Vows as Contract in Ottoman Public Life (17th-18th centuries)

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To Dicle Koğacıoğlu

Abstract

Starting sometime in the seventeenth century, vows (*nezir,* Ar. *nadhr*) began to be used in the central lands of the Ottoman Empire as a means to seal contracts of a public nature. Although these vows were similar to the more common and older forms of customary compacts that also pertained to public matters, vows had a better defined status in sharia and could entail worldly liability in addition to moral/religious obligation. Using court records and fatwa collections, I argue that vows exemplified the expansion of legality and control of the state over custom and morality, as well as the recognition of a customary device of contract and its penetration into the legal sphere. On a secondary level, I also provide new material on contemporary political culture and the question of legal pluralism in the Ottoman context.

Keywords

vows, oaths, contract, custom, legal centralization, Ottoman Empire

In March 1703, coppersmiths in the town of ʿAyntāb (modern Gaziantep) reached a unanimous decision against preemptive purchases of unprocessed copper. According to their deposition, which was registered

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at the court, some of the coppersmiths bought raw copper outside the town before it reached the sheikh of the coppersmiths to be distributed among the craftsmen, as agreed by all (*cümlemiz ma'rifetiyle ve ittifāḳiyle*). They then made a contract and compact (*ḳavl u ittifāḳ ve 'ahd u mīṣāḳ*) to the effect that should any of them breach the compact (*naḳż-i 'ahd*), from then on, he would pay 50 *ġurūş* as *neẕir* (vow) towards the repair of the court building.[1] A similar resolution by felt-makers of the same town, dated December 1738, was also registered at the court as a vow. This time the craftsmen pledged not to put oxen wool in the felt they produced and to observe specific measures in making saddles. They also "[vowed] to pay 50 *ġurūş* towards the cleaning of the Sacur River should any of [them], whoever that be, violate [their] compact and contract."[2]

At first sight, these agreements may not strike students of Ottoman urban history as original, since it is now recognized that collective agents, such as neighborhoods or guilds, enjoyed a fairly large degree of autonomy that could materialize also in collective agreements such as these. The novelty of the compacts here was that they were sealed with a *neẕir*, a vow (Ar. *nadhr*),[3] literally "to oblige oneself or to undertake."[4] This pre-Islamic practice was incorporated into Islamic culture and used throughout Islamic history, as far as we know, primarily for private purposes. Its use in connection with public issues in the Ottoman Empire, as in the examples above, was a novelty that seems to have emerged sometime in the seventeenth century.

Not all *neẕir*s were of an economic nature. Some were openly political and meant to be binding for a group of people or a more structured collectivity, for individuals vis-à-vis collectivities or collectivities vis-à-vis the state. Thus, vows operated both at local and imperial levels, and always pertained to a matter of public concern. For this reason, in this study I call them public vows, as opposed to vows that pertained to private concerns of individuals; the latter were not registered.

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1) Ayntab Court Register no. 52/251 (1/3 *Şevvāl* 1114/1703).

2) Ayntab CR no. 93/246 (10 *Ramażān* 1151/1738).

3) Most of the primary sources used in this study are in Ottoman Turkish. Legal and other terms of Arabic origin are transliterated in their Turkified version. Arabic transliteration will be used for specifically non-Ottoman contexts and periods.

4) Bilal Esen, 'İslam Hukuku'nda Nezir ve Adak', Unpublished MA thesis (Marmara University, 2003), 7.

The examples of public vows thus far identified are all from Anatolia and Rumeli, with the exception of a few records from seventeenth-century Aleppo that Charles Wilkins has kindly shared with me.[5] Notwithstanding impressions of colleagues working on different parts of the Arab provinces,[6] new research may bring to light further examples of public vows from this region. New examples may emerge from other parts of the Balkans as well. For practical reasons, this study has been limited to Rumeli and Anatolia.

In what follows, I first survey different uses of vows in public life, and then examine them from legal and extra-legal perspectives as contractual devices. It emerges from this examination that public vows exemplified the expansion of the legal sphere vis-à-vis custom and morality as well as the guardianship of the state over the claims of God. It is also possible to read the process in reverse however: public vows represented recognition of a customary device of contract, hence expansion of custom into the legal sphere. On a secondary level, this observation provides new material for the debate on the question of legal pluralism in the Ottoman Empire. It also provides new material for the study of contemporary political culture: public vows resonated with a broader culture of consent and contractual politics that matched the tenor of vigorous local politics and redefined center-periphery relations in the seventeenth and eighteenth centuries.

Nezir

1.1. The Basics

A *nezir* is a compact (*'ahd*) between an individual and God. A third party may be specified as a beneficiary of a vow (*menzūr leh*), thereby committing the vow-taker to a certain course of action in relation to this other person. The possibility of involving a third party made *nezir*

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5) Personal communication, December 2008.

6) Personal communications with Rifa'at Ali Abou-El-Haj, Nelly Hanna, Abdul-Karim Rafeq and Dror Ze'evi, 2001-2008.

an instrument of contractual commitment in private as well as public matters.[7]

Vows of a public nature emerged in the central lands of the Ottoman Empire probably around the middle of the seventeenth century and began to appear in Ottoman records in the second half of the century. Of the thirteen fatwa collections consulted for this study, the three early works by Zenbilli ʿAlī Cemalī (1503-1526), Ṣunʿullah el-Ḥalebī (1599-1603), and İbrāhīm el-Ḥalebī (d. 1549)[8] do not contain any fatwas about public oaths or vows. The large majority of fatwas concerning public oaths or vows are located in two collections: that of Minḳārizāde Yaḥyā Efendī (1662-74) and Menteşīzāde ʿAbdü'r-rahīm (1715-16), with a few others from Yaḥyā b. Ẕekeriyā (1622-32), ʿAṭā'ullah Efendī (1715) and Ibn Abī İsḥaḳ (1685-1752/53).[9] The beginning of registration, let alone the emergence of the practice itself, is certainly more difficult to trace. The earliest recorded example I have been able to identify dates from the period of the Ottoman-Habsburg war of 1683-99, i.e. a few decades after jurists began to debate public vows.[10] Most probably, the practice continued unrecorded for some decades before jurists took notice and addressed it as an issue. In the meantime, it became customary to take the cases to the court. While the juridical

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7) See Roy Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton, NJ: Princeton University Press, 1980), 42-72, regarding the political use of oaths and vows in the tenth and eleventh centuries. Also *EI*[2], s.v. *nadḥr* (J. Petersen) 7: 846-47.

8) Zenbilli ʿAlī Efendī, *Fetāvā-yı ʿAlī Efendī* (Süleymaniye Library, Ms. Fatih no. 2390); Ṣunʿullah Efendī, *Fetāvā* (Süleymaniye Library, Ms. Serez no. 1132); İbrahim Halebi, *İzahlı Mülteka'l-Ebhur Tercümesi*, trans. Mustafa Uysal (İstanbul: Dizerkonca, 1968). The latest *şeyḫü'l-islām* collection used is that of Dürrīzāde Meḥmed ʿĀrif (d. 1800), *Netīcetü'l-fetāvā ma'a'n-nuḳūl* (İstanbul: Maṭbaʿa-yi Āmire, 1265/1848). I have also consulted M. Emin Ibn Abidin, *Reddü'l-Muhtar Ale'd-Dürri'l-Muhtar: Şerhu Tenviri'l-Ebsar*, tr. Ahmed Davudoğlu (Istanbul: Şamil Yayınları, 1983), vol. 7.

9) ʿAṭā'ullah Meḥmed b. İbrāhīm Efendī (d.1715), *Fetāvā-yı ʿAṭā'iyye* (Süleymaniye Library, Ms. H. Hüsnü Paşa 427); Minḳārizāde Yaḥyā Efendī (1662-74), *Fetāvā* (Harvard Law School Library, HLS MS 1402 [ca. 1720 C.E.]); and Menteşīzāde ʿAbdü'r-rahīm Efendī (1715-16), *Fetāvā-yı ʿAbdü'r-rahīm* (İstanbul: Darü't-tıbāʿati'l-Maʿmūre, 1827).

10) Ayntab CR no. 37/89/1, dated *rebī'ü'l-āḫır* 1100/1689, where the people of Ayntab pledge to pay the state 2,500 *akçes* (~ 20 *ġurūş*) per neighborhood should they fail to denounce deserters from the war front. Also no. 37/75/1, dated *cemāzīyü'l-āḫır* 1100/1689. Also Ayntab CR no. 18/258/1, *cemāzīyü'l-āḫır* 1070/1660, a similar collective oath registered on the occasion of Abāza Hasan Paşa's revolt--although the word *nezir* is not used here.

debate seems to have faded out around the middle of the eighteenth century, the practice itself continued.

To date, only Faroqhi and Tamdoğan have examined *nezir* in the Ottoman context, and both of them have focused on vows sworn by collectivities concerning security matters relating particularly to the control of bandits and tribes. These studies highlight the element of state initiative and the penal aspect of the practice.[11] Tamdoğan, in addition, recognizes their contractual aspect but does not elaborate on it. As indicated by the vows sworn by craftsmen (see above), there was another group of oaths and vows that pertained to public life and did not involve the central state. It is in this second group that the contractual aspect of the vows comes out most clearly. However, vows elicited by the state in state-society/center-periphery relations operated within the same cultural parameters as vows that involved local parties alone.

1.2. Vows as Penal Surety

In his *Zübde-i Vekayiât*, the chancellor chronicler Sarı Mehmed Paşa writes about two riots that took place in the provinces: one in Bosna Saray (Sarajevo) in 1093/1682, and a few years later, another in Cyprus.[12] According to the chronicler, the Bosna Saray incident was started by peasants who had been summoned to town in the aftermath of an unresolved murder. It was the deputy governor's idea "to make the Muslims and infidels stand surety for one another" and pay him and the qadi two *ġurūş* per guarantor. When the peasants came to town, events took an unexpected turn. Aided by some urban 'outlaws', the

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11) Suraiya Faroqhi, "Räuber, Rebellen und Obrigkeit im osmanischen Anatolien," *Periplus* 3 (1993), 31-46. Faroqhi has identified a register devoted exclusively to *nezir* records dating from 1766-1782. Işık Tamdoğan, "Le *nezir* ou les relations des bandits et des nomades avec l'État dans la Çukurova du xviiie siècle," in *Sociétés rurales ottomanes, Ottoman Rural Societies*, ed. A. Mohammad et al. (Le Caire: Institut français d'archéologie orientale, 2005). Also see Hülya Canbakal, *Society and Politics in an Ottoman town: 'Ayntab in the 17th Century* (Leiden; Boston: Brill, 2007), 162-64.

12) Mehmed Paşa does not specify the date of the Cyprus affair. He writes about the event as a prelude to the events of 1102/1690-91. Silahşör Mehemmed Bey, alias Fireng Bey, who played a key role in suppressing both riots, died in 1097/1685-86. Hence, the two events must have taken place only a few years apart. Defterdar Mehmed Paşa, *Zübde-i Vekayiât, Tahlil ve Metin (1066–1116/1656–1704)*, ed. Abdülkadir Özcan (Ankara: TTK, 1995), 390-92.

peasants broke into the court, where they pillaged the qadi's coin chest, threw him down the stairs, and beat him and his deputy to death.

In the Cyprus incident, the offenders were soldiers, some "native janissaries" (*yerlü yeñiçeri*) and prebend-holders who had been "encouraged in their mischief," so our chronicler says, "by some of the notables". The rebels killed their commanders and forced the deputy governor into flight, but they paid for their actions dearly in the end. Many of them were executed and the notables (*aʿyān*) who were involved in the rebellion were given a severe rebuke (*zecr ü taʾnīf*). In addition, the Cypriots vowed to give the heads of thirty rebels to the authorities and 50,000 gold coins to the imperial treasury, should such an improper situation arise again on the island. A stone pillar was erected in front of the Ayasofya Mosque and the vow was carved on it so that "the people of the island should remember what had happened and avoid such rebellion and mischief (*baġī ve fesād*)."[13]

Similarly, in Bosna Saray, the townsmen pledged to pay 40,000 gold coins to the state and to hand over a number of heads from among the "villains" should such mischief happen again. In this instance, too, the vow was sealed by a column erected in a public spot to remind the townsmen of the combined power of God and the state as parties to the vow and to ensure the town's compliance with the compact (*kemer-bend-i mīsāḳ*).[14] While these are the only two incidents I have come across in which a vow was graphically sealed by a monument, we find similar vows in the court registers of various Ottoman towns.

Vows instigated by the state brought together elements of two legal principles: collective penal responsibility and criminal surety. The former consisted of (a) paying the blood money (*diyet*) as the offender's solidarity group (*ʿāḳile*)[15] in case of unintentional homicide and bodily

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13) "…*kendü taʾahhüdleri üzere ṭaraf-ı mīrīye ellibiñ altun ve bāʾi_s-i nāʾire olanlardan daḫī otuz mikdārı kelle ġalṭīde-i riḳāb-ı humāyūn-ı şehriyārī olmak üzere muṣammem ve nez̲r ü taʾahhüd eylemeleriyle … zihām-ı tırāşīde-i mücellādan perdāhte maḫrūṭyyüʾş-şekl bir ṭaş īcād ve nez̲r ü taʾahhüdlerin ol ṭaş üzerine ḥakk itdürüp*". Defterdar Mehmed Paşa, *Zübde-i Vekayiât,* 390-92.

14) *Zübde-i Vekayiât*, 132-33.

15) Baber Johansen, "Eigentum, Familie und Obrigkeit im hanafitischen Strafrecht. Das Verhältnis der privaten Rechte zu den Forderungen der Allgemeinheit in hanafitischen Rechtskommentaren," in *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 358-59 [org. in *Die Welt des Islams* 19 (1979), 1-73];

harm, and (b) taking the oath of compurgation (*ḳasāme*) when blood money was due but the assailant was not known. Judging from Ebussuud's fatwa on the matter and other *şeyḫü'l-islāms*' rulings regarding unintentional homicide, the Ottoman center dispensed with the concept of the solidarity group and adopted a more individualistic interpretation of the law.[16] Yet, jurists retained the principle of oath of compurgation, which limited the idea of individual liability.

In the oath of compurgation, collective liability is predicated on a clear conception of the right and responsibility to control a given space, which ultimately derives from ownership, usufruct or profit.[17] This principle, combined with limited technologies of control in a pre-modern state, dictated a tri-partite division of space. In privately owned spaces such as real estate and its appurtenances, owners are expected to be in control, and they are legally liable. In public spaces that are no one's property and utilized by an uncertain number of people, such as central markets, main roads and interregional routes or bridges, the state is in control and liable. Finally, in intermediate spaces utilized by a defined group of people, such as neighborhood lanes, neighborhood mosques or village commons, the community of users is legally liable.[18]

Clearly, the state's obligation to maintain security, and its liability when it could not, is only complementary to that of private persons and communities in inhabited areas. Two imperial decrees dated 1746 demonstrate the logic of this division of labor. According to them, the principle of collective liability had not been practiced in the capital city

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H. N. Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye Kamusu* (Istanbul: Bilmen Yayınevi, 1969), 3: 54.

16) Colin Imber, *Ebu's-Su`ud, The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997), 247. Peters notes that the solidarity group did not exist in India either. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge, UK; New York: Cambridge University Press, 2005), 92. For royal regulations on the topic, see Uriel Heyd, *Studies in Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 106, 115-18, 131, 308-11.

17) Johansen, "Eigentum, Familie und Obrigkeit"; Minḳārizāde, *Fetāvā*, 142b-143b; Çatalcalı 'Alī Efendī, *Fetāvā-yı 'Alī Efendī* (İstanbul: Maṭba'a-i 'Āmire, A.H. 1311), 2:318; Feyżullāh Efendī, *Fetāvā-yı Feyżiyye ma'an-nukūl* (İstanbul: Dāru't-tabā'at el-Āmire, A.H. 1266), 541; see also Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 97; and Bilmen, *Kamus*, 3:165.

18) Minḳārizāde, *Fetāvā*, 143a; Bilmen, *Kamus,* 3:161.

"from time immemorial." Even if the decrees 'invented the tradition', as the expression 'time immemorial' might signify in public discourse, it is possible that by 1746, the principle had indeed been rescinded in the capital. Historian Akman, who has discovered these decrees, rightly argues that the collective oath of compurgation presumes a small community that lacks anonymity, and it would have been an impractical and ineffective practice in a metropolis like Istanbul with a population of half a million in the seventeenth and eighteenth centuries.[19] In provincial towns, however, the principle of collective responsibility may have remained a viable tool of social control well until the end of the empire.

One can trace elements of another legal practice, criminal surety (*kefālet*), in state-instigated vows. *Kefālet* refers to the responsibility to bring a defendant to court or to hand him over to authorities,[20] as in the case of vows instigated by the state. In Ottoman practice, criminal surety was also linked to *ḳasāme*, which is based on collective spatial responsibility. For example, if someone is suspected of mischievous behavior, he may be evicted from his neighborhood unless someone stands surety for him, and the neighbors might decline to do so for fear of being held liable in the future, through *ḳasāme*, should the suspect indeed turn out to be a mischievous fellow.[21]

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19) Mehmet Akman, "Osmanlı Hukukunda Kasâme," *Türkler*, 13 (2002), 789-94.

20) Ahmed Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri* (Istanbul: FEY Vakfı, 1990-96), II:246; III:106; VIII:111. Cp. Joachim Eibah, "Burgers or the town council? Who was responsible for urban stability in early modern German towns?" *Urban History*, 34,1 (2007), 17-18, for oaths of *Urfehde* taken by citizens in German towns to pursue offenders, prevent released prisoners from committing violence, help the offended and settle conflicts.

21) See Heyd, *Studies*, 250, 310. According to Özcan and Akman, in the sixteenth and early eighteenth century, surveys occasionally were made to register the inhabitants of all or selected neighborhoods in Istanbul. Every inhabitant was expected to present someone as surety, and if he/she? could not, he/she? was banished from the neighborhood. See Tahsin Özcan, "Osmanlı Mahallesi: Sosyal Kontrol ve Kefalet Sistemi," *Marife* 1 (2001), 129-51 and Mehmet Akman, 'Osmanlı Hukukunda Faili Bilinmeyen İtlaf Durumlarında Öngörülen Ortak Sorumluluğun Hukuki Niteliği,' *Türk Hukuk Tarihi Araştırmaları* 3 (2007), 789-94. Unfortunately, it is difficult to say how common this practice was in other periods in Istanbul or other parts of the empire. In an ongoing study of *kefālet* in sixteenth-century Palestine, Rifa'at Ali Abou-El-Haj focuses on the social and consensual dynamics of the practice. "A Probe into the Social," unpublished paper given at the Institute of

Thus, the vows under consideration here mirrored functions of both the oath of compurgation and criminal surety. For example, in the first half of the eighteenth century, several tribes among the Yeni-İl and subjects of the Ḥaremeyn-i Şerifeyn in the Province of Maraş agreed to pay 1,750 to 24,500 *ġurūş* to the imperial treasury or the imperial kitchen as *nezir* if they were to harm the property of the settled communities or if they failed to hand over miscreants to the authorities.[22] In 1776, people of Karahisar-i Sahib in western Anatolia vowed to pay the state *nezir* money if they let the notables continue to recruit tribal mercenaries, and in 1778 they vowed to deny entry to a rebel *a'yān* to the region.[23] In a way, it would seem, the state was acting as a public prosecutor in lieu of those anonymous groups of people injured by the collapse of order. It sought compensation, just as blood money was due to the state treasury for victims who died without heirs.

These cases did not involve either the oath of compurgation or criminal surety, but rather a novel combination. In a *nezir*, people vow to maintain order, to collaborate with authorities, to deliver culprits or, less commonly, to be obedient themselves. Unlike the oath of compurgation, which is followed by the payment of blood money, vows are promissory, i.e. future-oriented, and meant to be preventive. In that regard, they function more like criminal surety.[24] Unlike collective penal

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Islamic Studies, McGill University, March 2006. I am grateful to Prof. Abou-El-Haj for sharing this study with me.

22) Dated 1701-1702, 1714, 1718, in Yusuf Halaçoğlu, *XVIII. Yüzyılda Osmanlı İmparatorluğu'nun İskân Siyaseti ve Aşiretlerin Yerleştirilmesi* (Ankara: TTK, 1997), 38; dated July 1734, in Cemil C. Güzelbey and Hulusi Yetkin, *Gaziantep Şer'i Mahkeme Sicillerinden Örnekler* (Gaziantep: GKD, 1966–70), vol. 4:17.

23) Yücel Özkaya, *Osmanlı İmparatorluğunda Âyânlık* (Ankara: AÜDTCF, 1977), 199, 228. From Afyon Court Register nos. 53, 55; For other examples from Anatolia and Rumeli, see Tamdoğan, "Le *nezir*"; Faroqhi, "Räuber, Rebellen und Obrigkeit"; M. Çağatay Uluçay, *XVIII ve XIX. Yüzyıllarda Saruhan 'da Eşkiyalık ve Halk Hareketleri* (Istanbul: Berksoy, 1955); Güzelbey and Yetkin, *Gaziantep,* 29, 87-9, 102-3; Aysel Danacı, 'The Ottoman Empire and the Anatolian Tribes in the 18th and 19th centuries', Unpublished MA Thesis (Boğaziçi University, 1998); Antonis Anastasopoulos, "Fighting the Flame of Disorder: Ayan Infighting and State Intervention in Ottoman Karaferye, 1758-59," *International Journal of Turkish Studies* 8 (2002), 73-88.

24) Abdullah Kahraman, "İslam Hukukunda Şahsa (Nefse) Kefâlet Müessesesi Ve Türk Ceza Muhakemeleri Hukuku'ndaki Teminatla Salıverme Müessesesi İle Mukayesesi," http://www.cumhuriyet.edu.tr/edergi/makale/234.pdf.

liability, which is based on law, and therefore automatic, *nezir* presupposes the willful agency of the vow-taker. In both respects, this type of vow is closer to legal surety, hence contractual.

There is good reason to suspect that vows that involved the state did not really depend on the freewill of the communities in question. In his account of the Saray Bosna incident, Mehmed Paşa gives a fairly clear hint to that effect, presenting the pledge as part and parcel of oppressive measures taken by the officer in charge of the inquiry. This is probably why he characterizes the incident as a "so-called *nezir*."[25] Even though the court records about *nezir*s involving the state depict a consensual process rather than an oppressive one, Mehmed Pasha may have hit the mark more accurately than the court scribes did. Nevertheless, the presentation of this political encounter between (agents of the) state and (agents of the) people within a consensual framework rather than a relation of command is important and signifies the acknowledgement of the limits of the state's territorial control. Likewise, the registration of state-instigated vows as acknowledgement (*iḳrār*) records signed by witnesses, as in ordinary *iḳrār*s, points to a concern to legitimize them within a legal framework.

1.3. Political Matters

Oaths and vows were also used in local public life. Various communities, rural as well as urban, became parties to pledges sealed by oaths and vows. In most cases, the person taking the vow was an individual who pledged before a collectivity that he would no longer claim this or that office or authority over this or that community. These vows were openly political. For example, claims of official a'yānship (or head *a'yān*) in the eighteenth century were frequently subject to vigorous contestation. One way to keep unwanted *a'yān*s out of office, it seems, was to make them vow not to hold office again—although such vows did not always work.[26] According to contemporary fatwas, vows could be used to regulate the holding of other offices as well. Thus, claims to a variety of positions, such as chief merchant (*bazarbaşı*), deputy judge,[27] and

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25) "*gūyā cümleyi nezre baġlayup...*", *Zübde-i Vekayiât*, 132.

26) For Ankara (1767) and Akhisar (1802?), see Özkaya, *Osmanlı İmparatorluğunda Âyânlık*, 211, 222.

27) 'Abdü'r-rahīm Efendī, *Fetāvā*, 1:319, 320, 323.

even the position of primary judge,[28] could be subject to a *nezir*. In one case from Ayntab, Mustafa Beşe swore in 1683 that he would never become the Head Butcher (*kasabbaşı*) again: "If I do," he said, "and if the qadi, whoever he might be at the time, does not collect my fifty *ġurūş nezir*, I will hold him responsible on doomsday."[29]

One also sees 'people' (*ahālī*) as primary agent of vows. For example, a court record from Malatya informs us that in 1714, the townspeople took an unconditional vow declaring their determination to "prohibit and expel" the oppressive deputy governor if he continued to arrest and imprison people without the court's involvement.[30] This political initiative is the mirror image of vows made by individuals to renounce office. 'People' could also be the direct beneficiary (*menẕūr leh*) of a vow. For example, in eighteenth-century Anatolia, in a number of instances, the official *a'yān* renounced his claim to office and pledged *nezir* money to be paid to the 'people' if he continued his claim.[31] It remains unclear, however, how the payment was made, who actually received it or how it was dispensed. The pledge (*menẕūr bih*) was always a certain amount of money in public vows.

Illegitimate claims of power were sometimes characterized as "meddling with the affairs" of a collectivity or, sometimes, of a whole province.[32] In the fatwa collections from the period, imams swear not to intervene in village matters or not to lead the prayer again, a Turcoman tribesman swears not to intervene in tribal matters, and a village warden

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28) Ibid., 1:321.

29) Ayntab CR no. 35/2/1.

30) "*Malatyā ahālīsi meclis-i şer'īde 'ahd-ı nezir itmişdir ki... fī-mā tenbīh Ken'ān bir kimesneyi şer'īsiz tutmaya tutar ise cümle ile men' ve def' eylemeye cümle böyle 'ahd itmişlerdir*." Quoted by Mehmet Karagöz in "XIII. Yüzyılın Başlarında Malatya ve Çevresinde Eşkiyalık Hareketleri," *Osmanlı Tarihi Araştırmaları Mecmuası* 5 (1994), 206. The text is from the court registers of the town but the register number is not specified. Similarly, 'Abdü'r-rahīm Efendī, *Fetāvā*, 1:322, 324.

31) Yuzo Nagata, *Muhsinzade Mehmed Paşa ve Ayanlık Müessesesi* (Tokyo, 1976) 6, 30; Özkaya, *Osmanlı İmparatorluğunda Âyânlık*, 211, 222, 264. The authors paraphrase the relevant documents; they both use the word "*ahālī,*" which is likely the original wording. For an overview of possible beneficiaries, i.e. destinations for the promised sums, see p. 98 and fn. 47 below.

32) Ayntab CR no. 40/207/3, *receb* 1104/1693, and no. 41/152/1, *cemāẕīyü'l-evvel* 1103/1692.

(*ketḫüdā*) swears not to intervene in tax matters.[33] Sometimes, illegitimate intervention in communal matters is characterized in general terms, such as oppression or mismanagement of the communal taxes.[34] In such situations, the claimant promises in his court deposition that he will mind his own business in the future, or pay, for example, 100 *ġurūş nezir* if he breaches his vow.[35]

Non-Muslims could also make vows. In August 1708, a delegation of non-Muslims in Ayntab went to court together with one of their co-religionists, claiming that he meddled in their affairs. They wanted him to vow to pay 200 *ġurūş* for repair of the court building if he interfered in community affairs again. He did, and the act was duly recorded.[36] This is interesting for two reasons. First, it confirms earlier findings about the interface between non-Muslim communities and the Islamic legal domain. Second, it should be noted that Hanafis, Malikis and most Shafiis do not accept *nezir* by non-Muslims—although the point is disputed. Thus, the taking of public vows by non-Muslims suggests that the practice was desacralized.[37]

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33) 'Abdü'r-rahīm Efendī, *Fetāvā*, 1:323; 'Aṭā'ullah Meḥmed b. İbrāhīm Efendī (d. 1715), *Fetāvā*, 122. Also 'Abdü'r-rahīm Efendī, *Fetāvā*, 1: 323, where an unspecified person vows not to demand *menzil* contributions from a village.

34) Ankara CR no. 168, dated 1777, in Özkaya, *Osmanlı İmparatorluğunda Âyânlık,* 264; Ayntab CR no. 40/17/1 *receb* 1103/1692.

35) For other examples, see Cengiz Orhonlu, *Osmanlı İmparatorluğunda Aşiretlerin İskânı* (İstanbul: Eren Yayıncılık, 1987), 134-36, 142; Özkaya, *Osmanlı İmparatorluğunda Âyânlık*, 199, 211, 228; Halaçoğlu, *XVIII. Yüzyılda Osmanlı*, 38. For a non-religious pledge not to intervene in the affairs of the neighborhood and its cash endowment, similar in spirit to vows, see M. Faruk Karacaoğlu, '1765–1768 Yılları Arasında Konya'da Sosyal Ve Ekonomik Hayat (59 Numaralı Konya Şer'iye Siciline Göre)', Unpublished MA Thesis, Selçuk University, 2008, 296-97 (org. 54-2, dated November 1767).

36) Ayntab CR 59/305/2, *cemāzīyü'l-āḫır* 1120/1708. Also Özkaya, *Osmanlı İmparatorluğunda Âyânlık*, 264. On *nezir* by Jews, see *Şeyhülislâm Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı*, ed. Mehmet Ertuğrul Düzdağ (İstanbul: Enderun Kitabevi, 1972), 93.

37) Esen, 'İslam Hukuku'nda Nezir', 65. Patricia Mihaly Nabti reports the continued (?) use of personal vows (*nidr)* among Christians as well as Muslims in modern Lebanon in "Contractual prayer of Christians and Muslims in Lebanon," *Islam and Christian-Muslim Relations* 9:1 (1998), 65-82. I thank Martha Mundy for bringing this article to my attention.

2.1. Ethics, Religion and Law

Vows and oaths pertain to the relationship between individuals and God. Of the several verses in the Quran that recommend or oblige the believer to stand by his/her word, Naḥl 91 is most illustrative of the composite character of humans' covenant with God to believe in Him and follow His commands, and their covenant to fulfill their promises to one another. It reads: "Fulfil the Covenant of God when ye have entered into it, and break not your oaths after ye have confirmed them; indeed ye have made God your surety; for God knoweth all that ye do."[38] Oaths and vows, like other unilateral statements of will, such as manumission of slaves or divorce--but unlike promises (*va'd*), may not be withdrawn. Once sworn, they generate a self-imposed obligation (*iltizām*).[39] Swearing a false oath is a great sin for which there is no expiation,[40] and, according to Hanafis, an oath is valid even if it is imposed, which may apply to some of the cases discussed in this study.[41]

The nature of the obligation generated by vows varies according to the pledged act (*menẕūr bih*). When the pledge is an act that is not religiously mandatory, its fulfillment is optional (*muḫayyer*). In other words, the prospective beneficiary may not demand fulfillment of the *neẕir*.[42] As in contracted oaths (*mün'aḳide*), the vow-taker may opt for expiation (*kefāret*) rather than fulfill the pledge.[43] The amount of money

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38) *Nahl*: 91, *The Qur'an: Text, Translation & Commentary*, tr. Abdullah Yusuf Ali (New York: Tahrike Tarsile Qur'an, 1987); see also *Tawbah*: 4 and *Maidah* 1.

39) Chafik T. Chehata, *Essai d'une théorie générale de l'obligation en droit musulman* (Le Caire: F.E. Noury & Fils, 1936), 168; Esen, 'İslam Hukuku'nda Nezir', 14, 17. The words *deyn* and *borc*, both meaning debt, are sometimes used interchangeably with *neẕir*, as in "let it be my debt/ *deynim/borcum olsun*". Çatalcalı 'Alī Efendī, *Fetāvā*, 183; 'Abdü'r-raḥīm Efendī, *Fetāvā*, 1:324; İbn Abī İsḥaḳ Muḥammed b. İsmā'īl (1096-1166), *Fetāvā-yı Muntaḫibe* (Süleymaniye Library, Ms. Kasidecizade 277), 49.

40) Esen, 'İslam Hukuku'nda Nezir', 65; also Ḥalebī, *Multaḳa*, 1:302.

41) *Multaḳa*, 1: 303. Cp. *EI*^{2}, s.v.*Nadhr* (J. Petersen), 7: 847 on free will.

42) Çatalcalı 'Alī Efendi, *Fetāvā,* 182-83 (quoting from *Durar* and *Bazzāzīya*); Abdü'r-rahīm Efendī, *Fetāvā* 1:324-25; Yeñişehrī Ebü'l-Faẕl 'Abdullāh, *Behcetü'l-fetāvā ma'a'n-nukūl* (İstanbul: Darü't-tıbā'ati'l-āmire, 1849/1266), 144; İbn Abī İsḥaḳ, *Fetāvā*, 49; 'Aṭā'ullah Efendī, *Fetāvā*,122.

43) Expiation consists of manumitting a slave, feeding or clothing ten poor people, or fasting for three days if one cannot afford any of the former. But if one can afford any of these pious deeds, fasting is not an option. Feyżullāh Efendi, *Fetāvā*, 137 [quoting *Khāniyya*]. Also Abdü'r-rahīm Efendī, *Fetāvā*, 1:324; 'Aṭā'ullah Efendī, *Fetāvā*, 122.

that is almost routinely stipulated as expiation for broken oaths and vows suggests that (a) people commonly resorted to oaths and vows (b) they often broke them, and (c) they took expiation seriously, as, for example, Ayntabi Mehmed Çelebi, who willed 1,550 *ġurūş* in 1689 for the expiation of his broken oaths and other poorly performed religious duties.[44]

Vows that create an irrevocable obligation are those that seek *ḳurbet*, i.e. closeness to God. Acts that are religiously mandatory (*farż* or *vācib*), such as fasting, prayer, or alms-giving, fall in this category.[45] Thus, the following statement committed the vow-taker forever: "I shall fast every Thursday for the rest of my life if my son returns safely from the war-front". Unlike worship (*ibādet*), *ḳurbet*, involves not only an act that serves to glorify God but also an additional purpose or utility of social relevance, like alms-giving or building a waqf.[46] In fatwa collections, the pledge (*menẕūr bih*) is always an act of *ḳurbet*.[47] One may argue that some public vows or, with a stretch of imagination, all public vows, involve *ḳurbet*. Acts like the cleaning of the Sacur River or the repair of a court building are clear examples of charitable acts of public relevance. As for payments to be delivered to the central treasury or the imperial kitchen, found almost exclusively in vows imposed by the state, it is likely that these are considered to belong to the hazy domain in which the rights of God and the state's guardianship over those rights overlapped. The rights of God involve, apart from the religious obligations of believers, what is considered as public interest, including anything that does not serve the private interests of private individuals.[48]

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44) Ayntab CR no. 37/59/1; on conditions of expiation, Ḥalebī, *Multaḳa*, 1:303.

45) Çatalcalı 'Alī Efendī, *Fetāvā*, 183; İbn Abī İsḥaḳ, *Fetāvā*, 49.

46) Esen, 'İslam Hukuku'nda Nezir', 18.

47) Beneficiaries mentioned in fatwa books: the poor (Es'ad Efendī), war captives (İbn Abī İsḥaḳ), the poor of the *medine-yi münevvere* ('Abdü'r-rahīm Efendī), the waqf administrator (on behalf of *medine münevvere*) ('Abdü'r-rahīm Efendī), *medine-yi münevvere* itself (İbn Abī İsḥaḳ), religious foundations or religious personages (mosques, tombs, convents, scholars, shaikhs) (Es'ad Efendī, Feyżullāh Efendī, 'Abdü'r-raḥīm Efendī, İbn Abī İsḥaḳ), descendants of the Prophet (Es'ad Efendī, İbn Abī İsḥaḳ), waqfs (Yeñiṣehrī), governors (İbn Abī İsḥaḳ), officials (*ehl-i örf*) (Çatalcalı 'Alī Efendī, Feyżullāh Efendī, Es'ad Efendī), the state (*mirī*) (Feyżullāh Efendī), and the central treasury (*beytü'l-mal*) ('Abdü'r-raḥīm Efendī).

48) Baber Johansen, "Secular and Religious Elements in Hanafite Law. Function and Limits of the Absolute Character of Government Authority," *in Contingency in a Sacred Law, Legal*

Historically, these rights formed a legitimate basis to expand the sphere of state authority into a wide range of areas.

Public vows, as defined here, clearly were not about private interests. Still, the person who takes the vow is not obliged to perform his/her pledge. Conditional vows, i.e. those in which the vow-taker's responsibility is contingent upon the occurrence of another act, may be expiated if the condition is a negative wish, e.g., something that the vow-taker wants to avoid. For example, "I shall fast every Thursday if I go to my mother-in-law's house again." These vows, called *lecāc*, are thought to strengthen one's statement; hence, they are treated like oaths. Structurally, all public vows are *lecāc*, i.e. the vow-taker may choose expiation instead of fulfilling the vow.[49] Most importantly, nobody, including the beneficiary of the vow, can force the vow-taker to fulfill her/his promise. S/he becomes a sinner (*āṣim*) if s/he does not fulfill it, and that is all—putting aside the subjective graveness of sinning, which we cannot measure.[50]

Vows in which the state (*mīrī*) or state authorities are specified as beneficiaries are no exception. According to Çatalcalı 'Alī Efendī (1692), who was the *şeyḫü'l-islām* until a few years before the Cyprus and Bosna-Saray incidents related above, a vow-taker may not be forced to stand by his pledge even if it involves a payment to the state. One of his fatwas addresses a closely matching situation:

> If Zeyd puts up 'Amr (*yanına alsa*) after having said, "I will owe the state (*mīrī*) 500 *ġurūş* if I put up 'Amr", will he owe the state 500 *ġurūş* just by having said that (*mücerred böyle dimekle*)? The answer: He will not.[51]

It would appear that state-related vows emerged about a generation before 'Alī Efendi, as did debates about their validity. For example,

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and Ethical Norms in the Muslim Fiqh (Leiden, 1999), 213-14. Typically, offences against rights of God are theft, banditry, unlawful sexual intercourse, false accusations of unlawful sexual intercourse, drinking alcohol, and apostasy. Peters, *Crime and Punishment*, 53-55.

49) Similarly, in Hanafi law, contracts that involve negative performance obligations, i.e. the obligation not to do something, do not normally generate liability in case of breach. Talip Türcan, "İslâm Borçlar Hukukunda Doğrudan Olumsuz Edimin Sözleşmeye Konu Olması Sorunu," *Ekev Akademi Dergisi* 7/14 (2003), 104.

50) İbn Abī İsḥaḳ, *Fetāvā*, 50; Çatalcalı 'Alī Efendī, *Fetāvā*, 1:144.

51) *Ibid.*, 1:145.

şeyḫü'l-islām Yaḥyā (1662-74) specified that a vow that makes 'servants of the state' (*ehl-i 'örf*) the beneficiary is not valid (*nezir olmaz*).[52] By the last quarter of the century, vows in which the state or state authorities are the beneficiary were recognized as vows but, as before, they do not entail legal liability or other legal consequence (*ḳażā'ī ḥükm*). Vows belong to the domain of the rights of God, and entail religious consequences alone.[53] Thus, Çatalcalı 'Alī Efendī, like other Ottoman *şeyḫü'l-islāms* and pre-Ottoman jurists, did not allow the transformation of a religious/moral obligation into a legal obligation. By the same token, he did not allow the state to expand its authority further within the domain of the rights of God, i.e. the domain of sin, even if the state was already moving in that direction.[54]

2.2. Community, ritual and law

If vows lacked consequences enforceable by the legal machinery of the state, why then did people make vows in public matters and more importantly, why did they register them? In other words, on what did the performative power of the vows and their registration rest?

Part of the answer to this question lies in the now-challenged idea of legal centralism or state law as a system of rules with an exclusive monopoly over the management of rights and liabilities. In the past few decades, legal anthropologists have argued that even in present day societies, legal sanction is only one of the devices used by contracting parties in order to secure performance. Even today, we are told, "most transactions are governed by informal community norms."[55] Legal definitions and rules may overlap with popular notions of contract but they do not necessarily coincide. In pre-modern contractual regimes,

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52) *Ibid.,* 31a.

53) Bilmen, *Kamus*, 8/187.

54) Compare the criminalization of sin, associated with the growth of the early modern state in Europe. Bruce Lenman and Geoffrey Parker, "The state, the community and the criminal law in early modern Europe," in *Crime and the Law: Social History of Crime in Western Europe Since 1500,* ed. V.A.C. Gatrell, B. Lenman and G. Parker (London: Europa Publications, 1980), 37.

55) Mark C. Suchman, "The Contract as Social Artifact," *Law & Society Review*, 37/1 (2003), 94-95.

the role of normative devices that were not controlled by the state must have been larger.

In Ottoman society, the third major locus of normative enforcement (apart from the state and God) was the community. The 'sanctity of contract', to quote Calhoun, "[was] not characteristic of the contract but of the membership of its parties in the community."[56] In this context, Rosen's remarks about assertory judicial oaths in modern Morocco are especially relevant. Concerning oaths elicited when no other evidence can be produced by the litigants (*taḥlīf*), Rosen points out that since "people would be less inclined to bond with false swearers ... one wouldn't want to risk his overall attractiveness" by swearing a false oath. Therefore, he argues, the community serves "as a means of bringing utterances to the realm of truth."[57] It is known that at least some early modern Ottomans also took their oaths seriously. Even though such oaths may appear irrational (from our disenchanted perspective of three or four centuries remove), many litigants declined to swear (*nükūl-u yemīn*) in a situation in which it meant the difference between winning and losing a case.[58] It can be argued that, as in the case of assertory oaths, social accountability was a factor that helped vows to materialize. This is not to exclude the role of the vow-taker's sense of religious and moral accountability—although our knowledge about the mental world

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56) C. J. Calhoun, "Community: Toward a Variable Conceptualization for Comparative Research," *Social History* 5 (1980), 117.

57) Lawrence Rosen, *The Anthropology of Justice, Law as Culture in Islamic Society* (Cambridge, Eng.: Cambridge University Press, 1989, repr. 1990), 35. See also David S. Powers, *Law, Society and Culture in the Maghrib: 1300-1500* (Cambridge: Cambridge University Press, 2002), 163. Powers too refers to fear of loss of reputation as well as fear of God as possible reasons for abstaining from taking an oath.

58) Gerber, *State, Society, and Law in Islam*, 49-50; James Grehan, "The Mysterious Power of Words: Language, Law, and Culture in Ottoman Damascus (17th-18th centuries)," *Journal of Social History* 37 (2004), 991-1015. On the practice of inviting the defendant to take an oath (*istihlāf*) and refusal to do so, see 'Alī Efendi, *Fetevā*, II: 64-67. Examples of refusal to take an oath: Ayntab CR no. 25/16/1, no. 38/37/2, no. 40/89/2. Also Üsküdar Court Register no. 23, Rec. no. 109, where the defendant takes an oath to refute accusations of theft. The plaintiff reports, "I … believe him and withdraw my complaint." In Sümeyye Akça, 'Üsküdar Kadılığı 23 Nolu ve H. 968-970 Tarihli Sicilin Diplomatik Yönden İncelenmesi: Metin ve İnceleme', Unpublished MA Thesis, Marmara University, 2005, p. 76.

of the Ottomans does not allow us to speculate about how they handled dilemmas of religious conscience and material interest.

One may also argue that the ritual of the vow itself, i.e. the utterance and recording of the contractual statement, is another source for the performative potential of the vow. In our case, the ritual comes into view most graphically in the Cyprus and Bosna Saray incidents, where stone pillars fulfilled the function that qadi registers fulfilled in other cases. That the pillar mattered is indicated by the attempts of the Cypriot *a'yān*, who sought its demolition, to petition in person in Istanbul. And when disorder returned to the island after a little while, it was "because the stone had been removed," Mehmed Paşa wrote.[59]

This is not to suggest that early modern Ottomans lived in a 'magical world' in which 'word [as such] was performative', as suggested by Grehan with regard to eighteenth-century Damascus.[60] Modern contract regimes also have a ritualistic side. Suchman argues:

> Even if transacting parties know relatively little about specific legal doctrines and have no intention of seeking court enforcement, the ceremony of drafting and signing a contract may reenact and reinforce central elements of faith, both about the transaction itself and about the larger social order…[61]

In the Ottoman case, since we know next to nothing about contract procedures outside the court, we can only speculate that the formalism of the court may have enhanced the ceremonial power of the contractual word. It is important to remember that although the role of the community in contract enforcement must have continued, our main source of information about the practice itself happens to be registers kept at state courts by state functionaries. What some scholars call the "judicial revolution of the early modern era" in Europe is known to have entailed a relative decline in the role of the community and community rituals in judicial matters and the symmetrical rise of bureaucratic mechanisms of dispute settlement and of state rites.[62] Judging

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59) "*Çünki 'adem-i taḥrīk fitnelerine sedd-i mümāna'at olan seng rū-nihāde-i ṣafḥa-i türāb oldu...*" *Zübde-i Vekayiât*, 391.

60) Grehan, "The Mysterious Power of Words."

61) Suchman, "Contract as artifact," 111.

62) Lenman and Parker, "The state, the community," 11-48; Eibah, "Burgers or the town council?" 14-26; C. Muldrew, "From a 'light cloak' to an 'iron cage': historical changes in

from the history of Ottoman bureaucracy, the Ottoman experience was probably closely parallel. Thus, a composite model of rights-management that embraced both custom and law on the one hand and community and the state on the other appears to be particularly suitable for studying the early modern period.[63] The examination of vows from this perspective, rather than from the formal perspective of sharia versus custom, looks promising because the relationship between custom and law in the Hanafi tradition did not involve a progressional hierarchy between custom and law in the way that the idea of 'early modern judicial revolution' might suggest. Rather, especially after the thirteenth century, and especially under the Mamluks and the Ottomans, custom was a recognized source of law, and also, it was as custom (*'örf*) that *kanun*, law originating from the state or the ruler, was recognized by jurists as legitimate.[64]

2.3. Between Custom and Law

Although a vow is not a *shar'i*-legal but a *shar'i*-religious act, public vows are not completely devoid of elements of legality. Put differently, they do not appear, in hindsight, unsuitable for scrutiny in legal terms. Close scrutiny suggests that public vows provided a customary, yet law-like solution to some of the limitations embedded in the Ottoman/Islamic contract regime, such as the absence of a general theory of contract, legal weaknesses regarding enforceability, especially of promissory agreements and, finally, in some cases, the absence of legal

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the relation between community and individualism," in *Communities in Early Modern England*, ed. P. Withington and A. Shepard (Manchester: Manchester University Press, 2000), 156-77.

63) For a parallel debate regarding the significantly different Chinese context, see Hiroaki Terada, "The Nature of Social Agreements (*Yue*) in the Legal Order of Ming and Qing China (Part One)," *International Journal of Asian Studies* 2 (2005), 309-27 and Jérôme Bourgon, "Aspects of Chinese Legal Culture – The Articulation of Written Law, State, and Society: A Review," *International Journal of Asian Studies* 4 (2007), 241-58.

64) Baber Johansen, "Coutumes locales et coutumes universelles: aux sources des règles juridiques en droit musulman hanéfite," *Annales Islamologiques* 27 (1993): 29-35; Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law," *Islamic Law and Society*, 4 (1997), 131-55; Miriam Hoexter, "Qadi, Mufti and Ruler: Their roles in the Development of Islamic law," in *Law, Custom and Statute in the Muslim World*, ed. Ron Shaham, (Leiden: Brill, 2007), 67-85.

personality. In order to identify these elements, I shall consider public vows, in what follows, as worldly pledges.

Like an *ʿaḳd*, *nezir* is an expression of human will that creates obligation. More specifically, it resembles a unilateral juridical act such as gift, bequest or release of debt that involves an offer (*īcāb*) but not necessarily an acceptance (*ḳabūl*).[65] In all public vows, the presence of more than one will is implicit, even in vows made to renounce office. In the latter case, that the vow-taker's intent to give up his claim is matched by the will of those who are subject to his authority can be deduced from other court records that reveal the mechanics of access to local office. When browsing court registers from the second half of the eighteenth century, one gets the impression that it was nearly impossible to wield local authority without the consent (*rıżā*) of the 'people'.[66] Nevertheless, formally, the expressed will of the person taking the vow in these cases is unilateral, and such acts are not viewed favorably by the Sunni schools of law other than the Malikis. The Hanafis are particularly emphatic in arguing that unilateral acts are not binding (*lāzım*).[67] Thus a unilateral act is not any more enforceable than a vow —although, one might argue, specifying a charitable or public cause as the beneficiary may reflect awareness of this predicament and a desire to counteract it.[68]

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65) Hussein Hassan, "Contracts in Islamic Law: the Principles of Commutative Justice and Liberality," *Journal of Islamic Studies*, 13/3 (2002): 257; Saba Habachy, "The system of Nullities in Muslim Law," *The American Journal of Comparative Law*, 13/1 (1964): 62. See also Noor Mohammad, "Principles of Islamic Contract Laws," *Journal of Law and Religion* 6 (1988), 123-24.

66) Several examples in Konya CR no. 59 in M. Faruk Karacaoğlu, '1765–1768 Yılları Arasında Konya'da Sosyal Ve Ekonomik Hayat (59 Numaralı Konya Şer'iye Siciline Göre)', Unpublished MA Thesis, Selçuk University 2008. See also Antonios Anastasopulos, 'Imperial Institutions and Local Communities: Ottoman Karaferye, 1758-1774', Unpublished PhD Thesis (Cambridge University, 1998), 51-91; and Ali Yaycıoğlu, 'The Provincial Challenge: Regionalism, Crisis, And Integration in the Late Ottoman Empire (1792-1812)' Unpublished PhD thesis (Harvard University, 2008), Ch. 3.

67) Chehata, *Essai*, 150-51; Mehmet Akif Aydın, "İslam Hukukunda Tek Taraflı Hukuki İşlem," in *İslâm ve Osmanlı Hukuku Araştırmaları* (İstanbul: İz Yayıncılık, 1996); Y. Linant de Bellefonds, *Traité de droit musulman comparé, Theorie générale de l'acte juridique* (Paris: Mouton & Co, 1965), 1:157-68; Emine Gümüş Böke, 'İslam hukukunda tek taraflı hukuki işlemler', Unpublished PhD thesis (Selçuk University, 2006), 72-73, 91-92.

68) See p. X above on *ḳurbet*.

Statements of will embedded in public vows are also legally impaired in another respect. Although they clearly embody a contractual spirit, they do not match any of the contract types recognized in Islamic law, and what is not recognized may not be legally enforced. Even though Islamic law matured relatively faster and earlier than post-Roman law in Europe and developed very sophisticated categories, Muslim jurists did not produce a general law of contract—which emerged in Europe only in the nineteenth century. Instead, they built a system of nominate contracts, each meticulously defined. Thus, contractual relations that do not fit in the nominate categories cannot be recognized by law.[69]

Nevertheless, changing social needs inevitably generated new forms of contract in Muslim societies. First becoming 'custom', they were recognized as local *'urf*. Some of these new forms eventually were incorporated into written law, i.e. new nominate categories emerged. Double rent (*icāreteyn*) and conditional sale (*bey' bi'l-vefā*) are examples of new contracts that were incorporated into the legal corpus, using elements from existing contracts, as social practice called for their recognition and regulation. Scholars then 'vetted' them by analogy.[70] As for those customary contracts that did not become 'law', they too were accommodated through a number of legal mechanisms.

One mechanism used to make a new contract legally recognizable is to couch it in a nominate binding contract by stipulating it as the latter's condition (*şarṭ żımne'l-'aḳd*), even if the two clauses are quite unrelated in subject matter. In these cases, the condition is in fact the main transaction sought by the parties.[71] Obviously, this structure closely parallels the structure of public vows, which are all conditional vows in which the condition defines the actual purpose of the promissor. The format "I vow to do x if I do y," implies a negative intention, i.e. the

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69) Chehata, *Essai*, 41-42. The liberal approach to contract of Ibn Taymiyya and his students constitutes an exception. Oussama Arabi, "Contract Stipulations in Islamic Law: The Ottoman Majalla and Ibn Taymiyya," *International Journal of Middle East Studies* 30 (1998), 29-50.

70) Frank E. Vogel and Samuel L. Hayes, *Islamic Law and Finance: Religion, Risk, and Return* (The Hague: Kluwer Law International, 1998), 98-99; Parviz Owsia, *Formation of Contract: A Comparative Study under English, French, Islamic, and Iranian Law* (London: Graham and Trotman, 1994), 138-39. Also Libson, "On the Development of Custom," 131-55; Hoexter, "Qadi, Mufti and Ruler," 67-85.

71) Owsia, *Formation of Contract*, 138-39.

intent not to do y. Here too, the condition and the vow are essentially unrelated. At the same time, the 'condition', being the primary objective of the act, the vow (*menẕūr bih*) functions like a penal clause that discourages non-performance of the promise. As in medieval Europe, where contract enforcement was a major problem and the attachment of a penal clause was a common remedy, in conditional vows obligation and liability do not overlap.[72]

Another mechanism that renders innominate contracts legally recognizable is the contract of *ṣulḥ* (composition/settlement). A contract of composition or amicable settlement is a binding pact and can be used to give "binding force to an agreement not recognized in se by the law". It is the flexibility of *ṣulḥ* as a contract that allows it to be used in much broader ways as 'people's law' rather than amicable settlement alone.[73]

In some public vows, elements of *ṣulḥ* are easily recognizable. One such case involves a dispute between dye house owners in Ayntab and the waqf of Husrev Pasha in Aleppo. Reportedly, the waqf suffered losses due to a large increase in the number of dye houses in Ayntab subsequent to its establishment in the sixteenth century. In 1704, dye house owners promised to pay 300 *ġurūş* annually to the waqf in order to make up for its losses, but they did not honor this contract, and in 1713, another contract was made whereby dyers now vowed to pay 2,500 *ġurūş* to the imperial kitchen should they fail in their obligation towards the waqf.[74]

The craftsmen's vows (see above) also represent the meeting of wills, as in contracts proper: the will of those who produced substandard felt

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72) David Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford; New York: Oxford University Press, 1999), 2; Herald J. Berman, "The Religious Sources of General Contract Law: An Historical Perspective," *Journal of Law and Religion*, 4/1 (1986), 103-124.

73) Aida Othman, 'And *Sulh* is Best: Amicable Settlement and Dispute Resolution in Islamic Law', Unpublished PhD thesis (Harvard University, 2005), 170-80.

74) Hüseyin Çınar, "18. Yüzyılın İlk Yarısında Ayıntab Şehri'nin Sosyal ve Ekonomik Durumu." Unpublished PhD thesis (İstanbul University, 2000), 328-29; and Ayntab CR no. 105/325 (*rebī'ü'l-āḫır* 1161/1748), where janissary tanners and other tanners are reconciled after a dispute regarding illegitimate exactions of the janissaries, and the two groups of tanners together vowed to pay 50 *ġurūş* to the qadi should this settlement be violated.

or who preempted the guild of coppersmiths in the purchase of raw copper, and the will of the rest of the craftsmen. From a practical point of view, these vows function like collective contracts meant to settle differences between at least two parties.

Not all public vows are so explicitly *ṣulḥ*-like. It is clear in all cases, however, that vows are preceded by a dispute or conflict of wills. Vows in which the vow-taker renounces office or authority clearly reflect an earlier dispute between the vow-taker, i.e. the office-holder, and various collectivities or the 'people'. Similarly, state-imposed vows regarding security and order also follow an episode of conflict, ranging from outright rebellion and mayhem to mere tax evasion. Here too, vows mark a moment of reconciliation, as in a contract of amicable settlement.

At the same time, vows in a *ṣulḥ* or *ṣulḥ*-like act may play an additional role. The statements of will expressed therein are all promissory, i.e. about future performance. The requirement in Islamic contract law to avoid uncertainty (*ġarār*) limits the scope of promissory contracts.[75] Vows, by definition promissory, may alleviate this problem.

Finally, let us note that judging from Ottoman court practice, private business contracts did not involve oaths or vows. In the Anatolian cities with which I am familiar, it was uncommon to register business contracts, unless they were preceded by a dispute. I suspect that the reason why vows were not part of these agreements was the lack of need for additional binding measures, because business was about 'claims of men' (*ḥuḳūḳu'n-nās*), i.e. the rights of transacting private parties, already well-defined and regulated by nominate contracts. Most of Islamic contract law is about the transfer and management of property and usufruct. Non-economic human association is also subject to legal regulation and protection, such as municipal matters, namely the right to air, water and space in 'books of walls' (*ḥiyṭān*) or intercommunal relations in 'books of right conduct' (*kerāhiye* and, partly, *siyer*). But these regulations concern non-contractual relations. Other kinds of non-economic association, e.g. corporate association calling for recognition of legal personality, or association in an ad hoc collective action, lack legal expression. It is precisely in this context, i.e. to create an idiom

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75) Mohammad, "Principles of Islamic Contract Laws," 123-24.

for rights arising from innominate association, that *nezir*s seem to have operated, as do pacts of various kinds in public life—as will be seen below.

3.1. Social Change and Public Vows

If *nezir* was in fact a medium to anchor what was not legally recognized in quasi-legal formality, was there an increased need for such a medium during the seventeenth and eighteenth centuries? Further, did existing forms of association begin to be registered because, for example, there was an increasing need for their legal recognition and protection? Or were public vows themselves a novelty?

First, if vows had always been part of public life and it was only their registration that started in the seventeenth century, then, clearly, there was a shift from an oral normative order to a written legal culture. There is sufficient evidence to indicate that written legal culture was indeed advancing in the Ottoman Empire. In addition to the striking expansion, beginning in the seventeenth century, of the court-register collections from most towns, certainly in the central lands, it would appear that the legal value of documentation also was on the rise. Already in the seventeenth century, courts were willing to accept private documents after due attention was paid to the authenticity of the handwriting on title deeds (*temessük*s).[76] At the same time, however, a shift towards anonymity in larger and more complex cities, i.e. relative decline in communal control, may have encouraged documentation.

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[76] Çatalcalı 'Alī Efendi, *Fetāvā*, 2:40-41, 48; Feyżullāh Efendi, *Fetāvā*, 346-47, 358, 378, 388. According to *Mecelle* (Article 1736), state documents such as title deeds, royal registers (*defter-i hakani*) and court registers with official seals beyond doubt of forgery are acceptable as evidence. Ali Himmet Berki, *Açıklamalı Mecelle* (Istanbul: Hikmet Yayınları, 1982), 390. However, the genealogy of this idea must be traced backwards in earlier legal literature. Sporadic examples of state papers used as evidence without oral collaboration by witnesses can be found in court registers. For example, Kayseri Court Register no. 66-1/38, dated 1657, in Rıdvan Yurtlak, '66/1 Numaralı Kayseri Şer'iye Sicili (H.1067/1657), Transkripsiyon ve Değerlendirmesi', Unpublished MA Thesis (Erciyes University, 1998), 122. Compare Boğaç Ergene, "Evidence in Ottoman Courts: Oral and Written Documentation in Early-Modern Courts of Islamic Law," *The Journal of the American Oriental Society* 124 (2004), 471-91; idem, "Document Use in Ottoman Courts of Law: Observations from the Sicils of Çankırı and Kastamonu," *Turcica* 37 (2005), 83-111.

Second, it is possible that public vows were a novelty of the seventeenth century, as suggested by evidence from fatwa collections. This possibility requires locating public vows in contemporary public life and its cultural idioms.

Many decades ago Inalcik coined the term 'communalization' to characterize the intensification of the activities and power of collective agents in Ottoman public life, beginning in the seventeenth century.[77] His lead in this diagnosis has been confirmed by subsequent scholarship, which points to a lively public life in cities in diverse regions of the empire. This finding clearly matches the political processes associated with what used to be called the 'period of decentralization' and the 'age of *a'yān*s'. An important aspect of this vigor was local processes of decision-making, shaped by collective will. Whether that was the patronizing will of local elites or some degree of popular voice—which people?—is a secondary issue for present purposes. It has been demonstrated, for example, that collective will, more specifically, 'people's' (*ahālī*) participation and consent in the election of the local 'official notable' in the second half of the eighteenth century, was an essential aspect of local governance during this period.[78] Evidence from Anatolia indicates that the participation and consent of the 'people' was needed for allocating other offices and positions already in the sixteenth century. Typically, a candidate for office was selected by unanimous decision (*cümlenin ittifāḳıyla*), and the appointee would promise to serve as required: "*ta'ahhüd ve iltizām idüp*," a phrase that functioned like an oath of office. Likewise, removal from a wardenship (*ketḫüdā*) or deputyship (*vekīl*) was contingent on collective will, itself a mirror image of the vows taken to renounce office or authority (see above).[79]

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77) Halil İnalcık, "Centralization and Decentralization in Otoman Administration," in *Studies in Eighteenth-Century Islamic History*, ed. Thomas Naff and Roger Owen (Carbondale and Edwardsville: Southern Illinois University Pres, 1977), 37.

78) Anastasopulos, 'Imperial Institutions and Local Communities'; Yaycıoğlu, 'The Provincial Challenge'.

79) Kayseri CR no. 66-2/107, dated 1657, in Murat Tan, '66/2 Numaralı Kayseri Şer'iye Sicili (H. 1067-68/M. 1656/57), Transkripsiyon ve Değerlendirme', Unpublished MA Thesis (Erciyes University, 1998), 89-90; Adana CR no. 17/144, dated 1744, in Metin Ceylan, '17 No'lu (H. 1156-1157 M. 1743-1744) Adana Şer`iyye Sicili Transkripsiyon ve Kataloğu', Unpublished MA Thesis (İnönü University, 1996), 379; Konya CR no. 59/97/2, dated 1767, in Karacaoğlu, '1765–1768 Yılları Arasında Konya," 413-15.

More importantly, collective will and/or consent was needed or invoked when a collectivity or a town incurred a financial or other official obligation, e.g. contributions towards local expenses as well as various taxes. In the relevant records, one finds, first, the consent (*rıżā*) of the 'people' concerned for the amount to be paid and then, their pledge to pay it (*ta'ahhüd*, *mute'ahhid*).[80] In some cases, the pledge took the form of a solemn compact (*'ahd*, *mīs̱āḳ* and, less commonly, *mu'āhede*).[81] *'Ahd* and *mīs̱āḳ* are both oath-constitutive terms of Quranic origin that refer to God's covenant with mankind, as in the earlier Biblical tradition.[82] Unlike most vows, these statements are multilateral agreements. Like vows, they are promissory, and it would seem, they were the best that the available language of rights provided for corporate action. Again, like vows, they stand between custom, morality and law (because they are enacted at the court).[83]

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80) Consent to a rise in lump sum head tax due to immigration, Konya CR no. 59/97/2 and 129/2, dated 1766; consent to a negotiated tax increase by subjects of the Esb-Keşan tax farm, Konya CR no. 59/13/3, dated 1766, in Karacaoğlu, '1765–1768 Yılları Arasında Konya', 177-78, 182; pledge to cover travel costs of the city representative, Trabzon CR no. 1890/17/5, dated 1728, in Gülseren Erden, '1890 Numaralı Trabzon Şer`iye Siciline göre 'Trabzon' H.1140-1141 (1727-1728)', Unpublished MA Thesis, (Yüzüncü Yıl University, 2000), 142; consent to pay taxes after confirming that the related tax survey is correct, Ayntab CR no. 40/211/3, 221/1, dated 1693; Ayntab CR no. 18/195/3, dated 1660; consent to deliver a certain amount of money to the tax farm holder, dated 1712, in Çınar, "18. Yüzyılın İlk Yarısında Ayıntab,' 292.

81) Ḥalebī, *Multaḳa*, 1: 301. Abdü'r-rahīm Efendī, *Fetāvā*, 1: 321; Çatalcalı 'Alī Efendi, *Fetāvā*, 180; 'Atā'ullah Efendī, *Fetāvā,* 122 (quoting *Hedāyā*).

82) For example, *Holy Quran*, 13:20 (ar-Ra'd). *Diyanet Vakfı İslam Ansiklopedisi*, s.v. Ahid (Abdurrahman Küçük et al.), I: 532-35; *EI²,* s.v. 'Ahd (Joseph Schacht), 1: 255. See Berman, "Religious foundations," 106, for the argument that the general theory of contract law grew out of religious thought from the late Middle Ages onward, and the emphasis placed in Protestant theology on 'the Covenant' (*'ahd*) was a particularly important aspect of the process. According to this view, the nineteenth-century jurists "cut the general theory of contract loose from its moorings in the belief system, and replace[d] those moorings with individualism."

83) Engin Akarlı, "Law in the Marketplace, 1730-1840," in *Dispensing Justice in Islam: Qadis and their Judgments*, ed. M. Khalid Masud, Rudolph Peters and David S. Powers (Leiden and Boston: Brill, 2006), 245-70, shows how 'custom'-making agreements registered at the court went through a legal evolution, first receiving a qadi warrant, then an imperial decree and receiving the status of the official 'order' of the group.

Impressionistically speaking, this consensual discourse became only stronger in the second half of the eighteenth century, and it is possible that the introduction of the principle of local elections in the appointment of the official *a'yān* (1765; 1791) and the city warden (1786; *şehir ketḫüdāsı*) played an important role in formalizing and furthering this discourse.

We need not take the terminology of the records at face value. What appears like consensual/contractual local politics in vows and other compacts, such as a tax commitment or consent to the authority of an office-holder, may have been the result of compulsion by local magnates or particular communities. Nor can one ignore the coercive dimension of vows elicited by the state. The fact that compulsion worked its way through a consensual/contractual discourse suggests, however, that consent was a cultural ideal and, therefore, a source of legitimacy.[84]

This cultural climate of collective initiative and negotiated bonds matches perfectly with Inalcik's 'communalization'. Yet, is 'communalization' an appropriate term in this context? Since the canonization of the 'community-association' (*Gemeinschaft-Gesellschaft*) dichotomy in the nineteenth-century, 'community' has come to represent mainly an *a priori* and ahistorical condition, as opposed to 'society as rational association'. In Ottoman studies too, we commonly use the term 'community' to characterize diverse collectivities without taking into account variation over the lifespan of the Ottoman Empire. The presence in Ottoman public life of—somewhat romantically conceived—communities, "… characterized by a high degree of personal intimacy, emotional depth, moral commitment, social cohesion and continuity"[85] well until the demise of the empire cannot be denied. Nevertheless, we need to recognize that the dynamism we observe in the seventeenth and eighteenth centuries may not have rested on primeval communities that simply became stronger due, according to Inalcik, mainly to changes in the taxation system. If we begin to draw more freely on what we already know about economic change during this period, it becomes

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84) See also Yaycıoğlu, 'The Provincial Challenge,' 168, where he argues regarding *a'yān* elections in the eighteenth century that even when the "elected" official *a'yān*s had usurped office, they claimed to have been elected or given 'people's' consent.

85) Calhoun, "Community," 106-8, quoting Robert Nisbet, *The Sociological Tradition* (New York, Basic Books, 1966), 48.

clear that dynamism in public life coexisted with increased social differentiation, which was not particularly favorable to 'moral commitment' or 'cohesion'. In fact, the increased visibility of collective contracts may be a sign that communities (and their moral economies) were threatened and that local publics, as more diverse agents with more visibly diverse stakes, were emerging.

Concluding Remarks

Although we now take for granted the possibility of change in post-classical Islamic law, we are still confronted with a largely uncharted territory regarding both the nature and extent of change. This is no less true in the case of Ottoman law. The question of substantive change has remained limited to the status of *ḳanūn*s, the Ebussuud synthesis and the nineteenth-century reforms.[86] Several aspects of legal practice, such as territoriality, custom as law, use of documents, the relationship between ethics and law, community and the court, punitive versus restitutive elements, and the court's power of prosecution, all await historicization. All of these topics are related to a larger question: the relationship between law as a normative domain theoretically under the monopoly of a (modern) state and all other normative orders operative in the realm.

Since the pioneering works of Gerber and Akarli,[87] both of whom emphasize the role of customary law in Ottoman legal practice, several scholars have argued for the coexistence of customary processes of dispute settlement and different kinds of courts (non-Muslim community

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86) Notable exceptions are Baber Johansen, *Islamic Law on Land Tax and Rent*: *the Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London; New York: Croom Helm, 1988); Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London; New York: I.B. Tauris, 2007).

87) Haim Gerber, "Sharia, Kanun and Custom in the Ottoman Law: the Court Records of 17th-Century Bursa," *International Journal of Turkish Studies* 211(1981), 131-47; idem, *State, Society, and Law*, 113-26; and Engin D. Akarlı, "*Gedik*: A Bundle of Rights and Obligations for Istanbul Artisans and Traders, 1750-1840," in *Law, Anthropology and the Constitution of the Social: Making Persons and Things*, ed. Alain Pottage and Martha Mundy (Cambridge University Press, 2004), 166-200; idem, "Law in the Marketplace, 1730-1840."

courts, qadi courts and administrative courts) as well as for diversity within law administered at state institutions. This diversity, which was due to the amalgamation of custom, royal 'custom' and pre-Ottoman *shari'a*, as well as the presence of different schools of law, has been given increasing attention lately, particularly due to interest in legal pluralism, still the dominant paradigm in legal anthropology. Our findings also point to the procedural and substantive complex that surrounded public vows in their indeterminate position between custom, religious morality and law. More importantly, this complex was not frozen in time. Firstly, 'custom' in the case of public vows, was not about the 'beaten path'. In other words, vows did not draw their legitimacy from old practice, but from present-day consensus of the groups concerned.[88] Secondly, bringing contracts under the guardianship of state courts signified a bolder claim on the part of the state vis-à-vis the claims of God (the domain of vows) and expansion of state control over customary processes of dispute resolution and social memory. Conscience, whether driven by religious concerns, moral concerns or rational calculations, was also formally brought under state surveillance. All these shifts appear as aspects of administrative centralization, a process that entered a new phase with Tanzimat in the nineteenth century.

The 'boundaries of the state' also had a spatial dimension. Public vows were customary contracts that were enacted in state law courts. No matter what jurists thought of this practice, it enjoyed official legitimacy, as may be inferred from the central state's own use of the practice. To quote Johansen, it was de facto 'juridified'.[89] As noted earlier, there is no evidence that the practice struck roots in Arab provinces. This regional difference needs to be considered both in terms of the extent of the state's legal authority and the nature of local custom, which, in this case, may have expressed itself as a more orthodox interpretation of earlier Sunni tradition. All this is not to suggest that alternative mechanisms for managing contractual relations in public life did not exist in these provinces. That must be the subject of another study.

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88) Akarlı, "Law in the Marketplace, 1730-1840," makes it clear that in the world of artisans, 'custom' was nothing but a novel consensus about what custom was. In those cases, too, however, artisans continued to refer to old practice.

89) Johansen, "Coutumes locales," 31.

From the perspective of substantive law, public vows appear to be a remedy for limitations in Islamic law and a means of anchoring public contracts in formality/legality. According to *fiqh* and *fiqh* scholars, past and present, the use of the vow as a public contract may seem inappropriate or wrong. But as Reynolds remarks with regard to late medieval practitioners of law who are sometimes looked down upon by legal historians for their 'incorrect' use of Roman law terminology, the non-standard use of oaths and vows may "not necessarily [be] the mark of confusion or lack of legal technique. Adopting new words may be a sign of trying out new ideas so as to adapt them to different conditions."[90] Perhaps there was a need for new ideas in Ottoman legal practice in the seventeenth and eighteenth centuries.

Admittedly, public vows or compacts did not yield immediate results in substantive law. *Mecelle*, compiled nearly a century after some of the examples discussed in this study, was a step towards a general theory of contract, and even that was not a complete step. One can rather speak of a broader cultural affinity between vows and their registration and the constitutional changes of the Tanzimat era. On the one hand, the increased role of the state in the normative domain anticipated state modernization/centralization in the nineteenth century. On the other hand, new forms of local government such as neighborhood or village headmanship (*muhtarlık*), municipalities or provincial assemblies, also introduced in the Tanzimat era, were products of the same political culture that produced and was bolstered by public vows/contracts.

Finally, if modern contract regimes in the late Ottoman Empire and its successor states were conceived and nurtured in pre-Tanzimat culture, as this study intimates, this would be one more instance of continuity, recently 'discovered', between the Tanzimat era and Ottoman 'early modernity'.[91]

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[90] Susan Reynolds, "The Emergence of Professional Law in the Long Twelfth Century," *Law and History Review* 21:2 (2003), 347-65.

[91] For a recent general assessment from the perspective of political economy, see Karen Barkey, *Empire of Difference: the Ottomans in Comparative Perspective* (Cambridge; New York: Cambridge University Press, 2008). Also see *Shared Histories of Modernity: China, India and the Ottoman Empire*, ed. H. İslamoğlu and Peter C. Perdue (London and New York: Routledge, 2009); Mundy, *Governing Property.* On political culture, see Hüseyin

The concept of contract has an almost mystical quality about it, because of its assumed association with modernity and its central role in liberal political thought. Despite its practical demise in the twentieth century, contract may regain its former shine, perhaps, in a future turn of historiography and social theory. Today, however, since the undermining of all historical boundaries by post-modernism, the transition from oath to contract or from conscience to rational reasoning and reliance on the penal machinery of the modern state looks like a protracted and multiplex process. Thus, the religious underpinnings of the conceptual repertoire to which public vows/contracts belonged should not come as surprise, nor should they be construed to imply that religious culture was 'the' repository of ideas and institutions from which Ottoman modernity originate.[92]

Yılmaz, "Osmanlı Devleti'nde Batılılaşma Öncesi Meşrutiyetçi Gelişmeler," *Dîvân* 13 (2008), 1-30.

92) Cp. Shumuel Eisenstadt and Wolfgang Schluchter, "Introduction: Paths to Early Modernities—A Comparative View," *Daedalus* 127/3 (1998), *Early Modernities*, 1-18.