

SOCIAL
SCIENCES
STUDIES
IN TURKEY

EYUP SARITAS

Editor



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CHAPTER 3

THE ROLE AND IMPORTANCE OF THE MIXED COURTS IN THE OTTOMAN PROVINCES: THE CASE OF THE PROVINCE OF EGYPT (1875-1949)

Recep Kürekli^{55*}

Abstract

From the beginning of the 19th century it appeared that the European legal system had begun to enter the Ottoman legal system. In this period, it is estimated that the Egyptian province was ahead of Turkey in the codification of the law. The establishment of the Mixed Courts was one of the most important developments in the history of Egyptian civilization with the expression of Khedive Ismail and was welcomed in the first place; But in the process, Egyptian nationalist administrators and the Egyptian bourgeoisie, which emerged as an efficient class, began to evaluate these courts as an influential means of intervention by the European powers on the country. As a result of international diplomatic initiatives and legal regulations, the Mixed Courts would be completely removed from the Egyptian legal system at the end of the first half of

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the 20th century. In this study, the legal, social, economic and political effects of these courts on Egypt were tried to be revealed by Ottoman and especially English archival documents during the period beginning from the Mixed Courts were established in 1875 until they were officially abolished in 1949.

Key Words: Mixed Courts, The Province of Egypt, Judicial System in the Late Ottoman Egypt.

Law in the Ottoman Empire

The Ottoman Empire adopted Islam as a religion, as in Muslim and the Turkic States, for which reason Islamic law was taken as the basis. Islam is a religion that regulates not only the principles of faith and worship but also the growing aspects of life. For this reason Islamic law has been adopted along with the acceptance of Islam. However, since the Ottoman State has a multinational structure, it is expressed that the law and customs together with the law of Sharia regulate the social life. Sharia law is made up of direct norms based on the Qur'an, Sunnah, Ijma and Qiyas. On the other hand, rather than being contrary to Sharia law, the common law is executed in accordance with administrative and military law, fiscal law and land law, which are shaped by the fiefs and laws of the Sultan.⁵⁶

The capitulations given to the western powers have been used as judicial privileges and are subject to their own laws and their own judges when there are conflicts and disputes among themselves in the countries where foreigners are present, and this task was usually carried out by their consuls. The aliens' cases were seen at the consulate courts established by the consulates. There were all kinds of lawsuits involving civil law within the jurisdiction of the consuls and disputes between their compatriots. It has been reported that in the cases of disputes between different nationalities and in disputed cases, the "convicts and requests of the parties" The Ottoman authorities did not preside over this kind of case without the parties' consent. On the basis of European law, the

⁵⁶ Murat Şen, "*Osmanlı Hukukunun Yapısı*", Osmanlı, C.6. Yeni Türkiye Yayınları, Ankara 1999, pp. 327-329.

lawsuits opened the plaintiffs' case to the consular courts to which the defendant belonged.⁵⁷

The struggle between the aliens and the Ottoman subjects began to be overseen by the Ottoman courts until the beginning of the 19th century rather than the the consulate courts. In the course of time, the authorities of the consular courts have progressively expanded and have begun to look at the struggle between aliens and the Ottoman subjects.⁵⁸

In the Ottoman Empire from the beginning of the 19th century, the need to make new arrangements in law emerged. Beginning with the 1839 Tanzimat Decree, foreign legal argument started to be made. In other words, the Europeanization of Ottoman and Turkish Constitutional legal code started in 1839.⁵⁹

Law in the Province of Egypt

At the beginning of the 19th century Egypt, especially in the codification of the penal code was ahead of Turkey. Although Egypt was a part of the Ottoman State, Mehmet Ali Pasha had arranged the new codes according to the Egyptian conditions.⁶⁰ From the time of Mehmet

⁵⁷ Yasemin Saner Gönen, "Hukuki Kapitülasyonlar ve Sonuçları", Osmanlı, C.6. Yeni Türkiye Yayınları, Ankara 1999, pp. 340.341.

⁵⁸ Yasemin Saner Gönen, "Hukuki Kapitülasyonlar ve Sonuçları", Osmanlı, C.6. Yeni Türkiye Yayınları, Ankara 1999, pp. 348.

⁵⁹ Christian Rumpf, "Osmanlı ve Türk Hukukunda Avrupalılaştırma Hareketleri", Osmanlı, C.6. Yeni Türkiye Yayınları, Ankara 1999, pp. 482-483. (TanzimatÇeviri hatası in a broad sense is a concept that expresses the arrangements made in the structure of the Ottoman State and in the state-society relations. See. Bülent Tanör, "Anayasal Gelişmelere Toplu Bir Bakış", Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi, C.1, İletişim Yayınları, İstanbul 1985, pp.10-26; Ali Akyıldız, "Tanzimat", Türkiye Diyanet Vakfı İslam Ansiklopedisi, C.40, TDV, Ankara 2011, pp. 1-10; Gabriel Baer, "Tanzimat in Egypt--The Penal Code", *Bulletin of the School of Oriental and African Studies*, University of London, Vol. 26, No. 1 (1963), pp. 29-49.)

⁶⁰ Gabriel Baer, "Tanzimat in Egypt--The Penal Code", *Bulletin of the School of Oriental and African Studies*, University of London, Vol. 26, No. 1 (1963), pp. 29. (Born in Kavala in 1769 or 1770, Mehmet Ali Pasha joined the army in 1787 and was among the 300 soldiers who had taken the road from Kavala against the French occupying Egypt in 1798. After the end of French occupation, the Ottoman and Mamluks struggle started in the absence of authority emerged in Egypt. Mehmet Ali Pasha, who won this struggle in favor of the Ottomans, was appointed as the governor of Egypt on 3 July 1805. See

Ali Pasha, significant arrangements were made in the field of law. For example, during the years 1829-1830 two important penal codes had been put into force. One of them was related to crime in general, and the other was specifically related to crimes in rural areas.⁶¹ The basic punishments given were lashing, exile and rowing (penal servitude).⁶² By 1834, Mehmet Ali Pasha increased his authority. Having sent a decree to local administrators, Pasha asked that the cases be investigated locally and the criminal cases connected with the trial, especially for the death penalty sent to him to be approved by him. The aim of Pasha is to establish a centralized, rational administration, and to have the ultimate authority within the legal system.⁶³ Until the French legal codes were enacted in 1883, Egyptian Penal code was enforced by written law and Islamic law throughout the 19th century. Penal codes were executed by parliaments, administrative and judicial institutions, while Islamic law was applied by the Qadi.⁶⁴ The Islamic religion, whether native or foreign persons allowed to use their own law in matters related to the civil status of their internal affairs.⁶⁵

The Egyptian rulers needed to penetrate the country to control and organize the country. The management system put into practice by Mehmet Ali Pasha developed rapidly and the effect of the administration began to be felt on the whole Egyptian people. This effect first appeared

about Mehmet Ali Pasha, Muhammet Hanefi Kutluoğlu, "Kavalalı Mehmet Ali Paşa", *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, C.25, Ankara 2002, s. 62-65.)

⁶¹ Rudolph Peters, "For His Correction and as a Deterrent Example for Others": Mehmed 'Alî's First Criminal Legislation (1829-1830)", *Islamic Law and Society*, Vol. 6, No. 2, The Legal History of Ottoman Egypt (1999), pp. 164.

⁶² Gabriel Baer, "Tanzimat in Egypt--The Penal Code", *Bulletin of the School of Oriental and African Studies*, University of London, Vol. 26, No. 1 (1963), pp. 29.

⁶³ Rudolph Peters, "For His Correction and as a Deterrent Example for Others": Mehmed 'Alî's First Criminal Legislation (1829-1830)", *Islamic Law and Society*, Vol. 6, No. 2, The Legal History of Ottoman Egypt (1999), pp. 173.

⁶⁴ Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth Century Egypt: The Role and Function of the Qadi", *Islamic Law and Society*, Vol. 4, No. 1 (1997), pp. 70. (The Ottoman Qadi is the judicial and civilian authority which has a unique place in the Islamic states. See: İlber Ortaylı, "Osmanlı Devleti'nde Kadı", *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, TDV, C. 24, Ankara 2001, pp. 69-73.

⁶⁵ Mark S. W. Hoyle, "The Origins of the Mixed Courts of Egypt", *Arab Law Quarterly*, Vol. 1, No. 2 (Feb., 1986), pp. 220.

on the law. Administrative arrangements were made on legal codes and regulations, including criminal proceedings that would apply to state officials. Nevertheless, the relationship between the executives and the officials, and the relations of the citizens to each other were clearly defined. The use and ownership rights of land have been regulated by other laws and regulations, as well as other commercial issues.⁶⁶

In the 19th and early 20th centuries Egypt had two major legal institutions. One of them was the mixed courts (al-mehakim al-muhtelilah) and the other was the domestic courts (al-mehakim al-ahliyyah).⁶⁷ Egypt was part of both of the British and Ottoman Empires internationally and was subject to the control of the Caisse de la Dette Publique in the judicial sense of the international mixed courts in the economic field.⁶⁸ Although Egypt was part of the Ottoman Empire, the Egyptian rulers had a wide range of freedom to legislate.⁶⁹ In Egyptian law, "majlis-i ahqam-i al-Misriyyah" instead of "majlis-i ahqam-i adliyah"; "Egyptian Governor's Council" instead of "Mushur"; Only "sheikh" or "faqih" or court instead of "court"; "Umera" instead of "Wukela"; have been used instead of Ottoman institutions and concepts.⁷⁰

The mixed commercial courts, which were established during the reign of Mehmet Ali Pasha, continued with the appointment of local merchants regularly to the council during the Abbas, Said and Ismail Pasha periods, and the election of European representatives was decided by the Ministry of Foreign Affairs of Egypt, possibly by consultation

⁶⁶ F. Robert Hunter, "State-Society Relations in Nineteenth-Century Egypt: The Years of Transition, 1848-79", *Middle Eastern Studies*, Vol. 36, No. 3 (Jul., 2000), pp. 147.

⁶⁷ Will Hanley, *Foreignness and Localness in Alexandria (1880-1914)*, A Dissertation Presented to The Faculty of Princeton University in Candidacy for the Degree of Doctor of Philosophy-Recommended for Acceptance by The Department of History, April 2007, pp. 4.

⁶⁸ Will Hanley, *Foreignness and Localness in Alexandria (1880-1914)*, A Dissertation Presented to The Faculty of Princeton University in Candidacy for the Degree of Doctor of Philosophy-Recommended for Acceptance by The Department of History, April 2007, pp. 77-79.

⁶⁹ Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth Century Egypt: The Role and Function of the Qadi", *Islamic Law and Society*, Vol. 4, No. 1 (1997), pp. 72.

⁷⁰ Gabriel Baer, "Tanzimat in Egypt--The Penal Code", *Bulletin of the School of Oriental and African Studies*, University of London, Vol. 26, No. 1 (1963), pp. 40.

with the relevant consulates. The vast majority of cases that came to the Mixed Commercial Court were complaints of Europeans against their inhabitants.⁷¹ The first Mixed Commercial Court in Alexandria was founded in 1826 under the name of "majlis al-tijarah" or "majlis al-tujjar" and was to be rebuilt with a law promulgated in 1842. This court was established to judge disputes between domestic (Egyptian or Ottoman) merchants or disputes between domestic and foreign merchants. Two such courts were established, one in Alexandria and the other in Cairo. Each court had an evaluation committee of merchants.⁷² The aliens who committed the crime were handed over to their own consulates, and the consulates sent their offenders to their own countries for trial in their country.⁷³

The mixed courts, reorganized in 1861, consisted of one Egyptian president appointed by the government, two Muslim merchant-evaluators and two Europeans. Judgments were made in accordance with the 1860 Ottoman commercial code. Consuls, however, continued to make complaints about the proceedings. The Levantine officers were concentrating on issues such as clearly distorting the testimonies during the translation process and generally not having any coercion on trial. Despite all these flaws, the Mixed Courts were perhaps the most autonomous organizations established by the government. The decision of the Alexandrian court could be appealed by the Cairo court or vice versa.⁷⁴ In 1876, reformed judicial courts were opened with the power to take civil action between aliens and the state or indigenous or other aliens. In Alexandria, six local and one Belgian, one Swedish, two Greek, one Austrian, French, Norwegian, Italian, American, Russian and German judges were assigned to the court in Alexandria.⁷⁵

⁷¹ Michael J. Reimer, *Social Change in Alexandria Egypt 1807-1882*, An Unpublished Dissertation, Georgetown University, Washington, D.C, March 16, 1989, pp. 278.

⁷² Michael J. Reimer, *Social Change in Alexandria Egypt 1807-1882*, An Unpublished Dissertation, Georgetown University, Washington, D.C, March 16, 1989, pp. 162.

⁷³ J.V.C. Smith, *Pilgrimage to Egypt*, Gould and Lincoln, Boston 1852, p. 27.

⁷⁴ Michael J. Reimer, *Social Change in Alexandria Egypt 1807-1882*, An Unpublished Dissertation, Georgetown University, Washington, D.C, March 16, 1989, pp. 278-279.

⁷⁵ *PRO,FO, 881/4509*, p. 18-19 (Summary by Lord Tenterden on the History of the Administration of Egypt 1840-81, Foreign Office, October 10, 1881)

The Emergence Process of the Mixed Courts

As a great judicial mechanism, the Egyptian Mixed Courts have emerged as the most successful international organizations. Fifteen nationals contributed to the development of these courts in fifty years so that the courts were able to carry out their activities in harmony. Relevant to these courts, diplomatic battles were initiated in 1867 by Nubar Pasha (Armenian-origin foreign minister of Khedive Ismail).⁷⁶ One of the most important steps in judicial reform was the establishment of international courts. Nubar Pasha, who made a great effort in judicial reform, sent a memorandum to powerful states in 1867. A commission was established on this subject. In October 1869, representatives of the Austrian, German, United States and Cairo members of France, England, Italy and Russia in Cairo were gathered with the participation of Nubar Pasha. The Commission convened until January 5, 1870 and issued a report strongly recommending that the old judicial system be renewed and international courts established. In January 1876 new courts were formally established and courts established on 1 February 1876 were opened. Three first-instance courts, one in Alexandria, one in Cairo and one in Mansoura, and one in Alexandria, opened an appeals court. The first-instance court in Alexandria consisted of 7 local and 12 foreign judges. 4 locals and 7 foreigners in Cairo were composed of 3 local and 5 foreign judges in Mansoura. The appeals court in Alexandria consisted of 7 foreigners and 5 local judges. In addition to foreign judges, there were judges who were called to assist judges in some commercial cases. These courts were overseeing all civil proceedings between the Government and the natives, and between the aliens of the same origin, and between the different foreign nations.⁷⁷ Nubar Pasha had to compromise on the majority of foreigners in these courts. Pasha, however, adapted some special mixed legal codes from French law to the legal system. But these legal codes were alien to judges appointed by the 14 states with both

⁷⁶ Jasper Yeates Brinton, "The Mixed Courts of Egypt", Advocate of Peace through Justice, Vol. 93, No. 4 (December, 1931), pp. 254-255.

<http://www.jstor.org/stable/20681637> (Accessed: 23-06-2017 07:40 UTC). See about Nubar Pasha: F. Robert Hunter, "Self-Image and Historical Truth: Nubar Pasha and the Making of Modern Egypt", *Middle Eastern Studies*, Vol. 23, No. 3 (Jul., 1987), pp. 363-375.

⁷⁷ PRO, FO, 881/4509, p. 3 (Summary by Lord Tenterden on the History of the Administration of Egypt 1840-81, Foreign Office, October 10, 1881)

domestic judges and capitulations. In Egypt's chaotic financial situation, it was inevitable to give priority to private foreign enterprises.⁷⁸ European laws have also been implemented while new courts are being established. For this reason, the Ottoman legal system also began to change. Ottoman statesmen desired to go to a legal system where the privileges are canceled and the principle of reciprocity is observed. These desires can only be reached in the period between 1917 and 1818.⁷⁹

According to the 1877 treaty, crimes related to slave trade were being discussed by military courts. This application could be seen as an imperative when the agreement was made, because there were no civil courts in the country in 1877. The intellectual part of the indigenous people had a feeling that the military courts were no longer needed because of the dramatic improvements in civil courts over time. Later, a special court to be composed of five judges elected from the Egyptian Appeals Court will be authorized and the decisions of this court will be final.⁸⁰

Establishment of the Mixed Courts

Many states in the Middle East have tried to develop their judicial systems, largely by modeling the European states, during the 19th century. In Egypt, one of the first steps in this direction was to set up the Mixed Courts.⁸¹

The idea of the Mixed Courts, which Nubar Pasha had envisaged in 1867, could not be put into practice until 1876. Khedive Ismail and Nubar Pasha were worried about struggling with the restrictions imposed by the capitulations. Disagreements between Egyptians and foreigners could not be sentenced in native Egyptian courts or consulate courts. However, the growing debts of Egypt were of a worrisome dimension.

⁷⁸ Byron D. Cannon, "A Reassessment of Judicial Reform in Egypt, 1876-1891", *The International Journal of African Historical Studies*, Boston University African Studies Center, Vol. 5, No. 1 (1972), p. 53.

⁷⁹ Yasemin Saner Gönen, "Hukuki Kapitülasyonlar ve Sonuçları, Osmanlı, C.6. Yeni Türkiye Yayınları, Ankara 1999, pp. 348

⁸⁰ *PRO, FO, 881/6808*, No: 7, p. 25 (Lord Cromer to the Marquess of Salisbury, Cairo, February 3, 1896)

⁸¹ Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt", *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 33.

This has led to the increasing insecurities of foreigners against the Egyptian government and the judicial system. For this reason, Egyptian managers needed to protect the financial interests of their countries. In this context, Nubar Pasha suggested the establishment of a unified legal system that includes aliens and natives. The Egyptian rulers had to accept the majority of foreigners in the Mixed Courts. Nevertheless, the courts have been forced to narrow down in their work areas. As foreigners continue to oversee the consular courts for criminal cases, the Mixed Courts would oversee civil and commercial cases. In Mixed Court law, a foreigner is entitled to file a lawsuit against the Government. Thus, if the case were won, the Government had to implement the court order. It was again appointed to investigate cases in the French legal system, and to appoint civil servants who were able to sue a criminal and who could find legal advice on the jurisdictions.⁸²

In Egypt, the Mixed Courts were first established in 1875.⁸³ These courts have begun to work amongst a great publicity and hope. These courts, operating according to completely new legal codes for the country, were also overseeing political and economic cases.⁸⁴ The established Mixed Courts were divided into two levels: first degree courts and appeal courts. First-degree courts were deployed in Alexandria, Cairo and Mansoura. The appeals court was in Alexandria. All the courts had a certain number of judges, and the majority of them were European. The Egyptian government, while having the right to choose a judge, chose judges from those recommended by European states.⁸⁵ Thus, the Mixed Courts were also used as a weapon in European intervention in Egypt. Because the judges were elected by the European governments from the Egyptian government, this situation was in favor of the Europeans in the stance.⁸⁶

⁸² Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt", *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 33-35.

⁸³ F. Robert Hunter, "Self-Image and Historical Truth: Nubar Pasha and the Making of Modern Egypt", *Middle Eastern Studies*, Vol. 23, No. 3 (Jul., 1987), pp. 367.

⁸⁴ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1875-1885", *Arab Law Quarterly*, Vol. 1, No. 4 (Aug., 1986), pp. 436.

⁸⁵ Robert L. Tignor, *Modernization and British Colonial Rule in Egypt, 1882-1914*, Princeton University Press, New Jersey, 1966, pp. 125.

⁸⁶ F. Robert Hunter, "Self-Image and Historical Truth: Nubar Pasha and the Making of Modern Egypt", *Middle Eastern Studies*, Vol. 23, No. 3 (Jul., 1987), pp. 367.

When the Mixed Courts began to work in 1876, Egypt became economically bankrupt and Khedive Ismail had to accept European control over the economy. In the meantime, the Mixed courts have begun to discuss numerous cases against the Khedive and the Egyptian government. Khedive Ismail would be demoted when he tried to get rid of the financial control of foreigners and the control of the Mixed Courts.⁸⁷

The Mixed Courts were modeled on French law as Nubar Pasha had expected.⁸⁸ So the law was based on French law and was applied by mixed courts.⁸⁹ The Mixed Courts have accustomed the country to European law and procedures. But very few Egyptian lawyers had studied law in France. This meant that the new legal system would be placed according to the French model. The legal codes published in Arabic were drawn up in a clear and concise manner and forced the courts to follow certain precise procedures. The salaries were fixed at a sufficient level so that judges would not feel the need to corrupt themselves. But the judges were not always chosen according to merit. The difficulties arising from the lack of sufficient Egyptian judges to adhere to the new system which imposed the presence of judges in the first degree and appeal courts. The newly established courts, despite many inconveniences, made a great progress compared to the previous courts. From 1885 onwards, the work was folded four times, and few cases were not completed. Some errors were probably caused by ignorance and inexperience. A serious bribery bill was not heard.⁹⁰

The court records continued to work without any legal delay, even after the British navy bombarded Alexandria in July 1882, in the confusion surrounding the city, and even until the defeat of Arabi Pasha forces in Tel-el-Kebir in September 1882.⁹¹ The general principle

⁸⁷ Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt", *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 36.

⁸⁸ Robert L. Tignor, *Modernization and British Colonial Rule in Egypt, 1882-1914*, Princeton University Press, New Jersey, 1966, pp. 125.

⁸⁹ *PRO, FO, 881/5322*, No: 174, p. 127 (Sir E. Baring to the Earl of Rosebery, Cairo, May 13, 1886)

⁹⁰ *PRO, FO, 407/106*, No: 64, p. 69 (Sir E. Baring to the Marquis of Salisbury, Cairo, March 29, 1891)

⁹¹ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1875-1885", *Arab Law Quarterly*, Vol. 1, No. 4 (Aug., 1986), pp. 441. (It is seen that the revival of national consciousness in Egypt was in reality and as a historical event

of the Mixed Courts was to decide on the civil disputes that emerged among different nations. The courts were now regarded as sufficient to oversee the cases of people from the same nation if they were concerned with European interests. In this respect, Circassians, the Railways, the Dominions and the Alexandria Municipality undertook to take care of domestic cases in addition to foreign cases against various state institutions, even if they were registered companies (even if they were registered in Egypt).⁹² The Mixed Courts continued to look at a wide range of commercial litigation regarding every segment of Egyptian society. As a specific example, employers have made decisions about the safety of the workers they work with, making sure that workers are as safe as possible, and they have made compensation decisions for occupation accidents.⁹³

The Mixed Courts have had a well-deserved reputation for impartiality and legal knowledge in the field of judges, as well as complaints about the cumbersome and expensive procedures. There is no doubt that these judges offer great services to the country. They maintain the equilibrium required by their legal qualifications and at the same time protect the plaintiffs against the arbitrary implementation of the Egyptian Government. On the other hand, it protected the Egyptian Government against the extreme demands of the Europeans. However, judges of the Mixed Court were not under any surveillance or control. The Egyptian government did not have any control over the courts. Only international control was alternative to other controls; but it was not in practice either.⁹⁴

The fact that the local Justice system has gradually ceased to be effective since the 1880s had by then become one of the topics discussed

firstly manifested in 1881 with the Arabi Pasha rebellion. As a result of this movement identified with the slogan "Egypt for Egyptians", the country was under a new invasion and ended with the death of many Egyptians. Arabi movement could be considered as the beginning of resistance against foreign invasion and foreign domination for many years under the consciousness of Egyptians. See. Yakup Kadri Karaosmanoğlu, "Mısır'da Milli Şuurun Uyanışı", *Orta Doğu*, Year 1, Number 2, Ankara 1961, pp. 3-4.)

⁹² *PRO, FO, 881/6965*, No: Inclosure in No 81, p. 57 (Further Memorandum on the Judgement of the Mixed Courts, December 2,1896)

⁹³ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1906-1915", *Arab Law Quarterly*, Vol. 2, No. 2 (May, 1987), pp. 177.

⁹⁴ *PRO, FO, 407/1106*, No: 64, p. 66-67 (Sir E. Baring to the Marquis of Salisbury,Cairo, March 29,1891)

at the local press as a matter of complaint. On the contrary, "Al-Hukuk", the magazine of Egyptian lawyers, admitted that the Mixed courts benefited Egypt.⁹⁵ In 1883, after the British occupation, a new penal code based on French law was put into force. In the following years a series of modern penal codes would be enacted.⁹⁶

In 1883, the Egyptians and the Ottomans were regarded as the same and were being tried as native citizens. Foreigners who did not benefit from the capitulations and beneficiaries were mostly tried in mixed courts in civil and commercial matters. However, the new penal code did not introduce any exemption, so foreigners who did not benefit from the capitulations were tried in domestic courts.⁹⁷

Serious progress has been made against crime in the justice system. Punishment of crime was more clear. There were not crowded rogue bandits anymore. The murder cases decreased from 347 in 1891 to 270 in 1892, and one-third of these murders were for robbery purposes. Other crimes were revenge, jealousy and land dispute related. But there was still highway robbery, cattle abduction, and such minor crimes were at high levels, and these cases before the judge were showing an increase. People did not help to prevent crime and identify it, they did not say what they know.⁹⁸ The police could not reveal the crime because often people, especially village guards, did not report crimes quickly, and did not give evidence to make criminals come out. With the expression of "Sir E. Baring," people did not understand that it was a public duty to do the best of each person's ability to provide order and suppress crime.⁹⁹

In 1896, the total number of crimes committed was 1,850. In 1897, this number was 1,437 with a 22% decrease. The types of crime, which were usually related to the security situation of the country, showed the effectiveness of the police and the crime rate was rather low. Among the

⁹⁵ Byron D. Cannon, "A Reassessment of Judicial Reform in Egypt, 1876-1891", *The International Journal of African Historical Studies*, Boston University African Studies Center, Vol. 5, No. 1 (1972), p. 61-65.

⁹⁶ Gabriel Baer, "Tanzimat in Egypt--The Penal Code", *Bulletin of the School of Oriental and African Studies*, University of London, Vol. 26, No. 1 (1963), pp.. 47.

⁹⁷ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1875-1885", *Arab Law Quarterly*, Vol. 1, No. 4 (Aug., 1986), pp. 443.

⁹⁸ *PRO, FO, 407/119*, No: 152, p. 110 (Lord Cromer to the Earl of Rosebery, Cairo, March 9,1893)

⁹⁹ *PRO, FO, 407/106*, No: 64, p. 71-72 (Sir E. Baring to the Marquis of Salisbury,Cairo, March 29,1891)

people, the robbery, known as banditry decreased from 51 to 17, violently and with pressure, fell from 440 to 280, from the constitutional raids of 98 to 75. The feedbacks indicating the decrease in crime show that not only in a specific place, but also in the country as a whole. This decrease showed itself to the full moon throughout the year.¹⁰⁰ From 1896 to 1899, it was observed that serious crimes had been steadily declining. However, the proportion of each case that resulted in the sentence increase from 73% in 1896 to 80% in 1899.¹⁰¹ By 1899, there were 242 Europeans in the Joint Courts, including judges, and only 17 of them were British citizens. 101 of these courts were working in Egypt.¹⁰²

The British Chamber of Commerce in Alexandria had long insisted on the regulation of fraudulent bankruptcy in the Mixed Law and the need to deal with this problem for a long time.¹⁰³ Indeed, the criminal proceedings of the mixed courts had been extended to include simple and fraudulent bankruptcy crimes. Fraudulent bankrupts could be sentenced to two to five years in prison. Simple bankruptcy involving crimes such as negligence and unjustified expenditure, fraudulent receivers and bookkeeping was considered as a mild crime, and simple bankruptcy criminals could be sentenced from one to two years in prison. If a foreigner was charged with this crime, "Parquet"'s investigation in this context would be carried out by a European magistrate.¹⁰⁴ The Alexandria Court of Jurisdiction (Mahkeme-i Muhtelitah), who committed fraudulent bankruptcy; But those living within the borders of the Ottoman State who did not reside in Alexandria were sent to Alexandria to withdraw their punishment from the court.¹⁰⁵

¹⁰⁰ *PRO, FO, 881/7158*, No: 116, p. 88-89 (Lord Cromer to the Marquess of Salisbury, Cairo, February 27, 1898)

¹⁰¹ *PRO, FO, 881/7510*, No: 29, p. 40 (Viscount Cromer to the Marquess of Salisbury, Cairo, February 20,1900)

¹⁰² *PRO, FO, 407/150*, No: 142, p. 133 (Viscount Cromer to the Marquess of Salisbury, Cairo, February 26, 1899)

¹⁰³ *PRO, FO, 407/152*, No: 3, p. 4 (Viscount Cromer to the Marquess of Salisbury, Cairo, July 1,1899)

¹⁰⁴ *PRO, FO, 881/7510*, No: 29, p. 48 (Viscount Cromer to the Marquess of Salisbury, Cairo, February 20,1900)

¹⁰⁵ *BOA*, Fon Kodu: DH.EUM.KADL., Dosya No: 11, Gömlek No: 28, Tarih: H. 19/Ra/1329 (20 Mart 1911); *BOA*, Fon Kodu: DH.EUM.KADL., Dosya No: 86, Gömlek No: 43, Tarih: H. 22/S/1331. (31 Ocak 1913)

In the following decades, as in the first decade after the establishment of the Joint Courts, there had also been cases in the Joint Courts of enormous commercial ventures and very valuable properties.¹⁰⁶

Similarly, the works that the Municipality of Alexandria had done were closely related to the prosperity of the city. Because the ratio of foreigners in the city was high, it also meant an intertwined relationship of interests. Naturally, these relations were also entering the jurisdiction area of the Mixed Courts. The decision of the Alexandria District Court in favor of the mixed courts in the case of debates over whether the Domestic Courts or the Mixed Courts would take the case for the Alexandria Municipality had also been approved by the Alexandria Court of Appeals. Thus, in the case of the Municipality, it was declared that the Mixed Courts were the sole authority.¹⁰⁷

Until the 1900s, education in all branches of European law was only given in French in Egypt. Only students who are in favor of French and who have attended elementary and secondary education are eligible to enter the School of Law. All students in preparatory schools favoring the English were deprived of practice in law school and legal education in practice. It was decided to remove this disadvantage. In 1899 an English section was opened at the School of Law. Three English lawyers with the necessary qualifications were appointed to this school as a faculty member. In October 1899, 37 students registered with the school. Seventeen of these students were included in the English part and twenty in the French part. The students in the English part of the school would follow a French course for a period of 3 years to evaluate the work in the field of law. This 3-year education would be concluded with the entry of these students in French, both written and oral exam. A standard and authoritative commentary on Egyptian civil law was also being prepared in English.¹⁰⁸ However, an arrangement that changed the status of "Khedivate Law School" would be done in 1912. Accordingly, this school was being transferred from the supervision and supervision of the Ministry of Education to the supervision and supervision of the Ministry of Justice. The close relationship of the Ministry of Justice with the law

¹⁰⁶ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1886-1895", *Arab Law Quarterly*, Vol. 1, No. 5 (Nov., 1986), pp. 562.

¹⁰⁷ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1896-1905", *Arab Law Quarterly*, Vol. 2, No. 1 (Feb., 1987), pp. 58-59.

¹⁰⁸ *PRO, FO, 881/7510*, No: 29, p. 54-55 (Viscount Cromer to the Marques of Salisbury, Cairo, February 20,1900)

education had many advantages that directly affected the law education. With this amendment, an upper council was established in the school. Two members of this council would form this commission for a period of not more than two years assigned by the chief executive of the appellate court, the chief prosecutor, the school principal and the Justice Ministry. The number of students in the school was 270 in 1912 and 55 students were granted diplomas.¹⁰⁹

By 1891 the official judicial languages recognized by the laws in the Mixed Courts were French, Italian and Arabic. In February 1889, the Egyptian government was generally sent to the governments, suggesting that they were one of the judiciary languages recognized by the English. Only the approval of France and Greece remained, and other states had approved this proposal. As most of the judges were more familiar with French and Italian than English.¹¹⁰ By 1892, judges in international courts spoke French no matter what their nationality, and tried to do the trial in French.¹¹¹ The official languages accepted in the mixed courts in 1898 were only French, Italian and Arabic. The exclusion of the English Language caused great damage to the interests of British and American plaintiffs. This issue was discussed in the British Chamber of Commerce in Alexandria. The costs and delays in translating legal actions into English harmed British commercial interests.¹¹² By 1905, English would be one of the official languages recognized by the Mixed Courts.¹¹³

As a result, the Mixed Courts have been involved in judicial proceedings in a variety of areas since its establishment. One of the most important areas of jurisdiction in this period, especially in a commercial community such as Alexandria, is the main commercial affairs, and new developments have been made in the field of law by making new arrangements in this area. Decisions were taken quickly and commercial

¹⁰⁹ *PRO, FO, 368/809*, No: 1, p. 51 (Reports by His Majesty's Agent and Consul-General on the Finances, Administration and Condition of Egypt and the Sudan in 1912, Cairo, March 22, 1913)

¹¹⁰ *PRO, FO, 407/106*, No: 64, p. 67 (Sir E. Baring to the Marquis of Salisbury, Cairo, March 29, 1891)

¹¹¹ W. Fraser Rae, *Egypt To-Day* (The First to the Third Khedive), Richard Bentley and Son, London 1892, pp. 216.

¹¹² *PRO, FO, 881/7158*, No: 116, p. 95 (Lord Cromer to the Marquess of Salisbury, Cairo, February 27, 1898)

¹¹³ *PRO, FO, 881/8553*, (Memorandum respecting Egypt, Printed for the use of the Foreign Office, Foreign Office, December 11, 1905)

privacy was important.¹¹⁴ Although there is a need to extend the powers of criminal jurisdiction of the Mixed Courts by the Egyptian Government and the British Counselors, it should be noted that until the first world war Egyptian nationalists did not bear a particular hostility towards the Mixed Courts and court employees.¹¹⁵

Disappearance of the Mixed Courts

The convictions of these courts, which were seen as positive in the first place, also changed over time and were now condemned as institutions representing the hegemony of aliens on Egypt. In 1936 al-Musawwar's weekly newspaper described these courts as "a crime against humanity". In fact, these courts were established not to increase the efficiency of aliens, but to limit this effect, on the contrary. The courts could have survived with strange and changing coalitions of Egyptians and aliens, but in the 1930s such courts completed their mission with a coalition of Egyptian nationalists and the progressively influential bourgeoisie and the British government.¹¹⁶ From the 1930s the Egyptian bourgeoisie emerged as a new political force. According to this new influential proprietor, the Mixed Courts and capitulations seemed to be a burden on the Egyptian economy. First of all, Egyptian trade leaders, capitulations and mixed courts, who did not have any foreign nationality, thought that foreigners brought foreigners to an advantage over the locals. Even when tax was levied on foreigners, the Mixed courts had been searching for the consent of the great powers. That was why as long as the capitulations remained, the Mixed Courts would remain.¹¹⁷

Before the removal of the capitulations, the Egyptian Government had recommended that criminal cases in consular courts of foreigners be transferred to the Mixed Courts and that these cases should be

¹¹⁴ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1896-1905", *Arab Law Quarterly*, Vol. 2, No. 1 (Feb., 1987), pp. 70-72.

¹¹⁵ Mark S. W. Hoyle, "The Mixed Courts of Egypt 1906-1915", *Arab Law Quarterly*, Vol. 2, No. 2 (May, 1987), pp. 184.

¹¹⁶ Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt", *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 33-34.

¹¹⁷ Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt", *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 45.

transferred to the Egyptian courts in a transitional period. International conferences on capitulations in Montreux almost succeeded in obtaining whatever they requested. Almost none of the participants in the conference were willing to defend the capitulations and the Mixed Courts. With the support of the Egyptian government and the bourgeoisie, the capitulations and the coalitions advocating the Mixed Courts had not been able to tolerate much so that the Mixed Courts were quickly lost, leaving little trace behind them.¹¹⁸ Officially, the Mixed Courts in Egypt were closed on October 15, 1949.¹¹⁹

Conclusion and Evaluation

In the Ottoman Empire, on which the Sharia and Common Law were based, we see that the European law started to enter the Ottoman legal system as a necessity of the contemporary conditions, in case of necessity of capitulations. In this context, in the Province of Egypt in 1875, there was a wide public support and hopes for the establishment of mixed courts. It can also be said that the European law (especially the French legal system) and its influence had increased gradually over the Egypt Khedive and the government through such courts. Because Egypt was financially in a very precarious period during the opening of these courts. Financially the situation of the country weakened the political influence of the Egyptian rulers. As a matter of fact, when the Mixed Courts started to work in 1876, the country had experienced economic bankruptcy. As a result, the Egyptian administrators had to accept the European control over the country by means of "De la Dette Publique". Even Khedive Ismael would be removed from the administration because he wanted to get rid of this economic and legal siege, although he was responsible for the country's economic downturn.

The definitions of the mixed courts concerning the Egyptians and the aliens were also problems to be clarified. In this context, Turks were

¹¹⁸ Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt", *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 47-49.

¹¹⁹ Jasper Y. Brinton, "The Closing of the Mixed Courts of Egypt", *The American Journal of International Law* Vol. 44, No. 2 (Apr., 1950), pp. 303.

not regarded as foreigners because Egypt was a legitimate part of the Ottoman State. This same situation was applied to the other Ottomans, the nations living in the provinces for a while.

The fact that a large number of cases had been opened since the time of its establishment was also a sign of trust in these courts. In this context, the judges of the Mixed Court were trusted. Egypt's economic and financial stability within the process were also the main factors that increased confidence. But in the first quarter of the 20th century, the perception of trust in these courts began to change. The Egyptian bourgeoisie, which started to function as an effective force over the Egyptian government and Egypt, had by then started to evaluate these courts as a tool for the political and economic system of the European powers on the country. The cases in the mixed courts were transferred to the Egyptian courts and the Egyptian authorities at the international conference in Montreux agreed to almost all of their requests. Consequently, at the end of the first half of the 20th century, these courts were completely removed from the Egyptian judicial system.

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