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# A “SPLENDID” CALAMITY AND *TANZIMAT* IN THE CITY: THE HOCAPAŞA FIRE OF 1865 AND PROPERTY IN DISASTER LAW

## Abstract

This article examines the Hocapaşa fire of 1865 and consequent planning activities in Istanbul within the frame of disaster law, demonstrating the impact of fires on law and property relations with a focus on the development of legally controversial practices, such as the *icarateyn* system. It reveals the change that the Hocapaşa fire brought about in disaster law and the notions of waqf property and argues that the Hocapaşa fire created an actual setting in which the waqf property was made into state property with reference to ‘public interest.’

**Keywords:** property, *tanzimat*, disaster law, *icarateyn*, ownership, public good, expropriation.

On Wednesday night at about five o'clock a fire broke out in Hocapaşa. After spreading throughout the neighborhood, it reached to the buildings of Çiftesaraylar and burned them down immediately. The conflagration became much larger and then spread into five-ten different directions decimating Hocapaşa, the vicinity of Babıali, different neighborhoods of Cağaloğlu, and both sides of the street from Sedefçiler to Sultan Ahmed square and then reached to the back side of Sultan Ahmed all the way to Kılıçhane, Kadirga, Kumkapı, Nişancı, and Çiftegelinler. The destruction of this fire is considered to be equal to that of the great fires of Cibali and Hocapaşa that devastated the capital in 1242 [1826] and 1246 [1830]. Such a conflagration in our lands has not been recorded ever since the emergence of non-official newspapers. A combination of the forces of the wind, the density of neighborhoods, and various other misfortunes made any attempts to contain this fire futile. Given all of the ineffective attempts and resources spent to contain this conflagration, it is hoped that in the future drastic measures will be taken to prevent another disaster like this to happen again.<sup>1</sup>

On the 6th of September 1865 the Ottoman capital woke up to smoke-filled skies. It was a day of dispossession and calamity for many who found themselves helpless against the merciless force of the fire. Centuries-old memory of blazes in wooden Istanbul probably did not help them to conceive the destruction that a spark in Hocaapaşa happened to outgrow. In less than twenty hours, about 1200 families were left in complete destitution.<sup>2</sup> Some more fortunate homeowners with means feared that they would have to become renters, whereas, others less fortunate faced the much more sobering prospects of not being able to afford to rent and having to live on the streets.<sup>3</sup> The fire exacerbated their misery because an epidemic of cholera had already raged through the city for some time. It was “a calamity as destructive to property as the epidemic has been to lives.”<sup>4</sup> A huge area on the historical peninsula was devastated: 2751 buildings in 27 neighborhoods burnt to ashes, including 1879 houses, 751 shops, 22 mosques, 3 churches, and other buildings.<sup>5</sup> The city, although “unique in the world except for its reflection on the sea,” lost a great deal of its charm and beauty.<sup>6</sup>

This time, the blaze was not understood as ‘divine punishment’ as had usually been the case in the past. For example, the Great Fire of Eminönü in 1660 that destroyed almost two-thirds of the capital was perceived by many as the wrath of God for the disappearance of moral rectitude in Istanbulite society.<sup>7</sup> The Hocaapaşa fire of 1865 did not evoke such fatalistic explanations. Rather, some people like one writer at *The Levant Herald* understood it as a “splendid opportunity” for urban reform since it gave the government a pretext to re-imagine and reshape a more ‘modern,’ ‘progressive’ Istanbul along the lines of its western sister-cities:

In view of the immense aggravation to this special peril of the place which the present system carries with it, the Government would have been more than justified in prohibiting wood-building altogether, and for doing so would have the precedent of every other capital in Europe. The reform would no doubt have at first worked hardly on individuals, but so does nearly every railway, drainage, and other public improvement Act which is yearly added to our own statute-book. The few must suffer, more or less, that the many may gain. In this instance, however, scarcely one of the objections to compulsory legislation applies, and a splendid opportunity therefore offers for initiating the reform on a scale that will virtually compel imitation in the case of all future re-erectments.<sup>8</sup>

The term *tanzimat* (reform, order, improvement)<sup>9</sup> was an already heavily entrenched ideology by the time of the fire that could be harnessed by the government immediately in its response to the disaster. On this particular occasion, the government could take advantage of the situation to erase the narrow and labyrinthine streets that prevailed throughout the city and decree that *kârgir* (stone and brick) must henceforth be used in lieu of the combustible, wooden building materials. In other words, the rebuilding of these districts could serve as a pilot project that would put all of Istanbul on par with its western contemporary cities. To be sure, such solutions to the disaster of fires were not unknown before 1865. Mustafa Reşid Paşa, one of the most influential reformers of the century, had already complained about foreign newspapers' comments on fires in the Empire as early as 1836. He was very taken aback by the fact that foreign writers dismissed Muslims as "stupid" or "backward" for their clinging to their long-established insistence on wood-building despite the fact that conflagrations consistently ravaged cities and towns throughout the realm.<sup>10</sup> Prompted by examples of western cities he visited during his diplomatic services in London, Paris and Vienna, he proposed to apply geometrical rules (*kavâid-i hendese*) to the city in order to create a uniform urban space with wide and straight streets and change the timber fabric of the capital into masonry.<sup>11</sup> Yet, no one seemed to heed his calls to revamp the city, and his proposal remained on paper until a fire broke out in the Aksaray district of Istanbul in 1856. It was then for the first time that the government attempted to implement a grid system by employing an Italian engineer, Luigi Storari. The result was not a complete grid system, though it marked a change in the determination of the state to play a larger role in urban planning.<sup>12</sup>

The scope of the calamitous Hocapaşa fire forced the government to find a decisive solution. Indeed, "the *tanzimat* that such a beautiful city like Istanbul deserves" was ironically dependent on urban disasters in the nineteenth century.<sup>13</sup> The timing and scope of planning was usually defined by the magnitude of fires. Beginning with the Aksaray conflagration, all major planning activities in the city were carried out in burnt-down areas. Likewise, all building regulations were designed for destroyed districts.<sup>14</sup> Fires were both the signs of 'underdevelopment' and the occasions for urban modernization. Although the Hocapaşa calamity ruined the imperial and historical core of the city, in the end it bore a 'success story' that inspired Osman Nuri Ergin (1883-1961), an urban historian,<sup>15</sup> to argue that "The Great Hocapaşa fire brought about

happiness for Istanbul rather than disaster.”<sup>16</sup> The signs of redevelopment are still present in the urban landscape of contemporary Istanbul, the most visible being the Divanyolu that was – and still is – the major thoroughfare of the peninsula that connects Topkapı Palace in the east to the gate of Edirne where many of the most important and glorious monuments of Ottoman architecture lie.<sup>17</sup>

As a part of its efforts to rebuild the area, the government initiated both a relief and a planning program immediately following the fire. In addition, the extensive character of the reorganization and property disputes necessitated the establishment of a special commission in 1866 under the name of *Islahât-ı Turûk Komisyonu* (the Commission for Street Reform). Its main task was to allocate the plots in the burnt-down area to their owners according to the rules and regulations that it laid out.<sup>18</sup> As a part of this duty, it also acted as the legal authority to oversee and resolve disputes between officials on the ground such as builders and engineers, and property owners.<sup>19</sup> Also noteworthy is that despite modern scholars’ emphasis on the *Tanzimat* as an era which the government trumpeted equality and filled its bureaucratic ranks with Christian bureaucrats, the composition of bureaucrats in this commission was unabashedly Muslim. The importance of this becomes even more obvious when one considers that many non-Muslim districts fell victim to the multiple paths of the fire. The members of the commission were composed of nine high-ranking officers appointed by the government: Refik Efendi, Subhi Bey, Mustafa Efendi, and Atif Bey, members of the Judicial Court; Kamil Bey Efendi, the Master of Ceremonies; Server Efendi, councilor of commerce; Ferid Efendi, a member of the Court of Inquiry; Mahmud Paşa, a military official; and Ahmed Muhtar Efendi, member of the Council of the Ministry of War.<sup>20</sup> Under the Commission’s command were also policing forces that could make sure that disorder did not prevail during the planning process.

The predominantly Muslim profile of the commission sits in contrast with the example of the Sixth District that had been chosen as the pilot among the fourteen districts in 1857 for the implementation of municipal reform. The Sixth District was composed of Pera, Galata and Tophane where powerful, non-Muslim figures in trade and finance were the leading agents of the urban planning.<sup>21</sup> This selection was not a coincidence, but a reference to the knowledge that non-Muslims and Europeans residing in the area were supposed to have in terms of municipal organization and city administration:



Since to begin all things in the above-mentioned districts [the other thirteen districts] would be sophistry and unworthy and since the Sixth District contains much valuable real estate and many fine buildings, and since the majority of those owning property or residing there have seen such things in other countries and understand their value, the reform program will be inaugurated in the Sixth District.<sup>22</sup>

The composition of the administrative body of the Sixth District was different from earlier municipal formations. For the first time, the government employed foreigners in urban planning.<sup>23</sup> A fire also shaped the experience of the Sixth District. The 1870 Pera fire gave a new impetus to the reordering of the area's urban landscape.<sup>24</sup> Although the example of the Sixth District was pioneering in many ways, the 'success' of the planning activities that were carried out by the Commission for Street Reform disproves the over-emphasis on the role played by non-Muslims and foreigners in the nineteenth-century urban development of the city.<sup>25</sup> The commission equally left its mark on the capital. This historiographical convention is of course part and parcel of the larger paradigm of modernization in Ottoman studies, within which most scholars of Istanbul focused on the state's desire and attempts to create 'a Western-style capital,' thus over-representing the role played by non-Muslims and foreigners. Mainstream historiography has therefore reduced the profound historical change informed by a myriad of historical actors to a handful of Ottoman reformers and their Christian 'advisors' whom they singled out as the agents of transformation.<sup>26</sup>

In what follows, I rather focus on social dynamics on the ground, and examine the contradictions, ambiguities, 'mistakes,' favoritism, negotiation and coercive 'persuasion' involved in the replanning process. In other words, I set out to explain the local, fluid and contingent – rather than generic and categorical – articulations of the *tanzimat* in the city within the context of property and disaster law that have been understudied in Ottoman urban and legal history. I take both property and law as a practice and social relation between various actors who defined and redefined their positions through varying discourses of ownership and usage rights. I approach the Hocaşa fire as a particular context in which property relations were reconfigured and reconsolidated. Yet, I do not consider it as a crisis and 'state of exception' that created its own law, nor as a 'suspension' of property laws.<sup>27</sup> I rather place the Hocaşa fire into a *longue durée* perspective by examining the development of legally

controversial practices due to the social and economic impact of recurrent fires. One of these practices that I focus on in this paper is the *icarateyn* system, a form of long-term leasing of waqf property.

I treat such systems more than a contingency in the legal corpus, a reflective of what can be called a continuous disaster law. My definition differs from what has been roughly addressed as 'disaster law' – "the legal and political structures that appear in the aftermath of crises such as earthquakes, floods, or fires" – in one respect.<sup>28</sup> I do not confine it to the immediate context of the Hocapaşa Fire in this study. Its temporal boundaries transcend centuries as in the case of the *icarateyn* system. Fires produced extraordinary situations that were translated into ordinary normative forms. The long-seasoned familiarity with fires, both legal and social, framed the shape of 'exception.' Thus, the disaster of 1865 was not really an exception for it was built on the past continuous experience.

However, in this particular occasion, there was a change in the character of disaster law. This change lies in the effort to break this very continuity. The conjunction of the nineteenth-century urban modernization, though not uniform, coherent, or wholesale, produced a particular socio-legal context for the Hocapaşa fire where the recurrent disaster of fires and its embeddedness in socio-legal culture was explicitly questioned. Fires came to be unacceptable which could have made them exceptions in the future if necessary measures against them had been comprehensively taken. This is why the government needed to make the victims of the Hocapaşa fire "accustomed"<sup>29</sup> to *kargir* construction with prohibitions on wood-building. It was an attempt to break the custom of wood-building, to decontextualize habits and traditions, as well as a backdrop for the extinction of the disaster itself with a reference to an imagined future where masonry and wide streets would be the guarantee against fires. The government complemented its efforts with the relief program, a form of persuasion which was not independent from expropriation laws and the discourse on 'public good,' nor completely voluntary on behalf of the sufferers or too explicit to be voluntary.

The roots of this change lie not only in the new notions of urban planning, but also in the kind of property regime in the making. Here my focus is on waqf property since most of the real estate in Istanbul belonged to various religious endowments. I argue that the Hocapaşa fire created a moment when the making of waqf property into state property was crystalized in an actual setting.

## The relief program as a form of coercive ‘persuasion’ and replanning

Immediately after the fire, the government provided food and shelter for the sufferers (*harikzedegân*). Those people who became homeless and had no place to stay were settled temporarily in unoccupied houses in the city without the consent of their owners.<sup>30</sup> A relief commission was formed in order to collect and manage the donations from all parts of the Empire, from the sultan and high-ranking statesmen to modest state officials and individuals in the provinces, both Ottoman and foreign. Although the collected sum was significant, it was not completely distributed to the sufferers. The relief commission decided to allocate half of the sum to the victims for their immediate needs. The other half was used to cover some expenses of the planning, especially for the cost reduction of construction materials in an effort to render “continuous prosperity.”<sup>31</sup>

The long lists of the donators were published in various newspapers with the amount of money they contributed. As the donations were made public the sufferers also expressed their gratitude publicly. The official newspaper of the state, *Takvîm-i Vekâyî* (The Calendar of Events), published two letters on the 27<sup>th</sup> of March 1866, one sent by the “Muslim population” (*ahâli-i müsleme*), and the other by the “Armenian community” (*Ermeni milleti*). Unfortunately, the letters’ authorship and indeed their collective nature remain unclear, though the form and vocabulary used in these letters suggest formal and bureaucratic affinities. Both praise the sultan for the degree of “mercy and grace” (*merhamet-i seniyye ve inâyet*) that was “unheard of” (*işitilmemiş*), and for which they would always be grateful.<sup>32</sup> Another newspaper, *Rûznâme-i Cerîde-i Havâdis* (Daily Newsletter), devoted some space to the letter sent by the dwellers of the Hüseyin Ağa neighborhood together with their *imam* (prayer-leader of the local mosque) and *muhtar* (headman of the quarter). The language they employed is much more vernacular, and they eulogized the grand vizier rather than the sultan for his efforts to extinguish the fire. Apart from expressing their gratitude, the publicity was too good an opportunity to pass up, and they also asked for a new carpet for the mosque of the neighborhood. Even more intriguing is that they did not miss the chance to mention some “disgraced persons” (*eşhâs-i erâzil*) who gathered around coffee houses, barbershops, and taverns, and were careless enough to “throw their burning cigarettes here and there,” which caused fires.<sup>33</sup> This narrative of accusation employed by the residents of the Hüseyin

Ağa neighborhood reflects the multidirectional character of the relief program as a form of social control. It was not simply the state persuading its subjects through charity for *kargir* construction. Victims of the fire also used it to express their discontent with those they regarded as “disgraced.”

As the inventory of damage was prepared the relief program was defined on the basis of house ownership. Those who were in need of support were divided into three groups in order of priority, and each group was subdivided into three according to the size of the house they had.<sup>34</sup> The first group included widows, orphans, the old and disabled, and those who lost all their possessions and their only house. The second group was composed of those who were able to save some of their transportable properties, and the third group was lucky enough to pull all their portable possessions out of the fire. Shop owners were excluded from the relief program, together with those who had more than one house, and a salary above 1.500 piasters. The former Grand Vizier Mehmed Rüşdi Paşa, the Chief Secretary of the Supreme Council of Judicial Ordinances Rauf Bey, and Fahreddin Efendi, the official representative of a provincial governor, and other high-ranking statesmen and officials who lost their *konaks* (mansion) were probably among this excluded group whose losses were regarded as worth mentioning in the pages of a newspaper.<sup>35</sup>

A temporal and qualitative distinction also shaped the relief program because the state sought to restore “continuous prosperity.” The amount the sufferers were given in cash was only for their urgent needs, not for the rebuilding of what was lost. This stress on “prosperity” echoes a wider discourse on welfare and “productive capacity” of society in the nineteenth century.<sup>36</sup> The target was the deep-rooted tradition of wood-building that was regarded to have drastically affected “the growth and progress of civilization and prosperity, and the protection of public wealth.”<sup>37</sup> Thus, the concern was to make the inhabitants of the capital “accustomed” to *kargir* building.<sup>38</sup> It was something to be forced otherwise everybody would construct a “fire temple” (*ateş-kede*) again if they had the freedom to build quickly and cheaply with wood as they wished.<sup>39</sup> Therefore, the government banned wood-building, as previously suggested in the columns of *The Levant Herald*. However, it was well aware that the ban could not be enforced unless it took some measures in order to facilitate stone construction. These measures revolved around the aim to make the cost of *kargir* construction more or less equal to wood-building. They included detailed calculations on the price of a single brick, special contracts with the producers of, and the abolition of taxes on, construction

materials, the opening of several streets to make the transportation of brick, stone, sand etc. easier and cheaper, and the withdrawal of taxes on building.<sup>40</sup>

These procedures, in addition to the direct intervention of the state in different facets of the relief ranging from providing money, materials, and new visions for the people of the districts together were the way in which the government talked the sufferers into *kargir* construction. The relief program as a whole was couched into a narrative that sought to persuade people of the harm that the existing material culture imposed on the public good. It was also coercive since it was accompanied by legal prohibitions. After all, wood-building would be nothing but “absurd” (*abes*) in Istanbul as the government and the Commission envisioned.<sup>41</sup> The ban was nevertheless difficult to be enforced. In spite of the relief program, some sufferers found it beyond their means to construct stone houses. Within a year of the fire, some residents of the Hocapaşa and Cağaloğlu neighborhoods were still homeless living in “cellars” (*mahâzin*) with their children and families.<sup>42</sup> Some inhabitants of these neighborhoods even wrote a petition collectively in order to gain permission for wood-construction in 1866. Although we do not know whether they were granted the liberty, it is clear that the wood-building continued.<sup>43</sup>

### The *icarateyn* system and property in disaster law

Within less than two weeks of the fire, an advertisement appeared in a newspaper. A Cemal Efendi wanted to sell his house in the Elvan neighborhood of the Hocapaşa district. The house itself was his freehold (*mülk*), and the land belonged to a religious endowment (*waqf*).<sup>44</sup> Apparently, his house was somehow spared by the fire. We are unfortunately unable to discern whether his decision to sell his property was related to the fire. If so, why was he so quick to post the sale notice? What is certain is that he differentiated two forms of property, *mülk* and *waqf*, and used only “for sale” (*satılık*), a term that refers only to the building, but not to the *waqf* land, since *waqf* property cannot be sold in principle according to Hanafite *waqf* jurisprudence, but can only be transferred. But the Ottoman term for ‘transfer,’ *ferâğ*, was not used in the advertisement probably for the sake of simplicity and space. A typical *qadi* registry of such a case of the *mukâta’a* system, a form of long-term leasing where the building in question is *mülk*, and the land is *waqf*, would use ‘sale’ (*bey*) for the house, and *ferâğ* for the

land. It would also indicate the name of the *waqf* and the permission of the *waqf*'s trustee. It is of course probable to expect a *qadi* registry involving sale of property to be much more specific in terms of terminology and details than a newspaper advertisement.

Such terminological distinctions were central to how property was classified and regulated by distinct as well as overlapping domains of law. *Mülk* (individual freehold) and *waqf* (holdings of religious endowments) regulated by sharia, and *mîrî* (state holdings) regulated by *qanun* (Ottoman administrative law) constituted the classical types of property in the Empire. *Waqf* property was especially important in the case of Istanbul where most of the real estate belonged to various religious endowments. As no clear-cut divisions existed between sharia and *qanun*, practical necessities on the ground usually produced controversial issues in *waqf* jurisprudence, issues for the solution of which the two legal doctrines usually merged into one, with a concern to keep *waqf* property as *waqf* property. The issue of long-term leasing was among the most frequently evoked questions contingent upon the legal stipulation that only a limited rental period was permitted, usually one, or at maximum three years.<sup>45</sup> The following remarks from a treatise on *waqfs* encapsulate the major concern:

After all, people would in the course of time no longer remember that a property is *waqf* and consequently give false statements in court. Since oral testimonies are the main category of legal evidence, this would endanger the legal status of *waqfs*. In the old days, this was not seen as a problem and there were no limits to the terms of the leasing of *waqfs*, but in these times people are prone to corruption and eager to appropriate what is not theirs.<sup>46</sup>

Although such concerns were expressed from time to time, actual necessities of life often made them difficult to maintain. As a form of long-term leasing, the *ıcarateyn* system, for instance, was a widespread practice similar the *mukâta'a* system in Cemal Efendi's case as cited above. *İcarateyn* literally means 'double rent' paid for immovable *waqf* assets. That it developed was mainly due to practical reasons: recurrent fires demolished not only freehold buildings, but also sources of *waqf* revenue, be it a house, shop or warehouse. For those many religious endowments that did not have sufficient revenues for reconstruction and renovation, leasing *waqf* possessions for a longer period of time appeared as a solution. The purpose of such practice was to cover the cost of reconstruction and regain lost sources of revenue to the *waqf*.<sup>47</sup>

Consequently, based on the justification that “necessity makes lawful that which is prohibited,”<sup>48</sup> long term leasing became an accepted practice from the sixteenth century onwards.

Furthermore, as the system developed it also provided a wide range of transactions that could be conducted on *waqf* property, including inheritance of usage rights (*intikâl*), transfer (*ferâğ*), subletting, exchange (*istibdâl*), and the physical separation of *waqf* assets (*ifrâz*). The *icarateyn* system also became the usual practice in the capital. As a matter of fact, during the discussions regarding the changes in the inheritance rules on *waqfs* run by this long-term form of leasing in 1867, the stress was on the scarcity of property in Istanbul other than *waqf*. This scarcity, as explained by the state, was the result of the gradual bending of the rules that regulated and limited the foundation of *waqfs*.<sup>49</sup> Yet, the state’s approach to the *icarateyn* system was flexible and pragmatic, contrary to the ‘*ulama*’s (the class of learned men) common opposition based on the assumption that “if the period [of lease by the same person] is long, this results in the annulment of the *waqf* (*ibtal al-waqf*), since whoever saw the person treating the property the way owners do, will, with the passage of time, consider him its owner.”<sup>50</sup>

Yet, the state’s pragmatism in the sense of responsiveness to social and economic necessities did not prevent it from reminding its title to property on occasion, whether *waqf* or *mîrî*. One such occasion came in 1826 with the foundation of the *Evkâf-ı Hümâyûn Nezâreti* (the Superintendancy/Ministry for Imperial Religious Endowments).<sup>51</sup> Its formation was an attempt to centralize *waqf* administration with new laws and regulations. The *Nezâret* was initially to control *waqfs* founded with the resources of the dynasty or subsidized by the central administration. Its primary task was to transfer revenues derived from *waqf* sources to the state treasury. In quantitative terms, the total number of the *waqfs* controlled by the *Nezâret* and its proportion to the overall number of *waqfs* in the Empire was/is unclear not only to us but also to the Ottoman state due to the lack of systematic surveys and the chaotic situation of *waqfs*. But, we know that the *Nezâret* was responsible for two categories of *waqfs*: *evkâf-ı mazbûta* controlled directly by the *Nezâret*, which included *waqfs* established by the sultans and their dependents, escheated *waqfs* transferred to the Ministry because of the extinction of the founder’s descendants, and *waqfs* that were under the supervision of the *Nezâret* but at the same time had trustees paid by the *waqf* treasury; and *evkâf-ı mülhâka* that were run by their trustees under the supervision of the *Nezâret*, which usually included

*waqfs* the administration of which was assigned to the chief dignitaries of the state.<sup>52</sup> The *Nezâret* also altered the role of the trustee who had been the chief agency in *waqf* administration to a great extent, making him/her dependent on state officials.

A crucial change accompanied the foundation of the *Nezâret*, which reconfigured the classical categories of property in the Empire. New property laws and regulations of the century treated *waqf* and *mîrî* property as almost one and the same category. But, the category of *waqf* to which these laws applied initially included *waqfs* controlled by the *Nezâret*. This resulted in the ever increasing assimilation of the *waqf* category into state property. The main innovations were the expansion of inheritance rights and the establishment of *waqf* and *mîrî* property as collateral to create an alternative money lending system.<sup>53</sup> The purpose behind this as expressed by Sadık Rifat Paşa, an influential statesman whose ideas marked the *Tanzimat* Edict and the developments thenceforth, was to increase agricultural production and enhance real estate values with an unlimited circulation of *waqf* and *mîrî* property in the economic sphere.<sup>54</sup>

The changes in inheritance rules suggest important interventions in the regime of ownership that the state endeavored to accomplish in the nineteenth century. These changes were the unification of inheritance rules regarding *waqf* and *mîrî* property, and the expansion of groups of individuals who could inherit within the family. What was expected from the broadened circles of inheritance was to persuade people that the *waqf* or *mîrî* property over which they had only usage rights would remain in the hands of their individual families. The logic of the state was straightforward: if holders of usage rights were convinced they would invest more capital and labor to improve the property in question:

... the imperial government decided on the procedures behind the inheritance [*intikâl*] of *mîrî* and *waqf* lands that have been used with title deed in order to increase and amplify the subject of agriculture and trade, and consequently, the wealth and prosperity of the domain one step further with the facilitation of transactions ...<sup>55</sup>

The state had a particular concern with the case of the capital where *waqf* property was the dominant form, which resulted in the enactment of a very Istanbul-centered regulation on inheritance in 1867. The stress was on the widespread practice of the *icareteyn* system in the city. As the practice developed from the sixteenth century onwards, it also introduced



a distinctive inheritance form: usage rights on property of a *waqf* run through *icareteyn* were inheritable between male and female offspring equally. With a reference to ‘public interest’ the regulation of 1867 entitled spouses, grandchildren and siblings to inherit:

... it is natural that a childless person [including those who lost their children] would grieve when he sees that his other dependents will be deprived of their house after his death. As a matter of fact it cannot be considered lawful that in the case of death without a child a man’s wife and grandchildren would be thrown in the street from the house that he built by working and regarding it as his own property without remembering that it is a *waqf*, and therefore as previously with the purpose of public interest, further modifications and extension in inheritance regulations came into existence ...<sup>56</sup>

The nineteenth-century political and economic interventions in property revolved around the rationale that the more usage rights were extended the more the holders would improve *waqf* and *mîrî* property with more labor and capital, which would result in greater wealth and production over which the state could impose more taxes. The regulation on inheritance was the product of this rationale, an attempt to create a new rent market. Therefore, the changes in property relations were much more complicated than a simple transition from multiple usage rights to individual property as conventionally assumed.<sup>57</sup> As it appears in the Ottoman case, private property was not perceived as the best way to increase productivity. The state did not withdraw its title to *waqf* and *mîrî* property. Instead, it expanded usage rights, not only on an individual but also familial basis, which had the potential to complicate further the chaotic character of ownership since these rights were not necessarily exclusive. This resulted, therefore, in multiplied claims – within the family for instance although familial disputes and their possible negative effects on investment were not addressed in the inheritance laws – and such regulations did not include all kinds of *waqfs* in the Empire, therefore added new layers to the multiplicity of property laws.

The expansion of usage rights on *waqf* and *mîrî* property was however not linear, nor was it always in conformity with the state’s renewed claim to *waqf* property in particular. As the differences between *mîrî* and *waqf* became blurred the line differentiating them from *mülk* was also thin on the level of practice. Even after the most comprehensive cadastral survey of the capital in 1874, a decree of Abdülhamid II in 1904 was addressing

the problem of the conversion of *waqf* and *mîrî* property into freehold especially in Istanbul with the violation of ownership regulations.<sup>58</sup> The earlier concern of keeping *waqf* property as it was, therefore the hesitation of some legal experts on systems like the *icarateyn*, came to have a new dimension on behalf of the state as the boundaries of state ownership enlarged with the centralization of *waqf* administration.

The Hocapaşa fire was another occasion for the state to reinforce its centuries-old claims to *waqf* property, which resulted in certain drawbacks in terms of legally defined usage rights. Let us look at the case of Necibe Hatun who was rendered homeless by the Hocapaşa fire. Her case is illuminating in many ways with regard to the ambiguity of *waqf* property.

### ***Tanzimat* and Necibe Hatun**

Unsatisfied with the land allotted to her during the reorganization of the area after the fire, Necibe Hatun presented a petition explaining her “misery” (*perîşâniyet*) and “victimhood” (*mağdûriyet*), which was reviewed by the Commission, and then handed over to the Judicial Court.<sup>59</sup> The petition concerns her house of approximately 689 square meters<sup>60</sup> with nine rooms in the Elvanzade neighborhood of the Hocapaşa district. This is quite a large home, most probably because it included a garden or courtyard as well. She informs that the half share of the house had belonged to her husband, Mustafa Ağa, who died sometime before the fire. Upon her husband’s death, his share became “*mahlûl*” (escheated), the only term in the petition indicating that the house was a *waqf* property. Although having limited means, she was able to transfer her husband’s share to herself by paying some money, most probably, to the Ministry of Religious Endowments. Since she did not have any income, she rented out some part of the house in order to make a living. However, she was unfortunate that the fire reduced her house to ashes. Nor was she able to keep the land that was also *waqf* property although it is not specified as such in the petition. The Commission first expropriated one-third of the land for street widening, an amount she was only “willing to sacrifice.”<sup>61</sup> Then, it allotted the remaining land to five persons whose identities are not noted in the document. Necibe Hatun was, however, given a completely new lot somewhere else which was in a much less valuable location (*şerefsiz mahal*) as she complained. She demanded that two of the five persons should be given land in another location, and that their land should be returned to her, whereas, she conceded that the

other three could remain. The Commission rejected her demand as the investigation that was carried out following her petition revealed that she was given new land in a decision that “abided by the rules and precepts of justice.”<sup>62</sup> The tone of the rejection also expresses the weariness of the Commission because “such cases came about every day.”<sup>63</sup>

What is significant in this case is that the legal status of Necibe Hatun as the renter of the *waqf* land through the *icarateyn* system was invalidated, a status that was clearly recognized by *waqf* jurisprudence. Let us look at an exemplary *fatwa* (legal opinion) from the early eighteenth century:

While the ground floor of a *waqf* house is being rented by Zeyd, and of the upper floor by ‘Amr through *icarateyn* the house burns-down and the land becomes empty, then Zeyd transfers the land to Bekir with the permission of [the *waqf*’s] trustee, then Bekir builds a room [the cost of which] is included in the down-payment, and in case ‘Amr wants to build a room on top of that [Bekir’s] room, is Bekir able to prevent [‘Amr]? The Answer: he is not.<sup>64</sup>

This fatwa illustrates two points: first, a renter of a *waqf* house could transfer his/her right of use even if the house was no longer there. In this case Zeyd’s usage rights on the house turns into usage rights on the land after the fire. Second, Amr is still able to keep his rights including constructing a new room for himself even after Zeyd transfers the land to Bekir. In short, the fire does not invalidate their usage rights contrary to Necibe Hatun’s situation. Then, what was the legal justification for Necibe Hatun’s case? Why did she not prefer to base her argument on this very legal right instead of employing the common narrative of “victimhood”?

The answers lie partly in the socio-legal discourse that the fire created, and partly in the state’s renewed claim to *waqf* property. The most important agent of this discourse was the Commission, an extraordinary body responsible for the difficult task of reconciliation with property owners, whereas the building regulations and expropriation laws of the century with reference to ‘public good’ embedded the justification of cases like Necibe Hatun’s partly, but not quite yet.<sup>65</sup>

It is in the context of expropriation laws that Necibe Hatun was only “willing to sacrifice” for the public good one-third of the land over which she had usage rights. In addition, she also consented that three other persons could maintain the plots given to them by the Commission. Her voluntariness and compliance was acting on the status of the *waqf* land

not as *waqf* but as state property. Therefore, she was not asking for what had belonged to her – depending on the usage rights defined by *waqf* jurisprudence – but simply for the remaining part of the land instead of what the Commission gave her in another location. This explains her narrative of victimhood, as well as her need to state in her petition that she did not receive any financial support from the relief commission as a way to reinforce her demand. She also added that the construction materials she purchased were becoming useless since she did not have the means to transport them to the other location.

This metamorphosis of *waqf* and state property which the fire crystalized was a lacuna in the building regulations and expropriation laws. The rate of expropriation without compensation for public good that materially meant wide and straight streets with proper pavements as well as sewage lines was set one fourth of the plot in question. If it exceeded that amount the owner would be compensated in cash.<sup>66</sup> This rule was valid for the category of *mülk*, leaving *waqf* property in a leeway about which the government and the Commission were completely silent.

Although the fire “swept away most of the difficulty” it was still hard for the Commission to arrange lots and replan the area.<sup>67</sup> The scope of the blaze was huge, yet it did not create a *tabula rasa* space where it would be much easier to build a city anew.<sup>68</sup> Even if it had done so the people on the ground were not a *tabula rasa*. The relocation of lots was the source of hardship. The opening, widening and straightening of streets sometimes necessitated the complete dislocation of some plots. Dwellers in areas with very narrow streets in particular were prone to be given new plots in new locations.<sup>69</sup> Most of the petitions written by the dwellers of the area revolve around the gap between pre- and post-fire value of their plots. The wording of these petitions resembles the terms that the Commission singled out to frame its discourse. *Şeref*, literally meaning ‘honor, pride, superiority, and distinction,’ was one of the most accentuated terms of the *tanzimat* in the city that they had in common. The Turkish conjunction, *emlâk-ı kesb-i şeref*, referred to the expected increase in real estate values after the reorganization. Necibe Hatun also complained about the *şeref* of her new plot that she found less valuable. After all, she was successful in playing the discourse on urban *tanzimat*.

For the Commission *emlâk-ı kesb-i şeref* was what justified expropriation, but for the dwellers it was not always their main concern. The calculation of the Commission was simple: a plot of 57.4 square meters (100 *arşun*) in Hocapaşa would be priced at 3.000 piasters at maximum

before 1865; after the fire this value would increase to 5.000 piasters; for owners, the cost of expropriation for one quarter of 100 arşun would be 1.250 piasters. Accordingly even after the expropriation property holders would gain 7.50 piasters, “the profit of reforms” (*islâhât semeresi*), in the value of their houses. Therefore, they “came to reason” and “said nothing,” the Commission claimed.<sup>70</sup>

The curious practice was, however, that the Commission seems to have expropriated one quarter as a rule no matter whether all of it was actually necessary for the reorganization of streets. As a matter of fact, the Commission sold the left-over land from one quarter in order to yield extra revenue instead of giving it back to owners as one would expect.<sup>71</sup> Likewise, the owners of masonry buildings that were not affected by the fire and the consequent street organization had to pay some money in return for the value that their properties would gain as a result of the overall replanning.<sup>72</sup> As it was the practice “the profit of reform” was not free.

Apart from the physical changes, one also wonders how neighborly relations changed in this period of urban planning. What was the place of non-monetary, social, everyday relations in the *şeref* of a location that property holders usually underlined in their petitions? The fire and the consequent planning activities also brought out tensions between the neighbors. Boundary conflicts, for instance, were likely to happen. Borders in the absence of a written document were open to ‘mistakes’ as pseudo-negotiations took place following the destruction of all physical traces of a building. What were the terms of measurement and negotiation carried out by the Commission? How did individuals convince both their neighbors and the Commission, and be convinced by them? How did the Commission formalize the administration of border settlements? Above all, it published notifications in newspapers for the owners to be present during the measurement of their plots in order to prevent errors.<sup>73</sup> It was a critical moment for owners to define the boundaries of their property.

A boundary dispute between Tahir Ağa and Reşid Ağa illustrates some of the other dynamics that mediated property relations during the reorganization. Tahir Ağa was a resident of the Karaki Hüseyin Çelebi neighborhood in the vicinity of the Hocapaşa district. The fire consumed his house, and left him with a plot of 91.8 square meters which he subsequently claimed. However, according to the Commission, it was less than that. In his petition he asserts that first the engineers of the Commission determined the size as 88.9 square meters, but then they reduced it to 56.2 on the basis of a “mistake” (*sehv*) that they had made in the initial measurement.

Although the difference was 35.6 he only reclaimed 11.4, which indicates the possibility that some part of it might have been expropriated that he did not count. His petition consists of only numbers and alleged calculation errors until the point where he presents this “unjust” (*mugâyir-i a’dâlet*) situation as a result of his being “poor” (*fukara*). As he sees it, this was a case of favoritism. His neighbor, Reşid Ağa, was given “extra” (*ilâve*) land which had actually belonged to him.<sup>74</sup> Unfortunately, we do not know anything about the relations between Reşid Ağa and the officials of the Commission. It is possible that Reşid Ağa was favored over “poor” Tahir Ağa because of some personal interests or connections. It is also equally possible that a real “mistake” was involved given the uncertainty of boundaries in the absence of a written evidence such as a title deed or a cadastral registry in this particular case, and Tahir Ağa was acting on this uncertainty. But still, even if this were the case, who had what means to prove or disprove a mistake? The official response rejected Tahir Ağa’s claims in this case.<sup>75</sup> However, the Commission was aware of possible abuses to which officials on the ground measuring and allocating lots to owners were subject.<sup>76</sup> Indeed, the commission had to deal with “endless disputes” because of “all sorts of disorder” that its officials caused.<sup>77</sup> On one occasion, it dismissed Mehmed Efendi, the head functionary, with some other officials in his retinue because of their misconduct.<sup>78</sup>

Since the metamorphosis of *waqf* and state property only explains the expropriation – even though the term becomes inappropriate – not the relocation of Necibe Hatun’s land the case of Tahir Ağa might suggest a possible angle. It is possible that her initial land that was actually quite big might have attracted some others who found their way into a negotiation and deal with the Commission. But beyond speculation the crucial point is the making of *waqf* property into state property when it came to expropriation and public interest. Her legal subjectivity embedded in the rights shaped through a long period in disaster law became undefinable and unrepresentable. When fires became something irreconcilable with urban modernization the law they shaped also became unworkable not only in the immediate context of the conflagration of 1865 but also in the context of earlier and wider transformations in urban property. The Hocapaşa fire was only the moment when the assimilation of *waqf* to state property was crystalized in an actual setting. Therefore, the changes in the property regime of the long nineteenth century are not simply about normative rights whether multiple or individual but positions taken around them on a practical axis.

## NOTES

- <sup>1</sup> *Tasvîr-i Efkar*, No. 328, 8 September 1865.
- <sup>2</sup> BOA. İ.DH. 542/37739; *Takvîm-i Vekâyi'*, 23 November 1866.
- <sup>3</sup> The common Ottoman idiom is "kira köşelerine düşmek."
- <sup>4</sup> *The Levant Herald*, 13 September 1865.
- <sup>5</sup> BOA. İ.DH. 542/37739. In another state document, the total number of the burnt-down buildings is 2879: BOA. İ.DH. 540/37356.
- <sup>6</sup> "Denizdeki aksinden başka dünyada eşi olmayan." BOA. İ.DH. 572/39882.
- <sup>7</sup> Mehmed Halife, *Tarih-i Gilmani* (İstanbul: Kültür Bakanlığı Yayınları, 1976), p. 96; Andreasyan Hrand D., "Eramya Çelebi'nin Yangınlar Tarihi," *Tarih Dergisi*. Vol. 27 (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi, 1973), p. 60; Marc David Baer "The Great Fire of 1660 and The Islamization of Christian and Jewish Space in Istanbul," *International Journal of Middle East Studies*, 36 (2004), pp. 159-181; Lucienne Thys-Şenocak, "The Yeni Valide Mosque Complex at Eminönü," *Muqarnas*. Vol. 15 (1998), pp. 58-70.
- <sup>8</sup> *The Levant Herald*, 13 September 1865.
- <sup>9</sup> The *Tanzimat* era in general refers to the period between 1839 and 1876 during which a set of administrative and legal reforms were initiated.
- <sup>10</sup> Cavid Baysun, "Mustafa Reşid Paşa'nın Siyasi Yazıları," *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Dergisi* 11, no. 15 (1960), p.124.
- <sup>11</sup> Cavid Baysun, "Mustafa Reşid Paşa'nın Siyasi Yazıları," pp. 124-25. It is even possible to trace similar proposals back into the eighteenth century. For example, Tatarcık Abdullah Efendi (1730-97) recommended the same points in 1792 to Sultan Selim III. See Murat Gül and Richard Lamb, "Mapping, Regularizing and Modernizing Ottoman Istanbul: Aspects of the Genesis of the 1839 Development Policy," *Urban History* 31, no. 3 (2004), pp. 423-24.
- <sup>12</sup> Zeynep Çelik, *The Remaking of Istanbul: Portrait of an Ottoman City in the Nineteenth Century* (Berkeley, Los Angeles, London: University of California Press, 1993), pp. 53-55.
- <sup>13</sup> "İstanbul gibi bir güzel beldenin lâyük olduğu tanzimât" BOA. İ.DH. 572/39882.
- <sup>14</sup> Four major regulations were enacted between 1848 and 1882: the Building Regulation of 1848 and of 1849; the Street and Building Regulation of 1863; and the Building Law of 1882. For the transliteration of these regulations see Gül Güleriyüz Selman, "Urban Development Laws and their Impact on the Otoman Cities in the Second Half of the Nineteenth Century." Unpublished MA thesis, METU, 1982, the Appendix.
- <sup>15</sup> Abdullah Taha İmamoğlu, "Osman Nuri Ergin: Cumhuriyet Döneminin İlk Şehir Tarihçisi," *Türkiye Araştırmaları Literatür Dergisi*, Vol. 3, No. 6 (2005), pp. 553-569.
- <sup>16</sup> "Hocapaşa harîk-i kebîri İstanbul için felâketten ziyâde sa'âdeti tevlîd etmiştir." Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediyeye*, vol. 3 (İstanbul:

- Büyükşehir Belediyesi Kültür İşleri Daire Başkanlığı Yayınları, 1995), p. 1222.
- 17 Maurice Cerasi, *The Istanbul Divanyolu* (Istanbul: Orient-Institut, 2004).
- 18 The Bill concerning the foundation of the Commission for Street Reform was published in the official newspaper, *Takvîm-i Vekâyi'*, 1 July 1866.
- 19 BOA. İ.MVL. 550/24667.
- 20 BOA. İ.MVL. 550/24667.
- 21 Christoph K. Neumann, "Marjinal Modernitenin Çatışma Mekanı Olarak Altıncı Daire-i Belediye," in 6. *Daire, İlk Belediye 1857-1913: Beyoğlu'nda İdare, Toplum, Kentlilik Sergi Kataloğu*, prepared by Beyoğlu Belediyesi and İstanbul Bilgi Üniversitesi Toplum, Ekonomi, Siyaset Araştırma Merkezi (TESAR) Yerel Yönetimler Araştırma Birimi (İstanbul, 2004).
- 22 Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediye*, 1:1314. Quoted in Zeynep Çelik, *The Remaking of Istanbul*, p. 45.
- 23 Ibid.
- 24 Zeynep Çelik, *The Remaking of Istanbul*, pp. 64-65; Lorans Izabel Baruh, "The Transformation of the "Modern" Axis of Nineteenth-Century Istanbul: Property, Investments and Elites from Taksim Square to Sirkeci Station." Ph.D. dissertation, Boğaziçi University, 2009, pp. 97-98.
- 25 For instance, Steven Rosenthal reduces the establishment of the first municipal body to the influence of 'modern' and 'secular' non-Muslims and foreigners as opposed to 'traditional' Ottoman Muslims in Istanbul. Steven Rosenthal, "Foreigners and Municipal Reform in Istanbul: 1855-1865," *International Journal of Middle East Studies* 11, no. 2 (1980), pp. 227-245.
- 26 For the examples of this historiography see Steven Rosenthal, "Foreigners and Municipal Reform in Istanbul;" Zeynep Çelik, *The Remaking of Istanbul*; Murat Gül, *The Emergence of Modern Istanbul: Transformation and Modernization of a City* (London: Tauris Academic Studies, 2009).
- 27 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: the University of Chicago Press, 2005); Giorgio Agamben, *State of Exception* (Chicago, London: the University of Chicago Press, 2005).
- 28 Ruth Miller, *Law in Crisis: the Ecstatic Subject of Natural Disaster* (Stanford, California: Stanford University Press, 2009), p. 1.
- 29 "halkı buna alıştırmak" BOA. İ.MMS. 31/1287.
- 30 *Rûznâme-i Cerîde-i Havâdis*, 11 September 1865.
- 31 "refâh-ı dâime" BOA. İ.DH. 542/37739.
- 32 *Takvîm-i Vekâyi'*, 27 March 1866.
- 33 "ellerindeki sigarayı yanar olduğu hâlde ortaya berüye atmakta oldukları" *Rûznâme-i Cerîde-i Havâdis*, 11 September 1865.
- 34 BOA. İ.DH. 542/37739.
- 35 *Rûznâme-i Cerîde-i Havâdis*, 9 September and 14 September 1865.



- 36 Nadir Özbek, Osmanlı İmparatorluğu'nda Sosyal Devlet: Siyaset, İktidar ve Meşruiyet, 1876-1914 (İstanbul: İletişim Yayınları, 2002), p. 47.
- 37 "medeniyet ve ma'mûriyetin tezâyüd ve terakkisi ile muhâfaza-yı servet-i 'umûmiye" BOA. İ. MMS. 31/1287.
- 38 BOA, İ.MMS. 31/1287.
- 39 BOA, İ.DH. 572/39882.
- 40 BOA, İ.DH. 572/39882; İ.MMS. 31/1287; İ.MVL. 550/24667; İ.MVL. 554/24866; A.}MKT. MHM. 356/78.
- 41 BOA. İ. MMS. 31/1287.
- 42 BOA. MVL. 504/143.
- 43 For the custom of wood-building and its existence until the 1920s in Istanbul see, Uğur Tanyeli, "İstanbul'un Ahşap Geleneği: Bir Tarihlendirme Denemesi," *İstanbul*, No: 25 (April, 1998), pp. 52-57; Kemalettin Kuzucu, "İstanbul Konut Mimarisinin Şekillenmesinde Yangınların Rolü: Ahşaptan Kargire," *İstanbul*, No: 32 (January, 2000), pp. 41-49.
- 44 *Rûznâme-i Cerîde-i Havâdis*, 14 September 1865.
- 45 Robert J. Barnes, *An Introduction to Religious Foundations in the Ottoman Empire* (Leiden: E.J. Brill, 1986), p. 51; Richard van Leeuwen, *Waqfs and Urban Structures: The Case of Ottoman Damascus* (Leiden, Boston, Köln: Brill, 1999), p. 63.
- 46 Quoted in Richard van Leeuwen, *Waqfs and Urban Structures*, p. 63.
- 47 For examples of *fatwas* on the issue from the late seventeenth, early eighteenth and nineteenth centuries see Feyzullah Efendi, *Fetâvâ-yı Feyziyye ma'an-nukûl* (İstanbul: Dâru't-Tabâ'at el-Âmire, A.H., 1266); Abdürrahim, *Fetâvâ-yı Abdürrahim* (İstanbul: Dâru't-Tabâ'at el-Ma'mûre, 1827); Meşrepzâde Arif Efendi, *Fetâvâ-yı Câmi'ü'l-icârateyn* (İstanbul: Dâru't-Tabâ'at el-Âmire, 1252/1837).
- 48 Ömer Hilmi Efendi, *İthâf-ül Ahlâf fi Ahkâm-il Evkâf* (Ankara: Vakıflar Genel Müdürlüğü, 1977), p. 54.
- 49 "Hayrât ve müberrâta dâir," 1284/1867. *Düstûr*, 1:1, p. 232; BOA, İ.MMS. 34/1417.
- 50 Ibn 'Abidin, *Radd al-Muhtar*, vol. IV. 400. Quoted in Miriam Hoexter, "Adaptation to Changing Circumstances: Perpetual Leases and Exchange Transactions in Waqf Property in Ottoman Algiers," *Islamic Law and Society*, Vol. 4, No. 3 (1997), p. 326. For another example, see Ömer Hilmi Efendi, *İthâf-ül Ahlâf fi Ahkâm-il Evkâf*.
- 51 The term "*nezâret*" translates as "superintendancy" at the beginnings of its existence but then comes to mean "ministry."
- 52 Ali Himmet Berki, *Vakıflar: Vakıf Müessesesi İnsanların Düşünbildikleri Hukuki Müesseselerin en Hayırlısıdır* (İstanbul: Cihan Kitaphanesi, 1940), pp. 291-292; Ömer Hilmi Efendi, *İthâf-ül Ahlâf fi Ahkâm-il Evkâf*, pp. 16-17. In a document concerning the transfer of waqf assets dated 1870 it is

stated that the number of *waqfs* directly controlled by the *Nezâret (evkâf-ı mazbûta)* was less than the number of *waqfs* that were not controlled by the *Nezâret (evkâf-ı gayr-i mazbûta)*. “Musakkafât ve müstegallât-ı mevkûfede muvâza’t-ı ferâğ hakkında buyuruldu-i sâmi,” 1286/1870. *Düstûr*, 1:3, p. 164.

53 “Arâzî Kanûnnâmesi,” 1274/1858. *Düstûr*, 1:1, pp. 178-180; “Arâzî-i emîriyye ve mevkûfenin tevsî’-i intikâlâtına dâir nizâmnâme ve zeyli,” 1284/1867, *Düstûr*, 1:1, pp. 223-224; “Hayrât ve müberrâta dâir,” 1284/1867. *Düstûr*, 1:1, pp. 232-236; “Bî’l-icâreteyn tasarruf olunan musakkafât ve müstegallâtın usûl-ü intikâlâtı hakkında karargir olan müsâ’adat-ı seniyye,” 1285/1869. *Düstûr*, 1:1, p. 225-229; “Musakkafât ve müstegallât-ı mevkûfede muvâza’at-ı ferâğ hakkında buyuruldu-i sâmi,” 1286/1870. *Düstûr*, 1:3, pp. 163-164; “Bî’l-icâreteyn tasarruf olunan musakkafât ve müstegallât-ı mevkûfe hakkında nizâmnâme,” 1292/1875. *Düstûr*, 1:3, pp. 459-461; “Emvâl-i gayr-i menkûle intikâlâtı hakkında kanun-ı muvakkat 1328/1910,” *Düstûr*, 2: 5, pp. 145-147; Halil Cin, *Osmanlı Toprak Düzeni ve Bu Düzenin Bozulması* (Ankara: Kültür Bakanlığı Yayınları, 1978), pp. 17-18, 366.

54 Kemal H. Karpat, “The Land Regime, Social Structure, and Modernization in the Ottoman Empire,” in *Studies on Ottoman Social and Political History: Selected Articles and Essays* (Leiden, Boston, Köln: Brill, 2002), p. 345.

55 “Arâzî-i emîriyye ve mevkûfenin tevsî’-i intikâlâtına dâir nizâmnâme ve zeyli,” 1284/1867, *Düstûr*, 1:1, p. 223.

56 “Hayrât ve müberrâta dâir,” 1284/1867. *Düstûr*, 1:1, p. 233-234.

57 For an example of this historiographical convention see Huri İslamoğlu, “Property as a Contested Domain: A Reevaluation of the Ottoman Land Code of 1858,” in *New Perspectives on Property and Land in the Middle East*, edited by Roger Owen (Cambridge, Massachusetts, London: Harvard University Press, 2000), pp. 3-61; and “Towards a Political Economy of Legal and Administrative Constitutions of Individual Property,” in *Constituting Modernity: Private Property in the East and West*, edited by Huri İslamoğlu (London: I. B. Tauris, 2004), pp. 3-34.

58 BOA. İ.ML. 95/66.

59 *Meclis-i Vâlâ-yı Ahkâm-ı ‘Adliye*. BOA. MVL. 875/52.

60 1200 *arşun*.

61 “fedâ ederek teşekküründe iken” BOA. MVL. 875/52.

62 “nizâmına muvâfik olarak kemâl-i hakkâniyetle” BOA. MVL. 875/52.

63 “bu misüllü da’vaların küll-yevm zuhûruyla” BOA. MVL. 875/52.

64 Abdürrahim, *Fetâvâ-yı Abdürrahim*, p. 511.

65 The Regulation of the Expropriation of Land and Real Estate for Public Interest of 1856; the Expropriation Decree of 1879; and the Law of 1914 Concerning the Manner of Expropriation by Municipalities in Istanbul and Provinces. Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediyye*, pp. 1756-68.

66 Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediyye*, pp. 1756-68.

- 67 *The Levant Herald*, 13 September 1865.  
68 BOA. İ.DH. 572/39882.  
69 BOA. İ. MVL. 555/24935.  
70 “husûle gelen fevâid-i âdiyeyi arsaların sâhibleri dahi anlayarak hasbe’l-  
nizâm olunan % 25 zâyî’âtı vermekte hiç kimse tarafından artık bir şey  
denilmemiştir” BOA. İ.DH. 572/39882; BOA. İ.MVL. 550/24667.  
71 BOA. İ.DH. 572/39882.  
72 BOA. İ. MVL. 550/24667.  
73 *Takvîm-i Vekâyi’*, 26 February 1866, 27 March 1866, 24 April 1866; *Tasvîr-i*  
*Efkâr*, 20 September 1865, 28 September 1865, 14 October 1865.  
74 BOA. MVL. 541/85.  
75 BOA. MVL. 541/85; MVL. 533/50.  
76 BOA. İ.MVL. 550/24667.  
77 “münâza’atın arkası alınamayup”; “türlü türlü uygunsuzluklar” BOA. İ.MVL.  
571/25660.  
78 BOA. İ.MVL. 571/25660.