

The Integration of Yemen into the Ottoman Bureaucratic and Central Judicial System (1872–1918)

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Abstract

This article deals with the institutionalisation and bureaucratisation of the judicial system in the Ottoman province of Yemen in the late nineteenth and early twentieth centuries. During this period, the Ottoman central government gradually transformed and reorganised its judiciary, restricting the purview of the traditional *şer'iyye* courts and increasing that of its new *nizamiye* courts. However, when the state attempted to incorporate its newly conquered province of Yemen into this new judicial system, it soon encountered problems. After abandoning the *nizamiye* courts, the government authorised the administrative councils and *şer'iyye* courts to implement *nizami* law. I argue that the flexibility of Ottoman practices facilitated the gradual transformation of the legal system in Yemen, resulting in the re-establishment of the *nizamiye* courts with the agreement of local leaders. I also demonstrate that despite its efforts to centralise, the Ottoman state did not impose uniform policies and practices during the nineteenth century.

Keywords

Ottoman Yemen – Legal History – *Nizamiye* Courts – Sharia Courts – colonialism

1 Introduction

During the nineteenth century, the Ottoman Empire instituted a significant structural transformation as it struggled to adapt traditional institutions to

modern conditions. In order to protect its territorial integrity and unity, the state sought to centralise all of its economic, administrative, and legal structures. The transformation of institutions typically occurred from the top down, with new structures taking shape first at the centre before spreading out to the provinces. The most significant changes occurred in the organisation of the legal system. While earlier scholarship tended to focus on the theoretical structure and shape of these transformations at the central level of the Ottoman state, more recent scholarship has shifted the focus to the Ottoman periphery and to local actors, especially in the empire's Arab provinces.¹ Building upon this newer scholarship, I investigate the institutionalisation and bureaucratisation of the judicial system in the Ottoman province of Yemen, a largely neglected region.

Yemen became an Ottoman province for the second time in the second half of the nineteenth century. Ottoman efforts to impose a new judicial system on Yemen have usually been regarded as ineffective. Yemen had its own long-standing political and legal traditions that had become entrenched during the two centuries prior to imperial and central bureaucratic rule. Its topography and geography – a large, mountainous region far from the imperial centre – made communication and administration difficult. Yemen also had a complex social structure, with diverse local groups and actors who competed to protect and advance their own interests through cooperation with, subversion of, or sometimes opposition to imperial authorities.² The story of how the Ottomans sought to address these challenges sheds light on several aspects of the wider

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- 1 On Ottoman adjudication practices in Damascus and Beirut in the late nineteenth century, see Zouhair Ghazzal, *The Grammars of Adjudication: The Economics of Judicial Decision making in fin-de-siècle Ottoman Beirut and Damascus* (Beirut: Institut Français du Proche-Orient, 2007). On the foundation and operation of different courts in Egypt in the late nineteenth and early twentieth centuries, see Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952* (Oxford: Oxford University Press, 2016). On legal reform in Syria (today's Jordan) in the context of land ownership, see Martha Mundy and Richard Saumarez-Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I. B. Tauris, 2007). On the exceptional legal practices and special courts employed by the Ottomans among tribal communities in Beersheba, see Ahmad Amara, "Civilizational Exceptions: Ottoman Law and Governance in Late Ottoman Palestine," *Law and History Review* 36: 4 (2018): 915–41.
 - 2 The Ottoman incorporation of Yemen into the empire for the second time was a complex process that involved numerous local and imperial dynamics. Here, I focus on the legal aspects of this process. For a broader account, see Isa Blumi, *Foundations of Modernity: Human Agency and the Imperial State* (New York: Routledge, 2012) and idem, *Chaos in Yemen: Societal Collapse and the New Authoritarianism* (London: Routledge, 2011).

Ottoman administrative and judicial transformation of the period, particularly in frontier areas. Here, I focus on three features: the dynamism of the Ottoman reform process, legal hybridity and jurisdictional overlap, and centralisation.

Despite considerable interest in the history of Yemen under Ottoman rule in the late nineteenth century, only a few scholars have addressed judicial organisation. Applying a textual ethnography to written sources, Brinkley Messick considers the transformation of law in Yemen from Ottoman to Republican rule. Messick's focus, however, is on the post-Ottoman era, and his references to Ottoman legal institutions serve primarily as contrasts.³ Thomas Kuehn discusses Ottoman presence in Yemen in the context of relations between Turks – as outsiders and rulers – and Yemenis, local people who usually resisted Ottoman rule. Kuehn claims that the Ottoman attitude towards the Yemeni people was colonial, as suggested by a tangible “policy of difference.” Within this colonial context, he discusses the Ottoman government's attempts to re-organise the judicial system, noting that Ottoman bureaucrats referred to Yemenis as “savage” and “indigenous,” and that the Ottomans installed interim legal formulas “according to their [i.e., Yemeni] customs and dispositions.”⁴ Unlike Kuehn, I do not interpret the policy of difference as a form of colonialism. Instead, I argue that the Ottoman struggle to integrate the Yemeni judiciary into its central bureaucracy – by creating pluralistic and overlapping jurisdictions – was an integral part of the state government's long-term reform and centralisation efforts.⁵ As I discuss below, the abolition of the nizamiye courts was a short-term compromise on the broader goal of empire-wide standardisation.

Scholarship on late-nineteenth-century Ottoman legal reform interprets the introduction of a new judicial organisation in Yemen as a deviation from the modern and centralised system implemented elsewhere across the empire. To demonstrate that the Yemeni structure diverged from the norm, scholars point to the fact that the nizamiye courts, established immediately after the Ottoman conquest, were soon abandoned. Avi Rubin, for example, interprets the implementation and subsequent removal of nizamiye courts in Yemen as a striking failure.⁶ By contrast, I present here a detailed account of the Ottomans'

3 Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California, 1996).

4 Thomas Kuehn, *Empire, Islam, and Politics of Difference: Ottoman Rule in Yemen, 1849–1919* (Leiden: Brill, 2011), 91–145.

5 On “legal pluralism,” see Lauren Benton and Richard J. Ross, ed., *Legal Pluralism and Empires 1500–1850* (New York: New York University Press, 2013).

6 Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 51.

long process of establishing new courts and creating plural jurisdictions in Yemen to show that it was not a failure when considered over the longer term.

Based on an examination of archival sources, I analyse Ottoman efforts to establish a centralised judicial system in Yemen between 1872 and 1918. Instead of focusing on the practical implementation of laws, I explore the judicial systems that lay behind them and the conflicts that arose during efforts to institutionalise those systems. I employ rich archival material from the Presidency Ottoman Archives (BOA), including imperial decrees (*irâde-i seniyye*) that put new orders into effect, government directives sent from Istanbul to the provincial centre, petitions written by Ottoman officials in Yemen, minutes of the Council of Ministers (*meclis-i vükela mazbatası*) that contain summaries of the provincial issues as well as debates in the council to solve them, and reports (*lâyiha*) by Ottoman senior officials about local conditions and problems. I also use Yemeni yearbooks (*sâlnâmes*) that list the administrative structure and its staff annually in the province of Yemen. I argue that Ottoman archival sources enable us to see the Ottoman government's firm commitment to bureaucratising the court system despite intermittent policy shifts. Although the Ottoman government insisted on establishing a centralised judicial structure, it did not impose a single standardised system across its numerous and far-flung provinces. Instead, the Ottoman state resorted to the time-honoured practices of negotiating and cooperating with local actors. It thus purposefully enacted policies that ultimately would be acceptable to the Yemeni people. In this article, I treat the establishment of a centralised judiciary in Yemen during three phases: first, the establishment of a central nizamiye court system (1872–1889); second, a policy shift that abolished the nizamiye courts and enabled the formation of plural jurisdictions (1889–1912); and third, the return of centralised courts following negotiations with local leaders (1912).

2 The Formation of Ottoman Yemen

Yemen came under Ottoman influence in the sixteenth century in connection with Ottoman maritime policy in the Red Sea and Indian Ocean. A hostile Portuguese presence in the Indian Ocean world – which impeded trade and threatened Muslim holy places in the Hijaz – mobilised the Ottomans, especially following the Mamluk sultan Qansûh al-Ghûrî's (d. 1516) call for help. Through a joint "Indian Expedition," allied Ottoman-Mamluk forces seized control of Zebid on Yemen's western coast on 20 June 1516. Thanks to the initiatives of vizier Hadım Süleyman Paşa, the Ottoman governor of Egypt, Yemen was integrated into the Ottoman realm following the capture

of Aden in 1538.⁷ However, local rebellions against Ottoman rule make it difficult for the Ottomans to establish a stable political order in the southern Arabian Peninsula.⁸ In 1635, the Ottomans retreated and agreed to hand over administration to the local Qasimi dynasty/Zaydi imams, on the condition that Ottoman merchants could continue their coffee trade along the coasts.⁹ Despite their lack of direct rule in Yemen, the Ottomans nevertheless continued to assert their “sovereign rights” over the region.¹⁰

In 1839, the British sought to enhance their profitable trade interests by colonising the port city of Aden (strategically located on the coast of the Gulf of Aden, which connects the Red Sea, the Arabian Sea, and the Indian Ocean).¹¹ The Ottomans regarded the British presence in Aden a threat, not only to their own commercial activities in the Red Sea, but also to the Holy Lands and hajj routes and to the rich province of Egypt. Kıbrıslı (“Cypriot”) Tevfik, the lieutenant of the Sharif of Mecca, persuaded the Ottoman government to take military and administrative measures to regain control of Yemen. In 1849, Ottoman troops under his rule entered and captured the port city of Hudaydah on the Red Sea coast, while other troops fought to control the larger inland city of

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- 7 On Ottoman penetration into Arabia and the Indian Ocean, see Salih Özbaran, *Ottoman Expansion towards the Indian Ocean in the 16th Century* (İstanbul: İstanbul Bilgi University Press, 2009); Giancarlo Casale, *The Ottoman Age of Exploration* (New York: Oxford University Press, 2010), 13–33, 53–83; İdris Bostan, “Kızıldeniz’de Osmanlı-Portekiz Mücadelesi: 16. Yüzyılda Süveyş, Cidde ve Muha Deniz Üsleri,” *Osmanlı Akdenizi* (İstanbul: Küre Yayınları, 2017), 125–169; J. R. Blackburn, “The Ottoman Penetration of Yemen: An Annotated Translation of Özdemür Bey’s Fethnâme for the Conquest of San’â in Rajab 954/August 1547,” *Archivum Ottomanicum*, 6 (1980): 55–100.
- 8 J. R. Blackburn, “The Collapse of Ottoman Authority in Yemen, 968/1560–976/1568,” *Die Welt des Islams*, 19: 4 (1979): 119–176; Qutb al-Din al-Nahrawâlî al-Makkî, *Lightning over Yemen: A History of the Ottoman Campaign (1569–71)*, ed. Clive K. Smith (London: I. B. Tauris, 2002); Ebtisam al-Gerafi, “Beylerbeyi Hasan Paşa Döneminde Yemen İdaresi (988–1013/1580–1604)” (PhD. Thesis, İstanbul University, 2015), 47–146.
- 9 There are only a few studies on Zaydi rule in Yemen between 1635 and 1849. A rare example is Eirik Hovden, *Waqf in Zaydi Yemen: Legal Theory, Codification, and Local Practice* (Leiden: Brill, 2018). On relations between Qasimis and the Ottoman state in the eighteenth century, see Ayşe Kara, “XVII. ve XVIII. Yüzyıllarda Osmanlı Yönetiminde Yemen ve Kasimiler Dönemi” (MA Thesis, İstanbul University, 2011). See also Paul Dresch, *Tribes, Government, and History in Yemen* (Oxford: Oxford University Press, 1989), 198–218 and Robin Bidwell, *The Two Yemens* (Essex: Westview Press, 1983), 22–28.
- 10 Caesar E. Farah, *The Sultan’s Yemen: Nineteenth-Century Challenges to Ottoman Rule* (London: I. B. Tauris, 2002), 14–15.
- 11 Idem, “Anglo-Ottoman Confrontation in the Persian Gulf in the Late 19th and Early 20th Centuries,” in *Proceedings of the Seminar for Arabian Studies*, 33 (2003): 117–132. On British plans to use Aden as a coaling station for steamships, see Gordon Waterfield, *Sultans of Aden* (London: John Murray, 1968), 19–31, and Bidwell, *The Two Yemens*, 30–32.

Sana'a.¹² Two decades later, in 1869, the opening of the European-controlled Suez Canal further increased the Ottoman government's security concerns in the Eastern Mediterranean.¹³ Under the command of Ahmed Muhtar Paşa, the Ottoman army subdued the northern Yemeni highlands and completed reintegration of Yemen into their empire once again in 1872.¹⁴ However, Aden continued to be under British rule (which lasted until 1967).¹⁵ As Britain also occupied Egypt in 1882, the Ottoman concern with increasing European presence in the region intensified.¹⁶ Thus, for them, keeping Yemen within the orbit of Ottoman sovereignty required not only military influence but also an institutional presence.

3 The Judicial System in Yemen before 1872

In the ninth century CE, the Shi'i Zaydis rose up against the Abbasids and established their political authority in Yemen.¹⁷ While most Yemenis in Sana'a and its surroundings were Shi'i Zaydis, the majority in Ta'iz, Hudaydah, and Asir were Sunnis in the late nineteenth century.¹⁸ In addition, a considerable number of Jews lived in Yemen.¹⁹ The *sayyids* (pl. *sādah*, male descendants of the Prophet

12 Farah, *The Sultan's Yemen*, 50–57; Durmuş Akalın, "Yemen'in Kuzeyinde Osmanlı İdaresinin Yeniden Tesis Edilmesi ve Mekke Şerif Muavini Kıbrıslı Tevfik Paşa (1848–1851)," *Mediterranean Journal of Humanities* 1 (2015): 33.

13 Blumi, *Foundations of Modernity*, 62.

14 Farah, *The Sultan's Yemen*, 58–81.

15 Waterfield, *Sultans of Aden*, 70–78, 205–213. See further R. J. Gavin, *Aden Under British Rule* (London: C. Hurst & Co., 1975). On the power struggle between the Ottomans and British in Yemen, see Ali Akyıldız and Zekeriya Kurşun, *Osmanlı Arap Coğrafyası ve Avrupa Emperyalizmi* (İstanbul: Türkiye İş Bankası, 2015), 283–317, and Mawby Spencer, "A Crisis of Empire: The Anglo–Ottoman Dispute Over the Aden Frontier, 1901–1905," *Diplomacy & Statecraft*, 18: 1 (2007): 27–52.

16 Blumi, *Foundations of Modernity*, 62.

17 On the creation of a Zaydi community in Yemen, see Dresch, *Tribes, Government, and History in Yemen*, 167–173, and Arthur Stanley Tritton, *The Rise of the Imams of Sanaa* (London: Oxford University Press, 1925).

18 İdris Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası," *Journal of Ottoman Studies*, 3 (1982): 316–317. Muhammed Hilal Efendi, the President of the Criminal Section of the Appeals Court in Sana'a, was the highest judicial authority in Yemen. He wrote two memorandums in which he examined the conditions, inadequacies, and necessities of the system from an insider point of view.

19 On the late-nineteenth-century Jewish community in Yemen, see Bat-Zion Eroqi Klorman, *The Jews of Yemen in the Nineteenth Century: A Portrait of a Messianic Community* (Leiden: Brill, 1993), 104–164, and Norman A. Stillman, *The Jews of Arab Lands: A History and a Source Book* (Philadelphia: Jewish Publication Society of America, 1979), 322–323, 347–349.

Muhammad) were highly revered, and only they could become imams.²⁰ The imams exercised both religious and political leadership throughout the region. Below the *sayyids* in the Yemeni social structure came the qadis. According to Bernard Haykel, the qadis needed to be either experts in Islamic law or descendants of a Zaydi imam. Haykel explains the function of qadis in Yemen as follows: they can “hold ministerial, judicial and administrative posts. Along with the *sayyids*, they are the purveyors of the religious sciences and often lived in towns or villages.” Despite their doctrinal differences, Zaydi and Shafi’i scholars had close relations and received licenses (*ijāza*) to teach and practice law from one another.²¹

Following the seventeenth-century Ottoman withdrawal from Yemen, the Qasimi dynasty claimed the imamate in Yemen. Muhammad al-Shawkani (d. 1834) then revived Islamic scholarship and modified Yemen’s judicial structures. Among these modifications was the creation of the chief judge’s position (*al-qadi al-akbar*, later called *qadi al-qudat*). The chief judge supervised the imamate’s judicial system, appointed and dismissed judges, and headed the imamic council (*diwan*), which effectively was the final court of appeal. Still, the imams themselves retained supreme legal authority.²²

British and Ottoman challenges to, and undermining of, the imams’ rule brought an end to the latter’s governing authority during the first half of the nineteenth century. The quick turnover of imams resulted in political fragmentation, a situation that was only ended when the Ottomans formally established the province of Yemen in 1872. However, the Ottomans did not inherit a stable administration and a well-functioning judicial system and their records point to considerable political and legal disorder.

We must acknowledge the dearth of contemporary sources about Yemen’s legal system and judiciary before the Ottoman conquest. Exceptionally, Hamid Vehbi, a contemporary writer for the *Sana’a* newspaper, provides insights into the legal practices in the transformative period. Although his language and perspective reflect the Ottoman point of view, his description of the conditions in Yemen appears plausible considering that administrative and judicial functionality decline in periods of political turmoil, such as that experienced in Yemen in the early and mid-nineteenth century.

According to Hamid Vehbi, the judicial system in pre-Ottoman Yemen was neither systematic nor well-organised. He reports that for civil and criminal

20 Gabriele Vom Bruck, “The Zaydi Sādah of the Yemen: The Temporalities of a Religious Tradition,” *Oriente Moderno* 18: 2 (1999): 393–411.

21 Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkani* (Cambridge: Cambridge University Press, 2003), 4, 67.

22 *Ibid.*, 69, 112.

cases alike, people had to apply to local *fuqahā'* (sing. *faqīh*) to settle their cases. The *fuqahā'* "made their rounds" through the subdistricts and villages, where they resolved cases by relying on shari'a principles and local customs. Vehbi notes that if both parties to a conflict assented to the *faqīh's* judgment, then all was well. However, in the cases in which one party was reluctant to accept the *faqīh's* authority, intervention by and/or mediation through a sheikh or tribal leader became necessary. These peace-making efforts generally were inadequate and the *fuqahā's* rulings often failed to be implemented since there was no authority to enforce them. Conflict between aggrieved parties could be prolonged and people sometimes resorted to revenge and murder.²³

4 Ottoman Judicial Reform

To understand the transformation of the Ottoman legal system, it is necessary to comprehend the nature and function of various courts that operated across the empire. The first attempt at modernisation, initiated by Sultan Mahmud II in 1838, involved the establishment of the *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* (Supreme Council of Judicial Ordinances). This new council adopted the legislative duties of the old *Divan-ı Hümayun* (Imperial Council), notably the responsibility to develop or review proposed legislation.²⁴ The next step was the creation of new local councils (*meclis-i muhassıl/müzakere*), which assumed responsibility for administrative affairs previously held by şer'iyye courts.²⁵ These councils later became courts in their own right.²⁶

The transformation continued with the development of commercial courts in the 1840s, beginning in Istanbul, where cases between Ottoman subjects and non-Ottomans were tried before a panel of judges of mixed nationality.²⁷ Accepting the testimony of non-Muslims in this new court system marked a significant shift in Ottoman legal practices, since it contradicted shari'a law. The central imperial government also began to establish criminal courts in the 1840s and 1850s, thus removing criminal cases from şer'iyye court control.²⁸ The şer'iyye courts continued to function throughout the empire, albeit with

23 Vehbi, "Yemen Kavânin-i Atıkası ve Cedîdesi," in *Yemen Sâlnâmesi 1299/1881-82*, 31-32.

24 *EP*, s.v. "Meclis-i Wala" (S. J. Shaw). On the authority and duties of the Supreme Council, see DÎA, "Meclis-i Vâlâ-yı Ahkâm-ı Adliyye" (Ali Akyıldız).

25 *EP*, s.v. "Maḥkama" (C. V. Findley).

26 DÎA, "Nizamiye Mahkemeleri" (M. Macit Kenanoğlu).

27 Findley, "Maḥkama"; DÎA, "Mahkeme" (M. Akif Aydın).

28 Hıfzı Veldet, "Kanunlaştırma Hareketleri ve Tanzimat," *Tanzimat I* (İstanbul: Milli Eğitim Basımevi, 1999), 203.

diminished influence: the qadis who had presided over them were replaced by naibs.²⁹ Together, these innovations paved the way for the establishment of nizamiye courts.

The nizamiye court, headed by a president (*reis*), addressed civil, criminal, and commercial disputes between Ottomans and non-Ottomans. It also implemented recently written or adapted civil, criminal, and commercial codes.³⁰ While the creation of the nizamiye courts limited the domain of şer'iyye courts to family matters subject to shari'a law, the nizamiye courts addressed all other legal matters. The scholarly assumption that şer'iyye courts were religious while nizamiye courts were secular is untenable. Rather, the distinction between the two is not clear-cut. As Rubin rightly notes, their separation was predicated on a division of labour.³¹ In fact, the sources clearly indicate that the judges of the şer'iyye courts – the naibs – also served as presidents of the nizamiye courts.³² The two courts were thus separate in their spheres of responsibility, but they were part of the same judicial system.

The Ottoman government extended these new judicial arrangements to the provinces. The Regulation of the Danube Province (*Tuna Vilayeti Nizamnamesi*), promulgated on 7 November 1864, reformed provincial administration and streamlined the administrative and judicial functions of provincial councils; by 1867, it had been implemented in other provinces across the empire.³³ These transformative changes reached their apex with the foundation of the Ministry of Justice in 1876. The reforms, which sought to establish a centralised and consistent judicial organisation throughout the empire, instituted one şer'iyye court and one nizamiye court in each administrative unit. The nizamiye courts had three levels: the court of first instance (*bidayet mahkemesi*), the court of appeals (*istinaf mahkemesi*), and the court of cassation (*temyiz mahkemesi*). The latter was located in Istanbul.

29 See Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," *Frontiers of Ottoman Studies: State, Province, and the West*, vol. 1, ed. Colin Imber and Keiko Kiyotaki (London and New York: I. B. Tauris, 2005), 43–60.

30 On the Ottoman codification in a global context, see Avi Rubin, "Modernity as a Code: The Ottoman Empire and the Global Movement of Codification," *Journal of the Economic and Social History of the Orient* (2016) 59: 5: 828–856.

31 Rubin, *Ottoman Nizamiye Courts*, 15, 73.

32 A similar finding appears in Jun Akiba, "Sharia Judges in the Ottoman Nizamiye Courts," *The Journal of Ottoman Studies* 51 (2018): 209–237.

33 *Düstur*, 1st edition, vol. 1, 608–624, 625–651; *Takvim-i Vekâyi*, def'a 773 (7 Cemâziyelâhîr 1281/26 Teşrîn-i Evvel 1280). The date of the Provincial Law of 1864 is given mistakenly as 8 October in most scholarly literature. See also Akiba, "From Kadı to Naib," 54.

Courts of first instance, which had both civil and criminal sections, operated on three levels: the district (*kaza*), the subprovince (*liva*), and the provincial centre (*merkez-i vilayet*). Each heard cases in accordance with its status in the judicial hierarchy.³⁴ Courts of Appeal were established only in the provincial centres, where people could request a formal change to a decision issued by a first instance court. The president of the civil section of the provincial court of appeals was the naib and first president (*reis-i evvel*), while the president of the criminal section was the second president (*reis-i sâni*); both were nominated by the Ministry of Justice and appointed by the Sublime Porte.³⁵ The Court of Cassation, which was renamed and reformulated version of the High Court of Justice (*Dîvan-ı Ahkâm-ı Adliye*) established in 1879, could, following a review, reverse or confirm judgements issued by first instance and appeals courts.³⁶ Commercial courts were also established in the provinces; depending on the needs of each province, they focused on either land or maritime issues.³⁷

The implementation of the new judicial arrangements in the provinces may resemble, but were not identical to, Istanbul.³⁸ In addition to the theoretical planning behind the Ottoman judicial reform, its implementation in provinces with diverse geographies and socio-cultural practices merits attention. The recent incorporation of geographic analysis into legal history is especially helpful for examining the situation in Yemen, shedding light on the uneven institution of judicial systems in different provincial regions.³⁹ The concept of “uneven geographies” focuses attention on the differing functions of the legal system in different regions, with dissimilarities shaped in part by local geography, political interests, and/or power or capacity to implement decisions.⁴⁰

The Ottoman government faced numerous challenges in its attempts to transform judicial organisation in the newly incorporated province of Yemen. Ahmed Muhtar Paşa, the first governor of Yemen, introduced some military and administrative reforms, quelled rebellions, and maintained an Ottoman

34 Rubin, *Ottoman Nizamiye Courts*, 34.

35 Fatmagül Demirel, *Adliye Nezareti, Kuruluşu ve Faaliyetleri (1876–1914)* (Istanbul: Boğaziçi University Press, 2010), 155–157.

36 *Ibid.*, 166.

37 *Ibid.*, 186–189.

38 Rubin, *Ottoman Nizamiye Courts*, 29.

39 David Harvey, *Spaces of Global Capitalism: A Theory of Uneven Geographical Development* (London: Verso, 2006).

40 On the term “uneven geography” as applied to the study of law and empire, see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press, 2010).

presence in the province between 1872 and 1873.⁴¹ For example, he declared the intention of the government and law to intervene in personal hostilities and blood feuds. The government would treat all vengeful acts as crimes subject to capital punishment irrespective of possible justifications.⁴² Yet, such regularisation did little to pave the way for the implementation of larger reforms that were, in effect, a foreign system being imposed upon an (initially) unwilling population. In order to overcome such challenges, the Ottoman administrators sought to integrate local jurists and local interests into the imperial judicial organisation.

Many Ottoman statesmen believed that their administrative systems should be compatible with the customs and traditions of the local community. By virtue of this state policy, and sensitive to the challenges they faced in this distant province, Ottoman rulers in Yemen strove to incorporate the *fuqahā'*, who previously handled all legal cases as judges, into the new legal order. *Fuqahā'* with good reputations for their knowledge of shari'a-based law were appointed as court judges, while others were appointed as court members and thus continued to play an active, and approved, role in the region.⁴³ This policy, which transformed local leaders and notables into "civil servants," demonstrates how the Ottoman imperial government integrated Yemenis and their traditions into a centralised legal structure. Simultaneously, Ottoman officials wanted to eliminate any possibility that the *fuqahā'* would emerge as alternative sources of authority. Clearly, co-opting local officials who understood the region and its people facilitated the work of Ottoman administrators.

5 First Phase: the Introduction of a New Court Organisation (1872–1889)

Although the formal establishment of the Yemeni courts cannot be precisely dated, the Ottoman government initiated legal reform as soon as the region was incorporated into the empire in 1872. The expansive court organisation that already existed by 1881 shows that the Ottomans were fully engaged in setting

41 On the reorganisation of the Yemen governorate, which took fourteen months to complete (March 1872 to April 1873), see Farah, *The Sultan's Yemen*, 82–100, and Kuehn, *Empire, Islam and Politics of Difference*, 41–51.

42 Vehbi, "Yemen Kavânin-i Atıkası ve Cedîdesi," 33: "*Muhâsamât-ı şahsiyye-i kadîmenin artuk izâle ve imhâsı Ahmed Muhtar Paşa cânibinden umum ahaliye kat'iyen i'lân ve işâ'a kılndı.*"

43 Ibid.

up the new legal system.⁴⁴ According to the provincial yearbooks, judges were appointed in Yemen beginning in 1872, and by 1881 the government had established *şer'iyye*, first instance, and appeals courts in the districts, subprovinces, and provincial centre.⁴⁵ I describe each of these courts below.

5.1 *Şer'iyye Courts*

According to Hamid Vehbi's description in the Ottoman Yearbook of Yemen (1299/1881–82), there was a *şer'iyye* court in every district and subdistrict, each under the presidency of a naib. In the subdistricts, the naibs were selected from among the local *fuqahā'*, approved by the niyabet of the subprovince, and appointed by the imperial government. At the district level, the naibs likewise were selected from among the local *fuqahā'* but ratified by the niyabet in the provincial centre, before being appointed by the Şeyhülislam. The *şer'iyye* courts at both levels heard and adjudicated cases according to shari'a law and tried to settle differences peacefully through reconciliation (*sulh*).⁴⁶ The sources show that the *şer'iyye* court system of appeals was constructed hierarchically; an appeal of a subdistrict *şer'iyye* court decision was made at the district level, while a challenge to a district-level decision was undertaken at the subprovincial court. As noted, the *şer'iyye* courts in the subdistricts and districts heard only civil cases.⁴⁷

5.2 *Me'muns Making Rounds*

Given Yemen's vast and diverse geography, and because some people did not have the means to travel long distances to district and subdistrict courts, a group of jurists called *me'muns* were appointed as subdistrict naibs who travelled to villages to hear cases, adjudicate justice, and perform some notary functions.⁴⁸ These *me'muns* established deep connections to local communities because of the nature of their work, and their cooperation with the *nizam-ıye* judges facilitated Ottoman control over judicial affairs in the hinterland.⁴⁹

44 We have limited archival material about the establishment of the judicial system prior to 1881.

45 For a list of naibs, see *Yemen Sâlnâmesi 1306/1888–89*, 34–35. Following Yemen's establishment as a province, naibs were appointed in the provincial centre and in the subprovinces of Hudaydah, Asir, and Ta'iz.

46 On *sulh* and its function in Ottoman courts, see Işık Tamdoğan, "Sulh and the 18th Century Ottoman Courts of Üsküdar and Adana." *Islamic Law and Society* (2008) 15: 1: 55–83.

47 Vehbi, "Yemen Kavânin-i Atıkası ve Cedidesi," 36.

48 Ibid. 35; Kuehn, *Empire, Islam, and Politics of Difference*, 108.

49 Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası," 312.

5.3 *Nizamiye Courts*

The Ottomans succeeded in establishing the appeals court and first instance courts in the provincial centre as soon as Yemen was incorporated into the empire, as they had done in other provinces. Sana'a was the provincial centre, and it was here that the appeals court operated (see Figure 1 below). The concept of appealing a court decision was novel, although the practice of reaching out to *fuqahā'* to retry earlier cases was familiar. The appeals court established in Sana'a was hierarchically at the top of all courts, and reviewed decisions made by first instance courts in the subprovinces. In the new judicial system, people could take decisions made in the Sana'a court to Istanbul for further appeal and cassation.⁵⁰

The president of the appeals court was the same naib who acted as a provincial-level shari'a judge; he was appointed to the presidency of the appeals court by imperial decree (*irāde-i seniyye*). Members of the appeals court were selected and appointed from among the *fuqahā'*. The appeals court was divided into civil and criminal sections in 1879. The naib became the president of the civil section. The president for the criminal section was appointed from Istanbul and served as the chief of the entire court organisation.⁵¹ Muhammed Hilal Efendi, the former naib of Hama (in the province of Syria), was appointed to the presidency of the Criminal Section of the Appeals Court in Sana'a on 5 September 1879.⁵² He held the highest position within the judicial organisation in Sana'a.

The central first instance court in Sana'a operated under a president appointed by imperial decree. On 8 April 1880, Münib Efendi was appointed to the presidency and Necib Efendi to the position of public prosecutor in the Criminal Section of the First Instance Court in Sana'a.⁵³ By 1881, first instance courts had been established in the subprovinces of Ta'iz, Hudaydah, and Asir. Divided into civil and criminal sections, they were managed by two to four members working under a president.⁵⁴ The naibs, appointed by the Şeyhülislam, presided over the first instance courts established in the sub-province centres. These naibs had a dual role: naibs of the şer'iyye courts and

50 Messick, *The Calligraphic State*, 190–191.

51 Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi," 33–36.

52 Presidency Ottoman Archives (BOA), İrade Dahiliye (İ.DH). 790/64194.

53 BOA, İ.DH. 799/64797.

54 *Yemen Sâlnâmesi 1298/1880–81*, 98, 100, 103. For the full list of court members in the subprovinces of Ta'iz, Hudaydah, and Asir, see Hümeýra Bostan, "Institutionalizing Justice in a Distant Province: Ottoman Judicial Reform (1872–1918)" (MA Thesis, İstanbul Şehir University, 2011), 107–108.

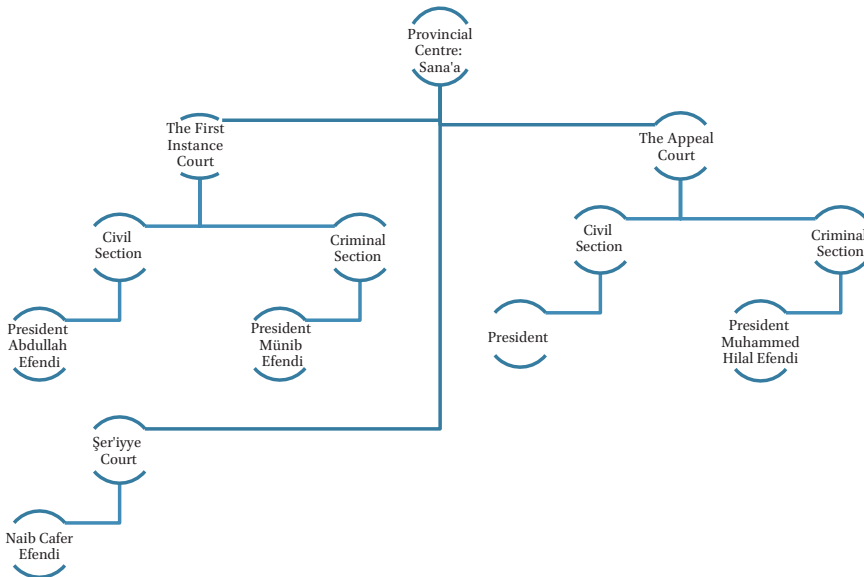


FIGURE 1 Court Organisation in the Provincial Centre in 1881.

presidents of the nizamiye courts. Thus, they adjudicated shari'a cases at the şer'iyye courts and civil, criminal, or commercial ones in the nizamiye courts (see Figure 2).⁵⁵

The imperial government established a separate commercial court in Hudaydah, a key port city that lay at the centre of Yemen's export and import trade. Much commercial litigation took place in Hudaydah, and its first instance court was unable to handle the heavy commercial workload on top of its civil and criminal cases; its members were also unable to handle transactions that extended beyond their normal sphere of authority. The Commercial Court in Hudaydah, established on 21 January 1881, consisted of a president, a member, a court clerk, and a janitor.⁵⁶

The appeals courts, the presence of multiple judges, and the diversity of court staff were all new for Yemen. Local court functionaries were organised into graded ranks – head secretary, second, third, and so forth – in accordance with a bureaucratic plan. As Messick points out, “age, educational attainment

55 *Yemen Sâlnâmesi 1298/1880–81*, 89. For the full list of court staff in the provincial centre in Sana'a, see Bostan, “Institutionalizing Justice in a Distant Province,” 107. On the role of naibs as presidents of both şer'iyye and nizamiye courts, see Akiba, “From Kadı to Naib,” 43–60.

56 BOA, İ. DH. 822/66275. 9 Kânûn-ı sâni 1296/21 January 1881; *Osmanlı Arşiv Belgelerinde Yemen*, ed. Mümin Yıldıztaş, Sebahattin Bayram, and Yıldırım Ağanoğlu (Ankara: Osmanlı Arşivi Daire Başkanlığı, 2008), 42–43.

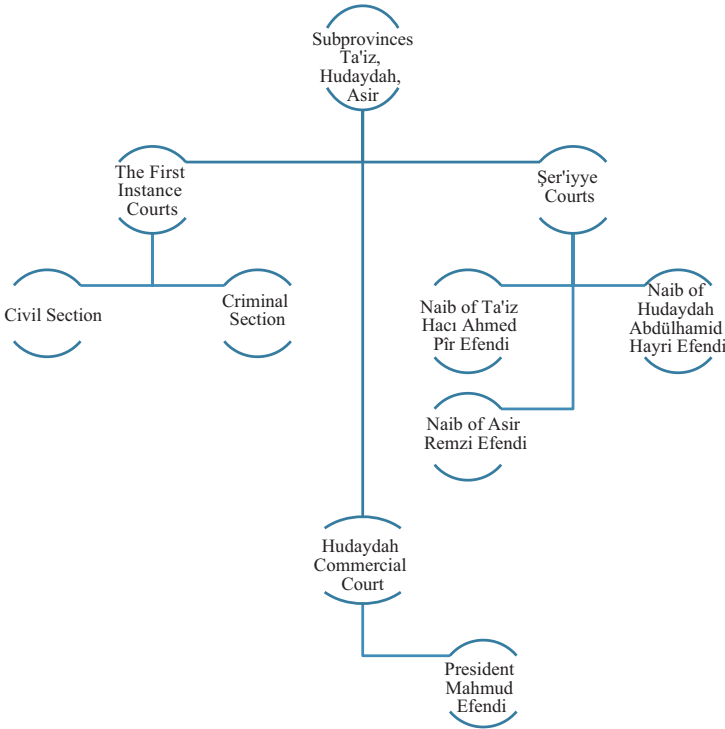


FIGURE 2 Court Organisation in the Subprovinces in 1881.

(associated with examinations and attestations), procedures for appointment, trial periods and inspections by superiors, rules about time in service and seniority, eligibility for promotion, transfer, and retirement, and an array of position-specific duties” all influenced the organisation of court staff. The structure of the Ottoman district administration paralleled that of the judges in the judicial organisation. Just as a district director (*kāimmakam*) was at the top and all subdistrict director officers (*müdir*s) were subordinated to him, so too the top of the judicial hierarchy was the provincial centre naib, to whom other judges at the district and subdistrict levels were subordinated.⁵⁷ This judicial hierarchy was characteristic of the modern bureaucratic organisation implemented across the Ottoman Empire in the late nineteenth century.

The highly structured court organisation did not always function effectively, however. For example, people living outside major urban centres continued to take their civil or criminal cases outside the formal system. They applied to the nearest *faqih* to avoid having to travel to the courts, or they took the law into their own hands, much as they had done previously. Some “savage” tribes (*pek vahşi olan bâzı kabâil*),

⁵⁷ Messick, *The Calligraphic State*, 188, 190.

as Hamid Vehbi put it, refused to apply to the official judges and [courts] in order “to protect and preserve their customs and traditions” (*‘örf ve te‘âmül-i kadîmlerinin muhafaza ve vikâyesi*).⁵⁸ In such instances, Ottoman officials worried that unless they made compromises, the whole project would collapse and the Yemeni people’s access to justice would be impaired. Failure to compromise would also impede the government’s attempts to establish security, order, and authority. As a result, the Ottomans took the demands and customs of the local population into consideration rather than insisting on the precise and pre-planned implementation of imperial rules and regulations.

Ottoman officials were divided about which path to follow. Some thought that retaining the simplicity (and broad reach) of the *şer’iyye* courts would be more economical and workable than instituting the much more complex *nizamiye* court system; others counselled patience and giving the Yemeni people time to become acquainted with the new judicial structure. For example, Osman Nuri Paşa, the governor of Yemen, called for the abolition of the newly implemented system because Yemenis lived like Bedouins (*hâl-i bedeviyetde olmak mülâbese-siyle*) and did not apply to the *nizamiye* courts.⁵⁹ By contrast, Muhammed Hilal Efendi, the president of the appeals court in Yemen, argued that critics of the new system exaggerated when they said people applied only to their own *fuqahâ’*. He observed that people applied both to their *fuqahâ’* and to the district and subdistrict councils to settle their cases, just as they did in other provinces.⁶⁰ In his opinion, abolishing the *nizamiye* courts would damage Ottoman efforts to “spread justice and civilisation” (*neşr-i adâlet ve medeniyet*) in Yemen. Instead of gaining the support of the Yemenis, abandoning the new judicial system would trigger and even give credence to demands for independence.⁶¹

The disagreement about whether to proceed with or dismantle the newly installed Yemeni judicial system continued in the imperial capital. Ahmed Cevdet Paşa, the Minister of Justice (*Adliye Nâzırı*), did not support the reforms proposed by provincial governor Osman Nuri Paşa. The Minister supported the abolition of the *nizamiye* courts but sought to preserve their features within a new *şer’iyye* court system as much as possible. Members of the Commission of Jurists at the Meşihat (Office of the Şeyhülislam), by contrast, supported Osman Nuri and rejected the Minister’s plan as “mere window dressing” that would undermine the goal of gaining local support.⁶²

58 Vehbi, “Yemen Kavânîn-i Atıkası ve Cedîdesi,” 34.

59 BOA, İ.D.H. 1083/84941. 23 Mayıs 1304/ 4 June 1888.

60 Bostan, “Muhammed Hilal Efendi’nin Yemen’e Dair İki Layihası,” 312.

61 Kuehn, *Empire, Islam, and Politics of Difference*, 130–131.

62 Ibid., 131 n. 112; BOA, İrade Meclis-i Mahsus (İ.MMS). 106/4548, f. 6, 3 Ağustos 1304/15 August 1888.

The Ottoman imperial government prevaricated. Some officials thought that the “people with Bedouin-style customs” (*ahâlînin etvâr-ı bedâvetkârânesi*) should become accustomed to the new order. They argued that various schools and training institutions (*ıslahhâne*) should be opened in Yemen to educate judicial officials in the Turkish language and to teach them about the new rules and regulations.⁶³ They opined that Yemen (along with a few other regions) was not ready for the implementation of the new judicial order. Relying on this opinion, the imperial government decided to adopt a gradualist approach, taking measures to increase the applicability and acceptability of its judicial system in Yemen and the regulations that governed it. Thus, officials decided to rescind some parts of the system until an adequate number of qualified personnel became available and the people became more familiar with it.⁶⁴ Consequently, the public prosecution (*müddeî-i umûmi*)⁶⁵ and presidency of

63 Vehbi, “Yemen Kavânîn-i Atıkası ve Cedîdesi,” 35. Most of the presidents and some court staff did not know Arabic, and translators were not always available during trials. According to Hasan Halid, this situation discouraged people from applying to the courts. BOA, Yıldız Esas Evrakı (YEE). 143/29, 1318/1900, 27–28. In addition to the schools noted above, Muhammed Hilal Efendi suggested the appointment of local people who spoke Arabic and had a good knowledge of the region’s culture as court members. Bostan, “Muhammed Hilal Efendi’nin Yemen’e Dair İki Layihası,” 318.

64 A similar situation occurred in Beersheba: “The Council of State envisioned its decision not to establish a nizamiye court as a temporary but necessary step on the path toward better governance, and hoped by this step to “win the hearts of the Bedouin” and “to convince them of the government’s just step.”” Amara, “Civilizational Exceptions,” 930.

65 The second criminal code (*Kânûn-ı Cedîd*), dated 1851, notes that in cases requiring *lex talionis* (retribution in kind), even if the criminal were pardoned by the victim’s heirs, the state could still punish him/her. The institution of public prosecution thus entered into Ottoman law. Schacht’s claim that there was no office of public prosecution in classical Islamic law implies that the Ottomans introduced this concept into Yemen as well. Schacht qualifies his assertion in two ways. The first concerns the role of the Islamic judge, the qadi, who had a range of “public” responsibilities as the “guardian of those who have no other guardian,” such as orphans, and for “public welfare in general.” Both areas of public responsibility in the Islamic judgeship were built into the mandate of the new Yemeni *niyabet*. The second qualification concerns a distinctive Islamic concept, *hisba*, and the public official who embodies it, the *muhtasib*. According to Schacht, the activities of the *muhtasib* constitute, in practice, an office of public prosecution. According to Rubin, the fact that the appointment and dismissal of public prosecutors were subject to imperial decree; points to the importance attributed by the central administration to these offices. It is remarkable that the legal opinion of public prosecutors had a special weight in court cases because they were not simply jurists but also represented state authority. Although the new Ottoman judicial organisation did not appear to conflict with Islamic law, it deviated from the classical tradition and there may have been a need for

the criminal section of the appeals court, the presidency of the civil and criminal sections of the first instance courts, and the positions of vice-prosecutor and junior clerkship (*a'zâ mülâzımlıkları*) were abolished by imperial decree.⁶⁶ The Law of the Court Organisation (*Mahkeme Teşkilî Kânûnu*) required that a necessary number of peace (*sulh*) courts be established in the subdistricts to handle civil cases and misdemeanours that could be resolved through reconciliation.⁶⁷

After continuing discussions and policy and personnel shifts, the government altered some of these plans over the following years. Some of the positions abolished in 1881 were re-established and filled, and the court organisation was extended to most districts by 1888. For instance, the appeals court was again divided into civil and criminal sections, and Muhammed Hilal Efendi was reappointed to the presidency of the criminal division for the second time on 14 November 1887.⁶⁸ Provincial- and district-level first instance courts were established in the subprovinces of Hudaydah, Ta'iz, and Asir. The commercial court that the government had established in Hudaydah, at British insistence, also continued and heard cases between Ottoman subjects and foreigners.⁶⁹

Despite Ottoman modifications of the judicial system in Yemen, there is evidence that Yemenis were still reluctant to use government courts and strove to avoid Ottoman authorities. A memorandum (*lâyiha*) describes court usage in several Yemeni subprovinces. The inhabitants of Asir, for example, avoided government courts from the beginning and continued to take their disputes to sheikhs and tribal chiefs. The people of Hudaydah likewise seldom took their civil cases to official courts – except for those who lived in the subprovince

people to become accustomed to the new system. See Messick, *The Calligraphic State*, 191; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1982), 189; Brinkley Messick, "Prosecution in Yemen: The Introduction of the Niyāba," *International Journal of Middle East Studies*, 15: 4 (1983): 510; Rubin, *Ottoman Nizamiye Courts*, 137.

- 66 Vehbi, "Yemen Kavânîn-i Atıkası ve Cedîdesi," 38–42. The Ministry of Justice perceived the institution of the public prosecution as the most important vehicle for promoting the nizami legal culture. Hence, abolition of the public prosecution in Yemen signified a withdrawal from the aspiration for "legal progress". See Avi Rubin, "The Positivization of Ottoman Law and the Question of Continuity" in *State Law and Legal Positivism: The Global Rise of a New Paradigm*, ed. Baudouin Dupret and Jean-Louis Halpérin (Brill: Leiden, 2022), 161, 165.
- 67 Vehbi, "Yemen Kavânîn-i Atıkası ve Cedîdesi," 42.
- 68 *Yemen Sâlnâmesi 1305/1887–88*, 44; Nejat Göyünç, "Trablusgarb'a Ait Bir Layiha," *Journal of Ottoman Studies*, 1 (1982): 236.
- 69 *Yemen Sâlnâmesi 1305/1887–88*, the first instance court and the commercial court of Hudaydah (70); the first instance court of Ta'iz (81); the first instance court of Asir (90).

centre and the districts of Zebid and Beytü'l-fakih. They generally brought their criminal cases to the *sayyids* and the local *fuqahā'*. The people of Ta'iz "were afraid" (*tehâşî ederek*) to apply to governmental courts and preferred to solve their civil and criminal cases through mediation in accord with their "old traditions and customs" (*örf ve âdet-i kadîme*). If a case came to the government's attention and it initiated an investigation, the litigants rushed to resolve the issue through whatever means were available to avoid government involvement.⁷⁰ Another challenge was the difficult geographical conditions such as mountains and long distances between settlements across Yemen, which hampered people's desire and ability to use the courts.⁷¹

6 Second Phase: Plural Jurisdictions: Administrative Councils and Şer'iyeye Courts Acting as Nizami Judiciaries (1889–1912)

The news arriving in Istanbul from Yemen indicated that the local population not only disliked and did not want to use the nizamiye courts, but also was turning against attempts by the Ottoman government to override traditional Yemeni judicial practices. The courts were not being used to their full potential or producing the desired results. Imperial officials quickly realised that the expense of operating this judicial organisation was placing an unnecessary burden on the treasury. They argued that the courts should be abolished. In 1889, the Council of Ministers (*Meclis-i Vükelâ*) decided to transfer jurisdiction for both civil and criminal cases back to the şer'iyeye courts. In addition, government officials agreed to appoint court observers to the şer'iyeye courts, selected from among the *fuqahā'* or other local scholars who had the people's trust.⁷² We can thus point to the agency of the local people in shaping the judicial system by challenging what had been imposed and pushing their demands.

In criminal cases that required *ta'zir* punishment,⁷³ judges in Yemen were instructed to impose punishments according to the Ottoman Criminal Code of 1858. These instructions obviated the need for separate criminal courts, and

70 BOA, YEE. 35–74, undated. For a transcription and review of the memorandum, see İhsan Süreyya Sırma, *Belgelerle II. Abdülhamid Dönemi* (Istanbul: Beyan Yayınları, 2000), 159–183.

71 BOA, Bâb-ı Âli Evrak Odası (BEO). 4382/328637, 18 Teşrin-i evvel 1331/31 October 1915, 4.

72 BOA, Meclis-i Vükelâ Mazbatası (MV). 45/20. 28 Haziran 1305/10 July 1889.

73 *Ta'zir* is a corrective punishment imposed at a judge's discretion for all forbidden or sinful acts according to Islamic law. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge: Cambridge University Press, 2005), 65–67.

the budget previously allocated to those courts was transferred back to the Public Treasury. However, the commercial court continued to operate in the port city of Hudaydah.⁷⁴

An imperial decree activated the new court system on 15 August 1889.⁷⁵ Although the şer'iyye courts were now once again in full operation, the Ottoman government increased administrative control over them. For example, talion decisions of the şer'iyye courts were to be reported to Istanbul and were to be implemented after an approval.⁷⁶ In addition, decisions taken by Ottoman officials to transfer some cases to the administrative councils indicate that they did not desire a complete return to the previous legal order in which only şer'iyye courts had supreme authority.⁷⁷ However, determining which procedural codes should apply in specific cases became an issue, especially in disputes related to the Public Treasury, *lex talionis* crimes, penalty articles defined in the Electoral Law, disputes between Ottoman subjects and foreigners, suits involving enslaved Africans, and officials who committed an offense related to their duty.

Particular uncertainty surrounded the handling and settlement of cases related to the Public Treasury, such as those that involved tax farmers (*mültezims*), contractors (*müte'ahhids*), and guarantors (*kefils*). On 17 August 1891, the Council of Ministers noted that throughout Yemen there was a mistaken belief that because the nizamiye courts had been abolished, cases brought against government officials would be heard in the şer'iyye courts. In fact, the administrative councils (*mecâlis-i idâre*) would continue as before, exercising jurisdiction over charges brought against government officials for job-related acts and behaviour that called for punishment. The Ministers suggested that the government should consider putting these matters under the jurisdiction of the administrative councils to ensure proper implementation

74 BOA, MV. 45/20. 28 Haziran 1305/10 July 1889.

75 For the document referring to the imperial decree that abolished the nizamiye courts in Yemen with its exact date, see BOA, MV. 49. 19. 15 Teşrîn-i sâni 1305/27 November 1889.

76 BOA, Dahiliye Mektubi (Д.И.МКТ). 2298/116. 11 Kânûn-ı sâni 1315/23 January 1900; Д.И.МКТ. 2342/52. 25 Nisan 1316/8 May 1900.

77 The Ottoman government incorporated councils (*meclis*) into the judiciary more broadly in different provinces in the nineteenth century. In Egypt, according to Khaled Fahmy, “*majlis* ceased to refer to a conflict-resolution body that adjudicated criminal disputes and instead came to mean an administrative council.” See Khaled Fahmy, *In Quest of Justice: Islamic Law and Forensic Medicine in Modern Egypt* (Oakland, California: University of California Press), 91, 270. In addition, Zouhair Ghazzal explored why and how the administrative councils in Damascus and Beirut started to handle judicial cases in the nineteenth century which traditionally had been considered in the purview of the şer'iyye courts. See Ghazzal, *The Grammars of Adjudication*, 527–529.

of relevant regulations. The earlier nizamiye court decisions reviewed by the Court of Cassation and returned to Yemen for completion would have to be passed on to the şer'iyye courts. An imperial decree dated 28 August 1891 authorised the administrative councils to hear litigations against government officials and between the Treasury and the tax farmers, contractors, or their guarantors.⁷⁸

Another problem related to penalty articles defined in the Electoral Law (*İntihâb-ı Meb'ûsân Kânûnu*).⁷⁹ The Council of Ministers decided (and duly informed all provinces) that district courts would hear misdemeanour cases that could result in the defendant receiving a jail sentence of up to one year, while the subprovince courts would hear felony cases for which the jail sentence would be more than one year. The Province of Yemen asked officials in Istanbul whether to adjudicate these cases at şer'iyye courts or at administrative councils, in the absence of the nizamiye courts. The Council of Ministers instructed the provincial authorities to try such cases at the administrative councils.⁸⁰

At the request of the Province of Yemen, the Ministry of the Interior consulted with the Ministry of Justice about how to execute sentences imposed by the commercial court at Hudaydah.⁸¹ Manyasîzade Refik, the Minister of Justice, gave official authorisation to the Commercial Court to execute court orders issued by şer'iyye and nizamiye courts and to adjudicate practices contradictory to the Stamp Act of 1908.⁸² In this document, the Minister of Justice uses the phrase "till the re-establishment of a new legal order," suggesting that the government intended to re-establish the nizamiye courts in Yemen at some point in the future.⁸³

As these examples demonstrate, the referral of nizami cases to the şer'iyye courts and administrative councils caused procedural obscurities and confusion. According to Mahmud Nedim Paşa, şer'iyye courts could not adequately try official cases. Nizamiye and administrative courts had decision-making capacity based on bail bonds, documents, and other evidence; the şer'iyye

78 BOA, MV. 66/92, 4 Ağustos 1307/16 August 1891; *Düstur*, 1st edition, vol. 6, (22 Muharrem 1309/28 August 1891), 1054–1057.

79 The Sultan approved the Electoral Law prepared by the first General Assembly in 1908. This code, which established some penalties regarding administrative affairs, was in effect until 1942. On the penalty clauses, see *İntihâb-ı Meb'ûsân Kânûnudur: Layiha*, 24–28.

80 BOA, DH.MKT. 2614/16, 1, 10 Eylül 1324/24 September 1908; *Düstur*, 2nd edition, vol. 1, (7 Ramazan 1326/3 October 1908), 83–84.

81 BOA, DH.MKT. 2679/48. 27 Teşrin-i sâni 1324/10 December 1908.

82 The nizami court orders were likely given only by the Commercial Court in Hudaydah.

83 BOA, DH.MKT. 2720/85. 14 Kânûn-ı sâni 1324/27 January 1909.

courts, however, could not pass judgment based solely on circumstantial evidence and bonds. Instead, they required witnesses to convict in criminal cases. If an official was “accused of embezzlement or any similar duty-related offense” (*ihtilâsât ve vazîfe-i me’mûriyetlerine mute’alluk sâir husûsât dan münba’is cerâimden*) but there were no witnesses, the charge would be dismissed and the accused acquitted. Proving such offenses in these courts was exceptionally difficult and put the plaintiffs at a significant disadvantage.⁸⁴

The transfer of nizamiye court tasks to şer’iyye courts did not include the new appellate and cassation authority. Consequently, decisions taken by the şer’iyye courts on issues that previously came under the jurisdiction of the nizamiye courts were considered final. People did not know that they could appeal şer’iyye court orders by applying to the Meşihat.⁸⁵ İsmail Rahmi, a retired district governor in Ka’tabe, suggested that this right of appeal should be retained and that nizami orders of şer’iyye courts at the district level should be appealable at subprovince courts; court decisions made at the subprovince level likewise should be appealable and examined at the provincial şer’iyye court.⁸⁶ Following discussions about the necessity to maintain an appeal authority, the Ottoman government decided to establish an investigation committee in Sana’a that would also serve as a place of appeal for sentences imposed by şer’iyye courts.⁸⁷ The committee would consist of a president appointed by the Meşihat, four members, and a sufficient number of clerks.⁸⁸ This marked a gradual return of the appeals procedure in Yemen.

As a result of these changes, the şer’iyye courts and administrative councils assumed nizami responsibilities after nizamiye courts in Yemen were abolished. Importantly, however, even court decisions made by the şer’iyye courts were now to be based, at least in part, on the Ottoman criminal code and on

84 BOA, BEO. 4382/328637, 3. 18 Teşrin-i evvel 1331/31 October 1915.

85 Previously, a litigant could object to the qadi’s decision by applying to the Imperial Council in Istanbul. Two of the highest-ranking judges (*kazaskers*) of the Ottoman judicial hierarchy were members of the imperial divan, which was the top executive branch of the Ottoman government. They advised the divan on legal matters and comprised its legal branch, which functioned as a high court. Engin Deniz Akarlı, “Law in the Marketplace, 1730–1840,” in *Dispensing Justice in Islam: Qadis and Their Judgments*, ed. M. Khalid Masud, Rudolph Peters, and David S. Powers (Leiden and Boston: Brill, 2006), 247.

86 BOA, YEE. 11/15, 27 Kânûn-ı evvel 1320/9 January 1905, Article 14.

87 A letter from the governor of Yemen, Mehmed Ali Paşa, about the need for an appeals court in Yemen appears in BOA, BEO. 3777/283208, 29 Haziran 1326/2 July 1910; an order by the Sublime Porte for the preparation of the relevant law appears in BOA, BEO. 3812/285843, 3 Teşrin-i evvel 1326/16 October 1910.

88 *Düstur*, 2nd edition, vol. 2 (8 Şevval 1328/12 October 1910), 748–749.

the *Mecelle*.⁸⁹ It seems that the Ottoman government created plural jurisdictions to address local conditions, to meet local demands, and to advance the government's interests.⁹⁰ Local conditions and inhabitants clearly played a role in creating this legal pluralism.

7 Third Phase: Local Negotiations Bring a Conclusion: Bureaucratic Court Organisation Returns with the Da'an Agreement (1912)

The Ottoman state failed to suppress the largely Zaydi-led rebellions and uprisings in Yemen in the late-nineteenth and early twentieth centuries and tried to find a solution to ongoing violence.⁹¹ The state negotiated with the Imam of Yemen but was unable to reach an agreement.⁹² According to Mehmed Ali Paşa, the Governor of Yemen in 1910–1911, Zaydi imams disguised their main political agenda and incited people against the Ottoman government for not implementing shari'a law.⁹³ In October 1911, after many years of failed negotiations, the Ottoman General-Commandant Ahmed İzzet Paşa and the commandant of the Zaydi Imam concluded an agreement at the village of Da'an.⁹⁴ Sultan Mehmet Reşad (r. 1909–1918) approved and countersigned the agreement on 22 January 1912.⁹⁵

89 Kuehn, *Empire, Islam, and Politics of Difference*, 115.

90 On 16 April 1910, the government cancelled court fees that amounted to around a hundred thousand *kuruş* per annum in order to encourage people to use the courts. To compensate the Treasury for the cancelled court fees, the government raised the rate of taxes collected from the province on 14 June 1910, with the consent of the Meşihat (the Office of the Şeyhülislam) (BOA, Dahiliye Muhaberat-ı Umumiye İdaresi (D.H.MUİ). 68-2/23). Here, it should be noted that the problem of court fees was not specific to Yemen; the inhabitants of other provinces also reacted negatively to the imposition of court fees. The new system of court operations proved to be an expensive public service for the average Ottoman subject (Rubin, *Ottoman Nizamiye Courts*, 47).

91 The conflicts were not only between the imperial authorities and Yemenis but also between prominent local leaders such as Imam Idrisi and Imam Yahya, who wanted to protect their autonomy. On the background of such power struggles, see Isa Blumi, *Chaos in Yemen*, 72.

92 Farah, *The Sultan's Yemen*, 212–246.

93 BOA, BEO. 3777/283208. 25 Haziran 1326/8 July 1910.

94 Different dates have been given for the agreement: 9 October in Caesar E. Farah, *The Sultan's Yemen*; 11 October in Metin Ayışığı, *Mareşal Ahmet İzzet Paşa: Askeri ve Siyasi Hayatı* (Ankara: TTK, 1997), 45; 13 October in Yusuf Hikmet Bayur, *Türk İnkılabı Tarihi*, vol. 2, part 1 (Ankara: TTK, 1943), 46.

95 Farah, *The Sultan's Yemen*, 271.

The main objective of the Da'an agreement was to recognise the Zaydi Imam as the legitimate leader of the Zaydi people living in northern Yemen: "The imam will nominate judges of the Zaydi School, [then] inform the provincial administration, which will [in turn] inform Istanbul for the confirmation of this nomination by the Judicial Office."⁹⁶ Although the Ottoman state agreed to grant significant rights to the Zaydi Imam to appoint and organise court staff, the legal organisation that the state sought to establish in Yemen emerged only gradually. For instance, a decision was taken to create an appeals court in Sana'a, which was the headquarters of the courts. The Imam nominated staff for this court, but the Ottoman government had the power to approve and appoint them. Although local sheikhs had to approve the courts' punishment decisions, those decisions were sent to Istanbul for validation, to be issued within four months. The Ottoman government also maintained the right to appoint judges for Shafi'i and Hanafi Yemenis and to appoint them outside the mountainous region controlled by the Zaydi Imam. A striking article in the agreement created "mixed courts" presided over by a team of Shafi'i and Zaydi judges to examine disputes that involved Zaydis and non-Zaydis. The government also appointed supervisors for courts that sought to adjudicate disputes in villages to lessen the burden on people who otherwise would have to travel to the court.⁹⁷

The Islahat Edict of 1856 established the equality of Muslims and non-Muslims before the law. However, Yemenis never consented to this agreement and Zaydi imams "denounced the Ottoman authorities for according Christians and Jews in Yemen more influence than was their due."⁹⁸ In a secret article in the agreement, the Ottoman government accepted Imam Yahya's demand that "the procedure dealing with *zimmis* [non-Muslim subjects] in Yemen had to follow the practices upheld by the second caliph 'Umar and be consistent with the shari'a of Hanafi and Zaydi schools of law."⁹⁹ The Ottomans hid this article from the public eye to ensure that it did not become a precedent for other provinces. The central imperial authorities sought to placate the local Yemeni

96 Messick, *The Calligraphic State*, 189–190.

97 Ibid.; Farah, *The Sultan's Yemen*, 297–298.

98 Kuehn, *Empire, Islam, and Politics of Difference*, 109.

99 BOA, Sadâret Divan-ı Hümayun Nâme-i Hümayun A.DVN.NMH. 37/1 (31 Kânûn-ı sâni 1327/13 February 1912), 10, 6th article in secrecy (*mukarrerât-ı hafiyye*): "Yemen'deki Museviler'den olan zimmilere de ahkâm-ı şer'î şerîf mücebince mu'âmele olunacaktır." See also M. Şükrü Hanioglu, *Preparation for a Revolution: The Young Turks, 1902–1908* (New York: Oxford University Press, 2001), 298; Kuehn, *Empire, Islam, and Politics of Difference*, 109.

leadership and establish a working legal order, even if some practices contradicted the main principles of the new Ottoman judicial system.

We have some information on the implementation of the Da'an agreement. On 31 October 1915, Mahmud Nedim Paşa, the last Ottoman governor of Yemen, wrote that Imam Yahya established three courts in the centre of Sana'a, other districts and subdistricts. Most of the judges and other court personnel such as court observers, bailiffs, and janitors were locals. After long challenges and negotiations, Yemen had a more institutional and bureaucratic court organisation with more staff.

8 Conclusion: Why Insist on a Bureaucratic Court System?

I have attempted to explicate the phased process through which the new Ottoman court organisation was introduced and implemented in the province of Yemen between 1872 and 1918. We can identify three phases that were shaped by local resistance and policy shifts: first, the establishment of a centralised court system in Yemen (1872–1889); second, the abolition of the nizamiye courts and the transfer of nizami procedures to the administrative councils and the şer'iyeye courts (1889–1912); and third, the return of a negotiated bureaucratic court organisation that was implemented with the cooperation of local leaders (1912).

The Ottoman state's several attempts to establish nizamiye courts indicate that it was determined to achieve a bureaucratically organised court system in Yemen, regardless of how long it took to do so. Although the nizamiye courts were abandoned at one point, certain established norms, regulations, and measures designed to standardise and control legal practice in Yemen were carried out. Ultimately, even the şer'iyeye courts were subject to checks through the installation of appeals and cassation processes.

Why did the Ottomans insist on establishing a bureaucratic judicial system in Yemen? The state's main goal was to establish firm Ottoman rule in the Province of Yemen and to provide justice to all subjects under its control. Although its legal practices may have changed over time, the state's aim to provide justice did not. Engin D. Akarlı writes, "no state could maintain itself over such a broad area, over such a diverse population and for such a long period without a working legal system and notion of legitimacy."¹⁰⁰ Maintaining a working legal system was one of the main goals of the long-lived Ottoman

¹⁰⁰ Akarlı, "Law in the Marketplace, 1730–1840," 245.

Empire, and recognising that what “worked” in one province would not necessarily work elsewhere was a key part of ensuring that this goal was realised. Thus, although Ottoman legal practices may have changed over time and across space, the determination to provide justice did not.

The notion of “providing justice” appears in many archival documents and is confirmed by the long struggle undertaken by the administration to establish a working court system in Yemen. Both the government of Sultan Abdülhamid II (r. 1876–1909) and the CUP (Committee of Union and Progress) expended a great deal of effort to ensure that some form of the Ottoman justice system was in place. Although the institutions of the Ottoman state were being transformed in the nineteenth century and Ottoman notions of good governance were changing, certain deeply established principles continued to influence its policies and objectives. State authorities believed that they could provide consistent justice to all imperial subjects with a new and hybrid legal system. The importance of protecting people’s access to justice, and hence their rights, is mentioned several times in the archival documents. For Ottoman statesmen, for example, the Yemeni people’s lack of knowledge of their right to appeal to the Meşihat was a problem that needed urgent attention.¹⁰¹ Similarly, the authorities did not want to leave litigants in a situation that would deprive them of their right to justice.¹⁰² One of the reports written by the reform commission pointed out the necessity of eliminating court deficiencies and providing justice on time without excuse.¹⁰³ To adhere to the principle of securing its subjects’ rights, the Ottoman government insisted on establishing nizamiye courts – or at least ensuring that nizami procedures were followed – but also allowed for plural jurisdictions by making concessions to its centralisation policies in response to conditions on the ground.

The second reason for the state’s insistence on regularising court organisation was its centralisation policies. The Ottoman government adopted a centralising vision, endorsed to different extents by the Tanzimat reformers and Hamidian and CUP officials. Yet, Ottoman policymakers were equally committed to the ideal of “legal positivism,” as suggested by Avi Rubin.¹⁰⁴ However,

101 BOA, YEE. 11/15, 27 Kânûn-ı evvel 1320/9 January 1905, Article 14. “*Bâb-ı Fetva-penâhîye takdîm ile temyizden taleb-i tedkiki usûlünü ekser ahâl-i vilâyet bilmedikleri için kesb-i kat’iyet etmekte ve bu ise ashâb-ı de’âvinin ziyâ’-ı hukûkunu mücib olmaktadır.*”

102 BOA, BEO. 4382/328637. 18 Teşrîn-i evvel 1331/31 October 1915, 3.

103 Mehmed Memduh, *Yemen Kit’ası Hakkında Bazı Mütâlaât*, (Dersaadet: Nümune-i Tibaat Matbaası, 1324), 123.

104 Rubin, “The Positivization of Ottoman Law,” 150–177.

when they were unable to apply this vision on the ground, they accepted and encouraged a policy of localised adaptation. As Amara concludes, “eliminating the legal peculiarities may have been the long-term Ottoman goal; in the short-term, however, the Ottoman government institutionalized [...] legal differences and relied excessively on negotiations rather than impositions.”¹⁰⁵

Recent scholarship has established that the Ottoman state made numerous compromises to its centralisation policies and practices in different regions of the empire.¹⁰⁶ For example, in southern Palestine, the Ottoman government authorised a special jurisdiction in Beersheba and tasked the Gaza Administrative Council to serve as a forum for Bedouin conflict resolution through reconciliation procedures “in line with the existing tradition.”¹⁰⁷ This article adds detail to this trend in the recent scholarship by analysing several revisions in the plan and interactions between the government and local actors in Yemen. The central government was eager to integrate Yemen within the imperial administrative standard as soon as it could, but Ottoman authorities were aware that state administration could not work effectively in a province without taking into consideration local traditions and expectations.

Finally, the Ottoman reform was flexible and gradual. After imposing the nizamiye system in 1879, the Ottoman government backtracked in 1889. However, the Da’an agreement of 1912 partially revived the courts with the consent of the local Yemeni people. Over time, Yemenis became accustomed to a bureaucratic and hierarchical court system, due in part to the conciliatory efforts made by the central government.¹⁰⁸ In contrast to the standard wisdom, the Ottoman state did not impose uniform policies and practices while centralising its administrative and bureaucratic organisation in the nineteenth

¹⁰⁵ Amara, “Civilizational Exceptions,” 939.

¹⁰⁶ CETOBAC organised a workshop in Paris in May 2015, “Faire le droit dans l’espace ottoman, 1800–1914,” where some of the presentations discussed allegedly exceptional cases. For some examples, see Christian Sassmannshausen, “When the Court Visited Home: Legal Out-of-Court Sessions and the *Manzûl* in Late Ottoman Tripoli”; Ahmad Amara, “State Making and Jurisdictional Tensions: The Beersheba Kaza as an Anomalous Legal Zone” and Noémi Lévy-Aksu, “Codifying – or not Codifying – the Exception: the 1877 *İdare-i Örfiye Kararnamesi*”.

¹⁰⁷ Amara, “Civilizational Exceptions,” 937–938.

¹⁰⁸ Surprisingly, until the 1970s the court’s organisation in (the later Republic of) Yemen resembled the earlier Ottoman court organisation: the first instance, appeal and cassation courts, and the codes used in the Yemeni judiciary very much resembled the Ottoman codes in both title and form. S. H. Amin, *Law and Justice in Contemporary Yemen: People’s Democratic Republic of Yemen and Yemen Arab Republic* (Glasgow: Roston Limited, 1987), 57–83.

century. On the contrary, it continued to benefit from its imperial experience by using the politics of difference as a successful tool of governance.

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