The *Fiqh* of Inter-Confessional Relations in the Ottoman empire

Responsable

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14h30-16h30
Salle Déméter 015

Intervenants

Vanessa De Obaldia
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Résumé de l'atelier

This workshop seeks to address the transformation of *fiqh*, or Islamic jurisprudence, in the Ottoman empire and the subsequent independent states. It aims to show the dynamic nature of *fiqh* and its transformations through time by focusing on the jurisprudence regarding non-Muslims, foreigners, or the interaction between religious groups. By analyzing the evolution of *fiqh* in relation to questions of property ownership, taxation, conversion, political participation and personal law, this workshop will point to the political, economic and social uses of Islamic jurisprudence. It will also consider legal pluralism and the interaction between, for instance, *fiqh*, *qānūn* and civil law. It will analyse legal discourses produced by religious scholars, both within the state and on its margins, and the practical applications of Islamic jurisprudence to specific cases concerning non-Muslims. Finally, this workshop will explore the imperial legacies in terms of personal status law in the independent states after the fall of the empire.

Programme

Vanessa De Obaldia
From fiqh *to secular law: The evolving legal approach of the Ottoman state towards the Latin Catholic Church, its institutions, and its ecclesiastical properties in Istanbul*
Ottoman religious and imperial law (*şerīʿat* and *ḳānūn*) was the framework withing which the Ottoman state established its legal relationship with the Latin Catholic Church in Istanbul upon the conquest of the city in 1453. With the passing of the centuries, the application of Islamic jurisprudence (*fiqh*) was complemented by additional legal mechanisms such as jurisconsults' deliberations (*fetvas*) and the will of the sultan (*irāde*) which influenced the shaping of Ottoman policy towards the Church when new situations arose in relation to the construction, destruction, and repair of churches. The Latin Catholic Church did not possess a legal persona and thus did not have the right to acquire properties under its name until the Decree passed in 1913. Consequently, they were registered in the names of ambassadors of the Catholic powers and other diplomatic personnel, lay members of the local Catholic community, and later in the names of priests and aliases. Yet, soon after, with the onset of the First World War, the Ottoman state confiscated and converted Church properties and institutions deemed to be affiliated to the Allied powers. Furthermore, following the proclamation of the Republic of Turkey on 29 October 1923,

the introduction of a series of new laws resulted in the further loss to the Latin Catholic Church of its immovable property.
For example, the Law of Endowments led to the ownership of the properties being transferred to the General Directorate of Foundations and to the Treasury and the 1936 Declaration in which properties of minority endowments were to be recorded, preventing the obtainment of new properties subsequently. This study shall examine the evolving legal approach of the Ottoman state towards the Latin Catholic Church, its institutions, and its ecclesiastical properties in Istanbul and how unprecedented circumstances and seismic political changes led to a deviation from the traditional norms of Islamic jurisprudence applied in Ottoman territories from the time of the conquest.

Anaïs Massot
Reinterpreting the concept of dhimma *during the Ottoman Tanzimat reforms: Jurisprudence and political discourses in Damascus in the 19th century*
The status of *dhimmi*, applying to non-Muslims in the Ottoman Empire, was gradually abolished by the Ottoman Tanzimat in the 19th century. This transformation, a source of intense debate in civil society, took place at different levels, particularly in the legal, administrative and political spheres. It reformulated not only the relationship of non-Muslims to the Ottoman state but also to their own communal authorities. The place of non-Muslims in the empire was renegotiated in a context of growing foreign influence, placing the question of loyalty at the center of the debates regarding the place of non-Muslims in the empire. The discussions regarding this status revealed its complex nature and the contradictory conceptions of many social actors regarding the meaning of this social contract. Focusing on the context of the city of Damascus in the first half of the 19th century up until 1860, this communication will explore the reactions of the Damascenes to this progressive abolition of the *dhimma* and how they apprehended the nature of this contract. It also will analyze the various ways in which Muslim jurists reinterpreted the *dhimma* in the context of the Ottoman reforms.

Nicola Melis
Practice, theory and change in Ottoman tradition: theorizing the development of legal meaning through legal and archival sources
An academic division still persists between Ottoman and Islamic legal studies. In the past, the former very rarely set Ottoman law in a general Islamic context; the latter often viewed Ottoman legal reasoning as having no pertinence to Islamic law in general. Nowadays, a flourishing theme in Ottoman studies is the relationship between legal theory and practical jurisprudence. Historians of Islamic legal discourse have begun to exploit Ottoman legal records as a source for the study of Islamic legal history. Therefore, now it is clearer that the Ottoman theory of international relations cannot be understood uniquely in terms of its own internal discourse, which is focused on a legalistic theoretical approach based upon the Hanafi fikih. Local custom played a fundamental and important role, often bringing about profound changes in the rules of *fiqh*. Whenever Hanafi rules were practical and convenient, the Ottoman government did indeed follow them to the letter; but if for commercial, political or international purposes it was necessary, it did not hesitate to modify the norms. In fact, in the making of Ottoman policy, custom in its various forms, was central and determinant. Rigid distinction between foreign and domestic affairs was carefully avoided by Ottoman officials. A foreign resident was often given a subject status, as a *zimmî*. In the early Ottoman period, as it was in Selçuk and Mamluk times, Islamic and Christian authorities considered each other as equals. In this paper, I aim to contribute to the recent scholarship by examining some case studies that I retrieved from the Ottoman and Italian archives.

Maurits Berger

A clash of legal cultures

In 1856, the Ottoman Empire replaced the political-legal construct of the *dhimmi* with that of citizenship. Except for personal status law: in that domain religious communities (*millets*) remained entitled to use their own religious laws. This situation has continued until today. And so, as a matter of state law, religious communities in countries like Syria, Lebanon, Palestine, Israel, and Egypt are subject to their own religious personal laws without recourse to a civil law alternative.

One of the issues that arises in such pluriform legal systems is when rules of the various laws are in conflict. This happens mostly in cases of religiously mixed marriages or when one of the spouses converts to another religion. The question "which law is applicable?" is amply addressed in Islamic *fiqh*, but between the 1930s and 1960s French researchers and Arab jurists have discussed this system in modern, mostly French, legal terms. The result is an Islamic legal system encapsulated in a French legal structure called "interpersonal law" with French legal concepts like "conflicts law" (*conflit de lois*) and "public policy" (*ordre public*). As such, this system has evolved into a new legal *status quo*.

Not so long ago, however, this system was challenged anew by a confrontation with European legal concepts. In 2018, the European Court for Human Rights ruled in a case of interpersonal status law in Greece, the only European country where civil and Islamic personal status law co-exist as legal systems recognized by the state. This situation is a remnant from Ottoman times and as such unique in today's European legal context.

This paper will use this case to analyze the confrontation between two forms of legal thinking, that of personal status as a single civil law, and as a plurality of coexisting laws. It will be demonstrated the judges of the European Court were so entrenched in civil law and human rights thinking that they were unable to come to a comprehensive understanding of the inner logic of interpersonal law systems. As such, this ruling provides an interesting example of a clash of legal cultures between these two legal systems.