

Legitimation, Legal Advice, and Statecraft: The Ottoman Şeyhülislam and the
Law of Rebellion, 1769-1830¹

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[This paper is a pilot for a new project, growing out of my dissertation research on captivity and prisoners of war, but going in a new direction. It is at a preliminary stage, and I very much welcome comments.]

In 1822, in the midst of the Greek rebellion that would eventually lead to independence from Ottoman rule, Sultan Mahmud II dispatched a fleet to the island of Chios (also known as Scio, or Sakız). By the time the fleet arrived, most of the rebels had departed from the island—leaving only the native population, which had not supported them. Nevertheless, the Ottoman force killed many and enslaved others, especially women and children. The sight of these white, Christian captives being sold openly on the streets of Istanbul shocked European diplomats, and the incident became a cause célèbre for decades in Europe. (See, for example, Eugène Delacroix’s painting *The Massacre at Chios*.²) When the British Ambassador Lord Strangford raised the issue with the Ottoman Reisülküttap, Canib Efendi, Canib replied sharply. According to Strangford’s report, Canib declared that “the Captives taken at Scio, were condemned to slavery by the Mussulman Laws and Religion—which not only permitted, but enjoined such a disposal

¹ This paper has evolved through presentations organized by Safa Saraçoğlu and Kent Schull for MESA 2013; by Kate Fleet and the Skilliter Center at Cambridge; and by Marcia Inhorn and the *Journal of Middle East Women’s Studies* at Yale. I am particularly grateful to Palmira Brummett, Boğaç Ergene, Suraiya Faroqhi, Christopher Nason, Leslie Peirce, and Amy Singer for their comments on those papers. My thoughts owe much to conversations with Joshua White.

² Eugène Delacroix, *Le Massacre de Scio* (1824), <http://www.wga.hu/art/d/delacroix/1/107delac.jpg>.

of the wives and children of their Enemies.”³ Had Canib wanted to, he could have pointed to a fatwa from the Ottomans’ chief jurist, the Şeyhülislam Abdülvahhab, declaring that indeed the residents of Chios could be enslaved, having rebelled against Sultan Mahmud II.

Canib’s comment illustrates a tension in Ottoman historiography, which may shed light on pre-modern Islamic governance more broadly. In claiming that the Sublime Porte (the Ottoman Government) was “enjoined” to allow rebellious populations’ enslavement, he presented the *sharia* as a set of rules constraining the Ottoman government (the Sublime Porte, to Europeans) in its political choices. Nineteenth-century Ottoman diplomats found this a useful argument in fending off European demands. In the 1850s, for example, Ottoman officials argued that they could not suppress slavery without obtaining a fatwa from the Şeyhülislam, which they were “not likely to obtain.”⁴ The idea that the *sharia*, and the jurists who interpreted it, constrained Ottoman government appeared to some European observers as a destructive constraint on adaptation to modernity. To others, though, it was evidence that the jurists prevented the sultan from becoming a despot.⁵

Ottoman historians have been divided on how much the *sharia* and the jurists, especially the Şeyhülislam, constrained Ottoman governance. In his book on the office of the Şeyhülislam, Richard Repp argues that, while theoretically “an independent check on the powers of the sultan,” the institution was “corrupted” and “subordinated to the secular government,” which

³ The National Archives [of the United Kingdom, hereinafter TNAUK], Foreign Office collection [hereinafter FO] 78/105 #73 (25/5/1822). Canib added—perhaps with a smirk—that “without having the plea of Law or Religion, the Christian Powers of Europe had for ages tolerated Slavery—not because their Messiah commanded it, but because it was a source of gain—that it was true, England had abolished it, but that it was only of late years that we had found out that it was wrong—and that half of Europe still differed from our opinion on the subject.”

⁴ Candan Badem, *The Ottoman Crimean War, 1853-1856* (Boston: Brill, 2010), 358.

⁵ See Pascal Firges, “Despotic or ‘pretty Much Just Like Us’? A French Revolutionary Diplomat’s Endeavour to De-Orientalize the Ottoman Empire” (presented at the Diplomatic Representation of Christian Powers in Early Modern Istanbul, University of Leipzig, 2011) (describing Marie Louis Descorches’ view of the jurists as exercising “judicial preview” over sultanic decrees).

“subverted its purpose.”⁶ Baber Johansen has shown how muftis shifted their legal interpretation to fit economic and political circumstances and to serve landowners’ interests over peasants’.⁷ Colin Imber’s account, focused on the sixteenth-century Şeyhülislam Ebussuud, likewise emphasizes that this jurist’s famous “harmonisation” of sultanik *kanun* and *sharia* “served distinctly secular purposes,” especially increasing sultanik power.⁸ Baki Tezcan, however, has recently challenged this view, arguing that the jurists who interpreted the *sharia* (not necessarily the Şeyhülislam) did constrain the sultans’ power, and were in fact critical to a sort of “unwritten constitution” between 1580 and 1826.⁹ Wael Hallaq, going further, argues that Islamic law, in the pre-colonial era, did not allow the state to be truly sovereign—and thus constrained political power in a way impossible in a modern state.¹⁰ He has been criticized for giving little attention to the realities of Ottoman governance.¹¹

In this context, it might be enlightening to examine the role of the Şeyhülislam in Ottoman governance—and Canib’s dispute with Strangford gives us a glimpse of that role. The situation on Chios was not isolated; beginning in the late eighteenth century and culminating during the Greek revolt of the 1820s, the Ottomans built a combined legal and military strategy for combating non-Muslim unrest, centered around orders authorizing rebellious populations’ enslavement—and nearly every order was accompanied by a fatwa from the Şeyhülislam. Many survive in the main Ottoman archives, the Başbakanlık, along with the orders they accompanied,

⁶ R.C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy* (Atlantic Highlands, N.J.: Ithaca Press, 1986), 300, 303. For the social history of the ulema and of the Şeyhülislams of the eighteenth century, see Madeline C. Zilfi, *The Politics of Piety: The Ottoman Ulema in the Post-Classical Age (1600-1800)* (Minneapolis: Bibliotheca Islamica, 1988).

⁷ Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants’ Loss of Property Rights Under the Hanafite Doctrine* (New York: Croom Helm, 1988).

⁸ Colin Imber, *Ebu’s-Su’ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 270.

⁹ Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (Cambridge: Cambridge University Press, 2010), 234–43.

¹⁰ Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity’s Moral Predicament* (New York: Columbia University Press, 2013).

¹¹ See Andrew F. March, “What Can the Islamic Past Teach Us about Secular Modernity?” *Political Theory* 42 (forthcoming 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2386075.

and records of the political deliberations which produced those orders. This offers a glimpse of how imperial politics, military necessity, and juristic interpretation interacted, as the state dealt with a period of great upheaval. The legal questions at stake—the parameters of Muslim rule over non-Muslims—were quintessential products of the pre-colonial political context, and they were clearly governed by the *sharia*, rather than from the sultanic *kanun*. They thus seem to offer a useful case study of what role *sharia*, and particularly the Şeyhülislam’s fatwas, played in Ottoman policy making. Did the law constrain sultanic decisions? Did it merely legitimate them after they were made? What did it mean to legitimate an imperial order with a fatwa?

The Law and the Military Problem

The Ottoman Empire, like every imperial state, dealt with resistance throughout its history, some small- and some large-scale. The end of the eighteenth century and the beginning of the nineteenth saw a particularly severe outbreak of brigandage and banditry, due in large part to Ottoman military policies. In Virginia Aksan’s words, the sultan’s officers “took up and discarded the irregular troops as need dictated, and were careless about the impact of such a policy on local populations. Hence there was considerable blurring of peasant and soldier, and reduction of border territories to banditry and unrest.”¹² Tolga Esmer has shown that the resulting groups of irregulars-turned-bandits—who often moved back and forth between these categories—reached across religious and linguistic lines, and attracted adherents or allies not only in remote provinces, but in administrative centers and in Istanbul; Esmer terms these “networks

¹² Virginia H. Aksan, *Ottoman Wars 1700-1870* (London: Longman, 2007), 169.

of violence.¹³ At sea, too, *Russian* policies of “taking up and discarding” privateers, especially Ottoman Greeks, in the Mediterranean created bands of pirates who moved in and out of state service.¹⁴

The result of such resistance was a near-constant trail of violence throughout the late eighteenth and early nineteenth centuries. But Christian uprisings were particularly destructive, and particularly well-remembered. The most famous occurred in Serbia in 1804-1816, and in Greece in 1821-1830, but there were others—in 1769-1770 in Moldavia and Wallachia, 1770 in the Morea/Peloponnesus, in 1788-1790 in Moldavia and Wallachia again, and in 1821 in Moldavia yet again. Many, but not all, of these revolts coincided with the various Russo-Ottoman Wars—fought in 1711, 1735-1739, 1768-1774, 1787-1792, 1806-1812, and 1828-1829.¹⁵

Each uprising presented a combined military and political challenge: the Ottoman state sought to bring its subjects back into the bonds of loyalty, without alienating others. But at the same time, the Porte often could not afford to pay and provision the forces it needed to suppress rebellions—who by now were almost entirely irregulars, rather than the professional janissaries and landed cavalry of earlier eras.¹⁶ Ottoman soldiers, like those of nearly every Mediterranean and Eurasian state before them, had traditionally supplemented or replaced salaries and rations by selling foreign captives into slavery.¹⁷ As I argue in my dissertation, the economic usefulness of

¹³ Tolga Uğur Esmer, “A Culture of Rebellion: Networks of Violence and Competing Discourses of Justice in the Ottoman Empire, 1790-1808” (PhD diss., Chicago, 2009).

¹⁴ See Will Smiley, ““After being so long Prisoners, they will not return to Slavery in Russia”: An Aegean Network of Violence between Empires and Identities,” *Journal of Ottoman Studies* 43 (2014): 217-30.

¹⁵ See generally Aksan, *Wars*.

¹⁶ For the Ottomans’ chronic logistical problems, see Virginia H. Aksan, “Whatever Happened to the Janissaries? Mobilization for the 1768-1774 Russo-Ottoman War,” *War in History* 5, no. 1 (1998): 23–36; and more generally, Aksan, *Wars*.

¹⁷ Rhoads Murphey, *Ottoman Warfare, 1500-1700* (New Brunswick, N.J.: Rutgers University, 1999), 150; Suraiya Faroqhi, *The Ottoman Empire and the World Around It* (London: I. B. Tauris, 2004), 115. Murphey, *Ottoman Warfare, 1500-1700*, 150; Faroqhi, *World*, 115.

male slaves fell as Ottoman navigators adopted sail-powered ships in place of galleys.¹⁸ Enslaved women and children, however, continued to command high prices, and as Madeline Zilfi has argued, they were symbolically vital to the Ottoman elite.¹⁹ Both Muslims and Christians often argued that it was acceptable to enslave the other, but not co-religionists, and this provided a license for Ottoman forces fighting in Christian territory belonging to the Russian, Austrian, or Venetian Empires, when the sultan declared that the conflict constituted a jihad.

When campaigning within the empire, this was not possible. Ottoman Muslims were immune to enslavement, though they could be executed—as, for example, Wahhabi leaders were, after being brought from the Hijaz following their defeat in 1818.²⁰ Christian subjects were officially considered *zimmîs* (from the Arabic *dhimmi*; colloquially called *reaya* in Ottoman Turkish), protected against enslavement in exchange for paying the poll tax (Arabic *jizya*/Turkish *cizye*). As Joshua White and Leslie Peirce have shown, announcing and enforcing these rules to prevent illegal captivity were important parts of the Ottoman state’s efforts to assert sovereignty in the sixteenth century—imposing what White calls “the sultan’s peace.”²¹

The enslavement of *zimmîs*, though, could become legal if they lost their *zimmî*. How this might happen was an important legal question for soldiers, *zimmîs*, and the dynasty alike, and Ebussuud restated the Hanafi school’s legal view in a sixteenth-century fatwa:²²

Question: Does the [*sharia*] permit the enslavement and buying and selling of those *zimmîs* who rebelled against the Padişah of Islam, and who were suppressed by his order, like other *harbîs*?

¹⁸ See Will Smiley, “‘When Peace Is Made, You Will Again Be Free’: Islamic and Treaty Law, Black Sea Conflict, and the Emergence of ‘Prisoners of War’ in the Ottoman Empire, 1739-1830” (PhD diss., Cambridge, 2012).

¹⁹ Madeline C. Zilfi, *Women and Slavery in the Late Ottoman Empire* (Cambridge: Cambridge University Press, 2010).

²⁰ Ziya Yilmazer, ed., *Sâni-zâde Târîhi: 1223-1237/1808-1821* (İstanbul: Çamlıca, 2008), II: 893. For Sunni juristic approaches to Muslim rebellion against Muslim rulers more generally, see Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001).

²¹ Leslie Peirce, “Abduction with (Dis)honor: Sovereigns, Brigands, and Heroes in the Ottoman World,” *Journal of Early Modern History* 15 (2011): 311–29; Joshua M. White, “Catch and Release: Piracy, Slavery, and Law in the Early Modern Ottoman Mediterranean” (PhD diss., University of Michigan, 2012).

²² I am still investigating the Hanafi *fiqh* on this issue.

Answer: If their rebellion necessitates the abrogation of the *zimmets*, yes. [But] the *zimmets* cannot be abrogated when they decline to pay taxes, turn out to be thieves and robbers, or take refuge in the mountains because of the timariots' oppression... Unless they join the *dar-ül harb* or make war with us, they cannot be enslaved.²³

A parallel fatwa specifically noted that, when imperial forces defeated non-Muslim bandits, the (presumptively adult male) bandits themselves were subject to different treatment than their female and minor relatives. "It is lawful," Ebussuud ruled, "for the thieves to be killed." But this must be an individualized punishment: the bandits' "wi[ves] wife and children would not be enslaved."²⁴ Only if the non-Muslim community joined with foreign enemies (the *dar-ül harb*), or invaded (*müstevlî*) and made war on Muslims, would they lose their *zimmets* and become, as a group, subject to enslavement.

Ebussuud, then, carefully limited the circumstances in which *zimmets* could lose their protection. Committing crimes—such as tax evasion, theft, robbery, flight, and even highway robbery (a *hadd* crime in Islamic law), might be grounds for punishment, but did not constitute forfeiture of *zimmets*. Only waging *war*—by implication, alliance with foreign enemies—would suffice. Ebussuud thus drew the line between legal and illegal enslavement along one of the most fundamental divisions in political philosophy: that between enemies and criminals.²⁵ Enemies could be enslaved; criminals could not.

Ebussuud's opinion did not create a legally binding precedent, but it was common for other muftis to follow earlier Şeyhülislams' rulings.²⁶ but the lines he drew were reflected in state practice. At least once, in 1716, the Porte authorized the enslavement of Moldavians and

²³ Y. Hakan Erdem, *Slavery in the Ottoman Empire and Its Demise, 1800-1909* (Basingstoke: Macmillan, 1996), 23. The translation is his. A transcription of the original opinion is found in M. Ertuğrul Düzdağ, ed., *Şeyhülislâm Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (Istanbul: Enderun, 1972), 100–101.

²⁴ Düzdağ, *Ebussuud*, 101.

²⁵ See Paul W. Kahn, "Criminal and Enemy in the Political Imagination," *The Yale Review* 99 (2010): 148–67.

²⁶ Uriel Heyd, "Some Aspects of the Ottoman Fetva," *Bulletin of the School of Oriental and African Studies* 32, no. 1 (1969): 56.

Wallachians accused of joining the Austrians during wartime.²⁷ The distinction between criminals and rebels becomes clear in the record books of the Ottoman shipyard prison (the *Tersane-i Amire Zindan*), where unfree oarsmen for the Ottoman fleet lived. These books are divided into two sections: one for “criminals” condemned to hard labor (*mücriman*), and one for “state slaves” (*üserâ-yı mârî*). In reviewing about a dozen of these register books, I have never seen a Muslim name in the “state slaves” list—as one would expect, since Muslims could not be legally enslaved. But the same ration books show Ottoman Christians in *both* categories. Those in the “criminals” section with Christian names are normally marked as *zimmîs*, reflecting that they remained protected subjects; they were simply criminals, not rebels, suggesting that despite their crimes, they retained their Ottoman subjecthood—they were imprisoned, not enslaved. Those in the “state slaves” section are listed by their place of origin, and in most register books there are some, with Christian names, who are described as being from Ottoman territories in the Aegean or Balkans—but they are *not* noted as *zimmîs*. They seem to have committed acts of rebellion which met Ebussuud’s standard to forfeit *zimmî*.

Weaponizing the Law of Rebellion

As the 1768 War with Russia began, the criminal-rebel distinction again became pressing. The main battlefields were initially in Moldavia, and the Porte worried that its leaders would aid the Russians—as they had in 1711, when Peter the Great invaded before being catastrophically defeated on the River Prut. In October 1769, the prince, nobles, priests, and elders of Moldavia were sent imperial orders warning of their families’ enslavement, among other consequences, if

²⁷ Viorel Panaite, *The Ottoman Law of War and Peace: The Ottoman Empire and Tribute Payers* (Boulder: East European Monographs, 2000), 413–14.

their people continued to aid the Russians.²⁸ Two months later, the chronicler Şemdanizade reports, the Porte carried out its threat, securing a fatwa from Şeyhülislâm Said Efendi (in office 1769-1773):²⁹

[Question:] ‘If the subjects of some villages, among the tribute-paying people in the lands of Moldavia, rebel and refuse to pay the *cizye* and ally with Muscovy and attack the lands of Islam and fight against the people of Islam, is it lawful for their lands to be attacked and for them to be enslaved?’

The answer [was] ‘It is lawful’ and accordingly, in [the month of] Sha‘ban an imperial order was issued.³⁰

The query, in Ottoman practice, would have been prepared by the Fetvâ Emini and presented to Said. It may have been designed to meet Ebussuud’s standard, listing rebellion and alliance with a foreign enemy as reasons that enslavement was legal—but it also included failure to pay the *cizye*, which Ebussuud had considered crime rather than rebellion. Assuming that Ebussuud’s opinion correctly stated the rule in Hanafi law, Said’s opinion followed logically from the question; whether or not the failure to pay the *cizye* did any legal work, the other factors were sufficient to produce this result. Most notably, the allegation that the Moldavians had “all[ie]d with Muscovy” fit Ebussuud’s standard of “join[ing] the *dar-ül harb*.” The Moldavians could be considered part of a foreign, sovereign power.

²⁸ Ibid., 109–112. Moldavia was a tributary principality, rather than part of the Ottoman Empire proper, but its subjects were protected against slavery by an imperial *ahdname*, and Ottoman jurists considered Moldavians *zimmîs*. See Viorel Panaite, “Wallachia and Moldavia from the Ottoman Juridical and Political Viewpoint, 1774-1829,” in *Ottoman Rule and the Balkans, 1760-1850: Conflict, Transformation, Adaptation*, ed. Antonis Anastasopoulos and Elias Kolovos (Rethymno: University of Crete, 2007), 21–44; Panaite, *Law*.

²⁹ TNAUK, State Papers collection [hereinafter SP] 97/45 #18 (18/12/1769). The names and dates in office of the Şeyhülislams are drawn from Mehmed Süreyyâ, *Sicill-i Osmani, Yahud Tezkire-i Meşahir-i Osmaniye* (Istanbul: Matbaa-i Amire, 1890), IV: 766–767.

³⁰ M. Münir Aktepe, ed., *Şem‘dânî-Zâde Fındıklılı Süleyman Efendi Târîhi Mür‘ît-Tevârih* (Istanbul: İstanbul Üniversitesi, 1976), IIB: 19. See also TNAUK, SP 97/45 #18 (18/12/1769); Ersin Kırca, “Başbakanlık Osmanlı Arşivi 168 Numaralı Mühimme Defteri (s.1-200)(1183-1185/1769-1771) Transkripsiyon, Değerlendirme” (MA thesis, Marmara, 2007), 193–194. Similar orders had been issued the previous month on the authority of the *kadı* of the imperial army (Ibid., 138–40. However, another order implies that the Şeyhülislam’s fatwa *had* been issued by late November (Ibid., 171–172). Orders implementing the enslavement and plunder of rebellious Moldavians are found throughout MHMd.168 (see Kırca, “Mühimme”; İlhan Gök, “Başbakanlık Osmanlı Arşivi 168 Numaralı Mühimme Defteri (s.200-376)(1183-1185/1769-1771) Transkripsiyon, Değerlendirme” (MA thesis, Marmara, 2007).

What is intriguing, though, is that the query itself involved prior legal interpretation, probably by the Divan (the sultan's imperial council). Fatwas, by definition, answer questions of *law* based on a given set of facts. But as legal scholar Kim Lane Scheppele has argued, the distinction between law and fact is far more ambiguous than it might seem.³¹ Any description of the facts which is legally useful, she notes, “will contain terms invoking legal categories, which mediate between the facts of ordinary description and legal judgments.”³² The bare, physical facts must be “processed” through what might be called “first-level interpretation,” to place them into legally relevant categories, before they can be invoked as objects of further legal analysis.³³ This is precisely what the Divan did, as it certain Moldavians had “rebel[led],” “all[ied] with Muscovy,” and “attack[ed]” Muslims. After this first-level interpretation, these findings became the object for Said's second-level interpretation, moving from *what* the non-Muslims had done, to what the *consequences* were.³⁴

Probably even more than in the past, the Divan now had a clear military reason to prefer this view. The ill-paid Ottoman forces needed plunder and slaves, but defeats by the Russian army made it impossible to reach enemy soil. In the words of the chronicler Căvid, “it was difficult to take Muscovite slave girl[s],” as Russia was “a far away country,” and well guarded.³⁵ One response was to invade Poland, on the pretense that certain Poles had abrogated the

³¹ Kim Lane Scheppele, “Facing Facts in Legal Interpretation,” *Representations* 30 (1990): 42–77. Her comments are particularly aimed at the fact/law dichotomy used to allocate authority between Anglo-American juries and judges, but the point is more widely applicable.

³² *Ibid.*, 58.

³³ *Ibid.* (the term “processed” is hers; the term “first-level interpretation” is mine).

³⁴ V.L. Ménage has, in passing, made a similar point, contending that “the ‘question’ put to the Muffî usually begged the real question: it did not ask whether in law [offenders’] behaviour amounted to” certain crimes, but assumed that it did, and sought authority to punish them. V.L. Ménage, “[Review of] *Fetwa Und Siyar: Zur Internationalrechtlichen Gutachtenpraxis Der Osmanischen Şeyh ül-Islâm Vom 17. Bis 19. Jahrhundert Unter Besonderer Berücksichtigung Des ‘Behcet ül-Fetâvâ’* by Hilmar Krüger,” *Bulletin of the School of Oriental and African Studies* 43, no. 1 (1980): 146. I believe Scheppele's framing of there being multiple levels of interpretation is a better model, however.

³⁵ Adnan Baycar, *Osmanlı Rus İlişkileri Tarihi: Ahmet Cavid Bey'in Müntehabâtı* (Istanbul: Yeditepe, 2004), 292–293.

friendship between those two states; those who surrendered were not to be harmed.³⁶ According to the British ambassador to Constantinople, John Murray, “these Excuses for entering into Poland seem to me to be entirely groundless: but there is little Plunder for the Troops elsewhere.”³⁷ So, in the summer of 1769, guided by members of the anti-Russian Confederation of the Bar, an Ottoman force enslaved between 1,000 and 5,000 Poles, who were sold in the army camp for 30 piasters each—or at a bargain, five for 50.³⁸ Other soldiers, without authorization, turned against Ottoman Christians. The Porte initially condemned this, and in fact executed an insubordinate officer, Kahraman Pasha, in August 1769 partly because “he had plundered all the villages where he passed in Moldavia.”³⁹

Kahraman Pasha’s actions may have been worthy of execution in August, but by December, they represented the official policy of the Porte. A similar order, justified by a fatwa, was issued for Wallachia as well. This was probably not simply a logical consequence of their rebellion, but instead the Porte’s *goal* in requesting the fatwa. Indeed, Şemdanizade refers to both orders simply as “for the enslavement of the subjects of Wallachia and Moldavia.”⁴⁰ The true intent was, in the words of the British ambassador, “to make Slaves and lay waste the Country.”⁴¹

The following year, some inhabitants of the Morea also rose against the Porte. This 1770 uprising became known as the “Orlov Revolt,” because it was aided and instigated by the Russian fleet in the Mediterranean, under Count Aleksei Orlov.⁴² The largely Albanian forces

³⁶ Kırca, “Mühimme,” 18–19. The Ottomans had gone to war largely because the Russians would not remove their forces from Polish territory, but now the presence of these forces, allegedly with Polish aid, was used to suggest that Poland had violated the Treaty of Carlowitz (Baycar, *Miıntehabât*, 313–317).

³⁷ TNAUK, SP 97/45 #16 (3/7/1769).

³⁸ TNAUK, SP 97/45 #16 (3/7/1769); Baycar, *Miıntehabât*, 293.

³⁹ TNAUK, SP 97/45 #21 (4/9/1769); Panaite, *Law*, 412; Erdem, *Slavery*, 26; Virginia H. Aksan, “Manning a Black Sea Garrison in the Eighteenth Century: Ochakov and Concepts of Mutiny and Rebellion in the Ottoman Context,” in *Mutiny and Rebellion in the Ottoman Empire*, ed. Jane Hathaway (Madison: University of Wisconsin Press, 2002), 63–72.

⁴⁰ TNAUK, SP 97/46 #1 (3/1/1770).

⁴¹ Aktepe, *Şem’dânî-Zâde*, IIB: 38.

⁴² See generally Aksan, *Wars*.

sent to the peninsula were directed to kill the (male) inhabitants, and to enslave “their women and children.”⁴³ This was done, and enslaved Greeks flowed into the markets of Salonica and Sarajevo.⁴⁴

Thus, the Porte had weaponized the Şeyhülislam’s abstract restatement of the Islamic law of non-Muslim rebellion, transforming unrest into opportunity, and resistance into a resource. Fueling the Ottoman military machine may well have been the Porte’s goal, even more than suppressing resistance.

Honing the Weapon

In 1787, war broke out again between the Ottomans and Russians, and in 1788, the Habsburg Empire joined in, on the Russian side. And once again, the Ottomans began to see domestic Christian outlaws, rightly or wrongly, as having joined with their foreign enemies. In Bosnia, the Porte was troubled by a bandit chieftain named Koçu, and this may have led to orders, issued in May 1788, declaring that the Christian inhabitants of the district of Novibazar (Yenipazar) were in revolt, and could be enslaved if they did not submit.⁴⁵ This was a conveniently-timed decision, as the area became the focus of fighting against the Habsburgs.

A similar, but better-documented, story occurred in the trans-Danubian Principalities. Ottoman forces, and those of Moldavian and Wallachian tributary princes, found that

⁴³ Başbakanlık Osmanlı Arşivi [hereinafter BOA], Cevdet Dahiliye collection [hereinafter CDH], 9437 (1183/12/er). This “left a legacy of animosity between the Greek and Albanian populations which played itself out during the Greek Revolution later” (Ibid., 154). All Ottoman documents’ dates are in the Islamic calendar, in the format year/month/day. The abbreviations “er,” “et,” and “el” refer to the last, middle, and first ten-day periods of each month.

⁴⁴ Mark Mazower, *Salonica, City of Ghosts: Christians, Muslims and Jews, 1430-1950* (London: HarperCollins, 2004), 105. See also BOA, Divan-ı Hümayun Düvel-i Ecnebiye Evrakları collection [hereinafter DVE] 11/26 (1189/10/15); TNAUK, SP 97/48 #19 (3/10/1772).

⁴⁵ BOA, DVE 63/59 (1202/8/et). This archival box, dedicated to diplomatic documents connected to the Habsburg embassy, is an odd place for a copy of this order; it may have come up in postwar discussions with the Austrians.

Moldavian peasants enlisted in the Russian and Habsburg armies, with some fighting as regulars and others as guerillas.⁴⁶ Ottoman sources described these fighters as “Volunteers” (*volonter*).⁴⁷ Fighting them presented the classic conundrum of counterinsurgency. The Divan reported to Sultan Abdülhamid I (r. 1774-1789) that, “it is doubtless that if we attack them, by [them] taking refuge in Moldavia, it will be impossible to distinguish them from the obedient *reaya*, and if we do not attack them, they will lay waste the countryside.”⁴⁸ They swam, as Mao would say a century and a half later, in the sea of the people.

To solve this military problem, Abdülhamid and his Divan agreed that they should consult the Şeyhülislam, Hamidizade Mustafa Efendi (in office 1788-1791). The sultan himself saw a parallel with the 1770 Greek uprising, noting in the margin of a report that “in the time of [my] late brother [Sultan Mustafa III (r. 1757-1774)], the *reaya* of the Morea also revolted.”⁴⁹ While I have not located the resulting fatwa, these deliberations suggest that the Divan—perhaps due to its ambivalence about the correct military decision—was not firmly committed to seeing the Volunteers either as criminals or rebels. The Divan referred to them as bandits (*eşkiya*), a term which implied they were criminals. But the Mustafa issued a fatwa in January 1789 which the Divan read to mean that the “group (*taiife*) known as Volunteer” could be enslaved.⁵⁰ I have not located the text of the fatwa, but subsequent orders, which refer to the Volunteers as having

⁴⁶ BOA, Hatt-ı Hümayun collection [hereinafter HAT] 1380/54385 (1203/3/1), 1380/54390 (1203/3/5), 1380/54429 (1203/6/19). The last document notes “the Volunteers and the Muscovites are mixed up” (*volonter ve Moskovlu mahlut edüğü*). This had been anticipated, and orders sent to forbid it, at the beginning of the war. See BOA, Cevdet Hariciye collection [hereinafter CHR] 6856 (1201/11/21); BOA, Cevdet Zabtiye [hereinafter CZB] 3204 (1201/12).

⁴⁷ This word has been transcribed as *vünester* by archivists (BOA, HAT 1385.54881 (est. 1205), and as *vatansız* by Sarıcaoğlu. See Fikret Sarıcaoğlu, *Kendi Kaleminden Bir Padişahın Portresi Sultan I. Abdülhamid (1774-1789)* (Istanbul: Tatav, 2001). However, in several documents it is clearly marked with Arabic vowel diacriticals as *vüliinter*, and therefore in many documents catalogs have more accurately transcribed it as *volonter*, most likely from French *volontaire*. Russian archival sources also refer to *Moldovanskiy Volentiry*. See Arkhiv Vneshnei Politikii Rossiiskoi Imperii, Konstantinopol'skaya Missiya, 90/1, d1055, l8b (7/4/1792 Old Style).

⁴⁸ BOA, HAT 1379/54346 (est. 1203).

⁴⁹ Ibid.

⁵⁰ The fatwa is copied in BOA, Mühimme Defterleri collection [hereinafter MHMd]185 #24, 5 (1203/4/24).

submitted to the Porte's enemies and enlisted in their armies,⁵¹ suggest that the fatwa's text was similar to the one issued in 1769. Here, again, the Volunteers were identified as enemies by affiliating them with a foreign enemy.

However, the Divan feared that its actions could be hindered by popular understandings of the law: if the captured Volunteers were sent to the Ottoman shipyards in Istanbul, as captured rebels had been in the past, they might claim to have been enslaved illegally, and “a crowd of commoners who do not know the meaning of ‘Volunteer’ will probably talk idly, saying ‘are they [the government] enslaving *reaya*?’” The Divan therefore decided to execute a few of the leaders, and to make the others row on the vessels of the Danube flotilla, safely out of view of the Istanbul crowd (which probably referred to Ottoman Christians). Fatwas were again requested from Mustafa to confirm the legality of this decision, and while these appear to have been lost, this was probably not a difficult legal issue—if a given person could be enslaved, surely the Porte could decide *where* he would be made to work. This incident suggests that the Şeyhülislam's legal interpretation, and the Divan's, had to compete with popular interpretations of the *sharia*—including those of non-Muslims.

Commanders in the field, however, still saw “difficulties” in the existing orders—probably because it was ambiguous who was included in the “group” of Volunteers. Şeyhülislam Mustafa, it seems, had not made clear how widely his fatwa swept. The Divan may not have engaged in prior first-level interpretation, leaving it up to Mustafa to decide not only to confirm that enslavement was the punishment for rebellion, but also to decide *whether* there was a rebellion, and *who* was rebelling. It may be that, following Ebussuud's earlier fatwas, he had limited his finding of rebellion only to male combatants—making them, but not their female or minor relatives and neighbors, subject to enslavement.

⁵¹ BOA, HAT 1380/54410 (1203/5/25).

The Divan itself—perhaps in informal consultations with Mustafa—soon went further. By February, the Divan believed that “most” Moldavian men had become Volunteers; in April, it raised the stakes, reporting to the newly enthroned Sultan Selim III (r. 1789-1807) that because “all” of the Moldavians had rebelled, new orders had been sent out summarizing the fatwas and allowing enslavement.⁵² Now rebellion was defined communally, rather than individually, allowing women and children, too, to be enslaved. Here, then, we see the Divan directly doing what it appears to have done in 1769: using its own legal discretion to make a first-level interpretation, deciding that certain incidents on the ground amounted to a legal “rebellion” by “all” of the Moldavians. These conclusions were then the grounds for further interpretations by Mustafa, going further than in January, to conclude that Moldavians could be enslaved. The orders eventually issued to Serasker Hasan Pasha allowed the enslavement of all those who “broke the pact” (*nakz-i ahd*).⁵³

Mustafa also issued another fatwa in January 1789, giving another rationale for the enslavement of *zimmîs*.

[Question]: And the people of the Abode of War occupying (*müstevlî*) and conquering a kingdom of the Abode of Friendship [with Islam] which is adjacent to the Abode of War, if the infidels of the kingdom are conquered and defeated by subjugation by the people of the Abode of War, that kingdom being subject to the Abode of War and in the administration of the Abode of War, is the killing and enslaving of the people acceptable?

⁵² BOA, HAT 1380/54410 (1203/5/25), 1411/57367 (1203/8/3).

⁵³ BOA, Cevdet Askeriye collection [hereinafter CAS] 46926 (1203/8/el).

The Answer: Yes.⁵⁴

The Porte applied this opinion to Moldavia, which was now largely under Russian control. Taken together with the application of the previous fatwa, the Porte's intention to authorize widespread enslavement in Moldavia becomes clear. This would have made sense militarily: as the spring of 1789 approached, it appeared that the main imperial army would march to face the Russians, advancing southward after capturing the fortress of Ochakov in December⁵⁵—meaning the campaign would be fought in Moldavia. As in previous fatwas, the Divan or the Fetvâ Emini had “processed” the bare facts in Moldavia to reach preliminary legal conclusions, which the Şeyhülislam then took as the object for further legal analysis. The result was, almost certainly, what the Divan had wanted. Any lingering concerns about the reactions of Christians in Istanbul to Moldavians' enslavement had apparently been overcome by military necessity.

The Porte had thus honed the law of rebellion into a weapon that could be systematically deployed against its own non-Muslim subjects, when those subjects rebelled by joining with foreign enemies. Fatwas from various Şeyhülislams had repeatedly confirmed that the penalty for such activities was loss of *zîmmet*, and hence enslavement, but the critical question remained: *who* was a rebel? The Divan and Şeyhülislam gave different answers at different points during the 1787 War, applying the label of “rebel” sometimes to individuals, and sometimes to whole communities or principalities. But Islamic law was not solely monopolized by the state, as the Divan feared that even non-Muslim subjects could interpret it, and mobilize based on those interpretations.

⁵⁴ BOA, MHMd 185 #24, 5 (1203/4/24)

⁵⁵ TNAUK, FO 78/10 #12 (22/3/1789).

Turning the Weapon Inward

The period between roughly 1790 and 1830 was extraordinarily violent, as Sultans Selim III and Mahmud II attempted to gain control over both local notables and bandits—who, as Tolga Esmer has shown, were often intertwined. Leaders chosen to march against them could make their fortunes, either through victory or collusion, while troops could benefit from plunder. Muslim rebels were often executed, and could also be condemned to hard labor. But ultimately, they remained *criminals*, rather than *enemies*. Neither they nor—crucially—their female and minor relatives could be enslaved, under any circumstances.

Matters *could* be different, of course, when the Ottoman state faced Christian bandits or rebels—so once again, the law of rebellion became a useful legal and military weapon. But now it moved beyond its eighteenth-century role as an adjunct to the Porte’s strategy in foreign wars, to become a domestic counterinsurgency strategy.⁵⁶

This move began in Serbia. An uprising there broke out in 1804, and Selim issued orders to suppress the rebels—allowing the enslavement of combatants themselves (assumed, in the orders, to be male). It is unclear if this was justified by a new fatwa, but the orders specifically banned the enslavement of Serbian women and children.⁵⁷ This distinction echoed the opinion the Şeyhülislam seemed to have issued for the Volunteers in 1789, and Ebussuud’s sixteenth-century fatwa: male combatants were liable for punishment, but women and children were not. It is notable, however, that Ebussuud had referred to *killing* bandits—something which was legal for

⁵⁶ I am not aware of any significant incidents where the law of rebellion was applied to purely domestic conflicts on a large scale in the seventeenth- or eighteenth-century Ottoman Empire, but these may have existed. I would welcome suggestions.

⁵⁷ BOA, HAT 134/5532B (1220/12/11).

zimmîs, Muslims, and enemies alike—rather than enslaving them. Now, the Ottomans spoke the language of rebellion (with enslavement as the punishment) rather than of banditry (with execution as the punishment), but it was still *individualized* rebellion. Thus the legal response to the Serbian uprising, like Mustafa’s January 1789 fatwa, fell somewhere between purely “criminal” and purely “enemy.” The offense and punishment were conceived in “enemy” terms, but it was conceived of as an individual matter, not communal.

Ottoman commanders in the field, however, wanted more. They sought to treat entire Serbian communities as enemies, legally turning the conflict into a full-scale war—so that they could enslave Serbian women and children. As noted above, in this era there was little profit in enslaving men. As early as March 1806, they requested the Porte to declare that the entire Serbian community had renounced its pact of *zimmîet*.⁵⁸ Selim seems to have demurred at first, but by early 1807, he accepted reports that the Serbs were enslaving Muslim women and children as sufficient to allow their enslavement. Declaring that the Serbs had “become Muscovites,” Selim allowed that they were liable to enslavement. These orders were renewed in 1813, and again in 1815.⁵⁹ Selim probably consulted with any of the Şeyhülislams who held office in this period, but it is unclear if a formal fatwa was issued.⁶⁰ But it is notable that, while the Serbian revolt was largely a domestic matter, the enslavement of rebels was justified, as before, by associating them with a *foreign* enemy—Russia. The law of rebellion, applied in the eighteenth century to those who actively aided enemies, was now being applied against domestic enemies, whose affiliation with foreign foes was at best peripheral, and at worst, a legal fiction.

⁵⁸ BOA, HAT 134/5532B (1220/12/11).

⁵⁹ BOA, HAT 133/5507 (1222/1/16), 148/6243 (est. 1221), 1110/44707 (1228/6/24); Yilmazer, *Sânî-zâde*, I: 696. At the same time, Selim revived the long-defunct *pencik* tax, as a way to control captivity; Sultan Mustafa IV then renounced it (justifying his action with a fatwa), though it seems it was still collected. I trace this evolution in Smiley, “When Peace Is Made,” 232.

⁶⁰ The Şeyhülislams were Esad Efendi (in office 1803-1806), Ata Mehmed Efendi (in office 1806 and again 1806-1808), and Ömer Efendi (in office 1806).

The Porte went further in the 1820s, as Ottoman Greeks rose up in revolt—starting a decade-long war that led to Canib’s confrontation with Strangford, and eventually to a clash between the Ottomans and the Christian powers at Navarino in 1827.⁶¹ The first uprising, in Moldavia in early 1821, was quickly suppressed, and failed to take hold, but no sooner had this revolt failed than resistance erupted far to the south, in the Peloponnesus. In July 1821, after a victory in Moldavia, the Ottoman Governor of Silistria requested instructions, reporting that some of his 46 captives, taken in battle, had wives and children in Wallachia. Could he send men to enslave these noncombatants?⁶² Mahmud II and the Divan seemed unsure about what to do, in terms of both law and policy.

Legally, they consulted the Şeyhülislam, Abdülvahhab, who issued a fatwa. The query began by reciting the usual actions which would constitute rebellion—breaking the pact, joining with other infidels to fight against Muslims—with the implication that these applied to the Greek combatants in question. Then, the Divan asked, “if this [rebellious male] infidel is taken, his enslavement is permissible by the sharia, but is the enslavement of this infidel’s wife and children who are in the Land of Truce also permissible?” Abdülvahhab’s answer was “definitely not.”⁶³ This followed the approach initially taken in Wallachia in 1789, and in Serbia in 1804-1806.

On policy grounds, Mahmud and the Divan may have welcomed this answer as a form of guidance. As Hakan Erdem’s work shows, there were clear reasons both to prefer and to oppose declaring rebellion and widening enslavement. On the one hand, as noted above, the Porte had learned over the past half-century that allowing enslavement was a powerful military tool for

⁶¹ See Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914* (Princeton, N.J.: Princeton University Press, 2012), 63–90; Y. Hakan Erdem, “Do Not Think of Them As Agricultural Labourers’: Ottoman Responses to the Greek War of Independence,” in *Citizenship and the Nation-State in Greece and Turkey*, ed. Thalia G. Dragonas and Faruk Birttek (London: Routledge, 2005), 67–84. Erdem’s article has provided particular inspiration for my own thinking on this subject.

⁶² BOA HAT 1157/45896 (1236/10/17).

⁶³ BOA HAT 1292/50201 (est. 1236), 1292/50201A (est. 1236). The latter document is the *istifta* and fatwa.

recruiting and motivating irregular forces. Erdem describes the “Machiavellian tone” of the Divan as it discussed declaring rebellion in order to motivate Muslims to spend their own resources in suppressing the revolt, in return for the promise of plunder.⁶⁴ On the other hand, as early as March 1821, the Divan recognized that declaring a rebellion might be a self-fulfilling prophecy, making otherwise innocent Christian subjects fearful and angry enough to revolt.⁶⁵

This was a similar, though not identical, dilemma to that which Abdülhamid I had faced in 1788, when deciding whether to send forces against the Volunteers. For Abdülhamid, the choice had been whether to send forces; for Mahmud, the Ottomans’ military weakness meant that sending forces at all required declaring rebellion. But that might have even worse effects. In both cases, the sultans turned to their Şeyhülislams, seeking legal solutions for military quandaries. Their requests, both formal and informal, offered little of the first-level interpretation found in those queries where the political authorities clearly desired a certain result.

But Mahmud, like Abdülhamid, eventually found it better to widen the scope of enslavement. Once again, the Porte secured fatwas through requests which already defined whole communities as being in revolt. As early as the spring of 1821, he began issuing orders, usually with attached fatwas from Abdülvahhab, declaring that individual communities along the Aegean coast were in revolt. These orders specifically authorized enslavement, as did others for parts of the Peloponnesus.⁶⁶ Unlike those issued in any previous conflict, the legal reasoning for Greeks’ enslavement did not depend on their ties to a foreign power—only to resistance itself. The law of rebellion had now become purely domestic.

It became routine to declare particular localities as legally in revolt, and thus to authorize the enslavement of women and children—and it was women and children whom the forces most

⁶⁴ Erdem, “Responses,” 69, 77, 81.

⁶⁵ Ibid., 68–69.

⁶⁶ Yılmaz, *Sânî-zâde*, II: 1137, 1172, 1186, 1197, 1230, 1291.

avidly sought.⁶⁷ Greek men were often simply killed. Most memorably, the Ottoman Governor of Karaman on one occasion reported after a victory “our soldiers seized all of it, as far as their women and even their coffee utensils.”⁶⁸ When Ottoman-Egyptian forces under Ibrahim Pasha entered the fray, they too became heavily involved in the slave trade.⁶⁹ Kabudlı Vasfi Efendi, an irregular cavalryman who served in the rebellion, captured the centrality of slavery in his remarkable memoirs: “[w]e had come here,” he said of one battle, “in order to take prisoners, to make slaves, male and female, and to fight.”⁷⁰

This conflict, which Vasfi’s father referred to as “not a chivalrous war,”⁷¹ became most infamous on Chios in 1822.⁷² The British traveler Robert Walsh claimed that the fleet sent there was readied quickly, because

[i]t was given out, that the island was to be surrendered to the adventurers who chose to engage in the expedition; the riches and timid character of the men, and the beauty of the women, were equally notorious, and the prospect of plunder and slaves, with little risk, attracted multitudes.⁷³

By July, he reported, there were no more than 900 residents left on Chios; 20,000 had been killed and 30,000 “carried off and sold in different places in Asia, Africa, and Europe.”⁷⁴ He claimed that 41,000 *pencik* certificates (“teskerais,” from the Turkish *tezkiye*) had already been issued by 1 May. These numbers are probably exaggerated, but one Ottoman register book

⁶⁷ Smiley, “‘When Peace Is Made,’” 236–37. Examples of such orders are BOA, CAS 8523 (1236/8/er), 46911 (1237/8/et).

⁶⁸ BOA, HAT 927/40279B (1237/10/23).

⁶⁹ BOA, HAT 887/39203 (est. 1239); Erdem, *Slavery*, 69-70; Zilfi, *Women*, 123.

⁷⁰ Jan Schmidt, “The Adventures of an Ottoman Horseman: The Autobiography of Kabudlı Vasfi Efendi, 1800-1825,” in *The Joys of Philology: Studies in Ottoman Literature, History and Orientalism (1500-1923)* (Istanbul: Isis, 2002), I:275 (his translation).

⁷¹ *Ibid.*, I:226. This is Schmidt’s translation of *bu çeng kural çengi değil*.

⁷² The British traveler Adolphus Slade argued that this would not have received much attention if inflicted by Christians on Muslims. Adolphus Slade, *Records of Travels in Turkey, Greece, &c.*, 2d ed (London: Saunders and Otley, 1833), 58–59.

⁷³ Robert Walsh, *A Residence at Constantinople* (London: Westley & Davis, 1836), I: 404.

⁷⁴ *Ibid.*, I: 409.

records the *pencik* receipts for 1,324 slaves (802 female, 502 male) taken on the island in less than two weeks, at a rate of 33 piasters per head.⁷⁵

This enslavement, however, was far from indiscriminate. The Porte targeted individual communities, and it attempted to control enslavement by requiring that all slaves be issued with *pencik* certificates certifying that they were from legitimately rebellious areas. Erdem shows that, when informed that some subjects from areas which had not rebelled, or which had been pardoned, were being sold, the Porte insisted that no slaves be sold without a *pencik* certificate.⁷⁶ Indeed, in Istanbul even the sale of lawfully-taken slaves from Chios—presumably distinguishable by the origin noted on their *pencik* certificates—was stopped by an official decree when Esma Sultan, a sister of Mahmud who held the island’s tax farm, protested.⁷⁷

The sight of enslaved Chiotese also outraged European observers—as Walsh’s narrative, quoted above, illustrates. Indeed, no other even during the Greek war of independence outraged Europeans as much as the sight of white, Christian, women and their children being sold into slavery.⁷⁸ Hence the diplomatic protests with which this paper begins.

Conclusion

Canib Efendi met these protests with a declaration that enslavement was *required* by Islamic law. His argument likely helped cement in European minds the idea that the Ottomans were fatally constrained by an ancient, barbaric legal code—still a popular view of *sharia* today. But in fact, as we have seen, the Ottoman state had not been forced to authorize its rebellious

⁷⁵ BOA, Bab-ı Defteri Başmuhasebe Kalemi Defterleri 8891, 4-18 (1237/8/22-1237/9/2).

⁷⁶ Erdem, *Slavery*, 20–21; Erdem, “Responses,” 70–71.

⁷⁷ Walsh, *Residence*, II: 10–11.

⁷⁸ Rumors in 1825 that Ibrahim Pasha intended to depopulate the Peloponnese of Christians caused perhaps more outrage, but this plan was entirely mythical. See Rodogno, *Against Massacre*.

subjects' enslavement, either by the person of the Şeyhülislam or by the dead hand of *sharia*. The Porte itself had tested, honed, and ever-more-widely deployed the law of the rebellion as a weapon of counterinsurgency, to meet military and political needs, over the course of half a century. It had done this by means of legal interpretation, some by the Şeyhülislam and some by the sultans and their Divans.

This did not mean, however, that the political authorities *controlled* the law, or that the law was ignored, or that it was simply reshaped. The Şeyhülislams' fatwas justified each policy, and these were invariably based on Ebussuud's opinions, and on the Hanafi *fiqh* that lay behind those. The policy, at every level, was a matter of interpretation.⁷⁹ When Şeyhülislams took the lead in interpretation, they tended to prefer to assign the status of "rebel" to individuals, limiting the scope of who could be enslaved—as in 1769, 1789, and 1821. When the Divan took the lead, engaging in first-level interpretation to "process" the bare facts before presenting them to the Şeyhülislam, always resulting in the status of "rebel" being assigned to whole communities. In both cases, interpretation was vital. The audiences for the fatwas, though only hinted at here, were not only other officials but also Muslim Ottoman subjects, and—as the Porte's anxieties over the "crowd of commoners" in Istanbul show—even non-Muslims. Indeed, as Canib's arguments show, even European diplomats were a potential audience, as the Ottoman state sought to avoid foreign interference by arguing that its actions were unavoidable.

To convince all of these audiences, as well as to satisfy itself, the Şeyhülislam and Divan alike needed to produce convincing legal interpretations, even when their political goals were

⁷⁹ This was true in the field as well. Though beyond the scope of this paper, military commanders often engaged in what Lauren Benton would call "legal posturing," creating quasi-legal justifications for their own acts of plunder and illegal enslavement. See Smiley, "When Peace Is Made," 115 n. 567.

clear. As the legal process school of scholarship has argued, such a need to *produce* justifications and talk about law is in itself important, and can help shape governmental action.⁸⁰

Here, because the Ottoman state constantly talked discussed, relied upon, and even weaponized the *sharia*, the frameworks embedded within *fiqh* shaped the state's actions. In the particular social, military, and geopolitical context of the late eighteenth and early nineteenth centuries, they drove Ottoman policy in the direction of regarding Christian unrest as a communal, military problem.

Rebellion was communal, because the status of “rebel” was routinely attached to communities—towns, villages, districts, and islands. The law of rebellion increasingly operated at this level, not less and not more. Not less, because while Şeyhülislams tended to prefer to consider rebellion as an individual crime, military necessity consistently led the Divan to re-interpret it as a communal offense. Not more, because it did not attach to “national” groups. Alongside these *sharia*-based measures, the Porte also took administrative actions against Greeks, as a group, for example by removing the elite Phanariot families from their positions in the Ottoman bureaucracy—but as Erdem has noted, the Ottomans did not justify these measures based on religious law.⁸¹ Moreover, there was no move to *enslave* all the Greeks in Istanbul (in any case, this would not have served any clear military purpose). Such administrative measures, he suggests, “perhaps better reflected the mood of the times than the *shari‘* sanctions which were fairly well established, expected and therefore frozen or stale.”⁸² But as the preceding discussion has shown, the Ottomans' *sharia*-based counterinsurgency strategy was anything but frozen; it had been actively articulated and developed since 1769. Instead, the distinction between *sharia*-based and administrative measures may have reflected the categories which remained embedded in *fiqh*,

⁸⁰ See, e.g., Harold Hongju Koh, “Transnational Legal Process,” *Nebraska Law Review* 75 (1996): 181–207.

⁸¹ Erdem, “Responses.”

⁸² *Ibid.*, 73.

and hence in fatwas: there was no way to declare “Greeks” as a whole to be in rebellion, because (unlike villages, islands, or the geographic regions of Moldavia, Wallachia, and Serbia) “Greeks” were not a single geographic or religious community which could lose its *zimmat*. In a sense, “Greeks,” as such, had not brokered a unified “deal” with the Ottoman state which they could all have abrogated.⁸³ Using the language of the *sharia*, even to adapt and deploy it creatively, required thinking in terms of the categories it recognized.

It had to be military, rather than criminal, when Christians were involved, because such an approach allowed the Porte to mobilize and motivate larger forces. When the Porte faced Muslim bandits, there was less incentive to consider the conflict a full-scale war or rebellion. Short of a declaration that he was an apostate, no Muslim could become a legal *enemy*, vulnerable to enslavement; he could only become a criminal, subject to imprisonment or execution.⁸⁴ Only Christians could, legally be in real rebellion. But since a rebellion was the only way to create the legal conditions under which forces could be recruited, this may have helped turn localized acts of resistance into broader rebellions. As the saying goes, when one only has a hammer, everything looks like a nail.

By 1822, this was in many ways the only hammer Mahmud had with which to confront Christian unrest. It was a hammer the Ottoman state itself had built and honed, since 1769, through both juristic and political legal interpretation. The Ottoman law of rebellion was born in wars against Russia, was applied more and more frequently, and slowly expanded to apply to

⁸³ See Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (Cambridge: Cambridge University, 2008); Christine Philliou, “Communities on the Verge: Unraveling the Phanariot Ascendancy in Ottoman Governance,” *Comparative Studies in Society and History* 51, no. 1 (2009): 151–181. I take the term “deal” from Russianist historiography, especially Brian J. Boeck, *Imperial Boundaries: Cossack Communities and Empire-Building in the Age of Peter the Great* (Cambridge: Cambridge University, 2009).

⁸⁴ For conflicts between Selim and Muslim “networks of violence”—with whom Ottoman forces and officials often in fact compromised or cooperated with—see Esmer, “Rebellion.”

purely domestic revolts. This law—this hammer—allowed the Ottoman state and its forces to exercise all the rights of foreign war against domestic opponents.⁸⁵

This did not mean that the state created the hammer *ex nihilo* based on its interests; it did so from the resources found in the Hanafi *fiqh* literature. Nor did it mean that the Ottoman law of rebellion was the *only* weapon that could have been created out of those resources—the legal tradition did not strictly determine state action. And the Porte was not forced to wield this hammer, as Canib implied—it chose to.

⁸⁵ This paralleled events in the Atlantic World, where states faced with domestic rebellions sought to exercise belligerent rights without recognizing the rebels' sovereignty. The classic statement of this theory came during the U.S. Civil War, in The Prize Cases, 67 U.S. 635 (1863). See John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York: Free Press, 2012), 142–157. The Supreme Court in this case drew on an earlier ruling, which had recognized France as possessing similar rights during the Haitian Revolution (Rose v. Himely, 8 U.S. (4 Cranch.) 241 (1808)). In 1823 the British government, for its own reasons, paralleled Ottoman legal views in finding that the Greek rebels were a belligerent entity, but not a sovereign state. See Harold William Vazeille Temperley, *The Foreign Policy of Canning, 1822-1827: England, the Neo-Holy Alliance and the New World* (London: G. Bell and Sons, 1925), 326; John Bew, “‘From an Umpire to a Competitor’: Castlereagh, Canning and the Issue of Intervention in the Wake of the Napoleonic Wars,” in *Humanitarian Intervention: A History*, ed. Brendan Simms and D.J.B. Trim (Cambridge: Cambridge University Press, 2011), 131.