Judicial Biases in Ottoman Istanbul: Islamic Justice and Its Compatibility with Modern Economic Life

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# Judicial Biases in Ottoman Istanbul: Islamic Justice and Its Compatibility with Modern Economic Life

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**Abstract**

The transition to impersonal exchange and modern economic growth has depended on courts that enforce contracts efficiently. This article shows that Islamic courts of the Ottoman Empire exhibited biases that would have limited the expansion of trade in the eastern Mediterranean, particularly that between Muslims and non-Muslims. It thus explains why economic modernization in the Middle East involved the establishment of secular courts. In quantifying Ottoman judicial biases, the article discredits both the claim that these courts treated Christians and Jews fairly and the counterclaim that non-Muslims lost cases disproportionately. Biases against non-Muslims were in fact institutionalized. By the same token, non-Muslims did relatively well in adjudicated interfaith disputes, because they settled most conflicts out of court in anticipation of judicial biases. Islamic courts also appear to have favored state officials. The article undermines the Islamist claim that reinstituting Islamic law (sharia) would be economically beneficial.

## 1. Introduction

Underdeveloped countries are often advised to improve their judicial systems in order to strengthen contract enforcement and increase gains from exchange. In particular, they are urged to institute laws enforced independently from the executive and legislative branches of government and impartially across society, without regard to such personal traits as sex, ethnicity, and religion (for examples, see Heckman, Nelson, and Cabatingan 2010; Dam 2006). The advice typically

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takes for granted that laws will not be based on any particular religion, in other words, that they will be secular. Yet in predominantly Muslim countries, there is a demand that legal reforms should draw on Islamic legal traditions stretching back more than a millennium. Sometimes it takes the form of a call for reinstituting Islamic law, or the sharia.

Certain elements of Islamic law have been studied for their economic implications. They include the prohibition of interest, the lack of legal personhood, the Quranic rules of inheritance, and penalties for apostasy.[1] What has not been analyzed, at least not rigorously, is the Islamic system of commercial adjudication. Did it satisfy the objectives of judicial impartiality and independence? This article seeks answers with reference to the Ottoman justice system in the seventeenth century.

There are four reasons for this choice. The first concerns data availability. Although Islamic law was in place for centuries over a huge land mass, nowhere were Islamic court proceedings recorded as thoroughly, or the records preserved as fully, as in the Ottoman Empire. We have constructed a database of Ottoman commercial trials spanning the entire seventeenth century. By far the largest such database, it consists of cases adjudicated in Istanbul, capital of the Ottoman Empire and commercial hub of the eastern Mediterranean. Second, the seventeenth century constitutes the latest period when Ottoman legal practices were essentially free of Western influences.[2] Third, at the time Istanbul was a highly cosmopolitan city with huge Christian and Jewish minorities and also an expanding foreign presence. Given the importance of cross-communal contacts in today's increasingly integrated global economy, it is of interest to examine the operation of Islamic courts in a setting involving interfaith business ties.

Finally, given that Istanbul was the seat of imperial power, its courts would have operated most closely in accordance with the ideals of justice and impartiality that Ottoman sultans claimed to pursue. Like many other Muslim rulers, Ottoman sultans threatened to punish state officials who mistreated their subjects; they also promised that all subjects, regardless of faith, would get fair hearings in imperial courts. Keeping Istanbul's judges essentially honest promoted political stability. Unlike judges in places remote from the capital, those posted in Istanbul also received compensation regularly, which counteracted the temptation to engage in corruption. Thus, the court records of seventeenth-century Istanbul allow the study of Islamic law in a setting where it would be expected to perform as closely as possible to Islamic ideals.

Critics of the Islamic system of justice, from contemporaneous observers of the Ottoman courts to modern legal scholars, have held that as a matter of practice Islamic justice has been unpredictable, biased in favor of state officials, and rigged against non-Muslims. The pro-state biases of the Islamic courts, say

[1] On apostasy, see Saeed and Saeed (2004); on the interest ban, see El-Gamal (2006); and on inheritance and legal personhood, see Kuran (2011, chaps. 5–8).

[2] By the late eighteenth century, non-Muslim Ottoman merchants were beginning to do business under European legal systems (Kuran 2004; Masters 2001).

critics, stem from their subordination to the sultan. Indeed, Ottoman judges served as personal representatives of the sultan, who had the duty to deliver justice. As for pro-Muslim biases, they were rooted partly in the in-group biases of Muslim judges. Also relevant, however, were procedures that treated Muslim testimony as inherently more credible than non-Muslim testimony (Schacht 1964, p. 132). Insofar as they existed, the biases in question could not be countered through formal judicial review. The rulings of a court could be reversed only through a personal appeal to the sultan, which for most litigants was not a realistic possibility.

To one degree or another, premodern courts openly discriminated against outsiders all around the world. In the absence of equal-rights norms that are central to modern judiciaries, they favored local interests without apology. The Islamic courts of the Ottoman Empire provide no exception. In barring non-Muslims from testifying as witnesses against Muslims, they followed, in an extreme form, what was once a universal pattern.[3] This procedural discrimination lends credibility to highly critical Western accounts of these courts (North 1744, pp. 45–47; Porter 1771, pp. 139–43; Masters 2001, pp. 65–68; Ekinci 2004, pp. 28–41). Middle Eastern legal reformers of the nineteenth century not only accepted these criticisms but also considered the biases in question harmful to economic development. The commercial courts founded by reformers had a secular character.

Despite the criticisms, distinguished Ottoman scholars who are familiar with the historical records report that, though prone to corruption, these courts were not noticeably biased against local Christians and Jews or European foreigners or any other group (Ekinci 2004, esp. p. 43). Lacking evidence of bias, they infer that Ottoman judges treated all groups fairly. This is puzzling. If the evidence-generating procedures of the Islamic courts were stacked in favor of Muslims, how could their verdicts have been unbiased? Conversely, if the courts were unbiased against non-Muslims, why did European observers and Ottoman reformers find them blatantly unfair? It could be that the European claims reflect hostility to Islam. Yet certain critics of Islamic courts heaped praise on other Ottoman institutions, which begs the question of why they were negative in this particular context.[4]

Our unique data set provides an opportunity to reconcile the seemingly contradictory accounts of Ottoman justice. We start with a description of the Ottoman judicial system. Theoretical and empirical insights from the law and economics literature follow. Subsequent sections of the article address, in turn, the various biases that afflicted Ottoman trials. We conclude with implications for modern attempts to revive Islamic legal institutions. The inefficiencies of the

[3] As in other Muslim-governed polities stretching back to the early Arab empires, the ban was based on the belief that non-Muslims lack good character (‘*adl*), considered essential for credible testimony (Schacht 1964, pp. 193–94; Peters 1997, p. 207).

[4] Porter (1771, pp. 42, 49), who is highly critical of the Islamic court system, speaks of the elegance of Ottoman mosques and the beauty of Persian poetry.

Islamic courts that operated in seventeenth-century Istanbul were not aberrations, we suggest. Rather, they stemmed from structural features of the Islamic legal system that modern promoters of the sharia consider relevant to modern life.

## 2. The Legal Marketplace in Seventeenth-Century Istanbul

In the seventeenth century, the legal system of the Ottoman Empire was based on Islamic law. Although it had its own particularities, it closely resembled the legal systems of previous and contemporaneous Muslim-governed states. Accounts of Mamluk courts in fourteenth-century Cairo and of Abbasid courts in tenth-century Baghdad resemble those of seventeenth-century Istanbul. In terms of organization, procedures, and principles of justice, the Islamic courts of the Ottoman Empire did not depart significantly from other Islamic courts.

Every Ottoman court was headed by a judge (*kadı*) who performed, in addition to several executive functions, two distinct judicial functions. On the one hand, he registered, and thereby authenticated, contracts, settlements, and transactions. A registered contract could be consulted should it become necessary to forestall or resolve a dispute. On the other hand, the judge conducted trials to resolve disputes brought before him.[5] A dispute could involve a criminal matter or what we would now characterize as a civil matter. In either case, the judge would hear the plaintiff, give the defendant a chance to respond, if necessary conduct an investigation of his own, and pronounce a verdict. Occasionally he would postpone a verdict to allow a litigant to bring evidence. A verdict might involve an order to fulfill a contractual term or pay damages. The records contain disputes involving debts, divorce and custody, estate settlements, guardianship, sales, property transfers, mortgages, pawning, tax payments, guild administration, communal rights, partnerships, and neighborhood norms. The burden of proof did not differ by the type of case, and neither did procedures.

Each judge had scribes record accounts of his activities in a register of cases (*sicil*), and during his tenure at any one court, he might use multiple registers. In small towns, judges had scribes record all their court business more or less chronologically in individual notebooks, moving to a new notebook when the first filled up. In major cities, the norm was to use a separate register for estate inventories and perhaps another for official directives. All other records ended up together, sometimes with certain government orders in the back, in general-purpose registers.[6]

When the tenure of a judge ended, his registers became closed books; his successor started one or more new registers. The departing judge generally

[5] The executive functions included enforcing public morals and keeping a record of official orders sent to the area. Ortaylı (1994), Imber (2002, chap. 6), and Gaudefroy-Demombynes (1950, chap. 10) discuss the functions of judges.

[6] Prior to the nineteenth century, judges had discretion on recording and categorizing (Mandaville 1966, pp. 313–14).

handed over his registers to his successor or, in places with a court building, simply left them behind for storage (Faroqhi 1997). The notebooks used as registers varied greatly in size. A judge who opted for a thick notebook with huge pages might have fit the entire record of his tenure into one book, especially if his tenure was short. If his successor started a skinny notebook, he might have gone through several notebooks. Many old registers must have been discarded eventually; others perished in fires, earthquakes, floods, and wars; still others must have been destroyed deliberately by individuals with something to hide.[7]

A judge's time in any one place was limited to prevent him from developing local political ties. It could be as short as 3 months, but the norm was about a year; rarely did a judge serve more than 20 months in any one post. The judges of courts located in politically sensitive places tended to be rotated especially frequently, which is consistent with the political considerations that guided appointments (Ortaylı 1994, pp. 16–20). The reassignment probability of a judge depended on his reputation. This provided incentives to minimize complaints by adjudicating consistently and fairly. Complaints about a judge posted in Istanbul would reach the sultan more easily than those concerning one assigned to a court located far away from the capital. For that reason, too, judicial corruption would have been less common in Istanbul than elsewhere, which affords us with an opportunity to study Islamic adjudication in a setting where it was most likely to approach the ideal.

For their services, some judges received a salary; all were also authorized to charge litigants fees (*harç*) set by law. These fees were usually proportional to the plaintiff's financial claim. In a commercial dispute, judges might collect, for instance, 2 percent of the amount at stake (Ortaylı 1994, pp. 67–69; Bayındır 1986, pp. 88–89; Gaudefroy-Demombynes 1950, pp. 150–51). There appears to have been no set standard concerning the payee. The plaintiff and defendant might be expected to share the cost. In the absence of documentation on the fee structure of the Ottoman judicial system, we do not know whether charges differed by the substance of the dispute or the amount at stake.[8] We know that the winner of a lawsuit had to pay, at a minimum, a fixed fee for a document certifying the outcome, known as a *hujjet* (*hüccet*).

Although judges were assigned to a jurisdiction, such as the town of Amasya or the Eyüp neighborhood of Istanbul, Ottoman subjects and visitors were not required to use the court located where they lived or worked. They were free to take a dispute to a judge of their choice. In practice, then, the judges of Islamic courts were in competition for legal business.

[7] There is no evidence that willful destruction of records was either common or systematic. If the tampering of records was a major issue, the analysis that follows would need to consider an additional type of sample selection bias. Moreover, if documents were destroyed systematically to remove traces of state-favorable rulings, then the commensurate sample selection biases would suggest that the pro-state biases identified in Sections 7–9 of this article understate their true extent.

[8] It appears that, as a matter of practice, substantial variations existed among courts. Records of the Ottoman palace are replete with complaints about judges who exceeded the authorized fees (Uzunçarşılı 1965, chaps. 9–10).

The vast majority of the Ottoman subjects adhered to one of the three monotheistic religions. Muslims, who formed the largest group, were required to live by Islamic law. This meant that to register a contract legally or to get a dispute adjudicated formally, they had to use an Islamic court. For their part, non-Muslims enjoyed choice of law: though entitled to use an Islamic court, on civil matters they were free to use a court of their own choice.[9] Thus, a Greek Christian could have a debt dispute with a coreligionist litigated before an official of the Greek Orthodox Church. All litigation involving both Muslims and non-Muslims had to be handled by a Muslim judge, because of the rule that Muslims had to live by Islamic law (Kuran 2004). This system of asymmetric legal pluralism meant that, at least in cases among non-Muslims, Muslim judges competed also with Christian and Jewish courts. Although it is certain that non-Muslims used courts of their own, these appear to have left no records (Al-Qattan 1999). This is undoubtedly because, in trying to minimize their tax obligations, Christian and Jewish communities sought to withhold information about their financial matters from state officials.

Under Islamic law, the responsibility to deliver justice belonged to the sovereign—in the Ottoman case, the sultan. He was free to litigate any dispute himself, and in principle anyone could take a case directly to him. In practice, he let his appointed judges try the vast majority of the lawsuits brought to an Islamic court. These judges differed in status and responsibility. Two chief judges (*kazasker*), one for Ottoman provinces in Europe and the other for the rest of the empire, handled appointments on behalf of the sultan. Moreover, the judges of politically strategic places such as Istanbul and Cairo, like those posted in the holy cities of Mecca and Medina, ranked above the rest. The salaries of judges were tied to rank. High-ranking judges could also earn more in fees by virtue of being posted to courts with exceptionally prosperous litigants.

In principle, high-ranking judges did not have more legal authority than the rest. The youngest judge on his first assignment in a sleepy town had as much authority to deliver a verdict as a chief judge. His verdicts were final, and from a doctrinal standpoint they carried as much authority as those of an experienced judge. Under Islamic law, there exists no standardized appeals process (Shapiro 1981, chap. 5; Ekinci 2001, pp. 27–82). Accordingly, an Ottoman disputant could overturn an unfavorable decision only by appealing directly to the sultan. The appeals system was thus biased in favor of elites with access to the sultan's palace. For most Ottoman subjects, appealing a court decision was not a realistic option, and it was particularly costly for the residents of places located far from the capital. None of this implies that Ottoman judges were free to rule whimsically. As we shall see, they were subject to constraints.

[9] All criminal matters, regardless of the identities of the accused and the victims, fell under the responsibility of Muslim officials.

## 3. Sources of Judicial Bias

The social sciences do not provide a general theory of judicial fairness. Disappointingly, theories of dispute resolution that were developed within the law and economics tradition show that the fairness of courts is not measurable in any meaningful way. The key problem, as shown in a body of literature launched by Priest and Klein (1984) and developed by Shavell (1996), lies in heterogeneity among litigants in both information and reputational costs. Such variations make it impossible to recreate, from any given subset of actually adjudicated disputes, the underlying set of potential disputes that might have gone to trial. As van Tulder and van Velthoven (2003) put it, the cases that reach trial represent only the tip of the iceberg of all civil disputes.[10] Because forward-looking and utility-maximizing potential litigants may choose to settle rather than appear in court, one cannot even assess the social optimality of observed litigation and plaintiff victory rates. Questions over whether the lawsuits in a particular society contain too many frivolous cases, are socially destabilizing, and are too costly also pose serious theoretical difficulties.

Nevertheless, the social sciences have much to contribute to analyzing judicial decision making in a heterogeneous society. Three distinct literatures are relevant to the identification of intergroup differences in the application of justice. They involve competition among legal jurisdictions, judicial independence, and in-group bias.

### *3.1. Fee-for-Service Adjudication and Competing Legal Jurisdictions*

In modern courts, judges are essentially indifferent to the number of cases that come before them, because it affects neither their promotion prospects nor their compensation. Before the modern era, however, the success of judges did depend on how many cases they adjudicated, because they derived income at least partly through litigation fees. The fee-for-service system fostered intercourt competition when multiple courts were in proximity. This claim has been tested through a comparison of England's courts before and after the English legal reforms of the early nineteenth century. Klerman (2007) finds that under the prereform period's fee-for-service compensation regime, judges were more likely to rule for plaintiffs than under the salary-based compensation regime that followed. He reasons that since plaintiffs decide whether to sue and also the adjudication forum, profit-maximizing judges would have tilted their verdicts in favor of plaintiffs.[11]

This finding is obviously relevant to Ottoman courts. Although Ottoman judges received a salary from the sultan, they also collected fees from litigants.

[10] Other important contributions include Kessler, Meites, and Miller (1996), Siegelman and Donohue (1995), and Siegelman and Waldfogel (1999).

[11] Building on Klerman's work, DiIanni (2010) adds that jurisdictional competition among courts will not necessarily generate a pro-plaintiff bias if the plaintiff and the defendant must agree on the adjudication forum.

Moreover, individual plaintiffs could seek out judges known for their propensity to rule in favor of the plaintiff. One would expect judges to have ruled for plaintiffs more frequently than they would in the absence of a choice among courts. They would have exhibited a pro-plaintiff bias, regardless of the religious identities of the litigants.

Following Landes and Posner (1979), Klerman (2007) asks what might limit interjurisdictional competition from unraveling into a corner solution such that plaintiffs always win. In premodern England, he finds, in addition to the Chancery and the Parliament, the monarch's ability to appoint and remove judges limited the pro-plaintiff bias of the courts. Biased judges undermined the legitimacy of the monarch's rule. The monarch's oversight of the legal marketplace thus constrained judges' ability to compete with each other by tilting decisions in favor of plaintiffs.[12]

As in premodern England, in the Ottoman Empire any pro-plaintiff bias of the courts would have been known to potential litigants. Moreover, the sultan's executive oversight would have guarded against the excesses of judicial rent seeking. This oversight brings us to another potential source of bias in adjudication: the state's influence on judicial decisions. A sultan able to limit the pro-plaintiff bias of judges might have managed to tilt their verdicts in favor of the state in cases that affected him directly.

### *3.2. Judicial Independence*

Judicial independence entails, on the one hand, the capacity to exercise judicial review and, on the other, counterpolitical judicial continuity. Judicial review gives courts the right to overrule executive decisions, to challenge the legitimacy of the government, and, under extreme circumstances, even to depose a ruler. The review process may result, of course, in the legitimization of government policies. Courts may support government rulings and facilitate their enforcement (Feld and Voigt 2003; Ramseyer and Rasmusen 2003; Hanssen 2004).

Over the course of Islamic history, the judiciary's ability to challenge the sovereign's authority has waxed and waned. Initially weak because of innumerable legal controversies, the court's powers expanded during the eighth and ninth centuries as schools of Islamic jurisprudence got established and legal traditions took hold. During this period, the judiciary occasionally challenged the sovereign's authority by rejecting legal innovations as deviations from the Quran. However, well before the establishment of the Ottoman state in 1299, sultans gained effective control over the judiciary. They then solidified this control by standardizing the code of law applied in their realms, assuming sole authority over the appointment and dismissal of judges, placing religious and judicial

[12] Court fees, too, limit pro-plaintiff bias. If the initiation of adjudication guaranteed the defendant's paying restitution to the plaintiff, the defendant would prefer to settle out of court in order to escape adjudication fees. The plaintiff would also prefer to settle for the opportunity to bargain with the defendant over the distribution of what would have been the judge's fees. Hence, court fees, along with the ability to settle out of court, will make judges cap their pro-plaintiff bias.

officials on the state payroll, and binding the judiciary's well-being to state support (Coşgel, Miceli, and Ahmed 2009; Imber 2002, chap. 6). The cowing of the previously independent judiciary removed the threat of judicial review and bolstered the ability of the courts to legitimize the prevailing regime. In assuming control of the judiciary, the sultan incentivized judges to enforce imperial laws and the chief judge (*şeyhülislam*) to support the sultan whenever consulted on the legality of a decree.[13]

Counterpolitical judicial continuity exists when judges stay in office following a political change. The Ottoman sultan's policy of rotating and replacing judges regularly, which was meant to decrease local loyalties and reduce corruption, limited counterpolitical continuity. In keeping the terms of judges short, this policy prevented the judiciary from establishing patterns that could outlive the sultan's reign.

By the seventeenth century, then, judicial independence was essentially lacking in the Ottoman Empire. Hence, one would expect Ottoman subjects to have shown extreme caution in challenging the state in court.

### *3.3. In-Group Bias in Judicial Decision Making*

All courts are prone to in-group bias, which is the tendency to give preferential treatment to people perceived as belonging to one's own group.[14] In modern jurisprudence, in-group bias is a recognized phenomenon that certain institutions are meant to counteract. A formal system of appeals limits a judge's ability to exercise favoritism, because having a decision overturned by a superior court would harm his reputation. Similarly, a norm of equal protection under the law makes judicial decision makers strive consciously to consider factors favorable to members of out-groups.

Such institutions may alleviate in-group bias but not eliminate it. Numerous studies indicate that even in liberal societies that promote the principle of equal protection under the law judges regularly exhibit in-group bias. Gazal-Ayal and Sulitzeanu-Kenan (2010) and Shayo and Zussman (2011) demonstrate that Israeli judges presiding over apolitical criminal and low-stakes civil hearings exhibit persistent in-group bias. Shayo and Zussman show also that the prevalence of in-group bias is correlated with security-related events that heighten political tensions.

There are also modern institutions that foster in-group bias. The jury system, whereby evidence is evaluated by the defendant's peers, promotes in-group bias favorable to defendants prosecuted by the state. By the same token, it can lead

[13] Judges may acquire greater judicial independence when they anticipate the replacement of the reigning sultan. They may begin to enforce the preferences of his expected successor in a display of proactive loyalty. For the underlying logic, see Helmke's (2002, 2005) work on judicial independence during regime transitions.

[14] Psychological experiments show that group members favor each other even when the group they share is random or arbitrary, such as having the same birthday (Tajfel 1982; Mullen, Brown, and Smith 1992).

to in-group bias in trials that pit an insider against an outsider. In a study of international patent enforcement in American courts, Moore (2003) finds that jury trials are more likely to exhibit xenophobic biases than trials decided from the bench.

Islamic jurisprudence requires all lawsuits to be adjudicated before a judge. This reliance on bench trials would have diminished in-group bias relative to modern jury trials. However, in the absence of clear procedures for appealing a verdict, judges lacked professional incentives to take precautions against in-group bias (Shapiro 1981, chap. 5). Nor were judges trained to follow a norm of equal protection in evaluating evidence. On the contrary, they learned to give greater weight to the testimony of a Muslim than to that of a non-Muslim. This legal tradition was built into the adjudication procedures of Ottoman courts. The transcripts of seventeenth-century trials are replete with references to seeking out Muslims specifically for opinions regarding a dispute at hand.[15]

Given that institutional pressures to counteract intentional or unintentional in-group bias were lacking, in interreligious lawsuits the judges of Islamic courts were very likely to favor their coreligionists. Since all judges were Muslim by design, non-Muslims would have been at a disadvantage in lawsuits pitting them against Muslims.

## 4. The Courts of Galata and Istanbul

To test these hypotheses, we turn to the largest existing data set of transliterated and translated Ottoman court records. It includes 10,080 cases from 15 registers in the courts of Galata and central Istanbul (hereafter simply Istanbul).[16] The registers were selected to provide a more or less uniform distribution over the entire seventeenth century.[17] In each dated account, the scribe would record the identity of the litigants—always including their religious affiliations and titles and often also their neighborhoods of residence—the nature of the dispute, the evidence brought to the trial, and the verdict. These two courts were the most prominent of the 16 courts serving the Ottoman capital, which at the time had around 700,000 inhabitants. The Galata court was located near the empire's main

[15] See, for example, cases Istanbul 9 (1661) 171b/2 (Kuran 2010–, 7:122–25), Istanbul 22 (1695) 105a/2 (Kuran 2010–, 1:369–70), and Istanbul 23 (1696) 20a/1 (Kuran 2010–, 4:589–92).

[16] The data set is reproduced in Kuran (2010–) with full transliterations of the records in the Latin alphabet of modern Turkish, along with detailed summaries in both Turkish and English. The records are in Ottoman Turkish, which few Turkish speakers now understand, because of both the syntax and the high number of Arabic and Farsi loan words. Scribes kept the records, for the most part, in an Arabic script known as broken divani (*karma divani*).

[17] The chosen registers provide coverage across the seventeenth century among the surviving general-purpose registers; thus, ones reserved for estate inventories or official correspondence are excluded. Over certain time spans, the registers tended to be small; to be able to check for repeat use of a given court over the periods in question, we included some consecutive registers. Big gaps exist in the series because of fires. The main motivation for constructing the sample was to see whether the standards and processes of Ottoman courts, and the economic life that they supported, changed over the course of the seventeenth century.

**Table 1**
**Trial Records**

| | Year(s) | *N* | % |
|---|---|---|---|
| Registers: | | | |
| Galata 24 | 1602–3 | 46 | 2.0 |
| Galata 25 | 1604 | 138 | 6.0 |
| Galata 27 | 1604–5 | 153 | 6.7 |
| Istanbul 1 | 1611–13 | 78 | 3.4 |
| Istanbul 2 | 1615–16 | 50 | 2.2 |
| Galata 41 | 1616–17 | 40 | 1.8 |
| Galata 42 | 1617 | 85 | 3.7 |
| Istanbul 3 | 1617–18 | 142 | 6.2 |
| Istanbul 4 | 1619 | 107 | 4.7 |
| Istanbul 9 | 1661–62 | 549 | 24.1 |
| Istanbul 16 | 1664–65 | 163 | 7.1 |
| Galata 130 | 1683 | 201 | 8.8 |
| Galata 145 | 1689–90 | 247 | 10.8 |
| Istanbul 22 | 1694–96 | 172 | 7.5 |
| Istanbul 23 | 1696–97 | 111 | 4.9 |
| Total | | 2,282 | 100.0 |
| Courts: | | | |
| Galata | | 909 | 39.8 |
| Istanbul | | 1,373 | 60.2 |
| Total | | 2,282 | 100.0 |

port, and the Istanbul court was near the fabled Grand Bazaar. Precisely because of these courts' proximity to major commercial centers, their caseloads consisted primarily of commercial registrations and trials. Only the latter are of interest here.

As Table 1 shows, our records contain 2,282 commercial trials.[18] The court register number is that assigned by the Turkish archive where the registers have been housed since 1894. Thus, "Galata 130" refers to the 130th register in the archive's Galata series.

Dividing our trials by court, we find that 60.2 percent belong to Istanbul. As shown in Table 2, the two subsamples differ in terms of the demographic composition of the litigants. Disproportionately few defendants were Muslim in Galata, relative to Istanbul, probably because Galata had disproportionate concentrations of Greek and Armenian Christian residents.[19] In theory, the religious diversity of a neighborhood could have affected litigation patterns. In a neighborhood with a relatively high share of Christian residents, judges might have been more sympathetic to Christians, if only in the interest of attracting more

[18] This figure excludes nine trials whose accounts lack information relevant to some part of our analysis.

[19] Population estimates for seventeenth-century Istanbul do not distinguish between neighborhoods, so we are unable to quantify the demographic differences between Istanbul and Galata.

**Table 2**
**Muslim Share of Litigants by Court**

| | *N* | Muslim Plaintiff | Muslim Defendant |
|---|---|---|---|
| Galata | 909 | 71.4 | 63.0 |
| Istanbul | 1,373 | 75.9 | 70.9 |

**Note.** The proportion of Muslim plaintiffs differs statistically between the two courts at the 95 percent level of significance ($t = 2.34$) and the proportion of Muslim defendants at the 99 percent level of significance ($t = 3.93$).

**Table 3**
**Prevalence of Topics by Court**

| | Tax | *Waqf* | Rent | Property | Sale | Guild |
|---|---|---|---|---|---|---|
| Galata | 6.6 | 12.8 | 8.8 | 21.1 | 26.1 | 3.5 |
| Istanbul | 3.6 | 17.1 | 9.1 | 19.1 | 27.5 | 2.8 |

**Note.** Values are percentages. Trials that involved more than one topic, such as a dispute over who would inherit a rental property, are counted more than once. Trials involving minor topics are not listed here. For both reasons, the rows do not sum to 100. The prevalence of tax- and *waqf*-related cases differs between the two courts at the 99 percent level of statistical significance ($t = 3.24$ and $t = 2.83$, respectively).

Christian-initiated cases.[20] Table 3 indicates that the two courts differed also in terms of the distribution of cases by topic. Thus, Galata had a higher share of tax cases than Istanbul but a lower share of cases concerning a *waqf* (Islamic trust).[21] Without controlling for the topics of the trials, we might misinterpret variation in dispute-specific standards of guilt as in-group bias, since minority participation is correlated with the topic of dispute.[22]

In contrast to the workings of a modern legal system, plaintiffs in seventeenth-century Istanbul did not need to sue in the district where the dispute arose or where they lived. They could choose among multiple courts located within walking distance of one another. Hence, Christians might have favored the Galata court because of greater convenience. It is possible, too, that the Galata court had a reputation for ruling in favor of Christians more often than the competing court in Istanbul.

## 5. Pro-Plaintiff Biases

Given that two courts competed with one another for lawsuits, their judges were all incentivized to tilt verdicts in favor of plaintiffs as a means of attracting

[20] Because a Christian could not sue a Muslim in a Christian court, relative neighborhood diversity is unlikely to have affected the prevalence of interreligious disputes.

[21] These two differences reflect the demographic differences mentioned above. Tax disputes involving the minority head tax (*cizye*) were common, and *waqfs* were administered predominantly by Muslims.

[22] A multivariate analysis described later in the article is unable to distinguish among court-, judge-, and year-specific effects. Most unfortunately, we cannot determine whether the adjudication venue of a dispute significantly matters to the outcome, because the Galata and Istanbul registers barely overlap chronologically.

**Table 4**
**Number of Trials by Religion of Litigants**

| | Defendant | | |
|---|---|---|---|
| Plaintiff | Muslim | Christian | Jewish |
| Muslim | 1,413 | 224 | 41 |
| Christian | 96 | 377 | 7 |
| Jewish | 20 | 29 | 20 |

**Note.** The number of trials among litigants of these three religious groups was 2,227. This subsample excludes trials involving a foreigner (*müstemen*), gypsy (*çingene*), or recent convert to Islam (*mühtedi*).

**Table 5**
**Plaintiff Win Rate by Religion**

| | Defendant | | |
|---|---|---|---|
| Plaintiff | Muslim | Christian | Jewish |
| Muslim | 59.0 | 57.6 | 65.9 |
| Christian | 71.9 | 59.4 | 57.1 |
| Jewish | 65.0 | 55.2 | 70.0 |

**Note.** The win rate for all plaintiffs in 2,227 trials limited to Muslims, Christians, and Jews was 59.7 percent.

cases. With all judges playing this game, the pro-plaintiff bias would have grown, and in the limit plaintiffs would have won all cases in every court. The limit would never be reached, of course, if potential defendants started refusing to appear before the most biased of judges. By the same token, insofar as judges were predisposed to compete for cases by favoring plaintiffs, the temptation to launch frivolous lawsuits would have increased, especially if judges made side deals with plaintiffs to share extractions from hapless defendants.

In fact, the verdicts delivered in our two courts do appear to have favored plaintiffs. They won 59.6 percent of all cases submitted to adjudication. As already noted, it is theoretically impossible to assign a benchmark of how a court insulated from interjurisdictional competition would perform. Hence, one cannot say whether this plaintiff victory rate deviates from the social optimum. Yet the number is clearly below the 100 percent figure we would have found if judges decided cases with the single goal of encouraging people to bring them lawsuits. Other considerations must have been in play. Fairness is, of course, the most obvious competing consideration. The sultan's executive oversight would have ensured that fairness played a significant role. For the sake of maintaining political stability, he would have limited the profit-seeking tendencies of even the most corrupt judge.

Table 4 gives the breakdown of the trials in terms of the nine possible pairings among our three religious communities, and Table 5 shows the corresponding plaintiff victory rates. We see that irrespective of the pairing, the plaintiff wins more frequently than the defendant. The plaintiff victory rate is significantly

greater than 50 percent in intra-Muslim, intra-Christian, and intra-Jewish cases but also when the litigants are from different faiths.[23]

Religion was not irrelevant to the probability of victory. Focusing on the Muslim/Christian cases, where the numbers are high enough for meaningful statistical analysis, we find that the plaintiff victory rate differs depending on the side of the Christian. In view of the debates concerning abuses against Christians, the nature of the difference may come as a surprise. The plaintiff victory rate is higher, not lower, when a Christian sues a Muslim than when the roles are reversed.[24] Equally surprising, it may seem, is that Christian plaintiffs do better when the defendants are Muslim than when the defendants are co-religionists (71.9 versus 59.4 percent). For Muslim plaintiffs, by contrast, the defendants' religion does not matter.[25] Not even the Ottomanists who reject the strident charges of anti-Christian bias in Islamic courts would have predicted these findings. On the basis of casual observations, they suggest that the Islamic courts treated Christians fairly, not that Greek and Armenian Ottoman subjects benefited from pro-Christian judicial discrimination.

Counterintuitive as these findings may seem, they will not surprise students of modern litigation involving foreigners. In American courts, xenophobia in adjudication goes hand in hand with a high foreign victory rate in foreign-initiated lawsuits against Americans. Studying patent disputes, Clermont and Eisenberg (1996) find that American courts rule in favor of foreign firms suing American firms at a higher rate than they do in favor of domestic American firms suing other American firms.[26] Yet foreigners consider American courts to be xenophobic; they also expect that in patent cases pitting a foreign firm against an American firm, the foreign side will generally lose. The authors reconcile this perception with their finding by invoking selection bias. Expecting American juries to be biased against them, foreign firms sue American firms only if their cases are very strong. Their high victory rate thus reflects not xenophilia but the

[23] Testing the intrafaith results in Table 5 against the null hypothesis that the plaintiff victory rate equals 50 percent, we reject the null hypothesis for Muslims and Christians at the 99.9 percent level of statistical significance and for Jews at the 90 percent level (the *p*-values are .00 for Muslims, .00 for Christians, and .07 for Jews). We also reject the null hypothesis in interfaith cases involving Christians and Muslims (the *p*-values are .00 for a Christian suing a Muslim and .02 for a Muslim suing a Christian), but we cannot do so consistently in cases involving Jews or others, in all likelihood because of their small numbers in the data.

[24] The difference is statistically significant at the 95 percent level ($t = 2.42$).

[25] For Christian plaintiffs, the victory rate is significantly greater at the 95 percent level when the defendant is a Muslim ($t = 2.25$). For Muslim plaintiffs, the null hypothesis that the rates are equivalent cannot be rejected ($t = .39$). For the sake of completeness, we may compare across plaintiffs, holding the defendant's religion constant. When the defendant is Muslim, it matters whether the plaintiff is Muslim or Christian at the 95 percent level of significance ($t = 2.50$). When the defendant is Christian, the plaintiff's religion does not matter ($t = .44$).

[26] In lawsuits between domestic firms, the plaintiff victory rate is 64 percent. By contrast, in those that involve a foreign plaintiff and a domestic defendant, it is as high as 80 percent. The difference is significant at the 99.9 percent level. In lawsuits brought by domestic firms against foreign firms, the plaintiff victory rate drops to 50 percent. This percentage differs statistically from 64 percent, again at the 99.9 percent level of significance.

strength of their lawsuits. This interpretation is supported by Bhattacharya, Galpin, and Haslem (2007), who study the impact of litigation on stock prices as a measure of expected judicial outcomes. They find that foreign firms sued in American courts are expected to do substantially worse than American firms sued in the same courts.[27] Our finding for seventeenth-century Istanbul fits these patterns. Like foreign plaintiffs in the United States today, non-Muslim Ottoman litigants did better in court than Muslims precisely because they had good reason to fear judicial discrimination.

One may wonder whether American courts differ at all from Ottoman courts of the seventeenth century in regard to biases against outsiders. The institutional biases of the Ottoman courts have no parallel in American courts, where American and foreign litigants enjoy identical formal rights concerning witnesses and where witnesses are not limited in terms of creed or nationality. What has not disappeared is in-group bias, which is resistant to legislation. Like juries everywhere throughout history, those in the United States are drawn from people predisposed to giving the benefit of the doubt to people like themselves. Thus, American jurors tend to find American litigants more credible than foreign litigants. Similarly, judges are predisposed to seeing conflicts from the perspective of American litigants.[28]

## 6. Non-Muslim Participation in Islamic Courts

If selection bias accounts for the high victory rate of Christians in their lawsuits against Muslims, they would have had special reasons to avoid Islamic courts. To determine whether Christians underutilized Islamic courts, we need to know the shares of each religious group in Istanbul's population. Although no population census was conducted in the seventeenth century, Mantran (1962) estimates that at the time Istanbul was 58.8 percent Muslim, 34.8 percent Christian, and 6.4 percent Jewish (Figure 1).[29] Most of the Christians were either Greek or Armenian.

Given these shares, let us conduct a counterfactual exercise to determine how

[27] Bhattacharya, Galpin, and Haslem (2007) employ a Heckman two-step regression process. In related work, Moore (2003) examines the number of international patent disputes while controlling for U.S. patents held by foreign and domestic firms, thus weighing the foreign litigation rate in U.S. courts against the number of foreign-held U.S. patents in order to determine how often international firms sue relative to American firms. She confirms that foreigners sue disproportionately less, given the distribution of patents held. This result is consistent with the inference that sample selection bias drives the high foreign victory rate in foreign-initiated lawsuits.

[28] Bodenhausen (1988) presents experiments concerning the psychological mechanisms through which juries interpret and internalize evidence presented in trials. Evidently, individual jurors tend to retain evidence consistent with their preexisting stereotypes and to discount exculpatory evidence.

[29] In his monumental history of Istanbul, Mantran (1962, pp. 44–47) provides, on the one hand, the population sizes of the Christian and Jewish communities in 1690 and, on the other, the Muslim and non-Muslim shares in the sixteenth century. There is no reason to believe that population shares changed significantly between the sixteenth and seventeenth centuries. By holding the relative sizes of the Muslim and non-Muslim communities constant, we are able to extrapolate the three shares.

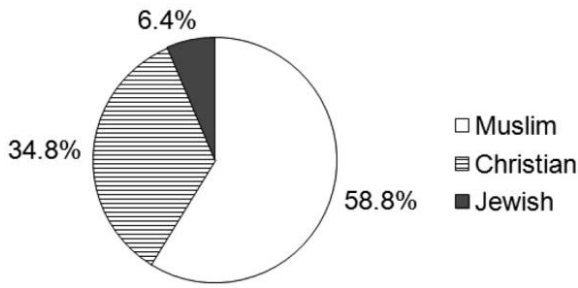


**Figure 1.** Population shares of the religious communities in seventeenth-century Istanbul

often the three groups would have faced one another in an Islamic court if, irrespective of faith, the residents of Istanbul interacted in pairs randomly. For the purposes of this exercise, we assume that for every type of pairing (Muslim/Muslim, Christian/Muslim, and so on), interactions give rise to litigation with the same probability and that all litigation takes place in an Islamic court. Under this random interaction and random litigation scenario, the distribution of pairwise litigation would be as shown in Table 6. The percentages for the intrafaith cases equal the squared shares of the communities in the population.[30] The interfaith shares are, of course, symmetric. For example, the share of Christian-initiated lawsuits against Muslims equals that of Muslim-initiated cases against Christians.

Table 6 also provides the observed adjudication shares in seventeenth-century Istanbul.[31] Clearly, intra-Muslim cases are vastly overrepresented relative to random adjudication, as are intra-Christian cases. The reason is that pairings did not occur randomly; Muslims interacted disproportionately with Muslims, and Christians with other Christians, which resulted in disproportionately many intrafaith disputes. Interactions were more likely among coreligionists because people found it advantageous to deal with individuals known to them personally, and typically they knew more about coreligionists than about religious outsiders. For Christians, another reason was that the two major Christian groups, Greeks and Armenians, favored Islamic courts over their own communal courts as a neutral ground for adjudication.

It is in interfaith disputes that the selection bias in question is detectable. Whereas under random interactions the share of Muslim lawsuits against Christians would equal the share of lawsuits with the roles reversed, in fact the two shares were starkly different: 10.1 percent of all disputes consisted of a lawsuit

[30] For example, the Christian intrafaith share is $(.348)^2 = 12.1$ percent. If Christians and Jews had an outside option, namely, adjudication in a court of their own religious community, their intrafaith shares would be lower than those given.

[31] These calculations exclude the few cases involving others (gypsies, foreigners, and new converts to Islam).

Table 6
Distribution of Trials by Religion of Litigants

| Plaintiff/Defendant | Random Pairings | Observed Pairings | *t*-Test of Equivalency |
|---|---|---|---|
| Muslim/Muslim | 34.6 | 63.5 | 31.20 |
| Muslim/Christian | 20.5 | 10.1 | 16.37 |
| Muslim/Jewish | 3.7 | 1.8 | 6.52 |
| Christian/Muslim | 20.5 | 4.3 | 37.61 |
| Christian/Christian | 12.1 | 16.9 | 6.07 |
| Christian/Jewish | 2.2 | .3 | 15.89 |
| Jewish/Muslim | 3.7 | .9 | 14.01 |
| Jewish/Christian | 2.2 | 1.3 | 3.73 |
| Jewish/Jewish | .4 | .9 | 2.49 |

**Note.** Columns do not sum to 100 percent because of rounding. For each of the nine religious pairings, the hypothesized and observed shares differ at the 99.9 percent level of statistical significance.

brought by a Muslim against a Christian, but only 4.3 percent involved a lawsuit brought by a Christian against a Muslim.[32] This asymmetry holds regardless of whether the cases were adjudicated in Galata or Istanbul.[33]

The asymmetry in question suggests that Christians considered the courts to be biased against themselves, at least in cases in which they faced Muslims. Two sources of institutionalized bias have already been mentioned. First, the judges and assistant judges of Islamic courts were exclusively Muslim, as were the court-appointed professional witnesses (*şuhud ül-hal*) present at every adjudication or registration procedure. These officials would have been attuned to the customs, perspectives, and aspirations of their coreligionists. As such, even if they tried to be meticulously impartial, they would have been more receptive to arguments of Muslims than to those of non-Muslims. Hence, in Muslim/Christian cases, the benefit of any doubt would have gone to the former.

Second, Muslims and Christians did not have equal rights with regard to testifying as a litigant-invited witness. Under rules that became institutionalized early in Islamic history, whereas a Muslim witness could testify against anyone, non-Muslims were allowed to testify only against other non-Muslims.[34] Our own sample of cases shows that in seventeenth-century Istanbul, the ban on non-Muslim witness testimony against Muslims was obeyed strictly. As Table 7 shows, a total of 1,177 witnesses were called to testify in our 2,282 commercial lawsuits. Of these, an overwhelming majority were Muslim. Especially striking is that not a single Christian or Jewish witness appears in any intra-Muslim lawsuit. In

[32] The two interfaith proportions differ at the 99.9 percent level of statistical significance ($t = 7.79$).

[33] In both courts, the number of Muslim/Christian trials exceeds the number of Christian/Muslim trials at the 99.9 percent level of statistical significance ($t = 7.51$ for Galata; $t = 3.97$ for Istanbul).

[34] Peters (1997, p. 207) documents that every major Islamic school of law, including the Hanafi school followed by the Ottoman administration, accepted these discriminatory rules.

Table 7
Religious Distribution of Litigant-Selected Witnesses

| | Witnesses | | | |
|---|---|---|---|---|
| Plaintiff/Defendant | Muslim | Christian | Jewish | Total |
| Muslim/Muslim | 741 | 0 | 0 | 741 |
| Muslim/Christian | 62 | 12 | 0 | 74 |
| Muslim/Jewish | 42 | 0 | 0 | 42 |
| Christian/Muslim | 39 | 16 | 0 | 55 |
| Christian/Christian | 99 | 76 | 0 | 175 |
| Christian/Jewish | 0 | 4 | 0 | 4 |
| Jewish/Muslim | 5 | 0 | 0 | 5 |
| Jewish/Christian | 9 | 5 | 0 | 14 |
| Jewish/Jewish | 0 | 0 | 13 | 13 |
| Subtotal | 997 | 113 | 13 | 1,123 |
| All three religious groups | 27 | 0 | 0 | 27 |
| Other combinations | 23 | 4 | 0 | 27 |
| Total (%) | 1,047 (89.0) | 117 (9.9) | 13 (1.1) | 1,177 (100) |

**Note.** $N = 2{,}282$. Other combinations include a foreigner (*müstemen*), gypsy (*çingene*), or recent convert to Islam (*mühtedi*) as a litigant.

sharp contrast, Muslims represent the majority of all witnesses called to testify in intra-Christian disputes (56.6 percent).

The presence of institutionalized judicial biases raises the question of why Muslims and Christians sued each other at all on economic matters. After all, Christians could have avoided the possibility of commercial lawsuits involving Muslims simply by doing business only with other Christians. Yet potential gains from trade would often have trumped the risk of biased litigation. A content analysis of the issues over which cases arose reveals that Christians and Muslims interacted most commonly through credit markets. We see in Table 8 that of all trials between Christians and Muslims, 65.5 percent concern debt. Typically, the plaintiff accuses the defendant of having failed to settle a debt linked to an installment sale with an implicit interest charge; hence, in the data debt and sales are positively correlated.[35]

To sum up thus far, we have (1) found a pro-plaintiff bias higher for Christians than for Muslims, (2) observed that, in line with the global norm of antioutsider judicial bias, Islamic courts were institutionally biased against non-Muslims, and (3) inferred that the anti-Muslim bias of the courts led Christian subjects to avoid suing Muslims except when their cases were particularly strong, which

[35] The coefficient of correlation between debt and sale is .09. It is significant at the 99.9 percent level. The plaintiff is the creditor and the defendant is the debtor 94.1 percent of the time. Given that the Muslim litigant is the plaintiff in 75.6 percent of the Muslim/Christian lawsuits involving a debt, we can infer that the Muslim was more often the creditor and the Christian was generally the debtor. Evidently, in the seventeenth century, in contrast to later times, Muslims supplied more credit than Christians. This disparity does not necessarily reflect a sample selection bias, because our usual indicator is absent: even though fewer lawsuits are initiated by a Christian than by a Muslim, the plaintiff win rates of the groups are statistically identical ($t = 1.31$).

**Table 8**
**Trial Topics as Percentages of Interfaith Adjudication**

| Topic | Christian Suing Muslim (1) | All Trials with Christians and Muslims (2) | Muslim Suing Christian (3) | *t*-Test of Equivalency: (1) versus (3) |
|---|---|---|---|---|
| Guild | 6.3 | 3.8 | 2.7 | 1.54 |
| Debt | 53.1 | 65.3 | 70.5 | 3.03 |
| *Waqf* | 14.6 | 17.8 | 19.2 | .98 |
| Property | 22.9 | 11.3 | 6.3 | 4.44 |
| Tax | 7.3 | 5.9 | 5.4 | .66 |
| State | 19.8 | 11.9 | 8.5 | 2.89 |
| Sales | 36.5 | 30.0 | 27.2 | 1.65 |
| Partnership | 29.2 | 20.9 | 17.4 | 2.38 |
| Inheritance | 29.2 | 20.6 | 17.0 | 2.48 |

**Note.** Columns sum to more than 100 percent because many trials involved two or more topics.

resulted in a selection bias in the available data. Table 8 raises a potential problem with the first and third points. Could the figures in question be reflecting differences across the religious groups in the types of issues they brought to court? This possibility will be addressed in due course, after we deal with a possible objection to point 2.

## 7. State Officials in Islamic Courts

Because the Islamic legal system lacked a concept of legal personhood, in none of our cases does the state per se appear as a litigant. Individuals with a grievance against the state had to sue the state official responsible for the offending act. Similarly, individuals who shirked a civic responsibility could be taken to court by a state official rather than the state itself. The authority and responsibility of the state were thus personified.

The officials who appeared in court most frequently were tax officials and estate supervisors. Palace employees also showed up, usually in connection with guild matters and communal affairs. Of the 178 state officials in our data, 11.8 percent were either Jewish or Christian (Table 9).[36] Non-Muslims were commonly employed as tax collectors, so this percentage is not surprising. It bears reiteration that data drawn from adjudicated cases need not match the underlying religious distribution of officials.

State officials appear in about 7 percent of our seventeenth-century disputes, a total of 163 cases. In 15 of these lawsuits, they face each other, leaving 148 cases in which a state official faces a subject. Officials appear as plaintiff and defendant at a statistically equal frequency (Table 10).[37]

[36] All of these cases are recorded in Kuran (2010–, vols. 3–4), where additional statistical breakdowns may be found.

[37] We fail to reject the hypothesis of symmetry at a meaningful level of statistical significance ($\chi^2(1) = .97$).

**Table 9**
**State Officials by Religion**

| | Muslim | Christian | Jewish | All |
|---|---|---|---|---|
| *N* | 157 | 7 | 14 | 178 |
| % | 88.2 | 3.9 | 7.9 | 100.0 |

**Table 10**
**Distribution of Litigants by Relation to the State**

| | Defendant | |
|---|---|---|
| Plaintiff | Subject | Official |
| Subject | 2,119 | 80 |
| Official | 68 | 15 |

**Note.** $N = 2{,}282$.

**Table 11**
**Plaintiff Win Rate by Litigant's Relation to the State**

| | Defendant | |
|---|---|---|
| Plaintiff | Subject | Official |
| Subject | 59.5 | 86.3 |
| Official | 30.9 | 73.3 |

**Note.** The plaintiff win rate for all 2,282 trials was 59.6 percent.

Turning our attention to the outcomes of these trials, we find significant variation in the plaintiff victory rate depending on the side of the state official. Whereas it is 59.5 percent when neither litigant is an official, it plummets to 30.9 percent when the plaintiff is an official and jumps to 86.3 percent when the defendant is an official (Table 11).[38] When officials face each other, the plaintiff victory rate is indistinguishable statistically from the baseline case.[39]

It appears, then, that cases between officials and subjects tend to be decided in favor of subjects. Given the judiciary's lack of independence from the executive, this observable outcome is almost certainly caused by extreme sample selection bias. No subject would have chosen to appear in court opposite an official unless highly confident of winning. However, in these cases we do not observe an inequality in the number of cases adjudicated. Hence, our previously applied heuristic method for identifying sample selection bias is not applicable

[38] The hypothesis of equality is rejected at the 99.9 percent level of statistical significance in both cases ($t = 4.75$ and $t = 4.83$, respectively).

[39] The hypothesis that the two plaintiff victory rates are equivalent is not rejected ($t = 1.09$).

**Table 12**
**Plaintiff Win Rate according to Involvement of State Official: By Plaintiff's Religion**

| | Defendant | | |
|---|---|---|---|
| Plaintiff | Subject | Official | *t*-Test of Equivalency |
| Muslim | 57.8 | 83.6 | 4.39 |
| Christian | 60.9 | 85.0 | 2.18 |
| Jewish | 62.3 | | |

**Table 13**
**Plaintiff Win Rate according to Involvement of State Official: By Defendant's Religion**

| | Defendant | | |
|---|---|---|---|
| Plaintiff | Muslim | Christian | Jewish |
| Subject | 60.6 | 59.8 | 64.6 |
| Official | 37.5 | 33.3 | 100.0 |
| *t*-Test of equivalency | 3.22 | 2.89 | 1.26 |

here.[40] Nevertheless, there is a hint of extreme sample selection bias that the smallness of our subsample precludes us from proving. Intriguingly, the asymmetry in the plaintiff victory rate is invariant to the religion of the subject where enough observations exist for statistical analysis (Tables 12 and 13). Evidently, the courts weigh the testimony of a state official equally regardless of the opponent's religion. This confounds the previous findings of institutionalized judicial bias against non-Muslims. Irrespective of religion, when a nonofficial opts to confront a state official in court, the case is sufficiently strong to withstand any pro-state judicial bias.[41]

Finally, we turn our attention to the substance of the cases that involve a state official. Table 14 shows the topics of trials whose litigants included at least one state official. Tax, inheritance, and debt disputes involve officials more frequently relative to the baseline case in which no official is involved. Tax disputes typically entailed disagreements between tax collectors and subjects over tax obligations; in some of the cases, a subject complained of harassment by an official when he had already paid his tax to another official. Inheritance disputes stemmed from the Ottoman law that allowed the state to appropriate the estates of heirless

[40] Earlier, we inferred sample selection bias when two conditions were met: in an ordered litigant pairing, one side won more frequently, and the side that won more often also sued less frequently. In the present case, the settlement rate appears sufficiently high that although the first condition is satisfied, the second is not. In cases that pit state officials against subjects, the litigant pairings are symmetric.

[41] In principle, the types of cases that state officials were able to bring against subjects could differ from those brought by subjects. Yet we find no topic for which officials sue subjects but not the other way around.

Table 14
Trial Topics according to Involvement of State Officials

| Topic | Litigants: Only Subjects | Litigants: At Least One Official | *t*-Test of Equivalency |
|---|---|---|---|
| Guild | 2.9 | 6.8 | 2.77 |
| Debt | 58.3 | 38.0 | 5.06 |
| *Waqf* | 15.6 | 12.9 | .91 |
| Property | 20.2 | 16.0 | 1.31 |
| Tax | 2.8 | 31.3 | 17.41 |
| Sales | 27.3 | 22.1 | 1.44 |
| Partnership | 19.7 | 23.3 | 1.11 |
| Inheritance | 28.1 | 55.8 | 7.51 |

**Note.** Columns sum to more than 100 percent because many trials involved two or more topics.

individuals. The state's confiscation of an estate would be challenged by a person claiming to be a rightful heir. Similarly, debt disputes could involve an official because unpaid taxes were considered a debt to the state.

## 8. Documented Contracts as Insurance against Judicial Bias

We already know that Ottoman courts did more than adjudicate lawsuits. Of the 10,080 records in our 15 court registers, 6,494 comprised the registration of a contract or settlement. Ottoman subjects registered agreements in court to have a record in writing as insurance against misunderstandings. When an agreement was entered into a court register, each litigant received a copy. A litigant's copy, or the record in the register itself, could be consulted in the event of a dispute.

Could the institutionalized biases of the Islamic courts be mitigated through documentation of agreements? One might expect non-Muslim Ottoman subjects to have alleviated the risks of pro-Muslim litigation by documenting their commercial interactions with Muslims. Likewise, subjects of all faiths might have lessened the dangers of pro-state litigation by documenting their transactions involving the state. In fact, some of our litigants did present documents to bolster their testimony. As Table 15 shows, a document was introduced by one side or the other, or both, in 15.2 percent of all trials. The table also shows that the presentation of a document massively increased the chances of victory. The win rate for the plaintiff, which is 60.3 percent when the sides make their cases without reference to any documentation, jumps to 83.9 percent when only the plaintiff introduces a document in support of his case. Equally striking, it plummets to 7.2 percent when only the defendant presents a document.[42]

[42] The two differences (83.9 percent versus 60.3 percent and 7.2 percent versus 60.3 percent) are statistically significant at the 99.9 percent level ($t = 6.87$ and $t = 11.53$, respectively).

**Table 15**
**Relationship between Document Use and Trial Outcome**

| | No Document | Document from Plaintiff | Document from Defendant | Documents from Both Sides | All Trials |
|---|---|---|---|---|---|
| *N* | 1,935 | 217 | 111 | 19 | 2,282 |
| Plaintiff win rate | 60.3 | 83.9 | 7.2 | 21.1 | 59.6 |

By themselves, these figures do not establish the commonness of documenting commercial transactions. A potential plaintiff's decision to seek a judicial ruling would have been influenced by whether he had supportive documentation. By the same token, he would be motivated to avoid court fees by settling out of court insofar as the document would convince the defendant that he would lose. A better proxy for the extent of document use is the rate at which defendants introduced documents, because it was not they who sought adjudication. But defendants, too, could settle, and they could deter lawsuits simply by showing potential plaintiffs their relevant documents. Nevertheless, potential defendants probably ended up in court at a higher rate if they had documentary evidence likely to exonerate them. Thus, the share of trials involving documents probably overstates the level of commercial documentation in seventeenth-century Istanbul.

We are still left with the question of why documentation use was so low. One reason is that the courts charged for documents. The judges of our two courts collected a 2 percent ad valorem fee for registering an estate settlement and between 8 and 30 *aspers* for a document certifying a court registration or verdict (*hüccet*); lesser fees were collected by their assistants (Uzunçarşılı 1965, pp. 85–86). All in all, the cost of registering a debt or sale contract corresponded to what a skilled worker made in 1–3 days.[43] For small transactions, these fees alone would have discouraged registration. Low literacy rates—no greater than 10 percent for any group—would also have limited the demand for documentation. Yet another reason to forgo documentation was that in Islamic jurisprudence, documents per se lacked evidentiary value in the absence of corroboration by witnesses to their preparation. Witnesses could charge for their services.

In a modern economy, a signed and notarized contract signals that the parties accept its contents and that the terms of a transaction were set in advance. In a lawsuit, it serves as evidence that the parties understood their duties associated with the transaction. In an Islamic court, the document includes a list of witnesses to its creation and indicates that they could resolve any conflict as to what was agreed. If parties to a court-registered contract end up in court, and one side introduces the contract, it serves notice that witnesses are available to speak to

[43] Özmucur and Pamuk (2002) estimate that in Istanbul a skilled worker made around 22.5 *aspers* per day at the start of the seventeenth century and about 36.9 *aspers* at the end. The courts may have competed with one another partly by varying the magnitudes and forms of their charges. Such competition would have kept fees within bounds.

its validity and testify to its particulars. The other side might concede the case at that point.[44] In the absence of a concession, witnesses are called, and it is their testimony that clinches the case for the document presenter.[45] Hence, witnesses in an Islamic court play the same role as the documented contract in a modern legal system. In principle, then, any effect of document use on the judicial outcomes might have worked solely through witnesses. This possibility is explored statistically through the multivariate analysis of the next section.

Any contract between a Muslim and a non-Muslim posed a special challenge in terms of the identity of the witnesses. Given the ban on non-Muslim testimony against a Muslim, the witnesses had to be Muslim for the contract to have value for the non-Muslim side. The need was met partly through witnesses for hire—individuals prepared to witness contracts for a fee. Although the compensations were not recorded, we know that the practice of hiring witnesses was common, and its abuses constitute a major theme in accounts of the Ottoman legal system (Uzunçarşılı 1965, chap. 18).[46] The upshot is that registering a contract in court was not simply a matter of drafting and recording its terms. A cadre of mutually acceptable witnesses had to be found. The rules of Islamic jurisprudence thus put non-Muslims at a disadvantage in documenting contracts.

The degree of trust would have been higher between coreligionists than between members of different communities. Hence, we would expect the use of documentary evidence to be greater in interfaith cases than in intrafaith cases. While the raw numbers tentatively support this hypothesis—document use in 16.3 percent of all interfaith cases versus 14.3 percent of all intrafaith cases—the paucity of observations precludes statistical significance.

Perhaps the most important reason for the low rate of documentation observed in our registers is not the cost of documentation but that in the seventeenth century the Ottoman economy had not yet begun the transition from personal to impersonal exchange. Commercial organizations were tiny and short-lived, and business took place largely among acquaintances (Kuran 2011). Irrespective of religion, people enforced contracts largely through reputation-based means, turning to courts only as a last resort and in extraordinary circumstances. Indeed, extrapolating from the average number of disputes in our registers, we find the probability of any given business transaction leading to litigation to be around .05 percent.[47] In borrowing from acquaintances or buying an object from a seller

[44] In our data set, at least one document is introduced in 347 of 2,282 trials. In 182 (52.4 percent) of these, no witnesses were called because the other side conceded the case.

[45] Of the 347 lawsuits in which a document was presented, 11 produced no verdict. In 148 of the cases, the opposing party decided not to contest the document. In only six of the contested cases did the judge rule in favor of the document-submitting party without authentication by witnesses. On the roles of witnesses in certifying documents, see also Tyan (1955; 1960, pp. 236–52) and Ergene (2005).

[46] The theme appears in one of our registers: Istanbul 22 (1695), 93a/1.

[47] This estimate is based on the assumption that every adult participates in 20 important commercial interactions per year and that the adult population of Istanbul amounted to two-thirds of 700,000 residents.

Table 16
Relationship between Document Use and Trial Outcome in Trials between Subjects and Officials

| | No Document | Document from Subject | Document from Official | Documents from Both Sides | All Subject/Official Cases |
|---|---|---|---|---|---|
| *N* | 104 | 26 | 14 | 4 | 148 |
| Subject win rate | 78.9 | 96.2 | 43.0 | 75.0 | 78.4 |

with whom one has interacted repeatedly, the expected benefit of documentation is limited. In fact, it may damage the relationship by signaling mistrust.

Nevertheless, document use should be more prevalent in the court records when the risk of losing is greater. That risk should peak on matters involving a state official, since the courts are predisposed to rule in favor of the state. Table 16 shows that document use is indeed greater in cases between a subject and an official, relative to the full sample of cases.[48]

Table 16 shows that in 44 of the 148 (29.7 percent) cases between a subject and an official, documentary evidence is presented to the court. As in the full sample, the side presenting a document is much more likely to win. Moreover, the extreme sample selection bias conjectured in Section 7 still results in the subject winning the majority of cases involving a state official. But the value of a document remains high. When a subject submits documentary evidence, he wins 96.2 percent of the time, as opposed to 78.9 percent when no documentary evidence is submitted. Similarly, when the state official submits documentary evidence, he is much more likely to win.[49]

## 9. Multivariate Analysis of Judicial Decision Making

Having examined the institutional biases in the Ottoman judicial system, noted the apparent asymmetries in court participation among Istanbul's religious communities, and explored the role of documents as insurance against pro-plaintiff and pro-state bias, we are left to question whether the differing plaintiff victory rates between religious communities—specifically the asymmetries involving Muslim/Christian trials—were driven by intergroup differences concerning the substance of the disputes. Muslims and Christians might have appeared in debt or *waqf* cases at disproportionate rates, and any judicial bias may have varied by topic. A related factor that could sway a judge is the presence of an official among the litigants.

[48] Documentary evidence appears in 29.7 percent of all trials between a state official and a subject. In those that do not involve an official, documentary evidence is submitted in only 14.0 percent of all cases. The difference is statistically significant at the 99.9 percent level ($t = 5.20$).

[49] The two differences (96.2 percent versus 78.9 percent and 43.0 percent versus 78.9 percent) are statistically significant at the 95 percent level and the 99 percent level, respectively ($t = 2.08$ and $t = 2.98$).

The relative weights of such influences can be disaggregated through a logistic regression framework. This exercise will enable us to separate the impact of the litigants' religion, their status in relation to the state, dispute topic, document use, and witness testimony. To facilitate interpretation, we provide the results through odds ratios.

### 9.1. Model

The logistic regression estimates the equation $\Pr(y_{it} = 1|\beta, \sigma^2) = \Pr(x'_{it}\beta + z'\eta + \varepsilon_i > 0)$, where $\varepsilon$ is distributed logistically with a mean of zero. To be more specific, we decompose the vector $\boldsymbol{x}'_{it}\beta$ as

$$\boldsymbol{x}'_{it}\beta = \boldsymbol{a}'_{it}\delta + \boldsymbol{b}'_{it}\gamma + \boldsymbol{c}'_{it}\xi + \boldsymbol{d}'_{it}\theta,$$

where $\boldsymbol{y}_{it}$ equals one when the adjudicator of case $i$ in year $t$ rules in favor of the plaintiff and $\boldsymbol{y}_{it}$ equals zero otherwise; and $\boldsymbol{a}_i$, $\boldsymbol{b}_i$, $\boldsymbol{c}_i$, and $\boldsymbol{d}_i$ are vectors that identify, respectively, whether either or both litigants are Muslim; whether either litigant is employed as a state official; which litigant, if any, introduced documentary evidence at the trial; and which litigant, if any, called witnesses to bolster a claim. The vector $\boldsymbol{z}$ consists of year-specific dummy variables to control for fixed effects on cases adjudicated in the same year.

The religion-specific variables are not interacted with the employment or document variables. We are thus assuming that the weight that the judge gives to documentary evidence is invariant to the faith of the party introducing it[50] and also that the judge weighs the testimony of state-employed individuals consistently, without regard to religion.[51]

### 9.2. Specifications

Under these assumptions, we present in Table 17 estimates for six specifications, each of which adds a new class of controls. Specification (1) controls for the religion of the litigants; specification (2) adds controls for cases in which the litigants include an official; specification (3) adds controls for the dispute topic; and specification (4), divided into three regressions, concerns documentary evidence. Specification (4a) simply adds controls to specification (3), while specifications (4b) and (4c) estimate specification (3) on cases that either include or exclude documentary evidence. Finally, specifications (5) and (6) add to specification (3) variables that indicate whether a litigant calls witnesses to testify.

In all the regressions, our reference specification involves a non-Muslim plaintiff and a non-Muslim defendant. Hence, the odds ratio for the variable Defen-

[50] When testing whether the judicial efficacy of documentary evidence varies by the religion of the litigant who submits it, we fail to reject the null hypothesis that the victory rate of a document-submitting plaintiff is invariant to the plaintiff's religion ($\chi^2(1) = .49$). The corresponding null hypothesis for a document-submitting defendant yields the same result ($\chi^2(1) = 1.52$).

[51] In comparing the plaintiff victory rates for state officials across religions, we fail to reject the null hypothesis that the rate is invariant to the official's religion ($\chi^2(2) = 1.04$). The result is the same when the plaintiff victory rates for sued officials are compared across religions ($\chi^2(2) = 1.97$).

**Table 17**

**Logistic Regression of Plaintiff Victory under Six Specifications: Odds Ratios**

| | All Cases | | | | No Documents | Documents | All Cases | |
|---|---|---|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4a) | (4b) | (4c) | (5) | (6) |
| Plaintiff Muslim | .94 | 1.00 | 1.03 | 1.05 | 1.07 | 1.02 | 1.03 | 1.07 |
| Defendant Muslim | 1.98** | 1.78** | 1.68* | 1.53 | 1.61 | 2.3 | 1.88** | 1.72* |
| Plaintiff Muslim × Defendant Muslim | .52** | .52* | .53* | .52* | .48* | .62 | .48** | .48** |
| Plaintiff is state official | | .35*** | .34*** | .30*** | .29*** | .46 | .35*** | .33*** |
| Defendant is state official | | 4.51*** | 4.75*** | 4.51*** | 3.53*** | 12.08*** | 3.24*** | 3.23*** |
| *Waqf* | | | .80 | .78 | .69* | 1.40 | .74* | .74* |
| Sale | | | 1.12 | 1.10 | 1.02 | 1.66 | 1.17 | 1.15 |
| Property | | | 1.40** | 1.64*** | 1.58*** | .63 | 1.50** | 1.59*** |
| Tax | | | .99 | 1.27 | 1.38 | .49 | .93 | 1.22 |
| Guild | | | 2.31** | 2.09* | 1.79 | 4.13*** | 2.28** | 2.00* |
| Plaintiff document | | | | 3.45*** | | | | 2.34*** |
| Defendant document | | | | .05*** | | | | .07*** |
| All documents | | | | .15** | | | | .21* |
| Plaintiff calls witnesses | | | | | | | 13.88*** | 11.11*** |
| Defendant calls witnesses | | | | | | | .02*** | .04*** |
| *N* | 2,282 | 2,282 | 2,282 | 2,282 | 1,935 | 341 | 2,280 | 2,280 |
| Pseudo-$R^2$ | .04 | .05 | .06 | .13 | .06 | .14 | .15 | .18 |

**Note.** All specifications include year-specific fixed effects. Specification (4c) drops six observations that perfectly identify the dependent variable. Specifications (5) and (6) drop two observations for the same reason.

* $p < .05$.

** $p < .01$.

*** $p < .001$.

dant Muslim indicates the change in the relative probability of the judge ruling for the plaintiff when the defendant is Muslim rather than non-Muslim. The specifications determine whether the above-discussed plaintiff victory rate differences in Muslim/Christian trials are robust to controls for factors that might have influenced judicial decisions.

### *9.3. Religion of Litigants*

In no specification does the plaintiff's religion affect the judge's decision-making process. Consistently, this variable turns out to be statistically insignificant. Furthermore, the defendant's religion is significant at the 99 percent level in specifications (1) and (2) and at the 95 percent level in specification (3). Hence, without controls for documentary evidence, a judge is more likely to rule in favor of the plaintiff when a Christian sues a Muslim than in the reverse case. This result matches the findings in Table 5. In specification (4a), which controls for document use, the coefficient for the religion of the defendant loses significance.

To interpret the last result, we estimate specification (3) twice more while limiting our data set first to cases without documentary evidence and then to those with documentary evidence. The estimated results of specification (4b) indicate that the litigants' religious pairings weakly predict judicial outcomes. By contrast, for specification (4c), the coefficient for the sample selection bias indicative of prejudicial bias is no longer significant. Evidently, non-Muslim apprehensions about encountering a prejudiced judge are alleviated when documentary evidence is present. Although documentation cannot change the judge's attitudes toward non-Muslims, it keeps him from disregarding persuasive evidence, thus limiting the impact of his in-group bias. That is why, in specification (4a), which controls for documentary evidence, the previously observed effect of non-Muslims suing Muslims only when highly confident of a win is diminished.[52]

The statistical significance of the interaction variable Plaintiff Muslim × Defendant Muslim helps to interpret the odds ratio of Defendant Muslim. In each specification, it indicates that when a Muslim sues another Muslim, the probability of a plaintiff victory returns to the baseline specification of adjudication among non-Muslims. Evidently, judges are equally likely to rule in favor of the plaintiff in intra-Muslim cases and cases among non-Muslims.[53]

[52] The goodness of fit of different specifications should not be compared directly against one another, as the number of observations and degrees of freedom vary considerably. However, it is reasonable to compare individual odds ratios' statistical significance, for *t*-statistics are already weighted by sample size and degrees of freedom to arrive at a common scale of significance.

[53] When both litigants are Muslim, the Plaintiff Muslim, Defendant Muslim, and Plaintiff Muslim × Defendant Muslim indicators are all equal to one. In this case, the statistically negligible coefficient of Plaintiff Muslim plays no role, but the coefficient on Plaintiff Muslim × Defendant Muslim is statistically the negative of that of Defendant Muslim. Thus, in each specification the product of the two coefficients is equal to one ($\chi^2 = .06$ for specification [1]; $\chi^2 = .23$ for specification [2]; $\chi^2 = .83$ for specification [3]; $\chi^2 = 2.78$ for specification [4]; $\chi^2 = .70$ for specification [5]; and $\chi^2 = 2.47$ for specification [6], all with 1 degree of freedom).

### 9.4. *Presence of a State Official*

Specifications (2)–(4c) all control for the presence of state officials among the litigants. The controls reflect the expectation that judges would have avoided putting themselves in conflict with state authority. Each specification points to a strong anti-state bias. Specifications (2)–(4a) indicate that judges are about 4 times more likely to rule in favor of the plaintiff when the defendant is a state official. Moreover, the plaintiff is about 3 times more likely to lose a case if he is a state official, all else being equal.

As with the high plaintiff victory rate for minorities, these results probably reflect a sample selection bias. A potential defendant threatened with a lawsuit by a state official would have opted to settle out of court unless very confident of prevailing at trial. Similarly, a potential plaintiff would have refrained from suing an official before a state-appointed judge unless the case was very strong.[54] In brief, the observed lawsuits involving a state official represent the disputes in which the official's case was particularly weak.

In specification (4c), the results for trials involving state officials differ from those of the preceding specifications. For cases in which documentary evidence is presented, a plaintiff who is an official has the same probability of winning as a typical subject, irrespective of religion.[55] In other words, when a judge is presented with either an official's supporting document or a nonstate defendant's exonerating document, any advantage that the judge would confer to the state official is statistically nullified. Revealingly, these results are not repeated when the defendant is an official. Since state officials are more likely than subjects to possess documentary evidence, when we limit the sample to trials in which documents are submitted as evidence, the plaintiff must be extremely certain of victory to challenge an official; in itself documentary evidence does not provide a high likelihood of winning since the defendant may be able to submit documents as well. Thus, in specification (4c), plaintiffs suing an official are 11 times more likely to win, relative to our baseline specification.

### 9.5. *Topic of Dispute*

When we control for the dispute topic, the estimates of the regressions remain statistically significant and constant (specifications [3]–[4c]). Evidently, the qualitative nature of the dispute, though undoubtedly germane to the adjudication process, does not make the judge weigh the religion of the litigants differently. The last four specifications suggest also that judges are more likely to rule for the plaintiff when adjudicating disputes over guild business and property transactions.

[54] To test these hypotheses directly, we would need data on settlement rates. Unfortunately, they are unavailable.

[55] This finding holds both when the document is submitted by the defendant and when it is submitted by the plaintiff ($t = .86$ and $t = .87$, respectively).

### 9.6. Documentary Evidence

The odds ratios for specification (4a) of Table 17 offer overwhelming support to our earlier observation that documents carry significant weight in trials. If the plaintiff introduces documentary evidence to the court, his odds of winning increase almost fourfold. More dramatically, when a defendant challenges the plaintiff's account through documentary evidence, the judge is about 20 times less likely to rule in favor of the plaintiff. As we proposed earlier, putting contracts in writing provides substantial insurance against breach of contract. Whatever the biases of the Ottoman judicial system, people could boost their chances of winning a commercial lawsuit merely by having a written document to support their case.

Yet given that in Islamic jurisprudence a document signals the presence of witnesses willing to testify in court in support of its content, the predictive capacity of a document could stem merely from the power of witness testimony. This possibility is addressed next.

### 9.7. Witness Testimony

The final two regressions reported in Table 17 indicate that witness testimony has a strongly significant impact on judicial outcomes. Specification (5) adds to specification (3) variables that indicate whether a litigant calls witnesses to bolster his or her testimony. The results show that witness testimony very significantly increases the win probability of the supported litigant. In particular, a plaintiff who calls witnesses to testify on his or her behalf is nearly 14 times more likely to win than one without witnesses; and the support of witnesses boosts a defendant's probability of winning by 50 times.

Specification (6) regresses trial outcome with controls for all the variables discussed above, including documentary evidence and witness testimony. Of greatest interest here is that the submission of a document affects how a judge will rule even when we control for the presence of witness testimony.[56] The evidence thus shows that documentary evidence retains its judicial value when witnesses are present. As one would expect, the magnitudes involved are smaller than those in specification (4a), in which no controls for witness testimony are made.

### 9.8. Religion of Witnesses

For one last inquiry into the role that institutional bias played in the Islamic legal system of the Ottoman Empire, we can examine whether the religion of a witness affects the weight that a judge places on his or her testimony. Because there are very few instances of Christian witnesses testifying on behalf of a

[56] Through alternative specifications, we examined the marginal power of documentary evidence conditional on the presence of witnesses. They show that a document has no additional predictive power once witnesses have testified. This finding underscores the jurisprudential value of documentary evidence—the signaling that witnesses are present to back up its substance.

defendant, the relative weights cannot be identified in that context. However, with regard to testimony on behalf of a plaintiff, there is no statistically significant difference between the relative weights of Muslim and Christian witnesses.[57]

This lack of a statistical difference may stem from a sample selection bias rooted in earlier identified institutionalized judicial biases against non-Muslims. Regardless of his or her own religion, a litigant would have called a Christian witness to court only if the latter were particularly credible. Thus, only the most credible potential Christian witnesses would enter the judicial records, which accounts simultaneously for the low numbers of observed Christian witnesses and the efficacy of their testimony.

## 10. Conclusions and Implications for the Present

Since no existing country has a fully functioning Islamic legal system, its past applications can provide the necessary clues as to whether it satisfies basic conditions of the rule of law. Through an examination of seventeenth-century Ottoman court data, this article shows that lack of judicial independence from the government and discrimination against non-Muslims may be among the consequences of instituting a legal system modeled on past applications of Islamic law.

As practiced in the Ottoman Empire, Islamic law was characterized by institutionalized judicial biases against religious minorities and lack of judicial independence from executive authority. Courts, too, were biased against Christians and Jews. We drew this inference from a comparison of lawsuits involving non-Muslim plaintiffs and Muslim defendants with lawsuits in which the roles were reversed. In the relatively fewer interfaith lawsuits of the first kind, the plaintiff victory rate was higher. Hence, it appears that non-Muslims preferred to settle claims outside the court unless reasonably confident of winning. The institutionalized biases of the courts must have been among the major reasons for settling. The result holds up in a multivariate analysis that controls for involvement by a state official, the issue in dispute, documentary evidence, and witness testimony. In lawsuits pitting a subject against a state official, the plaintiff victory rate is much higher when the lawsuit is initiated by the former. Apparently, subjects were reluctant to sue a state official unless very confident of prevailing, though the finding of asymmetry in this rate lacks statistical significance. Documentation of contracts gave the victims of institutionalized biases substantial protection against discrimination. However, given the prevalence of personal exchange, the most reliable way to protect against a contract's risks was to interact with personal acquaintances.

Legal reformers of the nineteenth century invoked these factors, along with the unsuitability of Islamic courts to modern financial and commercial practices,

[57] We cannot reject the hypothesis that the religion of a plaintiff's witnesses affects judicial outcomes ($t = .81$).

in campaigning for secular commercial courts. They viewed traditional Islamic courts as contributors to the region's deepening economic problems. By the 1850s, they had managed to establish secular commercial courts in Istanbul, Cairo, and Alexandria. Insofar as their justifications were grounded in fact and the secular courts did adjudicate more impartially, the new courts would have contributed to jump-starting the Middle East's catch-up process. Native Christians and Jews were becoming increasingly important economic players, and leveling the playing field would have stimulated trade, especially internal trade involving Muslims.[58] Studying the records of the commercial courts should enable the testing of whether, in fact, the biases identified here diminished.

One might object that conditions in the twenty-first century are different enough that the foregoing findings are irrelevant to the reimposition of Islamic law. Another possible objection is that the Ottoman courts of the seventeenth century are unrepresentative of genuinely Islamic courts that existed only in the early centuries of Islam in the religion's Arab heartland. Both of these objections involve empirical matters. Did the courts of early Islam not discriminate against non-Muslims? Did their judges avoid favoritism toward state officials? If one or both of these questions has a negative answer, one would want, of course, to know why practices differed. With respect to the first objection, one must identify exactly what differs now. Is it that judges are insulated from political pressures? Have the proponents of Islamization agreed to abrogate the long-standing practice of treating Muslim testimony as inherently superior to non-Muslim testimony?

The proponents of reinstituting Islamic law have tended to avoid such questions by focusing on ideal conditions that are unlikely ever to be attained. In the Islamic society of their imagination, all public officials have infused an Islamic morality, which makes them averse to corruption and favoritism. Accordingly, no judge rules in favor of a state official merely for fear of state reprisals, and no state official expects him to do so anyway.[59] Yet there is no evidence that morality alone can eliminate the biases in question. In no known society are public officials immune to material incentives. Moreover, according to Muslim accounts widely accepted among Islamists, no known Muslim society after the year 661, the end of Sunni Islam's canonical golden age, has been free of corruption. These accounts leave us to ask how the biases identified in this article would be eliminated. There is an additional reason that today's proponents of Islamic law avoid addressing the possibility of injustices toward non-Muslims:

[58] On the role of trade expansion in economic development, see North (1981), Platteau (2000), Dixit (2003), and Greif (2006). Kuran (2011) identifies mechanisms through which Islamic law limited commercial expansion in the Middle East in particular.

[59] For examples of social designs that treat Islamic morality as an antidote to corruption, see Afzal-ur-Rahman (1980, chap. 7), Chapra (1992, esp. chaps. 7, 9), and Naqvi (2003, chaps. 4–5). See also Bulaç (1993, pp. 63–79, 123–88), who holds that in polities governed under Islamic law, non-Muslims have enjoyed exemplary justice and received equal treatment from courts.

the presumption, discredited here through econometric techniques, that historically Islamic courts ruled impartially on cases involving non-Muslims.

There is a difference in conditions that would mitigate the biases identified in this article, were courts similar to those of seventeenth-century Istanbul to go into operation. The use of documentation is much more widespread in the modern Middle East than in the period covered in our empirical work. In seventeenth-century Istanbul, documentary evidence mitigated the biases inherent in Islamic justice. Simply by documenting their transactions, subjects could protect themselves against pro-state biases, and non-Muslims against pro-Muslim biases. It is impossible, however, to write a complete contract that accounts for every possible contingency. Conflicts on matters that could not have been anticipated are inevitable, as are disagreements over contract interpretation. Hence, documentation alone would not eliminate the biases.

Economic globalization has raised the importance of judicial independence. As one of the determinants of investment risk, it affects capital flows. In particular, capital generally flows toward countries where courts are relatively independent of the executive branch of government. Sooner or later, therefore, the supporters of an Islamic legal system must come to terms with the potential costs of judicial subordination to the executive. They will need to deal with the structure of courts staffed by corruptible judges who are responsive to material incentives.

Insofar as globalization promotes economic interactions across national and religious boundaries, it also raises the potential costs of pro-Muslim judicial biases. The adoption of a legal system that weights witness testimony by the religion of witnesses would pose an impediment to commerce and thus economic growth. Companies setting up shop in a country under Islamic law would expect compensation for the risks incurred by their employees. In countries with a substantial non-Muslim population, such as Egypt, where estimates of the Christian Coptic population range between 10 and 20 percent, pro-Muslim judicial biases would take an economic toll both by weakening minorities and by impeding cross-religious commercial interactions. In predominantly Muslim countries without a substantial non-Muslim minority, such as Saudi Arabia, similar costs could arise from judicial biases against socially unpopular or officially disfavored Islamic sects. The very logic of disregarding non-Muslim testimony could be used to justify the discounting of, say, Shii testimony. There are precedents in Islamic history for denying to adherents of certain rival Islamic sects the right to testify against Muslims considered part of the pius mainstream (Peters 1997, p. 207).

The demand for reinstituting Islamic law receives a sympathetic hearing from some intellectuals and policy makers committed to preserving or reviving local cultures. Insofar as multiculturalism is itself desirable, a case can be made for using Islam's rich legal heritage as a basis for certain legal reforms. Nevertheless, there are trade-offs that merit recognition and consideration. Imposing Islamic

law could harm Muslims economically by restricting their participation in the global economy.

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