, 367, 465. On the Akkoyunlu *yasakname*, see Stephen F. Dale, *The Muslim Empires of*

associated with him. It is worth pointing out that Mamluk sources record quite meticulously the edicts and regulations issued by the Mamluk sultans, and the sultanate of Qāytbāy was no exception—his reign is fairly well documented by contemporary chroniclers.[40] Therefore, one may expect that contemporary and later sources would mention the *ḳānūn* of Qāytbāy (or his *ḳānūnnāme*), had he indeed had or issued one. It would also be reasonable to expect to find reference to the *ḳānūn* of Qāytbāy in Arab sources from the years and decades following the conquest. However, this is not the case: the extant accounts of Qāytbāy's reign and of the last decades of the Mamluk sultanate do not use the term *qānūn* in the Ottoman sense of sultanic/dynastic law. Even the edicts that the Ottoman-

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the Ottomans, Safavids, and Mughals (Cambridge: Cambridge University Press, 2010), 82–3.

[40] On Qāytbāy's reign, see, for example, Ḥusayn Ibn. Muḥammad b. al-Shiḥna (d. 1504), *al-Badr al-zāhir fī nuṣrat al-malik al-nāṣir Muḥammad ibn Qāytbāy* (ed. ᶜUmar ᶜAbd al-Salām Tadmurī; Beirut: Dār al-Kitāb al-ᶜArabī, 1983); Muḥammad b. Yaḥyā Ibn al-Jīᶜān (d. 1496), *Kitāb al-Qawl al-mustaẓraf fī safar al-Malik al-Ashraf Qāyitbāy* (Cairo: al-Dār al-Thaqāfiyya li-l-Nashr, 2006), 9–38; Anonymous, *Tārīkh al-Malik al-Ashraf Qāytbāy* (ed. Muḥammad Zaynahum; Cairo: al-Dār al-Thaqāfiyya li-l-Nashr, 2006), 39–117; ᶜAlī b. Dāwud al-Jawharī Ibn al-Ṣayrafī (d. 1495), *Inbāʾ al-haṣr bi-abnāʾ al-ᶜaṣr* (ed. Hasan Habashi; Cairo: Dār al-Fikr al-ᶜArabī, 1970); Ibn Iyās, *Die Chronik des Ibn Ijās* (ed. Mohamed Mustafa *et al.*; Istanbul: In Kommission bei Franz Steiner, 1931–75), vol. 3; Shams al-Dīn Muḥammad b. ᶜAlī Ibn Ṭulūn (d. 1546), *Mufākahat al-khillān fī ḥawādith al-zamān: tārīkh Miṣr wa-l-Shām* (ed. Muḥammad Muṣṭafā; Cairo: al-Muʾassasa al-Miṣriyya al-ᶜĀmma li-l-Taʾlīf wa-l-Tarjama wa-l-Ṭibāᶜa wa-l-Nashr, 1962–4), vol. 1; Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī (d. 1651), *al-Kawākib al-sāʾira bi-aᶜyān al-miʾa al-ᶜāshira* (ed. Jibrāʾīl Sulaymān Jabbūr; Beirut: Jāmiᶜat Bayrūt al-Amīrikiyya, 1945–58), i. 297–300. See also Petry, *Twilight of Majesty*.

appointed governor of Damascus, the former Mamluk Jān Birdī al-Ghazālī, issued in the years following the Ottoman conquest do not refer to a *ḳānūn* or any specific regulation that was attributed to Qāytbāy (or his successors).[41] In short, it is fairly evident that *ḳānūn* was not part of the Mamluk political and legal vocabulary.

Why, then, did the new Ottoman rulers insist on describing practices and laws they inherited from their Mamluk predecessors as *ḳānūn*, and, in some cases, even assume/invent the existence of a written legal code? After all, the Ottomans could have just implemented the pre-Ottoman laws without labeling them 'the *ḳānūn* of Qāytbāy'. In his excellent study of the Ottoman conquest of Egypt, Benjamin Lellouch interpreted the Ottoman quest for Qāytbāy's *ḳānūnnāme* as an attempt to codify Mamluk regulations, despite the fact that the Mamluks avoided such a codification.[42] Codification may be one of the reasons for this quest, but it seems to me that the Ottoman conquerors were mainly after a comparable sultanic/dynastic law. The account of the sixteenth-century Ottoman chronicler Celāl-zāde Ṣāliḥ Çelebi (d. 1565), who was also a Hanafi judge in Egypt during the governorship of Dāvūd Paşa (r. 1538–49), sheds some light in his *History of Egypt* (*Tarīḫ-i Mıṣr*) on the way in which the Ottoman rulers and their provincial governors and administrators perceived Qāytbāy's *ḳānūnnāme*:

[41] Some of these edicts were inscribed on buildings across Syria throughout the Mamluk period and in the first years of Ottoman rule in the province. The discursive continuity from the Mamluk to the very early Ottoman period is remarkable. For Damascus, see Jean Sauvaget, 'Décrets mamelouks de Syrie (premier article)', *Bulletin d'études orientales*, 2 (1932), 15–52.

[42] Lellouch, *Les Ottomans en Égypte*, 63, 107.

> [We] asked the city dwellers [*şehirlü ṭāifesi*]: "Of the *padişāh*s of the past, for whose justice are you grateful and whose *ḳānūn* did you favour?" We shall search for his *ḳānūnnāme* and, in accordance with [that *ḳānūnnāme* we] shall promulgate a *fermān* ordering the writing of a *ḳānūnnāme*. The people said: 'We are content with the sultanic *ḳānūn* [*ḳānūn-i sulṭānīye*] that prevailed during the time of the late Sultan Qāytbāy', and they chose it. On his behalf, he [the Ottoman sultan] issued a noble *fermān* [*fermān-i hümāyūn*] ordering the search for [*buldurmışlar*] the sultanic *ḳānūnnāme* [*ḳānūnnāme-i sulṭānī*] of his [Qāytbāy's] time. He ordered that from that [day] on, the affairs of the province [of Egypt] [*umūr-i vilāyet*] will be administered according to an imperial *ḳānūnnāme* [*ḳānūnnāme-i hümāyūn*] that is compatible [with Qāytbāy's *ḳānūnnāme*]. At that same time, an imperial edict [*emr-i hümāyūn*] was issued ordering the deposit of [the *ḳānūnnāme*] in the Divan of Egypt [*divān-i Mıṣr*].[43]

Celāl-zāde Ṣāliḥ Çelebi's account clearly assumes the existence of a pre-Ottoman *ḳānūnnāme* of Qāytbāy discovered after the local population mentioned its existence. Equally important is the fact that, according to Celāl-zāde, the Ottoman conquerors were looking for a pre-Ottoman *ḳānūn* to implement in Egypt, a *ḳānūn* that would enjoy the support of the local population—but that was not necessarily

[43] For the Turkish passage, see Lellouch, *Les Ottomans en Égypte*, 231. For Lellouch's French translation see ibid, 230–31. For Ṣāliḥ b. Celāl's biography, see ibid, 262–3.

Qāytbāy's.[44] Celāl-zāde describes interesting dynamics of legal translation in which both the Ottoman conquerors and the newly incorporated subjects took part.

In the Turkish chronicle he wrote in Egypt, Celāl-zāde's colleague ʿAbdüṣṣamed al-Diyārbakrī offers a somewhat different account. According to this narrative, Selīm insisted on implementing exclusively the *ḳānūn* of Qāytbāy: '[T]hese [certain] regulations and principles [*ḳāʿideleri ve ḳānūnları*] were not specific to Qāytbāy. The late Selīm Khān ordered that the *ḳānūn* of Qāytbāy should be implemented [*Ḳāyıtbāy ḳānūnı üzerine olsun deyü buyurdı*].'[45] In any event, both chroniclers seem to agree that attributing certain regulations and principles to the late Mamluk sultan carried special weight in the conquerors' mind.

From a Damascene perspective, the jurist and chronicler Shams al-Dīn Ibn Ṭūlūn (d. 1546) relates in his chronicle of the Ottoman conquest of Damascus that Selīm I abrogated a certain practice that he attributed to the *yasaq* (i.e., *ḳānūn*) of the Circassians and the Kurds (possibly referring to the Ayyubid dynasty) (*yasaq al-Jarākisa wa-l-Akrād*).[46] Ibn Ṭūlūn's account, Celāl-zāde's, and the imperial *ḳānūnnāme*s suggest that the Ottoman sovereigns and their ruling elite attempted to translate the legal landscape they inherited from the Mamluks into their political-legal vocabulary. In the new rulers' vocabulary, the sultan, and more generally the dynasty, must have a

[44] The Ottomans' approach of letting the new subjects choose which *ḳānūn* they wanted to follow is also evident from the legal codes of eastern Anatolia (see n. 25 above).

[45] The Turkish text appears in Lellouch, *Les Ottomans en Égypte*, 364. For Lellouch's French translation, see ibid, 365.

[46] Ibn Ṭūlūn, *Mufākahat al-khillān*, ii. 84.

ḳānūn—that is, a law that was associated with them, whether codified or not.

OTTOMAN YASAQ (*YASAQ ᶜUTHMĀNĪ*)

As we have already seen, David Ayalon argued that '[t]he mention of the *yāsa* in *any* context (including the purely Mongol context) steadily declines in the Mamluk chronicles, until it completely disappears long before the end of the Mamluk rule'.[47] Ayalon, however, neglects to discuss the last appearance of the *yasa* in sources (mainly chronicles) compiled by authors who were born and educated during the last decades of the Mamluk sultanate and who witnessed the Ottoman conquest of the Arab lands. The resurfacing of the *yasa* (or *yasaq*) in these sources suggests that Ayalon's conclusion about the decline of the *yasa* is somewhat exaggerated. As I would like to suggest in this section, the fact that the *yasa* discourse reemerged in the early sixteenth century across the Arab lands suggests that the *yasa*, or at least certain views of the *yasa*, as a political and legal concept never completely disappeared. Instead, it seems to have had a ghostly presence of sorts in the political and legal imagination of many during the last decades of the Mamluk sultanate, and possibly served to define negatively what legitimate legal claims the Mamluk sultan and his official could make.

Several studies have rightly pointed to the hostile attitude of jurists from the Arab lands toward Ottoman legal practices, which they most frequently labeled *yasaq* (and only occasionally *qānūn*), over the course of the sixteenth century. In his account of the Ottoman conquest of Egypt, Ibn Iyās states quite disapprovingly that the recently appointed Egyptian judiciary were expected to follow

[47] Ayalon, 'The Great Yāsa of Chingiz Khān' (Part C2), 141.

the Ottoman *yasaq* (*al-yasaq al-ᶜUthmānī*).[48] When the Ottomans imposed marriage fees, Ibn Iyās relates, many Egyptian jurists vociferously opposed this regulation, describing it as *yasaq*. One of them, the Maliki ᶜIsā al-Maghribī went as far as declaring that the Ottoman *yasaq* was the *yasaq* of the infidels (*yasaq al-kufr*) (a declaration that led to ᶜIsā's imprisonment).[49] Writing in Damascus after the Ottoman conquest, Ibn Ṭūlūn was not as adamantly against the Ottoman *yasaq* as Ibn Iyās was, but he does nonetheless employ the highly charged term to refer to certain Ottoman officials (whom he calls *ahl al-yasaq*), most likely those that Ottomans called *ehl-i ʻörf* (the executive officials who were appointed by the Ottoman state).[50] Another Damascene, the late sixteenth-century Shafiᶜi Sharaf al-Dīn Mūsā b. Yūsuf al-Anṣārī (d. after 1593), calls certain Ottoman fees *yasaq*.[51] Further, Najm al-Dīn al-Ghazzī (d. 1651), in his centennial biographical dictionary of the sixteenth century, is also

[48] Ibn Iyās, *Die Chronik des Ibn Ijās*, v. 418; Meshal, 'Antagonistic Sharīᶜas', 201; Behrens-Abouseif, *Egypt's Adjustment*, 69, 74.

[49] Rafeq, 'The Opposition of the Azhar *ᶜUlamāʾ*', 48. Additionally, in a more poetic expression of the resentment towards the Ottoman *yasaq*/*qānūn*, Ibn Iyās cites a poem local official witnesses (*shuhūd*) composed against the appointed judge that was sent from Istanbul: 'We have seen a half-blinded monster before our death, he came from the lands of Rum to prevent our well-being/He promoted the *qānūn* at the expense of the *sharīᶜa* of Aḥmad [Muḥammad], and we ask the Lord of the Throne of Glory Supreme [*rabb al-ᶜarsh*] to examine our sorrow'. Ibn Iyās, *Die Chronik des Ibn Ijās*, v. 467.

[50] Ibn Ṭūlūn, *Mufākahat al-khillān*, ii. 85. Sharaf al-Dīn al-Anṣārī refers to *ahl al-yasaq* as the *yasaqiyya*. Sharaf al-Dīn Mūsā b. Yūsuf al-Anṣārī (aka Ibn Ayyūb, d. 1590), *Nuzhat al-khāṭir wa-bahjat al-nāẓir* (ed. ᶜAdnān Darwīsh; Damascus: Wizārat al-Thaqāfa, 1991–), ii. 171, 210.

[51] al-Anṣārī, *Nuzhat al-khāṭir*, i. 166, 224; ii. 175. See also Bakhit, *The Province of Damascus*, 125.

critical of the Ottoman *yasaq*. Of particular interest to our discussion is a debate he mentions between a Damascene jurist and appointed judges about the nature of the Ottoman *yasaq*, in which the former argued that the *yasaq* is not based on the four foundations of Islamic law (the Qurʾān, the Sunna, consensus [*ijmāʿ*], and syllogism [*qiyās*]).[52]

The recurring reference to the Ottoman administrative and legal practice in Cairene and Damascene sources is intriguing: Why did the Arab jurists describe the Ottoman practices by resorting to the *yasaq* discourse? They could have just pointed to what they considered the Ottoman legislation's non-Islamic features, declared it non-*sharīʿa*, or framed it within the *siyāsa* discourse.[53] The employment of the term *yasaq*, however, suggests that the Arab jurists identified something quite unique in the Ottoman legislation that justified this particular concept. But what were these unique features?

Before we turn to answer these questions, a brief philological comment is in order. In her study of the Ottoman conquest of Egypt, Doris Behrens-Abouseif has pointed out that *yasaq* was used by Arab historians for Ottoman law, whereas *yasa* was the term used for the law of Chinggis Khān.[54] Indeed, *yasaq* was more frequently used in sixteenth-century Arab chronicles. Nevertheless, it also appears in Mamluk sources, such as the chronicles of al-Ṣafadī and Ibn

[52] al-Ghazzī, *al-Kawākib al-sāʾira*, ii. 116. The *yasaq* is also called *maḥsūl*, that is, a law that is not derived on the hermeneutic principles of Islamic Sunni law. See also Winter, 'Ottoman Qāḍīs', 89–90.

[53] At the same time, Arab chroniclers continued to employ the verb *rasama* (and its derivatives *rasm* and *marsūm*) to refer to the Ottoman issuance of laws and regulations.

[54] Behrens-Abouseif, *Egypt's Adjustment*, 69 n. 2.

Taghrībirdī.[55] It is therefore fairly evident that the late Mamluk chroniclers made this connection between Ottoman dynastic law and Chinggisid law, although it is difficult to explain why *yasaq* became more commonly used than *yasa* over the course of the fifteenth century.[56]

Returning to the questions, the preamble to the Ottoman 1525 *ḳānūnnāme* for the province of Egypt may offer some answers. The preamble describes the sultan's ancestors and the Ottoman dynasty more generally as the source of the *ḳānūn* and of the Egyptian legal code in particular: 'Some of the just and compassionate *ḳānūn*s, which [were initially issued] in ancient times and [came down] from my [Sultan Süleymān's] noble fathers and great grandfathers, are linked [to] an old principle and in a straight link, and should be followed' (*âbâ-i kirâm ve ecdâd-i 'iẕâmimdan ḳadîm'üz-zamândan baᶜẕı ḳevânîn-i ᶜadâlet ve âyîn reᵓfet ber ḳâ'ide-i ḳadīm ve râbita-i müstakim rabt olunub her dem ona mürâca'at edeler*).[57] Sixteenth-

[55] Ayalon, 'The Great Yāsa of Chingiz Khān' (C2), 116.

[56] In Ottoman Turkish, the term appeared as *yasaġ* since at least the early decades of the fifteenth century. During his reign, Selīm I issued a *yasaknāme* for the province of Bursa; see Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukī Tahlilleri*, iii. 167. The title *yasaknāme* does not appear in the reproduction of the edict (on p. 170). In the *ḳānūnnāme* for the province of Egypt, issued in 1525, the phrase '*Yasaġ oluna ki*' (Let this law be [known]) is employed. Ibid, vi. 102.

[57] Ibid, vi. 86. This phrase recurs over the sixteenth century in different contexts. The sixteenth-century Ottoman grand vezir Lütfī Paşa (d. 1562 or 63), for example, praises the Ottoman dynasty's (*Osmanlı ṭāifesi*) following of the '*ḳānūn* of the ancestors of the sultans and the sublime principle of the *ḫaḳans* [*ḳānūn-i selef-i selāṭīn ile ve-ḳā'ide-i 'alīşān-i ḫevākīn*]'; Lütfī Paşa, *Tevārih-i Āl-i Osman* (ed. Âli Bey; Istanbul: Enderun Kitabevi, 1990 [1341/1925]), 4–5. The late sixteenth-century bureaucrat and chronicler

century Arab observers did not fail to recognize this connection between the *ḳānūn* and the Ottoman dynasty, as their employment of the term *al-yasaq al-ᶜUthmānī* (a variation of the Ottoman *ḳānūn-i Osmānī*) suggests. Moreover, it is this connection that justified in their eyes the reintroduction of the Mamluk *yasaq* (or, in some cases, anti-*yasaq*) discourse.

This connection between a legal corpus and practices and the ruling dynasty is markedly different from the connection between the sovereign and his *siyāsī* legislation that the Mamluk concept of *siyāsa* implies. In the Ottoman perception, the legal corpus draws its legitimacy from the ancestors, the dynasty, and the legislating sultan, who represents the dynasty. Put differently, the dynastic law traces its origins to the eponymous founders of the dynasty, whereas the Mamluk discourse of *siyāsa* does not have, and in fact rejects, this dynastic dimension: the right of the Mamluk sultan to issue *siyāsa* laws and regulations rested on the recognition of his legitimacy as an Islamic (Sunni) sovereign, a legitimacy that had little to do with his

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Ferīdūn Bey (d. 1583) also makes a similar statement in which he emphasizes the ancestral origin of Ottoman dynastic law; Nicolas Vatin, *Ferîdûn Bey, les plaisants secrets de la campagne de Szigetvár. Edition, traduction et commentaire des folios 1 à 147 de Nüzhetü-l-esrāri-l-ahbâr der sefer-i Sigetvâr* (ms. H 1339 de la Bibliothèque de Musée de Topkapi Sarayı) (Vienna: LIT, 1993), 337, 413.

As Rifa'at Ali Abou-El-Hajj has demonstrated, the preambles for the Ottoman *ḳānūnnāme*s in general and those for the empire's Arab provinces served the new rulers in propagating their ideals of rulership and justice. Rifa'at Ali Abou-El-Haj, 'Aspects of the Legitimation of Ottoman Rule as Reflected in the Preambles to Two Early *Liva Kanunnameler*', *Turcica* 21/22/23 (1991): 373–83. See also Buzov's discussion of the preamble of the 1525 *ḳānūnnāme* for Egypt in Buzov, 'The Lawgiver and His Lawmakers', 19–45.

lineage, in cases in which he could trace it. As Anne Broadbridge has pointed out, 'unlike Chingizid or later Turko-Mongol notions of kingship, however, [the Mamluk] ideology hinged consistently and exclusively on antiquated Islamic concepts, and on a vision of the Mamluk sultan as a martial Guardian of Islam and Islamic society'.[58]

The sixteenth-century Arab chroniclers and jurists may also help us further explore the role the dynasty played in the Mamluk political-legal imagination. The extent to which Mamluk sultans sought to establish dynasties has been the focus of several studies and scholarly debates. In her study of the Mamluk conception of the sultanate, Amalia Levanoni has argued that the Mamluks tended to favour a factional pattern, in which the sultan was 'the representative of the coalition of the dominant factions and . . . a tool to ensure their positions and interests', over dynastic rule.[59] By contrast, others have pointed to the fact that several Mamluk sultans experimented with dynastic rule over the course of the thirteenth and fourteenth centuries. As Broadbridge, a representative of the latter approach, has recently explained, scholars like Levanoni and others have missed the 'intention of the dying monarch' to establish a dynasty, and instead mistakenly focused on the 'lived reality of political power (whether a son managed to hold on as sultan)'.[60] In any case,

[58] Anne Broadbridge, *Kingship and Ideology in the Islamic and Mongol Worlds* (Cambridge: Cambridge University Press, 2008), 12.

[59] Amalia Levanoni, 'The Mamluk Conception of the Sultanate', *International Journal of Middle East Studies*, 26 (1994): 373–92. For an exhaustive survey of the bibliography on this historiographical debate, see Anne Broadbridge, 'Sending Home for Mom and Dad: The Extended Family Impulse in Mamluk Politics', *Mamluk Studies Review*, 15 (2011): 1–18.

[60] Ibid, 2–3.

both views agree that in the fifteenth century, the Mamluks definitively rejected this form of succession.

I am not interested here in supporting any of the views in the historiographical debate concerning the existence of a Mamluk 'dynastic impulse'. It is noteworthy, however, that the debate has tended to focus on the succession practices in the Mamluk sultanate and the sultan's obligations to his peers/subordinates. Much less attention has been paid to other aspects of dynastic rule, and, most relevant to our discussion here, to the role of the dynasty in the Mamluk political-legal imagination. Examining the sixteenth-century sensibility with regard to the Ottoman *yasaq*/*ḳānūn* along with the sensibility in earlier centuries with regard to the Mongol/Chinggisid *yasa* may add important layers to our understanding of the Mamluk perception of the dynasty and dynastic rule. It seems fairly clear that the Mamluk perception of dynasty and the function it fulfilled as a source of legal legitimacy were very different from the Ottoman (and, more generally, the post-Mongol) notion.[61]

It is worth dwelling on the affiliation of the Mamluk jurists-chroniclers who denounced the Ottoman *yasa* with the learned circles, since the Ottoman perception of dynastic law also bore on the relationship between the jurists and the dynasty. Ottoman dynastic law was instrumental in regulating the relationship between the dynasty and the jurists affiliated with it: through its *ḳānūn* the Ottoman dynasty shaped the career and training tracks of the members of its imperial learned hierarchy. Moreover, *ḳānūn* was a key element in the Ottomans' development of an official school of law (*madhhab*). In other words, *ḳānūn* was a crucial part of the

[61] See also Rhoads Murphey, *Exploring Ottoman Sovereignty: Tradition, Image and Practice in the Ottoman Imperial Household, 1400–1800* (London: Continuum, 2008), 33–5.

dynasty's encroachment on the jurists' relative autonomy as legislators. The late Mamluk observers' opposition to Ottoman legislation should be seen, at least in part, within this context. By rejecting the Ottoman notion of dynastic law, these jurists-chroniclers sought to preserve the role of the jurists as the main legislators. It is worth stressing once again the difference between the Ottomans' aims and those of their Mamluk predecessors: the latter invoked the concept of *siyāsa* to justify their legislation; they preserved, at least theoretically, the jurists' relative autonomy; and, perhaps most importantly, they did not legitimize their rule by referring to an independent ancestral source of authority. Moreover, it seems that throughout the Mamluk period, despite some jurists' opposition to the Mamluk *siyāsa*, many others came to accept it and even, as the concept of *al-siyāsa al-shar^{c}iyya* indicates, developed and articulated it in their writings. The Ottoman conquest altered the Mamluk status quo.

MAMLUK *SIYĀSA*, OTTOMAN *SIYĀSET*

As I have argued, the introduction of the Ottoman notion of dynastic law as a site of sovereignty considerably changed the legal landscape of the empire's Arab provinces. This change, I believe, has not always received the attention it deserves in modern historiography. Some studies, including Halil İnalcık's entry in the *Encyclopedia of Islam* and Uriel Heyd's seminal *Studies in Old Ottoman Criminal Law*, perceive *siyāsa* (i.e., the pre-Ottoman notion of *siyāsa*) and the Ottoman *ḳānūn* to be quite similar. This is, for example, Heyd's description of this relationship:

> The *ḳānūn* is chiefly inspired not by principles of law and justice but, <u>like the</u> *siyāsa*, by the need to improve the administration and to safeguard public order. Just like the

siyāsa, it can, and should, change in accordance with changes in social conditions.[62]

Put differently, in Heyd's description of the relation between *siyāsa* and *ḳānūn*, the latter seems to be an Ottoman continuation of the former.[63] It is quite possible that the extensive use of the term *siyāset* in fifteenth- and sixteenth-century Ottoman legal codes (as well as in other contemporaneous legal sources) contributed to the emergence of this interpretation of the relation between *siyāsa* and *ḳānūn* in modern historiography. In light of my discussion in the previous sections, however, I find Heyd's (and others') description of this relationship somewhat problematic.

To clarify what is at stake, I would like to address a question that is central in my mind: How does the Ottoman *siyāset* stand in relation to Ottoman dynastic law, the *ḳānūn*? By focusing on the manner in which this relation is articulated in the Ottoman *ḳānūnnāme*s (and to a lesser extent in other sources), I hope to stress the difference between the Mamluk *siyāsa* and the Ottoman *siyāset*.[64] In a *ḳānūnnāme* issued during the reign of Meḥmet II (r. 1451–81),

[62] Heyd, *Studies in Old Ottoman Criminal Law*, 202 (emphasis is mine). See also Ze'evi, *Producing Desire*, 50.

[63] In the same vein, in the conclusion of his recent study of the relationship between *siyāsa* and Sharīᶜa in the Mamluk sultanate, Yossef Rapoport has argued that 'in the final years [of the Mamluk sultanate] the tension between the *siyāsah*, grounded in notions of equity but open to arbitrary implementation, and the formalistic and ineffective sharīᶜah, came to a head. It is only the Ottomans who would resolve this tension by enforcing a unified *kanun* based on the sharīᶜah' (Rapoport, 'Royal Justice and Religious Law', 101).

[64] On the Ottoman concept of *siyāset*, see Heyd, *Studies in Old Ottoman Criminal Law*, 259–71; Agmet Mumcu, *Osmanlı Devletinde Siyaseten Katl* (Ankara: Ajans Türk Matbaası, 1963); Peirce, *Morality Tales*, 313–36.

the sultan ordered that the governor of the province (*sancak bey*) punish (*siyāset oluna*) criminals (*fesād edenler*), with the approval of the judge. The legal code explicitly states that the punishment was to be meted out according to the *ḳānūn* (*ber-muceb-i ḳānūn siyāset oluna*).[65] Imperial codes from the reigns of Meḥmet's successors reflect the same perception of *siyāset*. In the sultanic *siyāsetnāme*s (*siyāsetnāme-i sulṭānī*) issued during the reigns of Bayezid II (r. 1481–1512), Selīm (r. 1512–20), and Süleymān (r. 1520–66), *siyāset* denotes punitive measures against criminals.[66] Moreover, in his summary of Ottoman dynastic law (*Ḳevānīn-i Āl-i Osmān*), Hezārfen Ḥüseyin Efendi clarifies that the rights that members of the Ottoman ruling elite were granted to extract revenues is premised on their ability (or, perhaps, right) to punish (*emlākın şartı siyāsetdir*).[67] In another place in this summary, he clearly juxtaposes the term '*siyāset*' to the word '*ukübet*' (punishment).[68]

Compared with the Mamluk understanding of *siyāsa*, the Ottoman *siyāset,* for the most part, is considerably more limited: the former was a general concept that referred to the sultan's authority to issue rules ranging from taxation to criminal law—usually in cases that the jurists did not explicitly address in their rulings—for the public good, whereas the latter was usually confined to punitive measures.

But more importantly, the implementation of *siyāset* punishments in the fifteenth and sixteenth centuries (as well as in later centuries) was regulated by Ottoman dynastic law. For example, the *ḳānūnnāme* for the Anatolian province of Menteşe, which was issued

[65] Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukī Tahlilleri*, i. 611.

[66] Ibid, ii. 169–71; iii. 191–4.

[67] Hezârfen Hüseyin Efendi, *Telhîsü'l-beyân*, 113–14.

[68] Ibid, 197.

during the reign of Bayezid II, orders that criminals should be punished (*siyāset etmek*) only by state officials (*ehl-i ʻörf*).[69] Even Hezārfen Ḥüseyin Efendi's discussion of *siyāset*, as we have seen, was part of a compilation that was devoted to Ottoman dynastic law. In other words, *siyāset* as a legal and punitive concept and practice was constituted by the Ottoman *ḳānūn*.

The novelty of the Ottoman perception of *siyāset* and its relation to *ḳānūn* were also commented upon by observers from the Arab lands. The late eighteenth-century Damascene officially appointed mufti and chronicler Muḥammad b. Khalīl al-Murādī astutely understood this relation between *ḳānūn* and *siyāset* in his account of the Ottoman conquest of Damascus: '[Selīm I] . . . renewed its [the city's] affairs and executed his orders in [Damascus] and established order in it according to his exalted *qānūn*, and he organized the offices [*manāṣib*] of knowledge and *siyāsa* according to the principle of his rulership [*qāᶜidat mulkihi*] and to what his noble judgment deemed preferable [*istiḥsān raʾyihi al-sharīf*]'.[70]

As al-Murādī observed, the articulation of the *siyāset* through *ḳānūn* may be compared to the Ottoman dynasty's intervention in the realm of *fiqh.* Similarly, as I have pointed out above, the dynasty, while drawing legitimacy from its dynastic law, shaped and regulated the structure of the specific branch within the Hanafi school of law it adopted.

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[69] Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukī Tahlilleri*, ii. 259.

[70] Muḥammad Khalīl b. ᶜAlī b. Muḥammad b. Muḥammad al-Murādī, *ᶜUrf al-bashām fī man waliya fatwā Dimashq al-Shām* (eds. Muḥammad Muṭīᶜ al-Ḥāfiẓ, Riyāḍ ᶜAbd al-Ḥamīd Murād; Damascus: Majmaᶜ al-Lugha al-ᶜArabiyya, 1979), 2–3.

CONCLUSION

The Ottoman conquest of the Arab lands brought to the surface the sensibilities of both the conquerors and their newly incorporated subjects concerning issues of law, sovereignty, and dynastic rule. While the Ottoman rulers sought a pre-Ottoman *ḳānūn*, many of their new subjects identified some Ottoman notions and practices of law and sovereignty as a version of the (quite infamous) Mongol *yasaq*. As I have sought to demonstrate in this article, these sensibilities may assist us in understanding the relationship between dynastic law (*ḳānūn*) and the Mamluk notion of *siyāsa*. More generally, these post-conquest moments of negotiation/interpretation/translation provide an opportunity to explore the different notions of dynasty (and their legal implications) and legal claims that coexisted across the Mamluk sultanate and the Ottoman domains in the fifteenth and sixteenth centuries. Furthermore, these moments reveal the multiple meanings of such concepts as *siyāsa* and *ḳānūn* in different political settings, and may help us to reconstruct a more nuanced understanding of these key concepts in Islamic political and legal history. In addition, these moments point to the significance of *ḳānūn* as a site of Ottoman sovereignty.

The encounter of the sixteenth century also marks, if not the introduction of the Ottoman modification of the word *qānūn* to denote dynastic law into Arabic legal-political vocabulary (or, to be more precise, the legal-political vocabulary in the Arab lands), then at least one of the earliest appearances of the newly modified term in the Arabic-speaking Middle East. This shift in meaning permitted another important transformation: over the course of the nineteenth and the twentieth centuries, *ḳānūn* (or *qānūn*) moved away from the sense of dynastic law and came increasingly to carry the sense of

state, and at times international, law. This latter transformation remains to be explored.