Araştırma Makalesi / Research Article

The Issue of Immunity (*Serbestiyet*) and the Clash of Property Claims Between *Waqf* and *Mîrî*

AYŞEGÜL ÇİMEN*

Abstract

This article problematizes the issue of immunity i.e. free-status (*serbestiyet*) in the Ottoman land regime in the early modern period. It focuses on waqf lands and evaluates the fief (*timâr*) and property (*mülk*) lands, examining the types of taxes or revenues associated with immunity from theoretical and practical perspectives. The regulations about immunity, exemption (*muâfiyet*), dues of immunity (*rüsûm-ı serbestiye*), customary dues (*tekâlîf-i örfiyye*), and the subjects (*reaya*) in free status lands in relation to these are examined through the *kânunnâme*s, court registers, and archival documents. The research results indicate that some exceptional regulations and practices do not correspond to the general formula of immunity. Aiming to present some possible explanations for that phenomenon, it emphasizes the significance of legal arrangements for revenue sharing that divided and redistributed revenue clusters in favor of local groups. Accordingly, it focuses on issues like reconciling Ottoman local administration and military organization and ensuring the cohesion of different corporate and social groups (ethnic, military, religious, etc.). Finally, the practices (such as bequests, gifts, and will) of the individuals who resided on free-status waqf lands are examined through sample cases. These practices caused conflicting property claims between the waqf and *mîrî* despite not violating the law.
Keywords: Revenue, immunity, beytülmâl, kanun, waqf.

'Serbestiyet' Meselesi Vakıf ve Mîrî Arasında Mülkiyet Haklarının Çatışması

Özet

Bu makalede, erken modern dönem Osmanlı Devleti'nde toprak rejiminin ana unsurlarından olan vakıf, timar ve mülk toprakların serbestiyete konu olan türleri incelenmiştir. Çalışma özellikle vakıf topraklarına odaklanarak serbestiyete içkin olan vergi/gelir türlerini teorik ve pratik açılardan ele almaktadır. *Serbestiyet*, *muafiyet*, *rüsûm-ı serbestiye*,

* Dr. Öğr. Üyesi, Marmara Üniversitesi İnsan ve Toplum Bilimleri Fakültesi Tarih Bölümü / Assistant Professor, Marmara University Faculty of Humanities and Social Sciences, Department of History. Istanbul, Türkiye. ORCID: 0009-0000-7100-2677; e-posta: aysegulcimene@gmail.com

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tekâlif-i örfiyye ve bunlarla bağlantılı olarak serbest statülü topraklarda yaşayan reâyâ ile ilgili düzenlemeler kanunnameler, siciller ve ilgili arşiv belgeleri ışığında incelenmiştir. Araştırma neticesinde hukukî olarak formüle edilmiş serbestiyet tanımlarına uymayan istisna düzenlemeler olduğu tespit edilmiştir. Buna göre, vergi gruplarını farklı yerel aktörler lehine bölen ve yeniden dağıtan yasal düzenlemelerin önemi vurgulanmış ve bu durum için bazı açıklamalar sunulmuştur. Bu doğrultuda, Osmanlı yerel yönetimi ile askerî organizasyonunun uzlaştırılması ve farklı kurumsal ve sosyal grupların uyumunun sağlanması gibi konulara odaklanılmıştır. Son olarak, vakıf topraklarında yaşayan bireylerin mirasa ilişkin uygulamaları (vasiyet, vakfetme ve hediye gibi) örnek vakalar üzerinden incelenmiştir. Serbestiyet rejimi kapsamında hukukî olan bu uygulamaların vakıf, mîrî ve bireyler arasında bazı çatışmalı mülkiyet haklarına konu olduğu gösterilmiştir.

Anahtar Kelimeler: serbestiyet, vergi, beytülmâl, kanun, vakıf.

Introduction

The Ottoman Empire was a quintessential example of a multi-ethnic and multi-religious empire in the early modern era, as it distributed offices, estates, and revenues among various claimants within a structured framework to govern its expansive territories. The Empire inevitably relied on a complex land regime to enable its administrative, legal, and fiscal operations, while also accommodating the diverse interests of its corporate and social groups. By implementing the free-status (*serbestiyet*) regime as a practical institution it compartmentalized governance, delegating some of the rulers' powers to the jurisdiction of various office and landholding entities. The general legal formula for the free-status lands acknowledged the claims of each holder within set boundaries and measures (*mefrûzu'l-kalem, maktû'u'l-kadem*) through *kânûns*. To establish administration within the free-status lands, this legal framework had to address a range of factors, including agricultural production, commerce, population, ethnic and religious differences, and military groups. Normative texts such as *kânûnnâmes*, imperial orders, *hüccets*, and fatwas were primarily responsible for addressing these issues and devising practical solutions and measures for the free-status lands, as well as for determining the limits of jurisdiction and the rules for authorization. Focusing on certain revenues and utilizing predominantly the normative texts, this article aims to re-examine *serbestiyet* with its possible implications in waqf lands in the Ottoman land regime.

Kânunnâmes provided the Ottoman land regime with defining a revenue unit, the potential amount of the same, its authorized collectors, as well as other norms and regulations. As Ferguson puts it, "the variant understandings of *qanun* as a principle, a legal practice, a tax register, and a typology of imperial order are all bundled into the textual terrain occupied by the *kânunnâme* and rendered them a robust genre for managing

territorial diversity".[1] Taking into consideration local characteristics, the related norms and *kânunnâmes* determined the biography of a revenue that was sensitive to time, locality, the status and the type of the property, the one who keeps and operates the revenue-yielding property, and its legal holder. They determined and legitimized the claims on various revenues and established the links between the revenues and collectors. *Örf* (traditional, customary, and approved) and ethnic or cultural characteristics of a locality were also decisive in defining the biography of a revenue, while setting aside any pressing circumstances that altered the formulas in each case.

Kânunnâmes generally addressed the titles of officials who were authorized to have claims on certain revenue units (*sâhib-i arz* or *sâhib-i ra'iyyet,* waqf administration, *sancakbeyi*, *subaşı*, etc..). These officials claimed the revenues either on behalf of the corporate groups they represented or the treasury (*mîrî*).[2] The types of land in a given area (waqf, *mülk*, *has*, *zeâmet, tımâr* and *mîrî*) were attached with official positions therein as claimers or collectors, such as waqf-*mütevellî*, *mübaşir*, *sâhibi-i timâr/sâhib-i arz*, *subaşı*, *mîr-i mirân, doğancı*, *yörük,* and *zâbit* among others.

From a theoretical perspective the revenues can be grouped as *tekâlif-i şer'iyye* (like *haraç, cizye, öşür*) and *rüsûm-ı örfiyye* (like *cürm ü cinâyet*, *resm-i arûs*, *yava*,[3] *kaçgun* etc.). These are relatively well-defined.[4] However, the manner in which these revenue units were explained and introduced into the Ottoman realm through normative texts reveal a more nuanced and sophisticated arrangement for almost every revenue unit. Different registers (like *defters*) and normative texts as if they were making a joint effort to better elucidate the revenue units and express the relevant norms for specific localities and conditions.

This article examines the links between the types of revenues, the tax collector, and the taxpayer in the context of customary taxes (*rüsûm-ı örfiyye*). It particularly focuses on the taxes/revenues that could be grouped as unclaimed properties (like *yava*, *kaçgun*, *beytülmâl*, *mâl-ı gâib*, *mâl-ı mefkûd* and others). It argues that these taxes were generally claimed by an authorized landholder and became one of the most contentious issues

1 Ferguson, *The Proper Order of Things*, 78.

2 "Corporate groups" in this context means any official administrative, fiscal-military, ethnic-cultural, or religious group subject to certain fiscal and legal regulations and holding certain immunities as articulated in the *kânunnâmes* and orders (like *timâr* holders, waqfs, and ethnic and military groups).

3 Or *yuva*.

4 Tabakoğlu, *Osmanlı Mali Tarihi*, 322–323; İnalcık - Quataert (ed.), *An Economic and Social History of the Ottoman Empire*, 70-71; Akdağ, *Türk Halkının Dirlik ve Düzenlik Kavgası* Yayınevi, 45–47.

among the potential claimants (*mîrî*, *sâhib-i arz* and *reâyâ*) in free lands. Problematizing the issue of *serbestiyet*, it shows the ways that *serbestiyet* was fitted into the Ottoman land regime and re-fixed when the claimants renegotiated the rules and conditions as articulated in the normative texts. In this regard, it demonstrates the theoretical and practical connections established between the three, namely (1) the revenues (*vergi/ rüsûm*), (2) the legal holders of the lands (*sâhib-i arz/sâhib-i ra'iyyet,* waqf administration), and (3) the tax-paying subjects (*reaya*). Utilizing largely normative texts and archival sources, it examines a less covered subject of property claims in free-status waqf lands.

Finally, this article roughly considers the period between 1450 and 1695 for two reasons. First, the registers which date to the late fifteenth and early sixteenth centuries provide early examples of revenue allocation and an illustration of *serbestiyet*. Norms and regulations, prepared in the sixteenth century, sought to formalize the land regime in Ottoman character, particularly under the reign of Süleyman, and with the efforts of *şeyhülislam* Ebüssuûd Efendi. The sixteenth century witnessed the theoretical evolution of the Ottoman land regime that perceptively defined the category of *mîrî* in Islamic legal tradition and the role of the ruler/ *imâm* in allocating the offices—if not also the estates.[5] Through *kânun*s and *Kânûn-ı Cedîd* in the seventeenth century the imperial center tried to regulate what landholders could claim as a "bundle"[6] of rights.

Second, the implementation of lifelong tax farming (*mâlikâne-mukâta'a*) in 1695 marked a key turning point in the Ottoman land regime, which introduced a more 'privatized' *serbestiyet* into the administrative structure that lasted until 1793. This "immunity from interference by the local authorities" gained a new significance that gave way to the rising control of lifelong lessees in the provinces.[7] Since the article focuses more on the formative period when the Empire tried to create an integrated legal environment through *kânun*, it does not consider the period after 1695.

5 Malissa Taylor reintroduces the issue of "office or property" in question referring to Martha Mundy's study. Opting to use the term "bundle", she defines a bundle of rights as "the aggregate of the rights held by individuals or particular classes of people" in the Ottoman context. She argues that the sixteenth century bundle had both property-like and office-like features that should not be downplayed; Taylor, *Land and Legal Texts in the Early Modern Ottoman Empire*, 9, 36. Mundy, "Ownership or Office?", 143–64.

6 Taylor, *Land and Legal Texts,* 9–10.

7 Salzmann, "An Ancien Régime Revisited", 393–423; McGowan, "The Age of Âyâns 1699-1812", ed., 658–665; Ergenç, *Osmanlı Tarih Yazıları*, 376–377; Öncel, "Land, Tax and Power in the Ottoman Provinces", 54-74.

Immunity (*Serbestiyet*) in the Discourse of Ottoman Land Governance

In managing extensive territories the Ottoman land regime had to consider several intricate and multifaceted parameters. For one, the rights and immunities extended to a group or person were not to encroach on the rights of another group or individual, while providing each group with enough fiscal and administrative benefits over the land. In return, those who held respective rights were expected to avoid harming or offending the *reaya,* while simultaneously optimizing the revenues and work for the expansion of the *beytülmâl*, the treasury. Moreover, the state/treasury would maintain its proprietary interest over the land (*rakabe*), and the legal arrangements it made would function as a regulatory framework governing the allocation and property relationships. This necessitated a deliberation to establish a land regime reconciled with the property relations prescribed by Sharia.

Taylor defines this process as "harmonization" and considers the mid-sixteenth-century legal arrangements as the "beginning of a new" regime.[8] Harmonization, she argues, increased both the "institutionalization of the peasant's bundle and the acceptance of the sultan's legislative authority over *mîrî* land."[9] Accordingly, the government defined property relations for a variety of Ottoman subjects by acknowledging rights and claims over the lands (like tax collection, cultivation, usufruct, possession, inheritance, rent, etc.) through "a fair and standard entity", the "bundle".[10]

For practicality I suggest extending Taylor's understanding of the "bundle" to include the rights held by proprietors as landowners (*mâlik-mülk*) or legal/institutional entities (*vâkıf-vakıf*). *Serbestiyet* as a practical formulation constituted a bundle-like structure that conferred upon its holder certain rights along with the jurisdictional authority over the land. Within this system landholders, local officials, and the imperial center constantly negotiated their respective claims on land, the contours of jurisdictional borders, and, most importantly, the *reaya* living in free-status lands.

İnalcık examines the usual formulary of sultanic land grant patents (*temliknâmes*) and their multilayered social and political implications. He observes that these patents and deeds of the waqfs established on *mülk* lands allowed their holders to control both the cultivated and the uncultivated

8 Taylor, *Land and Legal Texts,* 3.

9 Ibid, 3-8.

10 Taylor prefers to use "the bundle (of rights)" instead of property rights as she thinks the bundle more explanatory in defining the aggregate of the rights enjoyed by the peasants and, for the source material at hand. Ibid, 9, 24-30.

parts of the land in question. Unless stated otherwise, what the land and its *reaya* would yield were claimed by these holders. It covers the revenue of various *şer'î* and *örfî* taxes and dues—including *yava*, *kaçgun*, *beytülmâl*, *mâl-ı gâib*, *mâl-ı mefkûd*, *resm-i arûs*, *cürm ü cinâyet*, *bâd-ı hevâ*, *tayyârat*. The typical phrase used to express this freehold grant was *bi'l- cümle hudûdu ve hukûku ile mefrûzu'l-kalem ve maktû'u'l-kadem min külli'l-vücûh serbest*.[11] The last words emphasized the "autonomous character of the bestowed land vis-à-vis the governors and local government agents."[12] İnalcık defines these free status areas as "autonomous enclaves."[13] He mentions waqf, *soyurgal*, *yurtluk-ocaklık,* and *malikâne-mukâta'a* as additional examples of such autonomous enclaves in Islamic states. In his study on waqfs, Barkan also refers to them as "areas exempted from government interference."[14]

Interestingly, the issue of *serbestiyet* has not been comprehensively examined within the broader context of the Ottoman land regime. The studies that have focused on free-*timâr*s, waqfs, and *mülk* lands only address the system within the specific scope of investigations in question. In this regard, Özer Ergenç merit particular attention as he approaches the issue from the perspectives of administration and finance. According to Ergenç, the Ottoman central administration delegated some of its powers in the provinces to the officials to provide an internal control mechanism and cohesion in the domains. To balance conflicting parties and their jurisdiction (*adlî-idârî/kâdı-bey*) in the field, *serbestiyet* provided an efficient regulation.[15] As a formula known to the Ottomans before, *serbestiyet* helped the government limit the broad authority of the provincial rulers as it distributed the rights to claim revenues and control them. Criticizing the perspectives that regard the free status lands as autonomous, Ergenç emphasizes the financial dimension of the free status lands and how the system was instrumental in nurturing the localities—particularly over the examples of Bursa (*Hâssa Harç Eminliği*) and Ankara.[16]

11 The general formula of *serbestiyet* was as follows: the land was granted to holder "in the way of full immunity" [*min külli'l-vücûh serbest*]; the the land in question was "crossed out from the registers in the state bureaus"[*mefrûzu'l-kalem*]; the local authorities or anybody else were prohibited "from setting their feet" [*maktû'u'l-kadem*] on the land. İnalcık – Quataert (ed.), *An Economic and Social History of the Ottoman Empire*, 122.

12 İnalcık, "Autonomous Enclaves in Islamic States", 112–34.

13 Ibid, 112-34.

14 "Devlet müdahalesine kapalı sahalar." Barkan, "İslam-Türk Mülkiyet Hukuku Tatbikatının Osmanlı İmparatorluğu'nda Aldığı Şekiller-1 Şer'i Miras Hukuku ve Evlâtlık Vakıflar", 156–81.

15 Ergenç, *Osmanlı Tarih Yazıları,* 204–206.

16 Ibid. 212.

In another of his publications Ergenç presents a document from his collection that indicates religious and Sufi orders were bestowed *mülknâme*, estates by *serbestiyet*, and held their land grants directly from the sultan. Aziz Hüdâyî Efendi who had a dervish lodge in Üsküdar was granted lands within the environs of Üsküdar district with various tax items, income-yielding additions and junctions, and all the taxes of *reaya* who lived in the borders defined.[17]

In examining the use of the concept of *serbestiyet*, Yılmaz mentions the meaning of the concept in the classical period and first explains *ocaklıks*[18]—the system that allowed some ethnic groups (like Kurds and Turcomans) to hold their immunity with their confirmed governor from the central state's interference.[19] These were a part of a special class of Ottoman administrative divisions that held certain privileges. The most common type of these *ocaklıks* was known as *serbest timâr*.[20] He adds,

> They were named free because of the fiscal, administrative, and judicial immunities they were granted. They lay outside the jurisdiction of local authorities and were managed by autonomous administrators, often with the rank of *voyvoda*, reporting directly to the beneficiary of the prebend.[21]

This study does not delve into the extent of the judicial autonomy in free-status lands or how criminals were able to get shelter in those lands. However, the issue of "judicial or jurisdictional autonomy" was a very misconceived type of immunity in the literature. Rather than the autonomy, this issue of criminals in free-status lands was more related to the registered *reaya* and the revenue it would yield.

17 "Bulgurlu karyesi ve Gaziler Depesi hudûd ve sınırunda olan tevâbi' ve levâhiki beytülmâl-i âmme ve hâssası ve bi'l-cümle kâffe-i hukuk ve menâfi'i ile mefrûzu'l-kalem ve maktû'u'l-kadem …envâ'-ı vücûh-ı mülkiyet üzere kutbü'l-ârifîn …. Üsküdârî Sultan Mahmûd'[a]…keyfe mâ yeşâ mutasarrıf olmak içün mülknâme-i hümâyun verilmeğle…" Ergenç-Taş, "Assessments on Land Usufruct and Ownership in Anatolia during the 17th and 18th Centuries", 12, 28.

18 Relying on a chronicler of the early eighteenth century, Yılmaz also argues the broader impact of *serbestiyet*, free prebends (*serbestiyet-mâlikâneler*), on the rise of provincial power magnates that were generally associated with the weakening of the control in the provinces and decline period. Yılmaz, "From Serbestiyet to Hürriyet", 202-30.

19 İnalcık, "Timar", 168-73.

20 For further discussion on the types of ocaklıks see Kılıç, "Yurtluk-Ocaklık ve Hükûmet Sancaklar Üzerine Bazı Tespitler", 119–37.

21 Yılmaz, "From Serbestiyet to Hürriyet", 212.

The registered *reaya* was the most valuable asset for a free landholder on the land to the extent that "The *reaya* that cultivates the land is considered more important than the land itself."[22] Populating or securing the land with *reaya* was the most common point of contention between the landholders, rather than the land. The legal holder had to be aware of his registered *reaya*, whether it was a waqf land or free *timâr* land. This was because the *reaya* was the chief potential for production, increasing revenues, maintaining security, and preserving the interests of the landholder in question. *Reaya* benefited the landholder not only with their service on a designated land but also with their everyday activities that were not oriented toward a governmental service or revenue yielding. For example, these activities might include marriage, committing a crime, finding a lost animal, or dying without a known heir. In such cases the law allowed the landholders to claim any revenue that might fall out of these happenings related to *reaya*. According to the general legal formula in free lands government officials (*mîrî*) were deprived of any claim either in total or in part on penalties,[23] fines, or dues that fell outside of judicial parameters.[24] *Cürm ü cinâyet*[25] and *bedel-i siyâset* were among them and meant to be claimed only by the legal holder in question.

Moreover, free landholders had to cooperate with the local *kâdıs* to generate the societal order. *Kâdıs*, as the representative of glorious sharia (*şer'-i şerîf*), had no limits in free lands to maintain their legal and administrative role, unlike other local rulers. Thus the phrase *mefrûzu'l-kalem maktû'u'l-kadem,* ideally, should not prevent officials from seizing criminals.[26] The registers and legal regulations consistently reminded the local rulers to enforce the rules while keeping also the free landholders informed. Nevertheless, the free landholders always had to be aware of two things: (1) The unregistered *reaya* who might come to free lands to get shelter or to go free after safely paying the penalty for their serious crimes (*cürm-i galîz*). The extant records suggest that the free lands were considered a place of sanctuary for those seeking to evade the law. Holding a certain degree of fiscal and legal autonomy, free lands were noticed and employed

22 İnalcık, "Osmanlılarda Raiyyet Rüsûmu", 583.

23 Some exceptions based on the arrangements in each land are mentioned below.

24 Devlet Arşivleri Başkanlığı Osmanlı Arşivi (BOA), *Ali Emiri Mustafa II,* Dosya nr. 2, Gömlek nr. 181. Cürm ü cinâyet was mentioned as one of the items of the revenue cluster to be claimed only by the waqf. See also, BOA, *Maliyeden Müdevver Defterler*, nr. 15450, s. 1-2, 925 (1519); Pantık, "Atik Valide Sultan Külliyesi (1686-1727)", 50.

25 İnalcık, *Hicri 835 Tarihli Suret-i Defter-i Sancak-i Arvanid*, XXVII–XXVIII; Akdağ, *Türk Halkının Dirlik ve Düzenlik Kavgası*, 45-47.

26 "İmdi serbest demeyüp her kande ehl-i fesâd olursa toprak kâdîsı ma'rifetiyle tutulup…" BOA, *Mühimme Defteri*, nr.7, h.1754, 21 M 976 (16 July 1568).

by criminals[27] as lands for asylum.[28] However, the records also suggest that free landholders tended to charge *cürm ü cinâyet* and *bedel-i siyâset* and to free the criminals thereby preventing a lawsuit in the locality where the crime was committed. (2) Securing the trial of criminal *reaya* in one's own lands, and prevent their escape and trial outside the borders of that land. Otherwise, this would cause an unlawful claim under an unentitled land's jurisdiction, and more importantly, pose a possible loss of a registered *reaya* in the future.[29] While the number of records merits attention regarding the issue of criminals in free lands, they primarily manifest a tension that resulted from registered *reaya* and the revenue it would generate. It seems to be mostly an issue of ruling on the spot (*mahallinde*) and channeling the revenue to the rightful claimer, rather than one of autonomy. As such, the matter of judicial autonomy or immunity requires further elaboration and contextualization through a comparative analysis of diverse sources.

One of the crucial points Barkan repeatedly draws attention to is the existence of diverse forms of legal arrangements on land grants, waqf lands, and fiefs in the Ottoman Empire.[30] These arrangements were a reflection of a diverse economy and society following the expansion of the Empire into different lands.[31] The Empire inherited some earlier types of land granting that held certain immunities like *mâlikâne-divânî*[32] and *baştina*.[33] But it attempted to regulate and define them within the Ottoman land regime. A specific example is Kermeli's research on the land system of Crete between 1645 and 1670. Examining the diverse land tenure practices that prevailed in Crete, she highlights how the system effectively integrated local

27 Like şakî, eşkıya, hırsız, ehl-i fesâd-ı şekâvet, etc.

28 "Da'vet-i şer' olunduklarında varıp serbest vakıf ve ze'âmet karyelerine tahsin edip elegirmeyip…." BOA, *Mühimme Defteri*, nr. 92, h.14, 15 L 1067 (27 July 1657); see also BOA, *Mühimme Defteri,* nr. 5, h.1254, 27 Ş 973 (19 March 1566) (1566) and BOA, *Mühimme Defteri*, nr. 19, h.132, 21 M 980 (3 June 1572).

29 "Günâh sâdır olduğı mahalde siyâsete me'mûr olana … bi-hasebi'ş-şer' cezâsı ve sezâsı ne ise itdürüp hârice alup gidermeyüp…" BOA, *Mühimme Defter*i, nr.7, h. 1653, 29 M 976 (24 July 1568); BOA, *Mühimme Defteri*, nr.73 h.341, 23 S 1003 (7 Nov. 1594).

30 Ömer L.Barkan, "Türk-İslam Toprak Hukuku Tatbikatının Osmanlı İmparatorluğu'nda Aldığı Şekiller: Mâlikâne-Divânî Sistemi", 119–84; Ömer L. Barkan, "İslam-Türk Mülkiyet Hukuku Tatbikatının Osmanlı İmparatorluğunda Aldığı Şekiller III: İmparatorluk Devrinde Toprak Mülk ve Vakıfların Hususiyeti", 906–42.

31 Buzov, "The Lawgiver and His Lawmakers", 84–88.

32 Barkan, "Mâlikâne-Divânî Sistemi", 119-134; Özel, *The Collapse of Rural Order in Ottoman Anatolia*" , 20–24, 31–39; Öz, "XI. Yüzyılda Ladik Kazasında Mâlikâne-Dîvânî Sistemi", 65–73.

33 Emecen, "Baştina," 135–36.

customs, Venetian sharecropping arrangements, and principles of Islamic law, resulting in a flexible and adaptive approach to land governance.[34] As Buzov argues, the Ottoman legal system at the end of the sixteenth century exhibited a remarkable level of diversity.[35] Its cohesion was maintained not by the absolute authority of the sultan or a highly centralized political structure but rather by the sovereignty of the *kânûn*, which served as a surrogate for the sultan's persona.[36]

The *kânunnâme*s provide evidence that İnalcık's formula for the "autonomous enclaves" underwent some modifications to incorporate or to exclude specific claimants of revenue depending on the prevailing conditions compliance with which appears to have become a necessity.[37] The nitty-gritty details in the normative texts indicate that the concern about accommodating local officials, the existence of different military and ethnic divisions, and the local culture and tradition were predominant elements that led to these modifications or rearrangements.[38] Third parties or some government functionaries whose duty it was to oversee the enclave's free status generally participated in negotiations on revenue sharing.

What does an "autonomous enclave" mean concerning waqf lands and the subjects registered there (*vakıf reayası*)? How did they generate an occasional or irregular revenue for the waqf? Normative texts convey that *beytülmâl*, *mâl-ı gâib*, *mâl-ı mefkûd*, *yava*, and *kaçgun* were the types of unclaimed property that a landholder or an official on behalf of the *mîrî* could claim as a revenue—based on the arrangement at hand. A revenue in the category of *bâd-ı hevâ*, the *beytülmâl* was generally claimed by the relevant legal holder—by *mübaşir*[39] or *mütevelli*[40] in waqf lands. However, two factors could interfere with this collection. One was the result of a de jure modification of revenue sharing generally due to local circumstances. The other was due to the clash of revenue claimants that arose out of a de facto control or possession of the property. The following sections provide examples of both legal modifications and property claims with due emphasis on their underlying causes.

34 Kermeli, "Caught in between Faith and Cash", 17–48.

35 Buzov, "The Lawgiver and His Lawmakers," 86.

36 Ibid.

37 İnalcık, "Autonomous Enclaves in Islamic States".

38 See Akyılmaz, "Bâd-ı Hevâ Vergilerine Bir Örnek: Resm-i Ârus", 115–28.

39 The agent who generally collected revenues on behalf of someone or an institution.

40 The trustee of a waqf, responsible for its proper management.

Revenue Allocation in Waqf Lands

Private landholders or those granted a *temliknâme* generally turned their property into a pious foundation or waqf. İnalcık concludes that the large land grants of the first three centuries of the Empire mostly aimed at enabling the grantees to establish a major waqf institution.[41] The imperial waqfs or "waqf complexes founded by the sultans, dynasty members, and high-ranking state servants" were generally of this type.[42] They were founded with full immunity.[43] This meant that the state renounced its rights including taxes and the right of entry to pursue criminals in favor of the waqf's interest.[44] The vast amount and variety of resources allotted to establish these waqfs and the huge complexes they formed illumine the significance of waqfs in the functioning of the Ottoman Empire. The free status granted to imperial waqfs was indicative of their institutional nature, constituting them as legal entities and equipping them with a corporate identity. A waqf's immunity (*mu'âfiyet* or *serbestiyet*) and autonomy (*muhtâriyet*)[45] influenced the range and extent of the resources from which it could benefit within its defined borders. *Rüsûm-ı serbestiyye*, *niyâbet*,[46] and *bâd-ı hevâ* were some of the cluster names assigned to the holder in free status lands like waqfs.[47] Different from rightful taxes (*hukûk*), dues (*rüsûm*) denoted its sultanic or customary (*örfî*) character, and *serbest* defined its category relevant to the status of the land and the landholder.[48]

The legal regulations regarding the waqfs with a free status acknowledged the dues that were collected on behalf of the sovereign and the occasional revenues that were reserved for the benefit of the waqf. Unless stated otherwise, this acknowledgment was done by an unequivocal formula that

41 İnalcık – Quataert (ed.), *An Economic and Social History of the Ottoman Empire*, 123; Ergenç-Taş, "Assessments on Land Usufruct and Ownership", 1-32.

42 Orbay, "Imperial Waqfs within the Ottoman Waqf System", 135–53.

43 İnalcık - Quataert, *An Economic and Social History of the Ottoman Empire*, 122.

44 Ibid.

45 For a detailed discussion of the terms and concepts similar to serbestiyet, see Yılmaz, "From Serbestiyet to Hürriyet", 202–30.

46 Tabakoğlu says that the dues like *cürüm* (fines), *tayyârat* (occasional revenues), *gerdek* (tax on marriage), *yava* (stray cattle), and *bâd-ı hevâ* were collected under the name *niyâbet*; Tabakoğlu, "Resim", 582-584; Şensoy, "Mukataalarda Muhasebe Kayıtları", 218; see also Sağlam, "Son Dönem Osmanlı Gelir Kaynaklarının Cumhuriyet Dönemi Gelir Kaynaklarıyla Mukayesesi", 113.

47 Sahillioğlu, "Bâd-ı Hevâ", 416-418

48 For a more detailed discussion see Tabakoğlu, "Resim", 582-84"; Darling, *Revenue-Raising and Legitimacy*, 126, 162; Barkan, "İmparatorluk Devrinde Toprak Mülk ve Vakıfların Hususiyeti", 906-42.

generally took its intensified tone from the *mülk*-status of the land before its conversion to a waqf.[49]

For instance, a specific *kanunnâme* that dates to the reign of Mehmed II (1451-1481) dealt with local officials in Rumelia and the fiscal revenues and administrative roles assigned to them. According to this regulation multiple figures could potentially supervise and collect the revenues from the following sources: *mevkûfât* (escheated or unassigned *timâr* lands, and unclaimed properties),[50] *yava*,[51] and *kaçgun*.[52] This case points to certain rules that aimed to regulate the claims within the established fiscal, military, and administrative order.

Hizra and Mehmed held contracts (*berat*s) entitling them to collect certain revenues in two revenue units (*mukâta'a*) for three years beginning on 15 Muharrem 866 (20 October 1461).[53] The contracts of these two contractors (*mukâta'acı*s) obliged the *kâdı*s to collaborate with the *mukâta'a* holders in overseeing the registration of revenues and the preservation of records. When the *kâdı*s found a runaway slave or stray cattle, they were to hand these over to the *mukâta'a* holders. However, the same document denied these two *mukâta'a* holders the right to intervene in such cases when the stray cattle belonged to the districts of *Koyun-eri* and *Tatar*.[54] In these circumstances *yava*s should be reserved for the heads of the local security forces (*subaşı*s), most likely as part of their official pay. Stray cattle and runaway slaves found in military campaigns (*akın*), however, should be delivered to the two *mukâta'a* holders. The document also upheld the

49 The *waqf* status did not significantly change the conditions of land that had attained freehold (*mülk*) status already. For a detailed discussion, see Barkan, "İmparatorluk Devrinde Toprak Mülk ve Vakıfların Hususiyeti", 906-42.

50 Barkan, "H. 974- 975 (M. 1567-1568) Malî Yılına Ait Bir Osmanlı Bütçesi", 277-332; Darling, *Revenue Raising and Legitimacy*, 65; Özel, "Limits of the Almighty", 226-246.

51 Stray cattle.

52 An absconding or runaway slave.

53 "Rumeli mevkûfâtını ve yuvasını ve kaçkûnunı ve Filibe haslarınun yuvasını dârende-i misâl-i şerif Edreneli Kassab Fideoğlı Hızır'a ve Filibeli Hacı Ahmedoğlu Mehmed'e sene sekiz yüz altmış altısında Muharrem ayınun on beşinci (15 Muharrem 866) gününden üç yıla altı yüz seksen bin akçeye ve sekizbin yüz altmış akçe resm-i berâta mukâtâ'aya virdüm ve buyurdum ki, varub kendiler ve âdamları yüriyüb teftîş edeler, her kandaki mevkûf timâr ve köy ve mezra'a ve çiftlük ve nesne hâsıl olur yer bulunursa hâsıl alub tasarruf ideler." İnalcık - Anhegger, *Kânûnnâme-i Sultânî*, 26–28; Akgündüz, *Osmanlı Kanunnâmeleri*, I, 392.

54 "Koyun-eri ile Tatar'un yuvası subaşılarundur." Here the document does not provide details regarding the particulars of what determines whether a *yava* belonged to Koyun-eri and Tatar. In general, this type of warning is meant to make clear the spatial borders between the revenue units. İnalcık - Anhegger, *Kânûnnâme-i Sultânî*, 26–28; Akgündüz, *Osmanlı Kanunnâmeleri*, I, 392.

rights of *mukâta'a* holders against certain ethnic-military divisions' claims on these two revenues.[55] The regulation warned the local officials, such as *sancakbeyi*s, *kâdı*s, and *subaşı*s[56] to cooperate with the *mukâta'a* holders and not to interfere with their potential revenues. Furthermore and remarkably, it warned the representatives of waqfs and *mülk*[57] lands not to impede the *mukâta'a* holders' work by arguing that a *kaçgun* caught on their lands belonged to them.[58]

The last warning is interesting because the waqfs and private landholders were generally allowed to benefit from such occasional or incidental sources of revenue called *bâd-ı hevâ* or *tayyârât*.[59] Managed autonomously, these were free of the interference of government-authorized third parties. Ideally, grant holders could use these properties themselves by leasing, donating, or endowing them; and their heirs could inherit them. All the actual or potential revenues expected from such freehold lands within "their well-defined borders" belonged to the grant holder.[60]

For instance, one document describes the revenues and the conditions regarding lands in Varna belonging to İsmihan Sultan, the daughter of Selim II, that were turned into waqf to provide revenue for her endowments in Istanbul.[61]

> Karye-i mezbûre sınırunda vâkî' olan cemî' erâzî ve mezârîyye tevâbi'i ve levâhiki ve bilfiil mevcûd olan reâya ve evlâd-ı reâya ve evlâd-ı evlâd-ı reaya ve karye-i mezbûreye gelib minba'd mütemekkin olan haymanası ile ve haraç ve ispençeleri ve gallâtı ve sâir rüsûmâtı ve adet-i ağnâm ve bâc-ı bazâr ve ihtisâb ve ihzârı ve bâc-ı pây-ı ağnâm ve gâv ve gavmişan-ı reâya-yı karye-i mezbûre ve gayrıhı ki ez hâriç âmedend ve bâd-ı hevâ ve niyâbet ve cürüm ve cinâyet ve beytülmâl-i hâssa ve 'âmme ve yava ve kaçgun ve mâl-ı gâib ve mâl-ı mefkûd ve resm-i arûsâne ve tapû-yı zemin ve tayyarâtı ve sâir müteveccihâtı ve

55 Based on their service on the land.

56 Superintendents of the local security forces.

57 Setting aside of large tracts of public lands for a specific grantee; private property.

58 "Ve tuzcılarda ve çeltükcilerde ve doğancılarda ve müsellimlerde ve levend-oğlanlarında ve 'azeblerde ve gör[enc]ilerde ve derbend köylerinde ne kadar kaçgun ve yuva davar bulunursa zikr olan mucebince kâdıları ma'rifetiyle bile mutasarrıf ola ve sancakbeyleri ve kâdıları ve subaşıları ve yerine duran adamları hiç vechile mâni' olmayalar ve vakıf ve mülk köylerde olan kaçgun esir dahî zikr olduğu mûcebince bile mutasarrıf olalar, mülkümde ve vakfımda tutuldu deyu kimesne mâni' olmaya…." İnalcık - Anhegger, *Kânûnnâme-i Sultânî*, 28.

59 Minovi - Minorsky, "Naṣīr Al-Dīn Ṭūsī on Finance", 755-89.

60 İnalcık, "Autonomous Enclaves in Islamic States", 112-34.

61 Sezer, "XVI. Yüzyılda İsmihan Sultan'a Ait Dupniçe Mülk Toprakları"," 375-95.

> bi'l-cümle kâffe-i hukûk-ı şer'iyye ve âmme-i rüsûm-ı örfiyyesiyyle min külli'l-vücûh serbest mefrûzu'l-kalem ve maktû'u'l-kadem merhûm İsmihan Sultan'a temlik…[62]

Similarly, an order issued upon the complaint of the *mütevelli*[63] of Selim I's waqf prevented third parties' interference with unclaimed properties and incidental dues. The order stipulated that the *subaşı*s, *çavuş*es, and *sipahi*s could under no circumstances claim *yava*, *kaçgun,* and other incidental dues (*bâd-ı hevâ*) within the borders of the waqf. People were to deliver whatever they found on the lands of the waqf to its revenue collectors (*câbîs*[64]).[65] The *kânunnâme* of Biga also began with a statement on the free status of the waqfs founded by the sultans and high-ranking officials (*selâtin* and *ümerâ*) that states that no one should interfere with these waqfs' claims on *yava* and *beytülmâl*.[66]

The term *beytülmâl* primarily referred to the public treasury but in this context was related to the Ottoman-Islamic legal principle that stipulated the escheat of heirless, other unclaimed, and abandoned properties to the public treasury. The normative texts dating back to the late fifteenth century define the types of unclaimed property and the procedures to observe when a property fell unclaimed. A few common scenarios were that the owner died without heirs (*beytülmâl*), or was absent (*gâib*) or missing (*mefkûd*) for a certain period during which time no one knew of his or her whereabouts. Stray cattle or other found animals (*yava*) and runaway slaves (*kaçgun*) were often included in this category of unclaimed property. These served as revenue for the offices or officials entitled to claim and keep them by established practices and valid contracts.

The revenue expected from such unclaimed property was of an irregular and occasional nature. It was clustered together with other revenue items of a similar nature under the rubric of *bâd-ı hevâ*[67] (wind of the air) or *tayyârât* (volatile gains). Other revenue sources included in this cluster were fines imposed on offenders guilty of crimes and transgressions (*cürm*

62 Barkan, "İmparatorluk Devrinde Toprak Mülk ve Vakıfların Hususiyeti", 906-42.

63 Trustee or supervisor.

64 İpşirli, "Câbî", 529-30.

65 Ahmed Akgündüz, *Osmanlı Kânunnâmeleri*, VI, 334.

66 "Evkâf-ı selâtîn ve evkâf-ı ümerâ serbest olup beytülmalına ve yavasına kimesne dahl etmeye deyu ellerinde selâtîn-i mâziyeden hükümleri ve padişahımızdan mukarrernâmeleri vardır…" BOA, *Tapu Tahrir Defteri*, nr. 59, s. 1; Ahmed Akgündüz, *Osmanlı Kânunnâmeleri*, III, 157-158; see also İstanbul Kadı Sicilleri Eyüp Mahkemesi 182 Numaralı Sicil, LXXII, 153.

67 Lewis, "Bād-i Hawā". Akgündüz, *Osmanlı Kanunnâmeleri*, I, 184-86.

ü cinâyet),[68] dues on marriage (*resm-i arûs*),[69] fees charged on the transfer of the use rights on cultivable lands (*çiftlik tapusu*), and fees on title deeds of plots used to build houses (*ev tapusu*).

Lewis touch upon the similarities of the *bâd-ı hevâ* cluster of dues and fees to the very disputed *aerikon* tax in the Byzantine Empire.[70] John Haldon observes that the term *aerikon* was used to mean "fines imposed for infractions of the imperial laws."[71] He argues that while the earlier sources indicate the occasional nature of the *aerikon*, the sources of the later (eleventh and thirteenth) centuries suggest that the term applied to regular cash impositions in the Byzantine state. According to Haldon *aerikon* was an element of the taxes imposed on land and agricultural workers (*demosia*),[72] which was also the name of the treasury that received fines imposed on private contracts in case of violations of the terms of exchange.[73] Ivan Biliarsky observes the arguments on the collection of *aerikon* by the abbots of monasteries and by the rulers' depository rather than the state—which is reminiscent of the formula in free status lands in the Ottoman Empire. He argues that in the Bulgarian context (*ariko*) it was more like an additional tax on stock breeding, but the fiscal legal institution was also borrowed from its Greek form.[74]

The Arabic word *tayyârât* was also used in a similar context with *bâd-ı hevâ*. It was employed either along with it, or alone to refer to revenues of an occasional or volatile nature.[75] The type of unclaimed properties, *beytülmâl*

68 For instance, the *hâssa* lands assigned to İskender Bey, who was the governor (*mîr liva*) of Malatya, were given to mukâta'a. Based on the *tahvil* (the period under which the mukâta'a was contracted), Mehmed Bey would undertake the collection of the following revenues: *mahsûl-ı resm-i arûs ve niyâbet ve bâd-ı hevâ ve beytülmâl ve mâl-ı gaib ve mâl-ı mefkûd, yuva ve kaçgun ve cürm ü cinâyet der nefs-i şehir ve bazı kurâ*. "Hasha-i İskender Bey mîr-liva-i Malatya an tahvil-i Mehmed bey b. Yahya Paşa." BOA, *Maliyeden Müdevver Defterler*, nr. 15450, s. 1, 925 (1519); See also Sahillioğlu, "Bâd-ı Hevâ", 416-18; Akyılmaz, "Resm-i Ârus", 115-28.

69 Ibid.

70 Lewis, "Bād-i Hawā"; see also İnalcık - Quataert (ed.),. *An Economic and Social History of the Ottoman Empire,* 69-72.

71 Haldon, "Aerikon/Aerika", 136-42.

72 Rather than the Greek etymology he derives the word from the Latin *aer* or *aeris*, which means copper or bronze that also refers to coinage; Haldon, "Aerikon/Aerika", 140.

73 For further information, see Miller, "The Basilika and the Demosia", 171-91.

74 Biliarsky, *Word and Power in Mediaeval Bulgaria*, 409-12.

75 "İrâd-ı tayyârât ve bâd-ı hevâ..." BOA, *Cevdet-Dahiliye*, Dosya nr. 348, Gömlek nr. 17370, 1104 (1692-93); BOA, *Cevdet-Maliye*, Dosya nr. 702, Gömlek nr. 28694, 1151 (1738); BOA, *Mühimme Zeyli Defteri*, nr. 18, h. 240^{b}/1, 1015 (1606); BOA, *Mühimme Defteri*, nr. 85, h. 410, 1040 (1631).

specifically, were either mentioned along with the *tayyârât* or considered under that cluster name.[76] The most salient link between *bâd-ı hevâ*, *aerikon,* and *tayyârat* is their reference to revenues of an irregular nature, and the collection and collectors of which were somewhat unspecific and showed variations.[77] Their origins often dated back to pre-Ottoman days, and as such, they were considered customary obligations (*tekâlif-i örfiyye* and *tekâlif-i emîriyye*). Their claim and collection presented complicated challenges to agents who were charged with various administrative and military/security responsibilities. The relevant regulations both in general and provincial *kânunnâmes* mostly dealt with specifying the rightful claimers of unclaimed properties depending on the circumstances. The realization of these revenues differed from the collection of regular taxes and dues based on agricultural production, commerce, and other fiscal transactions.

Legal Modifications and Fiscal Accommodation

Ideally, the revenues were allocated to provide a better administration and to accommodate the fiscal interests of local officials, landholders, and the imperial center. The elements that determined the allotment of the revenues for the related parties in a locality were: (1) the status of the land (whether it was *mülk*, *vakıf, timâr* or *mîrî*), (2) the revenue-yielding capacity of the lands, and (3) the title holders in the locality (such as *mîr-i livâ*, *subaşı*, *sâhib-i timâr*, *zâ'im*, *mübâşir*, *emîn*, etc.). These elements worked interactively to define a legitimate claim on a revenue source. However, de facto conditions that prevailed in a locality also affected the distribution of the benefits expected of these items and necessitated modifications through imperial regulations.

The modifications affected the cluster of unclaimed properties and other incidental revenues, especially when they involved the free status lands. While the rules and regulations acknowledged each land/title holder's claims within set bounds and measures (*mefrûzu'l-kalem*, *maktû'u'l-kadem*), the modifications could help to redistribute these revenues among the relevant parties.

76 See BOA, *Mühimme Mühimme Zeyli Defteri,* nr. 18, h. 240^{b}/1, 1015 (1606); BOA, *Mühimme Defteri*, nr. 85, h. 410, 1040 (1631).

77 The casual items of revenue are called *tayyarāt* by Nasīr al-Dīn Tūsī (d. 1274). Minovi - Minorsky, "Naṣīr al-Dīn Ṭūsī on Finance",755-789; Tabakoğlu also defines these types of revenues (dues on fines, marriages, bâd-ı hevâ, and tayyârât) as "The occurrence is left to chance" (*oluşması tesadüflere kalmış*), or simply causal revenues; Tabakoğlu, *Osmanlı Mali Tarihi*, 294, 434.

For instance, a *kânunnâme* prepared during the reign of Bayezid II in 897 (1487) for Hüdâvendigar Province explained the type of revenues and their authorized collectors. Accordingly, in a free *timâr* land the revenues that accrued from stray animals and fugitive male and female slaves (*abd-i âbık* and *kenizek*) were reserved for the *timâr* holder. Tax-paying subjects, either the *reaya* of that *timâr* land or any *reaya*, who found one of these revenues (stray animals or fugitive slaves) in that specific *timâr* land should deliver them to the *timâr* holder. The holder was also entitled to keep unclaimed properties and other *bâd-ı hevâ* like the fines collected upon certain transgressions (*cemi'-i cerâyîm-i reâya*). Since they were assigned fully to *timâr* holders, local administrators could not claim any share.[78]

However, in non-free (*serbest olmayan*) *timâr* lands, the *timâr* holders had to share half of the revenue that accrued from the said incidental instances with the governor of the province (*beylerbeyi*). This revenue was divided into three shares where a security chief (*subaşı*) was appointed and served in the same area.[79]

Imperial registers (*defter-i hâkânî*) complemented *kânunnâmes* when deemed necessary. The final words of legal regulations referred to the relevant imperial registers for details and clarification. They called attention to these registers, the force of their provisions, and the need to adhere to them as follows: "*itibar defteredir*, *defterde bir hususa tayin olunmadığı takdirce*..., *kuyûd-ı defter itibarda akvâdır*, *mukayyed der defter-i atîk*."[80] The registers helped to prevent any unauthorized third-party claims on the revenues. When the local figures and officials quarreled over who was the rightful claimer and what was the status of the lands in question, they demanded a copy of the imperial register to check the instructions. For instance, a submission prepared by the *kâdı* of Yanbolu documented a dispute between the waqf and *mîrî*.[81] On behalf of *mîrî*, *beytülmâl-ı hâssa emini* intervened in the estates of the *reaya* who died heirless in waqf land. Upon the complaint

78 BOA, *Tapu Tahrir Defteri*, nr. 23, s. 3; Akgündüz, *Osmanlı Kanunnâmeleri*, c. III, 187.

79 See, for example, BOA, *Topkapı Sararı Müzesi Arşivi Evrakı*, Dosya nr. 889, Gömlek nr. 59, C 1101 (March 1690): "Eğribucak'da vâki' Harameyn-i Şerifeyn Evkâfı'ndan Ayvalık ve Kafirağlı nam karyeler reayaları kadîmü'l-eyyâmdan mefrûzu'l-kalem ve maktû'u'l-kadem min külli'l-vücûh serbest olup hâsıl olan mahsulatları ve üzerlerine edâsı lazım gelen hukuk ve rüsûm-ı raiyyet ve cizye ve ispençe ve adet-i ağnâm ve cürm-i cinâyet ve bâd-ı hevâ ve mâl-ı mefkûd ve yuva ve kaçgun müjdegânesi ve arûsane ve sâir rüsûm-ı raiyyetleri ne ise vakfa hâsıl kayd olunup..." BOA, *Mühimme Defteri*, nr. 7, h. 493, R 976 (Sept.1568); Barkan, *Kanunlar*, 4-5. For an example of sharing the revenues in *timâr* lands, see BOA, *Mühimme Defteri*, nr. 7, h. 1493, 5 Z 975 (1 June 1568).

80 See for instance Barkan, *Kanunlar*, XXXI, 272; *Kavanîn-i Örfiyye-i Osmanî*, 17ª.

81 BOA, *Topkapı Sararı Müzesi Arşivi Evrakı*, Dosya nr. 223, Gömlek nr. 11.

of *mütevelli*,[82] the *kâdı* asked that the imperial register be sent to the district (*kat'-ı nizâ' için defter-i hâkânînin bu cânibe irsâli lâzımdır*) in order to solve the issue.[83]

In the *kânunnâme* of Karaman the *timâr* lands under the title of *havass-ı hümayun*, *havâss-ı şehzade*, *havâss-ı ümerâ-i elviye*, *dergâh-i âli hüddamı, kılâ' dizdârı* and sixty-five *nefer* sergeants of *emîr-i alem* were all designated *serbest*. Thus, the governor of a sub-province (*mîr-i livâ*) was denied claiming half of the *bâd-ı hevâ* on these lands because the registers stipulated that their holders were entitled to all (*tamâmen*) and not half (*nısf*) of the *bâd-ı hevâ* revenues.[84] The literal meaning of the words and phrases used in the regulations was not enough to define the rightful collectors. The registers (*defter-i hâkânî*) clarified whether the revenues in question were partially or entirely assigned to the holder.

However, some of the earlier registers were vague about determining the rightful collectors. For instance, the word *serbest* was used vaguely regarding the waqf lands in the *kânunnâme* of Halep. Thus, provincial rulers could claim the incidental revenues that occurred on these lands. According to the old register (*defter-i atîk*), the "free status" of waqf lands "meant that no one except the trustees could intervene with the people working on waqf lands so that it thrives".[85] But rather than suggesting a firmer definition of the free status of the land, the register stated that not all waqf lands in the region were designated as full (*tamâm*) waqf. Some lands combined waqf and *mîrî* shares (*hisse*). In these shared (*hisseli*) lands, the provincial rulers[86] claimed the accidental revenues. This resulted in conflicts when the waqf trustees claimed all the revenues or the same share that the *mîrî* claimed before, and the producers (*reaya*) suffered.[87]

82 Of the waqf of Haremeyni'ş-Şerîfeyn.

83 BOA, *Topkapı Sararı Müzesi Arşivi Evrakı*, Dosya nr. 223, Gömlek nr. 11.

84 "Feemma bu zikr olunan havâss ve zeâmetler ve serbest timârlar muayyen olup hîn-i tahrirde bâd-ı hevâları tamamen yazılıp nısf kayd olunmamıştır"; Akgündüz, *Osmanlı Kanunnâmeleri*, c. III, 325.

85 "Vakfın serbest olmasından maksud reayasına mütevellisinden gayrı kimesne dahl etmeyip mamur olmaktır" BOA, *Tapu Tahrir Defteri*, nr. 281, s. 7, 959 (1551/52).

86 *Sancakbeyi* and *umenâ*.

87 "Bazı kura ve mezârîde Haremeyn-i Şerifeyn hissesi ve serbest evkâf hisseleri olup defter-i atikde serbest olmağla rüsûmdan ve bâd-ı hevâdan dahi vakfa hisse yazılıp cerime vâki' oldukda ümena tarafından cerimelerin aldıktan sonra vakfa dahi cerime gerek deyu mütevelliler yapışıp reaya ziyade mutazaccır oldukları vukû'ı üzere pâye-i serîr-i adâlet masîra arz olundukda, vakfın serbest olmasından maksud reayasına mütevellisinden gayrı kimesne dahl etmeyip mamur olmaktır çünkü tamam vakıf olmayıp hisse-i mîrî olmağla beher hal ümenâ dahl etmek mukarrer ola…" BOA, *Tapu Tahrir Defteri,* nr. 454, s. 5; Akgündüz, *Osmanlı Kanunnâmeleri*, c. V, 649; For a similar regulation on Azaz see BOA, *Tapu Tahrir Defteri*, nr. 506, s. 5, 978 (1570-71).

Apart from these, the existence of ethnic and military divisions also led to changes in the aforesaid formula. According to another copy of the *kanunnâme* of Halep prepared in 943 (1536) the customary taxes paid by a specific group (tribe) of Kurds (*İzzeddin'e tâbi Ekrâd tâifesi*),[88] were reserved for their chiefs (*begs*) alone. This group or tribe of Kurds (*Ekrâd taifesi*) was organized as a *liva* (sub-province) under İzzeddin Bey within the Province of Şam according to the Ottoman administrative divisions of 1527.[89] This particular group was to pay all customary taxes to their *begs* while they were to pay the regular agricultural taxes (like *öşür* and *resm-i çift*) to those who had the authority to control the land where this tax revenue was generated (*sâhib-i arz*).[90] Legal regulations were modified to accommodate the socio-cultural and economic conditions of the land in question.

Another example of similarly accommodational arrangements regarding the collection of unclaimed property and other *bâd-ı hevâ* is the case of Gypsies. Çingene Sancağı, the Romani Province, was not a geographical division but a political and administrative arrangement based on Romani ethnic identity and the auxiliary military services they provided in Rumelia. The sources indicate that the bey of the Çingene Sancağı, who was not a Romani, administered the fiscal and military affairs of the Romanis in the region as early as the late fifteenth century.[91] Muslim Gypsies were exempted from *tekâlif-i örfiyye* in the sixteenth century in exchange for their military service—mostly in logistics.[92] The regulation prepared in the 1530s stipulated that the bey of the Çingene Sancağı would be in charge of claiming all the customary levies (*rüsûm-ı örfiyye*) including fines imposed on criminal and transgressive offenders (*cürm ü cinâyet*) and other *bâd-ı hevâ* that involved the Romanis affiliated with the *sancak*. However, this

88 Further inquiry is needed on the usage of the terms *ekrâd* (Kurds) and *etrâk* (Turks) in sixteenth-century Aleppo and the surrounding regions. Apart from its ethnic meaning, the term *ekrâd* also reflected the socio-cultural dynamics of the region. For the relations between the sedentary and nomadic components of the region's population and the influence of these divisions on military and administrative arrangements see, Sayılır, "Türkiye'de Konar-Göçerlerin Sosyo-Tarihsel Yapıları", 23-38; Öztürk, "İzziye Kazasının Kuruluşu ve Milli Mücadeledeki Yeri", 29-45; Akis, "Tahrir Defterlerine Göre 16. Yüzyılda Kilis Sancağındaki Aşiretlerin İdareleri", 9-30.

89 Enver Çakar, "XVI. Yüzyılda Şam Beylerbeyiliğinin İdari Taksimatı," *Fırat Üniversitesi Sosyal Bilimler Dergisi* 13, no. 1 (2003): 355–60.

90 "Ekrâd taifesinin İzzeddin Beğ'e tâbi olanların cürm ü cinâyetleri ve sâir rüsûm-ı örfiyyeleri ve adet-i ağnamları beğlerine müteallik olup ziraat ettikleri yerden öşrün ve resm-i çiftlerin sâhib-i arza verdüklerinden sonra mâ'ada rüsûmları beğlerine hasıl kayd olunmuştur"; Akgündüz, *Kanunnâmeleri*, c. V, 658.

91 Altınöz, "Çingeneler", 291-94.

92 Dingeç, "XVI. Yüzyılda Osmanlı Ordusunda Çingeneler", 33-46; Çelik, "Community in Motion", 390, 394, 413.

rule excluded the Romanis who lived and worked on most waqf and *timâr* lands as regular subjects.[93]

The wording and the clauses of legal regulations changed little from the late fifteenth to the late eighteenth century. However, together with the imperial registers *kânunnâme* texts, particularly the provincial *kânunnâme*s, were bound to the social, cultural, political, and fiscal dynamics that prevailed in a region. The *kânunnâmes* were adapted to meet the evolving needs of the land regime and the fiscal interests of corporate landholders, ensuring continuity with the *kanûn-ı kadim* while reflecting changing circumstances.

Heirless Estates in Waqf Lands and Conflicting Property Claims

Theoretically, unclaimed properties were deemed as revenue belonging to the *beytülmâl* (in the sense of Public Treasury)[94] as these sources were supposed to serve specific public needs. If a deceased or missing owner did not have a legally valid heir or designated successor, the treasury escheated his/her properties in principle—thereby allowing and empowering its agents to act accordingly. The Islamic legal principles that applied the treasury and the government regulations regarding the management of revenues provided a framework that guided the collection and management of these revenues in general. The Ottoman *beytülmâl emâneti*[95] (in the sense of a specific Ottoman institution) was in charge of heirless estates, but its agents had to observe certain procedures in doing so. Appropriate collection of them, which included non-commercial and non-agricultural possessions as well as cash and precious materials, depended on several factors.[96] As personal possessions these properties were subject to ownership rights and might range from a small piece of fabric to a well-adorned mansion.

Based on the law of *serbestiyet*, the free status waqf lands maintained their claims on heirless estates and other unclaimed properties of their registered *reaya*, while the *mîrî* was deprived of any claim. However, as individuals,

93 Barkan, *Kanunlar*, 249–50.

94 *Beytülmâle râcî'*, *Beytülmâle âid*, etc.

95 As an institutional structure the organization was named *beytülmâl emâneti* or *beytülmâl mukâta'ası* in the Ottoman Empire. BOA, *Hatt-ı Hümâyun*, Dosya nr. 1399, Gömlek nr. 56288; BOA, *İbnül Emin-Maliye*, Dosya nr. 72, Gömlek nr. 6714, 1116 (17051705); BOA, *Ali Emiri-Ahmed I*, Dosya nr. 2, Gömlek nr. 162, 20 L 1014 (28 Feb. 1606), among others.

96 Bilgin - Bozkurt, "Bir Malî Gelir Kaynağı Olarak Vârissiz Ölenlerin Terekeleri ve Beytülmâl Mukataaları", 1–31; Çimen, "Public and Private Property Claims in the Ottoman Empire", 27-34, 96–100.

the registered *reaya* also held the right to endow, bequeath, or donate their properties according to their will. Though implemented under valid legal procedures, these actions impeded the rights of the free landholder in question. These situations manifested the immunity of the *reaya* in relation to the immunity of the landholder. In some cases, other free-status corporate groups and *mîrî-beytülmâl*[97] were also involved in claiming a share or revenue, demonstrating how elaborate and intricate the nature of property relations was. The following cases provide insight into settling disputes related to multiple claims and Ottoman notions of proprietorship. They illustrate how the applied court procedure was to resolve each case considering the instrumentality of different agents, deeds, and attestors.

Case 1

When Mehmed Çelebi, known as Cimcime Defterdâr,[98] died without a known heir (*vâris-i marûf*) probably in late 981 or early 982, the agent of the treasury (*beytülmâl-ı hâssa emini*[99]) escheated the deceased's estate to liquidate it properly and to deliver the revenue to the treasury. Müstedâm b. Abdullah brought a lawsuit against this action, stating that the deceased Cimcime Defterdâr was the founder of certain waqfs in Temeşvar and that Müstedâm was the *mütevelli* of these waqfs.[100] He claimed that Cimcime Defterdâr had bequeathed the addition of one-third of his estate to these waqfs (*evkāf-ı merkūmeye ilâve etmek için hâl-i hayâtında sülüs-i mâlını vasiyyet etti*) and had appointed Müstedâm as the custodian and executor of his will (*vasiyyetinin tenfîzine ve mesârife sarf etmeye vasî secti*). Müstedâm provided the court with the necessary legal document, an official copy (*hüccet*[101]) of the record of the Court of Temeşvar regarding the Cimcime Defterdâr's will. The *hüccet* indicated that the will was drafted in the presence of the then incumbent judge of Temeşvar, the *beytülmâl-i hâssa emini*, the *emin*'s clerk, and two witnesses–Mehmed and Pervîz–and notarized by the court. Based

97 The official body in charge of managing and collecting unclaimed properties and heirless estates on behalf of the treasury; Çimen, "Public and Private Property Claims in the Ottoman Empire", 169-200.

98 Literally, the affable and small director of finances.

99 The trustee of the estates of heirless deceased government officials and ordinary people whose estates were valued above 10,000 *akçes*. As the officers in charge of claiming the heirless properties on behalf of the treasury, they were generally named in the court registers *beytülmâl emini* or *emin-i beytülmâl*. The *beytülmâl* officers were in charge of liquidating the properties they acquired from the estate of an heirless deceased person.

100 İstanbul Kadı Sicilleri, Galata Mahkemesi 5 Numaralı Sicil, XXXII, 40–41, judgment (hüküm): 10, original text nr. [6-2].

101 The copy of an entry in the *kâdıs*' register, legal deed.

on this document and the confirmation of the group of trustworthy and knowledgeable witnesses (*'udûl-i müslimin*) assisting the court, the judge approved Trustee Müstedâm's appeal and decided that it was appropriate to pay to the waqf 94,895 *akçes* from Cimcime Defterdâr's estate (*muhallefât*) in keeping with his will.

The volume in question included three issues related to Cimcime Defterdâr's estate. While two of them were related to his bequest in favor of the waqf—discussed above—the third indicated that Cimcime Defterdâr himself owed 119,602 *akçes* to the waqfs in question. Abdüllatif, another trustee of the waqfs, requested the repayment of this debt to the waqf out of the deceased's estate.[102] Abdüllatif presented to the court a *hüccet* issued by the judgeship of Temeşvar as evidence, and the court approved the trustee's appeal.

The *beytülmâl* officers had already taken charge of the deceased's estate in keeping with the established procedures. These agents were responsible for overseeing the liquidation of the properties they sequestered from the estate of an heirless deceased person and for delivering them to the treasury. Ideally, this process was completed only after the lawful claims against the estate were settled properly. The liquidation of the estates was necessary mainly in two respects; for being able to deliver this revenue to the treasury, and for being able to spend it on a dazzling spectrum of government expenditures.

It is unclear how the agents of the Treasury remained uninformed of the evidence regarding the deceased's debts and pledges when the estate was sequestered. But such delays were not unusual under the conditions of those times. It was in recognition of the possibility of delayed claims that the procedures allowed an interval before the final appropriation of an estate as revenue for the treasury, whether fully or partially.

The two examples above indicate that the due legal process prioritized the discharge of loans and the honoring of lawful pledges. The system recognized the precedence of an individual's contracts, pledges, and benevolent commitments over the claims of the treasury. Copies of court records (*hüccet*s) verifying such pledges along with the acknowledgment of a claim by the knowledgeable and trustworthy witnesses (*'udûl-i müslimîn*) assisting the court facilitated the settlement and reconciliation of conflicting claims, if with some delay.

102 "Müteveffâ-yı mezbûrun zimmetinde evkāf-ı mezbûrenin karzdan râyicü'l-vakt yüz on dokuz bin altı yüz iki akçe hakkı vardır. El-ân muhallefâtından bu mikdârın vakfa ödenmesi lâzımdır"; İstanbul Kadı Sicilleri, Galata Mahkemesi 5 Numaralı Sicil, XXXII, 110, judgment (*hüküm*) nr. 146, original text nr. [96-4].

People might have chosen to leave their property to specific individuals or to dedicate it to serve certain charitable purposes, rather than letting it to pass to the treasury or a duly authorized waqf or *timâr*. One of the most frequent ways in which an heirless person resorted to delimit and even eliminate the treasury agents' (*beytümalcis*') claims upon the estate was to bequeath it to individuals of his or her own choosing—utilizing a legally valid will, signed by the testator and witnesses in the *kâdı*'s presence. The legal document (*hüccet*) issued by the court attesting to the will's validity served as strong evidence in future conflicts, if there were any. The supportive testimony of the trustworthy and knowledgeable people assisting the court (*'udûl-i müslimîn* also called *şuhûdü'l-hâl*) likewise helped to establish the legal validity. Founding a waqf was an even more common and effective practice to which heirless people could resort to prevent the sequestration of their possessions for the treasury as the following cases illustrate.

Case 2

The collection and liquidation of unclaimed properties had a considerable potential to instigate conflicts between the waqf and the representatives of the treasury, i.e. the *mîrî-beytülmâl*. Written documents and verbal statements backed by reliable witnesses could change the fate of an unclaimed property even in the face of *beytülmâlcis*[103] who were particularly eager to claim and hold that property. No less effective in this regard was the diligence and prompt action of waqf agents—like trustees (*mütevelli*), ushers (*mübâşir*), and revenue collectors (*câbi*)—in pursuing estates that could be potentially turned into a revenue source for their waqf. This was also key in the case of reimbursements.[104]

For instance, a lawsuit filed by el-Hac Hasan Bey, a trustee of the Haremeyn-i Şerîfeyn (Mecca and Medina) waqfs, against Mustafa Çavuş, the *beytülmâl-i hâssa emini*[105] in Galata in 1614 concerning a house sheds some light on the nature of tensions between waqfs and *beytülmâlcis*. According to the case, a soldier (*cündî*), Mehmed b. Ali, prepared a testament eight years prior whereby he turned the house he owned into a waqf that would serve as his house (*menzil*) until his death and then that of his manumitted slaves

103 Agents and contractors that claimed abandoned properties or heirless estates on behalf of the treasury.

104 See Yıldız, *1660 İstanbul Yangını ve Etkileri*, 79.

105 The agent of the treasury authorized to collect the heirless or abandoned estates of the *askerî* class—regardless of its amount—and of *reâya* whose estate is worth more than 10,000 *akçes*.

(*utekâ*) until their extinction (*inkirâz*), and thereafter it would belong to the "poor of Medina."[106] The house was in the district of Beşiktaş in the *mahalle*[107] of Ekmekçibaşı. When Mehmed b. Ali and then his manumitted slaves died, *beytülmâlci* Mustafa Çavuş "illegally" claimed and sequestered (*bi-gayrı vech-i şer'î vaz'-ı yed eylemişdir*) the property. When the *beytülmâlci* was asked to explain his unlawful action, he rejected the accusation, arguing, "Since Mehmed died without a known heir, I claimed the house to hold it in trust on behalf of the *beytülmâl*, and besides, I am unaware of his will that converted the house to a waqf."[108] When the *mütevelli* Hasan Bey was asked to prove his claim, he brought to the court three witnesses who testified that *Cündî* Mehmed had indeed converted his house to a waqf ultimately for the benefit of the poor of Medina. Hasan Bey also presented to the court a copy of the record showing the registration (*tescil-i şerif*) of *Cündî* Mehmed's will. Accordingly, the *beytülmâlci* (*mîrî*) was supposed to remove the hold on the house in favor of the waqf.

At this stage the case was not fully settled as another trustee of the Haremeyn-i Şerîfeyn waqf, Hasan Çavuş, had to initiate legal action against Peymâne bt. Abdullah. He contended that Mehmed and his freed slaves no longer existed and therefore Peymâne's use of the house was unlawful.[109] However, Peymâne's answer revealed that she was the manumitted slave (*mu'tekâ*) of the deceased *Cündî* Mehmed whose testament approved her right to hold and keep the house until her death as discussed above. Despite the waqf trustee's denial, Peymâne proved her status as the (*mu'tekâ*) of the deceased with the help of trustworthy witnesses in her neighborhood.[110]

106 "Mehmed Bey b. Ali nâm cündînin mülkü iken târîh-i kitâbdan sekiz yıl mukaddem evvelâ kendi nefsine ba'dehû utekāsına ba'de'l-inkırâz Medîne-i Münevvere fukarâsına vakf ve şart edip teslîm-i mütevellî ve tescîl-i şer'î…." *İstanbul Kadı Sicilleri,* Evkaf-ı Hümâyûn Müfettişliği 1 Numaralı Sicil, XLV, 208, judgment (*hüküm*) nr. 142, original text nr. [51^{a}-3].

107 Urban quarter.

108 "Mehmed Bey fevt oldukda vâris-i ma'rûfu olmayıp terekesi beytülmâle âid olmağın menzil-i mezbûra emâneten vaz'-ı yed eyledim vech-i merkūm üzere vakf ve şart eylediği ma'lûmum değildir deyu münkir olup…." *İstanbul Kadı Sicilleri,* Evkaf-ı Hümâyûn Müfettişliği 1 Numaralı Sicil, XLV, 208, judgment (*hüküm*) nr. 142, original text nr. [51^{a}-3].

109 "Mehmed Bey b. Ali nâm cündînin mülkü iken târîh-i kitâbdan sekiz yıl mukaddem evvelâ kendi nefsine ba'dehû utekāsına ba'de'l-inkırâz Medîne-i Münevvere fukarâsına vakf ve şart edip teslîm-i mütevellî ve tescîl-i şer'î edip hâlâ kendi ve utekāsı münkariz olup menzil-i mezbûrun tasarrufu Medîne-i Münevvere fukarâsına âid olmuşiken mezbûre Peymâne bi gayr-ı vech-i şer'î vaz'-ı yed eylemişdir." *İstanbul Kadı Sicilleri,* Evkaf-ı Hümâyûn Müfettişliği 1 Numaralı Sicil, XLV, page 213, judgment (*hüküm*) nr. 147, original text nr. [52^{b}-1].

110 "Peymâne cevâb verip fi'l-vâki' mezbûr Mehmed Bey menzil-i mezbûru vech-i muharrer üzere vakf ve şart edip ve ben vâkıf-ı mezbûrun mu'tekası olmak ile

One might be curious whether the *beytülmâlci* was really uninformed or unaware of the will of the endower in a quarter that was within his jurisdiction as a revenue collector. Probably, he was not in as good a position as was the waqf trustee to know about the testaments and endowment deeds registered at the *kâdı*'s court. The trustee was interested in keeping track of developments that could potentially benefit the waqf.

It is also interesting to ask how and why the case ended up in court. Did the *beytülmâlci* and the *mütevelli* not have a chance to discuss the case and the relevant evidence and reach an agreement without going to court? Perhaps there was an ongoing tension between the holders of these two positions. After all, waqfs could divert much-needed sources of revenue away from the treasury, thereby undermining the income of individuals commissioned or authorized to collect revenue.

At any rate, this case illustrates how the courts of law (headed by *kâdıs* or *naibs*) worked in settling a dispute. It further shows that legal documents served as strong evidence in such settlements. The case also points to the complexity of ownership claims and relationships that formed around objects regarding their use, possession, and value as a source of revenue.

Case 3

Although rare there were also cases of conflicting property claims arising between two waqfs. For instance, the *mütevellis* of two different waqfs appeared before the court at the *Evkâf-ı Hümâyun Müfettişliği* (the Inspectorship of Imperial Endowments) to settle a dispute between their respective waqfs in 1031 (1622). Veli Bey, the *mütevelli* of the Waqf of Haremeyn-i Şerifeyn, was the claimant, and Ahmed Ağa, the *mütevelli* of the Hazret-i Eyüb el-Ensârî Waqf was the defendant. As the register reveals, Ahmed Ağa appropriated a deceased person's house on behalf of the Eyüb el-Ensârî Waqf.[111] The house was in the *mahalle* of Takyeci in the District of Eyüp. The deceased probably had lived in Takyeci. The document is silent about the rationale of Ahmed Ağa's sequestration of this house for the Eyüp Sultan Waqf. Quite likely, he did so because the deceased resided and worked on lands attached to the Eyüb Sultan Waqf and was a "subject of

menzil-i mezbûru ber-mûceb-i şart-ı vâkıf tasarruf ederim deyip…." *İstanbul Kadı Sicilleri,* Evkaf-ı Hümâyûn Müfettişliği 1 Numaralı Sicil, XLV, 213, judgment (*hüküm*) nr. 147, original text nr. [52^{b}-1].

111 His name is not recorded in the register. *İstanbul Kadı Sicilleri,* Evkaf-ı Hümâyûn Müfettişliği 1 Numaralı Sicil, XLV, 325, judgment (*hüküm*) nr. 276, original text nr. [85^{b}-1].

the waqf" (*vakıf reâyâsı*).[112] His property would end up as *beytülmâl* revenue allocated to the waqf in case he died without a surviving heir.

In his defense, Ahmed Ağa stated that he had appropiated the house for the *beytülmâl* of the Eyüb el-Ensârî Waqf (*vakf-ı mezbûrun beytülmâlı için zabt eyledüm*). However, the deceased had a testament that had already changed which waqf's interests would prevail over the other. The deceased had endowed his house first for his use and benefit (*süknâ*) and, after his death, for the equal benefit and use of his two wives Fâtımâ and Nâzenîn, then for his manumitted slave (*atîka*), Zamâne, after the death of his wives, and finally for the benefit of the poor of Medina upon Zamâne's demise. This deed and testament disallowed the Eyüb Sultan Waqf from acquiring a potential and valuable source and empowered the Haremeyn-i Şerifeyn Waqf (of Mecca and Medina) instead regarding the acquisition of the property in question in due course.

Interestingly, *Mütevelli* Ahmed Ağa was overzealous in escheating the house for the Eyüb el-Ensârî Waqf.[113] The deceased's two wives were still alive and entitled to keep the house as the legitimate heirs of the deceased. Ahmed Ağa was required to respect their rights, even if he was unaware (or pretended to be unaware) of the existence of a testament that altered the status of the house.

It was Veli Bey, the trustee of the Haremeyn-i Şerifeyn Waqf, who brought the case to court and the changed status of the house to Ahmed Ağa's attention. How did Veli Bey first become aware of Ahmed Ağa's action? One can imagine that the Harameyn Waqf was managed well, kept sufficiently punctual records regarding its potential future assets, and was able to keep an eye on actions involving these assets. More likely, it was the women, the deceased's two wives and manumitted slave,

112 "Menzil-i âti'l-beyâna Hazret-i Eyüb evkāfı beytülmâlına âid olmak zu'mu ile vâzı'ü'l-yed idiği…." *İstanbul Kadı Sicilleri,* Evkaf-ı Hümâyûn Müfettişliği 1 Numaralı Sicil, XLV, 325, judgment (*hüküm*) nr. 276, original text nr. [85^{b}-1].

113 Yıldız also mentions these types of situations in waqf properties with tenants. For instance, he examines the cases related to the waqf properties with *icâreteyn* and *mukâtaa* whose tenants died. He contends that the mütevellis were reluctant to grant the rights of the legal heirs, even when the stipulated conditions were met. He shows a decree (*buyruldu*) issued in 1689 that ordered, in cases where no heir shows up, these waqf properties with *icâreteyn* were to be escheated by the treasury. The decree proved that the treasury could put its overarching claim on such properties, and prevent the waqf's right to re-rent the waqf property. However, this is the case for the waqf properties with *icâreteyn*, not all of them; Yıldız, *1660 İstanbul Yangını ve Etkileri*, 76–81. For a more detailed discussion of waqf properties with *icâreteyn* see Ramazan Pantık, "Osmanlı'da İcâreteyn Uygulaması Hakkında Yeni Değerlendirmeler," *Vakıflar Dergisi*, Vakıflar Genel Müdürlüğü Yayınları, no. 48 (2017), 75-104.

who brought the matter to Veli Bey's attention, prompting him to file a lawsuit.

They were represented in the hearings, probably as witnesses who informed all parties that it was their right to continue to live in and use (*süknâ* and *tasarruf*) the house that the Eyüb el-Ensârî Waqf had impounded. The available record of the hearings does not refer to the presentation of written evidence (*hüccet* or registration data) regarding the deceased's will or the changed status of his house. However, it indicates that the trustworthy and knowledgeable observers (*'udûl-i müslimîn*) assisting the court acknowledged the plaintiff's position based on testimonies. In the end the court decided that the parties should act by the deceased's deed and testament, thereby protecting the three women related to him as well as the long-term interests of the Harameyn Waqf.

An heirless deceased person's testament that favored an endowment could thus provide the latter with a possible source of revenue (if of the incidental category). The endowments established by heirless individuals could also compromise the *mîrî*'s or treasury's lawful claims over an heirless estate and the revenue it would generate. This revenue (along with others from similarly "incidental" types) helped meet certain expenses of the palace and other government organs, offices, and agents. Still, the regulations, and legal practice allowed arrangements that transferred *mîrî* rights involving such potential revenue sources to waqfs, whether partially or entirely. Some waqfs appear to have taken advantage of this opportunity to acquire property in ways that hurt *mîrî* interests. However, it was also possible under certain circumstances that the legal status of a waqf property changed in a way that benefitted the *mîrî* (treasury). The following two cases exemplify these circumstances and shed some light on the grounds of a rightful claim.

Case 4

The legal formula for free lands (*serbest*) acknowledged and determined the rightful collector of revenue for a specific land. The land, its actual and potential revenues, people living on that land, and animals—whether living or found within those borders–became a matter of dispute among possible claimants in question. However, the revenue, which was more directly related to real or unregistered subjects and their possessions, was a complex issue that resulted in conflicting claims between parties involved.

A case that occurred in the Yenice village (*karye*) of the sub-district (*nâhiye*) of Terkos expounds the legal formula of the *serbestiyet* of a waqf over the unclaimed property. There, Hüseyin b. Mustafa, the *câbi* or the revenue

collector of the Waqf of Küçük Ayasofya, oversaw the acquisition of unclaimed properties on the lands of his waqf on its behalf. Hüseyin b. Mustafa seized, seemingly overzealously, the 147 sheep that a deceased non-Muslim (*zımmî*) left behind. However, the *haslar subaşısı*,[114] Dâvud b. Abdülmennân took Hüseyin to court for seizing the sheep unlawfully.

Hüseyin, the *câbî*, defended his acquisition of the sheep on behalf of his waqf based on the rule that stray animals (*yava*) found on the lands of a waqf should accrue to that waqf as revenue.[115] Hüseyin's argument was correct in the sense that the loose animals (*yava*) found on the lands of a waqf that had a free status belonged to that waqf. The estate of a deceased person who had no heirs also belonged to the waqf of free status—in case the deceased was a resident of the lands affiliated with that waqf. Hüseyin, the *câbi,* must have known that the owner of the flock of the 147 sheep he sequestered was not a resident of the lands affiliated with his waqf, for he considered the sheep loose. The animals had likely gone astray after their owner's unexpected death and disappearance.

Dâvud, the *subaşı*, however, argued that the deceased was not a resident of the lands affiliated with the aforesaid waqf. Rather, he was an outsider who happened to die there. Consequently, the sheep he left behind should be credited to the *mîrî-beytülmâl* under the *subaşı*'s supervision. (*Yabandan gelip mürd olan Londi'nin(?) metrukatı mîrîye râcidir zikrolunan koyunları kânun üzere ben mîrî için zabt ederim deyücek…*)[116] The *subaşı* preferred the word *metrukât* (possessions that a deceased person left behind; estate or inheritance) rather than *yava*. Rather than focusing on the issue of the sheep, the hearing revolved around the status and residency of the *zımmî* who happened to die in the waqf land.

Using the same word, *metrukât*, the judge agreed that the waqf could not claim a share in the *beytülmâl*—in the narrow sense of the term, namely the estate of a deceased person with no known heirs. He decided to put the surviving 145 sheep[117] under the *subaşı*'s trust for the *mîrî*. He was convinced that his decision conformed to the long-standing law regarding

114 A local security force commander who oversaw the imperial lands within his administrative jurisdiction and the collection of due revenues from these lands, which were reserved for the sultans and high-ranking officials.

115 "Koyunlar câbî olduğum vakıf karyenin toprağında bulundu, yavanın beytülmâli cânib-i vakfa ait olur deyû kabz eyledim dedikde…" BOA, *Topkapı Sarayı Müzesi Arşivi Evrakı*, Dosya nr. 1276, Gömlek nr. 40, 16 Ca 994 (4 June 1586).

116 BOA, *Topkapı Sarayı Müzesi Arşivi Evrakı*, Dosya nr.1276, Gömlek nr. 40, 16 Ca 994 (4 June 1586).

117 One of the sheep died a natural death, and one was ravaged by a wolf (*biri eceliyle mürd olup ve birisini kurd pâreleyub*).

these kinds of inheritance (*Bu makulelerin metrukâtı kânun-ı kadîm mûcebince vakfa zabt olunmayub mîrî için zabt olunagelmeğin…*)[118]

The brief record of the hearings in this case does not explicitly refer to any inquiries regarding the possibility of the existence of lawful heirs. However, the use of the term "trust" probably implies that the *subaşı* would be responsible not only for delivering the yield of this resource to the *mîrî* (treasury) but also for honoring the possible claims of legitimate heirs or creditors. As indicated above, regulations imposed an interval before the liquidation of heirless estates and unclaimed properties and allowed appeals even after the liquidation of assets. Davud, the *subaşı*, and other relevant agents of the *mîrî*, therefore, remained accountable for delivering sheep or their price to any heir and creditor who could prove the rightfulness of his or her claims on the deceased inheritance.

Case 5

Kiko, son of Kirko, and Ali were co-owners of the produce (*galle şerîki*) of an orchard (*bostan*) belonging to the Pertev Paşa Vakfı.[119] The orchard was in the *mahalle* of Ebulvefâ in Istanbul. As Kiko explained in the court, Mahmud Bey, Ali Bey, Süleyman Bey, and Havva Hanım were the descendants of the waqf's founder and holders of the right to use the orchard (*evlâd-ı vâkıf* and *mutasarrıf*s). They rented the orchard for two years (1096-1098/1685-1687) to Kiko and Ali for 5,500 *akçe*s per year. The tenants paid 11,000 *akçe*s in total to the *mutasarrıf*s.[120] After these two

118 This decision is a bit interesting given the phrase *kânûn-ı kadîm*. The revenue assignment of the waqf of Ebû Eyyub el-Ensârî included the inheritances of the deceased people who were not resident but died in the waqf land while s/he was a guest, or just accommodated there during his/her journey: "Hazret-i müşârun-ileyhün [Ebû Eyyûb-ı Ensârî] evkâfı karyelerine ve sâyir rüsûmâtı ve bâd-ı hevâsına ve cüz'î vü küllî ve hâricden gelüp müsâferet üzre iken müşârun-ileyhün toprağında fevt olanlarun beytülmâllerine hâricden dahlolunmayup evkâf zâbıtları zabt u kabz eylemek." BOA, *Topkapı Sarayı Müzesi Arşivi Evrakı*, Dosya nr. 1276, Gömlek nr. 40, 16 Ca 994 (4 June 1586); In another register the issue of 'müsaferet' was expounded as follows "emr-i şerîf mûcebince … hâricden gelüp evkâfı toprağında sâkin olup ve göçgüncilerün beytülmali… cümlesin vakfun zâbıtlarına zabt u kabz itdüresiz." BOA, *Mühimme Defteri*, nr. 88, h. 261, Ca 1027 (June 1618). There are two possible explanations considering the meaning of the *müsaferet* in the Ottoman context: (1) guest, or (2) internment of the ambassadors and citizens of hostile countries in war time. The assignment might cover those in the second meaning of the word. In case we take the first meaning, the waqf in question might be assigned this specific revenue in particular, unlike others. Redhouse, "Misaferet", 780.

119 *İstanbul Kadı Sicilleri,* İstanbul Mahkemesi 20 Numaralı Sicil, LVI, 76, Judgment (*hüküm*) nr. 38, original text nr. [9ª-2].

120 *İstanbul Kadı Sicilleri,* İstanbul Mahkemesi 20 Numaralı Sicil, LVI, 76, Judgment (*hüküm*) nr. 38, original text nr. [9ª-2].

years Ali died without an heir. According to Kiko's statement in the court, Kiko and Ali had planted fruit-bearing and non-fruit-bearing trees (*eşcâr-ı müsmire* and *gayri müsmire*) in the orchard. Thus, he requested the court to send capable experts to the orchard to check and count the number of trees he and Ali planted.

He made this request evidently to protect his rights as a *mukâta'a* tenant. Regulations allowed the waqfs to make *mukâta'a* contracts with tenants.[121] Accordingly, the tenants could own as free *mülk* the buildings they built, the trees they planted, and other improvements they made on waqf property (whether land, lot, garden, or orchard) during their tenancy with due consent of the waqf administrators.[122] As owners of these additions and improvements, the tenants could pass them to their descendants, donate them to third parties, or endow them.[123] In this case the trees Kiko and Ali planted together became their (*mülk*) property. However, Ali died without a known heir, which meant that his share of trees would pass to the *mîrî-beytülmâl* along with the rest of his inheritance. Kiko and Ali had planted more than 700 young trees (*fidan*). Kiko wanted legal recognition of his share of these trees so that they could be sheltered against possible interventions and confiscation by the *beytülmâlci*. The court sent expert gardeners (*bahçıvân tâifesi üzerine ehl-i hibre*) to the orchard to count, assess, and divide the young trees planted by Kiko and Ali. Half of these trees (375 of them to be exact) were earmarked as revenue for the *mîrî-beytülmâl*, and the other half were recognized as Kiko's *mülk*.

The evidence at hand does not allow us to fully understand how the consequent multifold layers of ownership worked in the case of this orchard. The waqf held claims on the bare or basic land of the orchard. The four descendants retained the right to enjoy the use and advantages of that land as partners. They rented their right to use the land to two gardeners who turned it into an orchard. Given the nature of their tenancy contract (*mukâta'a*), the gardeners became full owners of the additions and improvements they made to the land. When one of the gardeners

121 Öztürk, "Mukâtaalı Vakıf", 132-34; "Kezâlik mukâtaalı vakf yer üzerinde bulunan mülk ebniye ve eşcâr ve kürûmun mâliki vefât edüpte ol ebniye ve eşcâr ve kürûm müteveffânın gerek ashâb-ı ferâizden ve gerek asbâtından ve gerek zevi'l-erhâmdan veresesine mevrûs oldukta…" Ömer Hilmi Efendi, *İthâfü'l-ahlâf*, 81; Kaya, Ömer Hilmi Efendi. For a detailed discussion on the issue see Durmuş, "Osmanlı Vakıf Hukukunda Mukâtaa", 18-20, 93, 128-149.

122 Ibid, 18-20.

123 "Ama izn-i *sâ*hib-i arzla arz-ı mîri üzerine ihdâs eylediği binayı veya gars eylediği eşcârı veyâhut arsa-i mevkûfe üzerine izn-i mütevellî ile nefsi için ihdâs eylediği binayı veyâhut gars eylediği eşcârı vakf eylese vakf sahîh olur." Ömer Hilmi Efendi, *İthâfü'l-ahlâf*, 25.

died without an heir, however, the *mîrî* became the owner of half of the additions and improvements. The tenants' initiative for producing on the orchard, and the waqf's approval of that improvement introduced the *mîrî-beytülmâl* into the episode as a new legal claimer. It gave way to a 'unecpected' revenue for the *mîrî*.

One can imagine that the *mîrî-beytülmâl* could rent or sell his rights to others, perhaps to another waqf or other gardeners, further complicating the layers of claims made to this land-turned-orchard. Such multi-layered claims instigated the formation of fluid and complex relationships around objects of proprietorship in the early modern Ottoman Empire. Explaining and analyzing these relationships are beyond the scope of this article. However, the connections between the land tenure system, tax collection methods, and the organization of government offices, as discussed in a general way in this article, indicate the intricate nature of property ownership and rights. It was formed around various revenues and assets with multiple layers of claims and relationships.

Conclusion

The properties examined above had irregular and incidental character. The incidents they fell as revenue were based on various human circumstances like being absent, going missing, finding a stray animal, dying without heirs, committing a crime, marrying, and so on. By their nature, these revenues fell in the spot (*mahallinde*), in the place where a legitimate and authorized landholder could claim and get benefited with this revenue with a material interest. The relative importance of these revenues becomes more apparent if one takes into consideration the mundane realities of daily life whereby a piece of property brought together various agents of the Ottoman Empire.

Based on the land regime, the Ottoman legal system accommodated the fiscal interests of the parties in a specific locality. This became possible, particularly, through the specific and provincial legal regulations that ideally took into consideration the potential claimants in a land, as well as the potential revenues which the land and its *reaya* would yield. Moreover, the needs of the government both at local and imperial levels also played a vital role in allocating the revenues. The regulations related to revenue allocation were stated in the documents that acknowledged a land and its inhabitants like the government officers, or title holders. The authorized holders of free-status lands such as waqf *mülk* or *timâr* were collecting the revenues for the corporate interest of the relevant institution. However, statements like *kânun-ı kadîm*, *mefrûzu'l-kalem,* and *maktû'u'l-kadem* went hand in hand with legal reorganization for revenue allocation in the lands

designated as free-status. When it was deemed necessary, the cluster of revenues was divided or reallocated via specific regulations, and the collectors were re-identified based on ongoing social, legal, fiscal, and administrative dynamics in these lands.

Apart from government regulations, the subjects' lives, their place of residence, occupancy, their ethnic or religious identity, and their service to the government determined the distribution of the revenues. The legal regulations and cases considered indicate that the cluster of unclaimed properties was one of the most disputed types of revenue, particularly when it comes to the free status lands. With free status, the subjects hence the revenues they produce were detached from the *mîrî*'s fiscal and administirative control to a great extent. These revenues were reserved for the benefit of that specific land, its subjects, and its holder. This system, particularly the free status waqfs might be put into the center of this discussion because they benefitted the Ottomans in developing a specific solution to a wide range of public goods issues that needed to be handled in localities.

The subjects of the free-status waqfs were free from the escheat of the overarching claim of the government on the estates of heirless deceased individuals, the *mîrî-beytülmâl*. According to the regulations those waqfs held the right to claim these as revenues. Waqf representatives oversaw, collected, and managed these properties as the only authorized escheator in their lands. However, the clash of revenue and property claims became one of the chief problems between *mîrî* and waqf. Ignorance of the rules and the borders of the waqf lands or simply being a bit more impetuous and overzealous in claiming these properties were some of the excuses of the agents of the treasury (*mîrî-beytülmâl*).

Additionally, individuals often prepared testaments and bequeathed their estates for the benefit of their loved ones and as endowments. These kinds of deeds were common as individuals applied these methods to circumvent the escheat of the related *beytülmâl* (either mîrî, or corporate *beytülmâls* like waqfs). Founding a waqf was one of the chief methods for "wealth-sheltering" from *beytülmâl*. One might think that, public or corporate claimers (like *mîrî-beytülmâl* and waqf-*beytülmâl*) could hardly be informed at the right time about the testaments or bequeaths of private persons. According to the registers discussed above, these claimers of *beytülmâl* showed up in the courts and claimed the estates that were already endowed or bequeathed by their private owners. However, as the cases demonstrated, complying with the rules in preparing the testaments and getting the deeds ratified by the court could help to fulfill a deceased's will, as well as make a proper claim for the new holders.

Tracing the varying degrees of autonomy across different regions of the Empire is difficult due to the diverse land tenure systems and the complex regulations on revenue claims. However, one might conclude that despite the powerful statement and formula of *serbestiyet,* the autonomy did not detach or isolate large tracts of land from government interference. The government was inside the free status lands; it was acquainted with the potentials of the free lands and what to control inside; it pursued criminals, re-regulated the revenue claimers when deemed necessary, or claimed a share of the revenues. Rather than generating distinct regimes that held their immunity from the government, *serbestiyet* enabled compartmentalized governance with the instruments of the early modern Ottomans. The *mîrî* and corporate groups inevitably continued to mediate the terms and accommodated their interests for the functionality of the system.

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