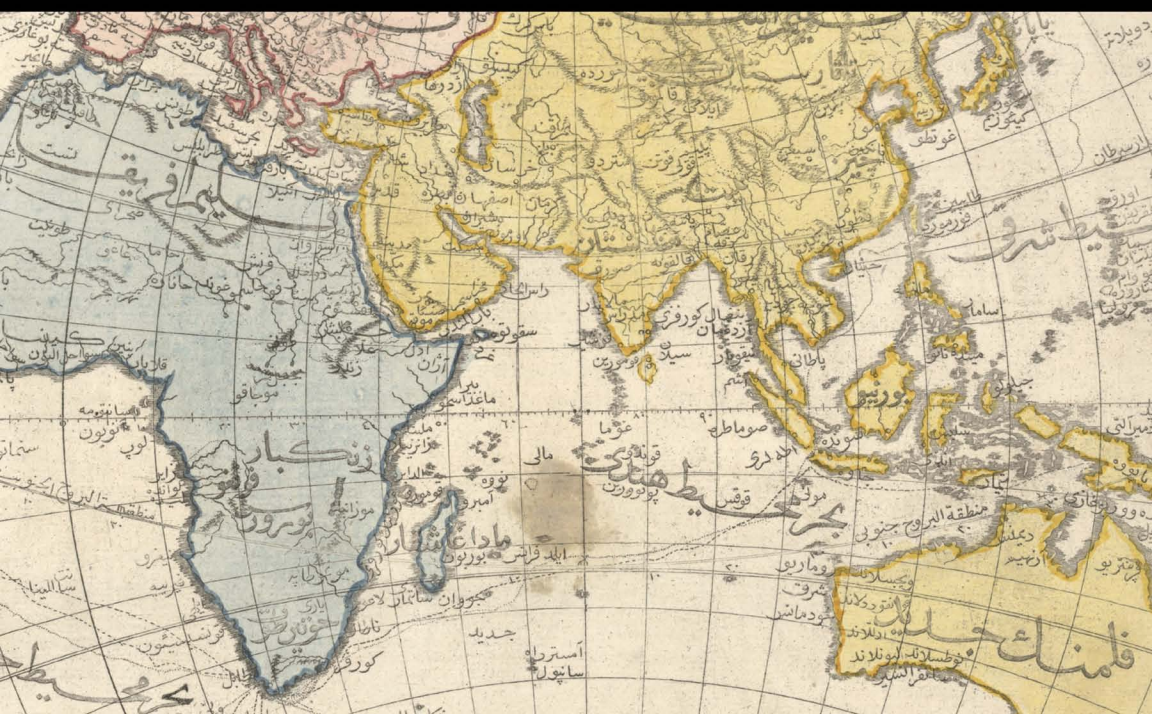
THE SUBJECTS OF OTTOMAN INTERNATIONAL LAW

Edited by Lâle Can, Michael Christopher Low, Kent F. Schull, *and* Robert Zens



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Foreword

The core of this edited volume originates from a special issue of the *Journal of the Ottoman and Turkish Studies Association* (*JOTSA*). This volume, however, goes well beyond the special issue to incorporate the stimulating discussions and insights of two Middle East Studies Association roundtables and the important work of additional scholars in order to create a state-of-the-field volume on Ottoman socio-legal studies, particularly regarding Ottoman international law from the eighteenth century to the end of the empire. It makes several important contributions to Ottoman and Turkish studies, namely, by introducing these disciplines to the broader fields of trans-imperial studies, comparative international law, and legal history. It also combines the best practices of diplomatic history and history from below to integrate the Ottoman Empire and its subjects into the broader debates of the nineteenth-century trans-imperial history. These broad debates include the creation of and contestation over citizenship, contestations over sovereignty, geopolitical rivalries, legal literacy on individual and imperial levels, the intersectionality of law and society within and between various states, and how the status or plight of an individual can mobilize geopolitical forces for imperialist agendas. These contributions upend Orientalist notions that the Ottomans did not engage in international law until the nineteenth century and simply copied what European powers had created. They also bring together the best of statist and history-from-below methodologies and approaches to this field by looking at non-elites affected by and effecting the contours, engagement, power struggles, manipulation, development, and transformation of Ottoman international law. This volume represents the exciting work and cutting-edge scholarship on these topics that will continue to shape the field moving forward.

It has been our pleasure to work on this edited volume with our co-editors, Lâle Can and Michael Christopher Low, and all its contributors. Volumes, such as this one, are always a labor of love and dedication that rely on the various talents and good humor of many individuals in order to assemble, review, advise, coordinate, consult, revise, to obtain publication permissions, copy edit, index, and shepherd to publication such an important work as this one. We are all very grateful to Indiana University Press and the Ottoman and Turkish Studies Association (OTSA) for their support of this scholarly contribution.

Kent F. Schull
Robert Zens

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THE SUBJECTS OF OTTOMAN INTERNATIONAL LAW

1 Introduction

Lâle Can and Michael Christopher Low

The impetus for this volume grew out of a series of workshops and panels, all of which pointed toward a critical mass of new research on Ottoman engagement with questions of sovereignty, citizenship, and extraterritoriality. In heated discussions about what it meant to be an Ottoman "national" versus a "citizen" or "subject," and conversations about the provenance of the legal advisors in the Ottoman Foreign Ministry who did the day-to-day work of defending the empire's sovereignty, there was a clear consensus that these topics merited greater attention and precision in terms. As editors of this volume, our own paths toward these subjects grew out of a recognition of what was missing in our work on different facets of Ottoman management of the steamship-era hajj. While neither of us set out to make international law a central concern of our research, questions of jurisdiction and protection, nationality and subjecthood, mobility regulation and passports, and the documentary practices underpinning them seemed to continually redirect our efforts. At every turn in the Ottoman archive, catalog searches for "foreign pilgrims" directed us to a trove of documents produced by the jurists at the Ottoman Office of Legal Counsel (Hukuk Müşavirliği İstişare Odası), the Hamidian-era bureau formed to navigate the landscape of Eurocentric international law. These archival sources provided unparalleled insight into the mechanics of empire, and disrupted long-held assumptions about imperial logic and governance. However, as we began to grasp the significance of this bureau for studying the Hamidian era, we became acutely aware of the deep disconnect between its omnipresence in the Ottoman archive and its curious absence in the extant historiography. In trying to understand the role that the Hukuk Müşavirliği İstişare Odası played in diplomacy and statecraft, we quickly found that many of the most basic institutions and practices related to the Ottoman state's formulation and dissemination of international legal expertise had barely garnered more than stray remarks.[1]

1. For noteworthy titles on Ottoman international legal institutions, see Aimee M. Genell's dissertation and forthcoming book project, "Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882–1923" (PhD diss., Columbia University, 2013); Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, UK: Cambridge University Press, 2010); Umut Özsu, "Ottoman Empire," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 429–48; idem, "The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory," in *The Oxford Handbook of the*

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The work of addressing these lacunae resulted in collaborations with colleagues that revealed a wider constellation of shared frustrations. Foremost among them was the pervasive assumption that Ottoman legal reforms, both international and domestic, were merely reactions to the pressures of the Eastern Question. An interrelated problem has been the conflation of the diplomatic history of the Eastern Question with the history of international law, both of which have been marred by an over-reliance on European sources. While there is a recognition that the Ottoman state struggled to prove its acceptance of the emerging civilizational norms of "international society" in a bid for full and equal membership in the European family of nations, the story of this effort remains skewed.[2] Previous studies of Ottoman engagement with international law have tended to overemphasize certain aspects of public international law that grew out of the Eastern Question: peace treaties, annexation, border demarcation, and territorial losses.

Likewise, existing scholarship has generally put forward a rather narrow vision of private international law associated with consular jurisdiction over European merchants and their non-Muslim protégés.[3] This myopic emphasis on non-Muslim minorities has reinforced a reading of late Ottoman history that foregrounds the salience of religious and identity politics. Another consequence of this approach has been the tendency to ignore the empire's Muslim populations, or to analyze Ottoman relations with Muslim colonial subjects outside an international legal framework.[4] But when we consider, for example, how the

Theory of International Law, ed. Florian Hoffman and Anne Orford (Oxford: Oxford University Press, 2016), 123–37; Mustafa Serdar Palabıyık, "International Law for Survival: Teaching International Law in the Late Ottoman Empire (1859–1922)," *Bulletin of the School of Oriental and African Studies* 78, no. 2 (2015): 271–92; Nobuyoshi Fujinami, "The First Ottoman History of International Law," *Turcica* 48 (2017): 245–70. Also see Umut Özsu and Thomas Skouteris's recent collection of symposium articles, "International Legal Histories of the Ottoman Empire," *Journal of the History of International Law/Revue d'histoire du droit international* 18 (2016).

2. On the standard of civilization and the Ottoman Empire's awkward place in the European family of nations, see Cemil Aydın, *The Politics of Anti-Westernism in Asia: Visions of World Order in Pan-Islamic and Pan-Asian Thought* (New York: Columbia University Press, 2007); Anthony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2002); Gerrit Gong, *The Standard of Civilization in the International Society* (Oxford: Clarendon Press, 1984).

3. On the undervaluation of private law in international legal history, see Will Hanley, "International Lawyers without Public International Law: The Case of Late Ottoman Egypt," *Journal of the History of International Law* 18 (2016): 98–119.

4. For recent work on legal pluralism, consular protection, and protégés, see Karen Barkey, "Aspects of Legal Pluralism in the Ottoman Empire," in *Legal Pluralism and Empires, 1500–1850*, ed. Lauren Benton and Richard Ross (New York: NYU Press, 2013); Lauren Benton, Adam Clulow, and Bain Attwood, eds., *Protection and Empire: A Global History* (Cambridge, UK: Cambridge University Press, 2017); Ziad Fahmy, "Jurisdictional Borderlands: Extraterritoriality and 'Legal Chameleons' in Precolonial Alexandria, 1840–1870," *Comparative Studies in So-*

Porte responded to Ottoman Muslims assuming "borrowed" European nationalities, or to European protégés—Christian, Muslim, and Jewish alike—seeking to benefit from capitulatory privileges, it becomes apparent that its vision of the relationship between defending the empire's territorial sovereignty and the reconfiguration of imperial subjecthood/citizenship and definition of nationality was not filtered exclusively through the prism of religion.

After decades of scholarship focused on Ottoman diplomacy and European legal imperialism, we have substantial insight into the kinds of questions that preoccupied European statesmen and jurists, as well as how their exercise of legal imperialism and extraterritoriality vis-à-vis the Ottoman Empire shaped the overall development of international legal thought. It is clear that the Ottoman Empire was a critical laboratory in which Europe experimented with a broad range of international legal instruments. On the other hand, how international law gained prominence and was translated and internalized within the Ottoman state remains an open question that this collection of essays seeks to address. How did Ottoman jurists, statesmen, and ordinary people apply and/or experience international legal thought? What novel solutions came out of these Ottoman experiments? Did they reproduce European expertise or did they contribute something uniquely Ottoman that shifted the parameters of what Europeans accepted as a valid perspective on international law? And, if so, what subjects and problems were most prominent in this Ottoman vision of international law? In answering these questions, this collection endeavors to reconstruct an Istanbul-centered history of "the law of nations" (*hukuk-ı düvel*) as it evolved over the course of the long nineteenth century. It also seeks to capture the messy, improvised process of incorporating international legal norms into existing patterns of domestic Ottoman governance.

As Umut Özsu points out in his concluding essay, "international law has never been merely an instrument for the coordinated regulation of inter-state relations; it has also been a means of reconfiguring the link between the state and the individual, with far-reaching implications for the latter's self-understanding." To this we could add that international law has never been exclusively driven by a single state, or even the collective will of European international society. In the "age of steam and print," the meanings of subjecthood, nationality, mobility controls, treaties, and even international law itself were all being challenged,

ciety and History 55, no. 2 (2013): 305–29; Mary Dewhurst Lewis, *Divided Rule: Sovereignty and Empire in French Tunisia, 1881–1938* (Berkeley: University of California Press, 2013); Willem Maas, ed., *Multilevel Citizenship* (Philadelphia: University of Pennsylvania Press, 2013); James Meyer, *Turks Across Empires: Marketing Muslim Identity in the Russian-Ottoman Borderlands, 1856–1914* (Oxford: Oxford University Press, 2014); Paolo Sartori and Ido Shahar, "Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain," *Journal of the Economic and Social History of the Orient* 55, no. 4/5 (2012): 637–63.

reshaped, and subverted by non-state actors, whether they be Ottoman or foreign nationals, Muslims or Christians, prisoners of war, migrants, smugglers, or pilgrims.[5] During this era of accelerating mobility, the proliferation of border-crossers was simultaneously forcing government officials across Europe, Africa, and Asia to define the parameters of subjecthood, nationality, and citizenship, and to clarify where their respective jurisdictional claims of territorial sovereignty or extraterritorial protection began and ended. In turn, as states tried to "cast shadows of sovereignty" beyond their realms, individuals seeking their protection were eager to know just how far these shadows extended and under what conditions they might recede.[6]

Our attention to these questions is not meant to detract from the importance of Ottoman treaty-making or the impact of European diplomacy on both the empire's external and internal affairs. However, the nature of our sources and the complex stories of statesmen and ordinary people engaging with international legal norms in novel ways all highlight the need for a fuller picture of what international law meant in the everyday practice and mechanics of empire. From Ottoman prisoners of war who learned to use treaty law to secure their release from Tsarist Russia to Ottoman provincial officials in Beirut and Anatolia who realized the interconnectedness of domestic policing and international mobility controls, we argue that international law was not something confined to European diplomats negotiating territorial losses or the fine print of treaties. We see international legal considerations engrained in the central state's day-to-day affairs, and also becoming integral dimensions of questions, periods, and geographies that scholars have either overlooked or failed to emphasize. With this in mind, this collection seeks to give greater visibility to a wider range of issues playing out across the Mediterranean, Balkans, and Russo-Ottoman frontier, as well as Anatolia, the Levant, Egypt, Libya, and the Anglo-Ottoman frontiers of the Indian Ocean basin in the Hijaz, Yemen, and Iraq.

One of the most glaring historiographical blind spots that this collection makes more visible is the overwhelming tendency to associate European international society, diplomacy, and international law exclusively with the Tanzimat period. In part, this is a legacy of the stubborn, artificial divide between a West-

5. On mobility and the "age of steam and print," especially see James L. Gelvin and Nile Green, eds., *Global Muslims in the Age of Steam and Print* (Berkeley: University of California Press, 2014); Nile Green, "Spacetime and the Muslim Journey West: Industrial Communications in the Making of the 'Muslim World'," *American Historical Review* 118, no. 2 (2013): 401–29; On Barak, *On Time: Technology and Temporality in Modern Egypt* (Berkeley: University of California Press, 2013); Valeska Huber, *Channelling Mobilities: Migration and Globalisation in the Suez Canal Region and Beyond, 1869–1914* (Cambridge, UK: Cambridge University Press, 2013).
6. Lauren Benton, "Shadows of Sovereignty: Legal Encounters and the Politics of Protection in the Atlantic World," in *Encounters Old and New: Essays in Honor of Jerry Bentley*, ed. Alan Karras and Laura Mitchell (Honolulu: University of Hawai'i Press, 2017), 136–50.

ern-facing era of Tanzimat modernization and an Eastern- (read backward-) facing Hamidian period characterized by Pan-Islamic legitimacy and outreach to the Muslim world. A closer look at the evolution of the state's international legal apparatus, however, suggests considerably more continuity than the oft-posited divisions between the Tanzimat and Hamidian eras would suggest. Conventional wisdom links the rise of Ottoman international legal thought to the Crimean War and the Treaty of Paris (1856), which begrudgingly invited the empire into the European family of nations and afforded it all of the advantages of public law and the Concert of Europe. By the 1860s and 1870s Ottoman officials regularly employed international legal arguments in order to defend the empire's territorial integrity and navigate the hostile world wrought by European colonialism. Yet, the formalization of Ottoman international institutions, expertise and the full articulation of what we might call an Ottoman vision of international law were Hamidian-era creations. Although this might be surprising to some, it should not be.

As it turns out, the Hamidian Pan-Islamic turn and the Ottoman experience of international law and diplomacy after 1876 were mutually constituted phenomena. In the wake of the disastrous Russo-Ottoman War of 1877–78 and the Treaty of Berlin, the French occupation of Tunisia in 1881, the British occupation of Egypt in 1882, and the acceleration of the Scramble for Africa, the Hamidian regime understood that a more systematic engagement with international law was necessary to the state's survival.[7] The exact timing of the creation of the Foreign Ministry's Office of Legal Counsel in 1883 makes this point explicit and shows that it was a quintessentially Hamidian institution. The unequal treatment to which the only Muslim member of the Concert of Europe was subjected, however, compromised the sultan's faith in European international society. In this context, the promotion of the caliphate and state-sponsored Pan-Islam was a complementary strategy designed to bolster the empire's position on the international stage.

The caliphate's inclusion in the Office of Legal Counsel's arsenal of legal tools and concepts shows how Ottoman international legal institutions and Hamidian Pan-Islam were parallel, sometimes contradictory, projects rather than diametrically-opposed or unrelated subjects. After all, Pan-Islam was a Janus-faced discourse aimed at shoring up legitimacy vis-à-vis both a domestic Muslim constituency and Islamic lands that were conquered by non-Muslim powers. International legal considerations led to radical redefinitions of Ottoman nationality and subjecthood that affected the empire's Muslim populations just as much as they changed the position of certain non-Muslim groups. Likewise, international

7. On the rapidly changing Ottoman position in European diplomacy from 1878 through the Scramble for Africa, especially see Mostafa Minawi, *The Ottoman Scramble for Africa: Empire and Diplomacy in the Sahara and the Hijaz* (Stanford: Stanford University Press, 2016).

legal expertise was also needed to reconsider the empire's foreign relations with the rest of the *umma*. As various forms of indirect and direct colonial rule extended across Central Asia, India, and Southeast Asia, by the closing decades of the nineteenth century virtually all non-Ottoman Muslims interacting with the Ottoman state had become subjects of European colonial empires. The result was a major reconfiguration of relations between the sultan and vast segments of the Muslim world.[8] In an era often defined by vague terms like Pan-Islamic unity, brotherhood, loyalty, and allegiance, even the state's highest foreign-policy objectives were being evaluated against—and frequently contradicted by—the empire's international legal establishment. Although counterintuitive to the dominant historiographic image of the Hamidian state, these calculations and counter-measures were necessary in order to guard against conflicts over questions of extraterritoriality, jurisdiction, nationality, protection, and subjecthood.[9]

* * *

At the outset of this collaboration we posed several overarching questions to our colleagues: What did international law mean to the late Ottoman Empire? How was this Ottoman vision of international law translated into the administrative mechanics of the state? How was international law translated into material documentary practices? For Ottomanists, how might a more precise understanding of international law contribute to a rethinking of the empire's engagement with Europe and colonialism? Likewise, how can Ottomanists contribute to conversations about nationality, protection, subjecthood, and citizenship beyond the field of Ottoman and Middle Eastern studies?[10] And, finally, what do we gain by

8. For a critical genealogy of the idea of the Muslim World and its emergence during this period, see Cemil Aydın, *The Idea of the Muslim World: A Global Intellectual History* (Cambridge, MA: Harvard University Press, 2017).

9. For studies of how the Hamidian state promoted Pan-Islam to counter European encroachments on its sovereignty and legitimize its Islamic authority among both Muslims within the empire and under colonial rule, see Selim Deringil, *The Well-Protected Domains: Ideology and Legitimation of Power in the Ottoman Empire 1876–1909* (London: I.B. Tauris, 1998); Kemal Karpat, *The Politicization of Islam: Reconstructing Identity, State, Faith, and Community in the Late Ottoman State* (Oxford: Oxford University Press, 2001); Azmi Özcan, *Pan-Islamism: Indian Muslims, the Ottomans and Britain, 1877–1924* (Leiden: Brill, 1997). On the different forms of Pan-Islam in this period, also see Adeeb Khalid, "Pan-Islamism in Practice: The Rhetoric of Muslim Unity and its Uses," in *Late Ottoman Society: The Intellectual Legacy*, ed. Elisabeth Özdalga (London: RoutledgeCurzon, 2005), 201–24.

10. For recent efforts to locate these Ottoman questions of citizenship and subjecthood in wider comparative and inter-imperial frameworks, see Dina Rizk Khoury and Sergey Glebov, "Citizenship, Subjecthood, and Difference in the Late Ottoman and Russian Empires," *Ab Imperio* 1 (2017): 45–58; Michelle U. Campos, "Imperial Citizenship at the End of Empire:

placing the Ottoman Empire in broader international, global, and comparative frameworks?

The scholars invited to contribute to this volume were given free rein to explore any aspect of the late Ottoman Empire's engagement with international law. The result is a provocative set of essays covering topics as disparate as the empire's highest international legal authorities, prisoners of war, Indian Ocean consulates, and Armenian migrants. They range from overviews of how the central state's approach to international law and diplomacy evolved over time to more discrete studies of how specific international legal concepts were brought to bear in domestic legislation, interstate contexts, and their blurry points of contact. Where the essays cohere is in their commitment to translating abstract concepts in the fine print of the Capitulations, the 1869 Ottoman Nationality Law, consular jurisdiction, and passport legislation, and integrating them into narratives that extend well beyond the narrow confines of legal history. The contributions reveal the multi-layered processes involved in translating international legal norms and instruments between international and Ottoman institutions. Equally important, they are careful not to flatten the "Ottoman state" by collapsing the differences between Istanbul and the empire's peripheries. They demonstrate both the complex interplay between the goals envisioned in Istanbul and the difficulties in implementing these new legal concepts across the empire's varied landscapes, especially in the empire's so-called exceptional provinces (*eyalat-ı mümtaze*) and semi-autonomous frontiers.[11]

Another critical contribution is the dizzying array of geographies featured in this collection. Within the empire, these essays draw upon examples from Balkan, Anatolian, Armenian, and Arabian frontier contexts. In the arena of interstate relations, they connect different parts of the empire not only to Western Europe, but also to Russia, Afghanistan, the Indian Ocean, the Muslim colonial world, and even the United States. We believe that this geographical breadth is more than a perfunctory nod to all things comparative, transnational, and global. It is indicative of how the field has evolved. Rather than seeking to decenter Europe or write the Ottomans into European history, this volume examines the global scope and tensions inherent in the state's simultaneous engagement with European international society, the colonial world, and its unique position as the world's last great Muslim empire. At the same time, we also hope that these previously overlooked Ottoman cases will bring something new to the study of

The Ottomans in Comparative Perspective," *Comparative Studies of South Asia, Africa and the Middle East* 37, no. 3 (2017): 588–607.

11. On the exceptional legal status of the empire's autonomous provinces, see Ayhan Ceylan, *Osmanlı Taşra İdarî Tarzı Olarak Eyâlet-i Mümtâze ve Mısır Uygulaması* (Istanbul: Kitabevi, 2014); Aimee M. Genell, "Autonomous Provinces and the Problem of Semi-Sovereignty in European International Law," *Journal of Balkan and Near Eastern Studies* 18, no. 6 (2016): 533–49.

international legal history as it relates to the Ottoman Empire and the Islamic world more broadly. To that end, Umut Özsu concludes this volume with an Afterword. Writing from his perspective as an expert on international law, rather than as a historian or Ottomanist, Özsu's panoramic evaluation of the volume as a whole allows us to think more broadly about what this collection might contribute not just to Ottoman studies but how it might also fit into a wider interdisciplinary conversation on "comparative international law" in non-European settings and through non-European archival materials.

In this volume's opening chapter, Will Smiley challenges our most basic assumptions about the timing and sources of the Ottoman gravitation toward international legal thought. As Smiley argues, even as the empire lost a series of wars against Russia, it became increasingly forceful in asserting the legal right to demand the release of its prisoners of war. By examining the evolution of Ottoman-Russian treaty-making, Smiley reveals how the liberation of Ottoman prisoners of war, especially Muslim captives, became enshrined in Ottoman conceptions of treaty and customary law.[12] As he points out, the story of captivity and the development of legal rights surrounding their return challenges assumptions that concepts of diplomacy, law, and sovereignty were static, modular categories that could simply be imported and assimilated during the Tanzimat period. By contrast, Smiley demonstrates how Ottoman ideas and practices surrounding sovereignty, inter-imperial treaty law, and subjecthood had already begun to develop along the Ottoman-Russian frontier during the eighteenth century. These developments were initiated by captives who learned how to use the language of treaty and customary law to assert their rights as Ottoman subjects. In addition to challenging the conventional periodization of Ottoman engagement with international law, Smiley raises the question of whether this pre-Tanzimat right to liberation from Russian captivity might suggest the development of a sort of "proto-citizenship" produced not only through domestic reforms but also through the legal logics of interstate relations.[13]

In Chapter 2, Aimee M. Genell underscores that while historians have long agreed that the Ottoman Foreign Ministry embraced international law as a necessary adjunct to European diplomacy, there remains no clear consensus on the exact timing of this legal turn. As she points out, we know very little about how international legal concepts were handled at the procedural level or the Ottoman

12. For parallel developments in early-modern practices surrounding inter-imperial treaty law related to questions of piracy, captivity, and diplomacy in the Mediterranean, see Joshua M. White, *Piracy and Law in the Ottoman Mediterranean* (Stanford: Stanford University Press, 2018).

13. On the concept of Ottoman "proto-citizenship," also see Ariel Salzmann, "Citizens in Search of a State: The Limits of Political Participation in the Late Ottoman Empire," in *Extending Citizenship, Reconfiguring States*, ed. Michael Hanagan and Charles Tilly (Lanham, MD: Rowman and Littlefield, 1999), 37–66.

officials tasked with executing such complex policy objectives. In a much-needed intervention, Genell provides an overview of the rise and fall of international law through an analysis of the Foreign Ministry's Office of Legal Counsel and a prosopography of the jurists employed there in the Hamidian and Committee of Union and Progress (CUP) eras. While Ottoman lawyers and statesmen viewed international law as a critical defensive strategy throughout the Hamidian era, Genell shows how and why their faith in its efficacy dramatically declined in the wake of the Italian invasion of Libya (1911) and the Balkan Wars (1912–13). By the First World War, she argues that "many one-time evangelists of international law" came to view it as little more than "an instrument of European imperialism used to justify the unequal treatment of the Ottoman state in the international arena."

Genell also catalogues the most common—and thorniest—issues brought to the attention of the empire's legal advisors. On the one hand, we find Ottoman lawyers occupied with questions of public international law, such as protecting autonomous provinces from being annexed, claimed as European protectorates, or even gaining their independence. On the other, we also find them involved in disputes between individuals, requiring a mastery of private international law. Such cases often grew out of the Capitulations, questions over consular protections, jurisdiction, or disputes over an individual's nationality, passport, or travel documents. In this sense, Genell's essay provides an overview that frames and contextualizes the case-studies that follow.

In Chapter 3, Will Hanley's analysis of the 1909 revision of the 1869 Ottoman Nationality Law takes up one of the central themes that occupied the Office of Legal Counsel: the slippery relationship between the legal definitions of nationality, subjecthood, and citizenship.[14] As Hanley argues, recent scholarship on the 1869 Ottoman Nationality Law has consistently sought its origins in the Tanzimat edicts of 1839 and 1856. He contends that interest in the question of Ottoman citizenship has led to a misreading of the word *tebaa*, and that the Tanzimat edicts referred to subjects, *not* citizens.[15] This "citizenship misreading" has

14. For a more complete "glossary" of terms surrounding Ottoman nationality, subjecthood, and citizenship, see Will Hanley, *Identifying with Nationality: Europeans, Ottomans, and Egyptians in Alexandria* (New York: Columbia University Press, 2017), 53–66, 236–55.

15. Hanley's essay engages and critiques recent debates on citizenship in the late Ottoman Empire and the colonial Middle East more broadly. For example, see Michelle U. Campos, *Ottoman Brothers: Muslims, Christians, and Jews in Early Twentieth-Century Palestine* (Stanford: Stanford University Press, 2010); Julia Phillips Cohen, *Becoming Ottomans: Sephardi Jews and Imperial Citizenship in the Modern Era* (New York: Oxford University Press, 2014); Engin Fahri Isin, "Citizenship after Orientalism: Ottoman Citizenship," in *Citizenship in a Global World: European Questions and Turkish Experiences*, ed. Fuat Keyman and Ahmet İçduygu (London: Routledge, 2005), 31–51; Karen M. Kern, *Imperial Citizen: Marriage and Citizenship in the Ottoman Frontier Provinces of Iraq* (Syracuse: Syracuse University Press, 2011); James H.

obscured the 1869 law's original connection to the Capitulations and an 1863 decree designed to restrict the proliferation of foreign protégés. This law presented foreign protégés with a choice: they could either naturalize as foreign subjects or submit to Ottoman territorial jurisdiction to maintain their status as subjects of the sultan. The unintended consequence was that many of them chose to naturalize with a foreign state, while remaining in residence and continuing to benefit from the rights of Ottomans. Thus, while the number of protégés dropped, the number of naturalized foreigners increased precipitously. This development prompted firmer legislation, which took the shape of the 1869 law. Set against this backdrop, Hanley puts forward the provocative conclusion that neither the 1863 protégé legislation nor the 1869 Ottoman Nationality Law were intended to form a citizenry. Rather, he argues that both were primarily aimed at safeguarding the empire's sovereignty over its residents against the threat of European extraterritoriality. Hanley then analyzes a 1909 proposal for the revision of the 1869 law in order to chart the evolution of Ottoman readings of nationality and naturalization from the Tanzimat through the CUP period. While the 1909 proposal was never enacted, Hanley considers what it reveals about ongoing struggles to implement the 1869 law, as well as two specific issues that it failed to fully address: denaturalization and marriage to Iranians.[16]

If Hanley's analysis of nationality legislation reexamines the changing definitions of what it meant to be Ottoman, in Chapter 4 Michael Christopher Low takes up a related question: what did it mean to be a foreigner after 1869? Low focuses specifically on an understudied group in relation to the Capitulations—non-Ottoman Muslims who had become foreigners both by virtue of the 1869 law and the expansion of colonial rule—and moves this issue's focus into the realm of inter-imperial competition for allegiance and influence in the Hijaz. Low brings to the fore the messy nature of implementing international law, while also considering its impact on Muslims caught in the middle of Anglo-Ottoman legal battles and proxy wars. After tracing how traditional distinctions between Muslims and *dhimmi* (People of the Book) were theoretically leveled by the 1856 Islahat Fermanı and more fully realized with the promulgation of the 1869 Ottoman Nationality Law, Low considers the impact on non-Ottoman Muslims who were designated as foreigners. By the early 1880s, when virtually all of the Islamic world was ruled by European powers, Low argues that foreign Muslims (*ecanib-i müslimin*) fell under a cloud of suspicion. This was especially true in the

Meyer, "Immigration, Return, and the Politics of Citizenship: Russian Muslims in the Ottoman Empire, 1860–1914," *International Journal of Middle East Studies* 39, no. 1 (2007): 15–32; Sarah Abrevaya Stein, *Extraterritorial Dreams: European Citizenship, Sephardi Jews, and the Ottoman Twentieth Century* (Chicago: University of Chicago Press, 2016).

16. On denaturalization and marriage along the Ottoman-Iranian frontier, especially see Kern, *Imperial Citizens*.

Hijaz, where foreign Muslims and their consular representatives began to assert their rights to European protections. Low argues that this previously unthinkable scenario opened up a paradox in the basic logic of the Capitulations: Ottoman authorities were forced to grapple with the stranger-than-fiction claim that foreign Muslims in Islam's holiest cities were entitled to capitulatory privileges and consular protections in order to avoid the supposedly arbitrary nature of Ottoman rule and Islamic law. By highlighting the unintended consequences of the 1869 Ottoman Nationality Law, Low demonstrates how the pervasive logics of international jurisprudence and extraterritoriality threatened to alter and undermine the Hijaz's previously exceptional autonomous, sacred, and ideological positions within the empire. In turn, his contribution offers an antidote to conventional wisdom about the Hamidian era, and urges us to consider Pan-Islam not as a religious discourse, but "a set of policies and discourses defined as much by sovereignty and international legal considerations as by Islamic legitimacy."

In an empire historically ruled by difference, Lâle Can's contribution in Chapter 5 shows that the status of non-Ottoman Muslims hinged on a variety of factors that included their subject status vis-à-vis European empires in the context of international law. Whereas Low's story revolves around non-Ottoman Muslims originating from formally colonized territories like British India, French Algeria, or the Dutch East Indies, Can tackles the even more vexing question of whether or not Central Asian pilgrims and migrants from the "informally colonized" protectorates and inter-imperial borderlands of Afghanistan, Bukhara, and Chinese Turkestan had legitimate claims to Russian and British nationality and their attendant capitulatory privileges. By tracing how the Office of Legal Counsel distinguished "protected persons" (*mahmi*) from so-called "real" (*asıl, sahih*) European subjects, she demonstrates that these mobile Central Asians were the exceptions that helped to define the rules and boundaries of an emerging "protection question." As opposed to colonial subjects like Indians and Jawis, whom the Ottomans begrudgingly accepted as foreign nationals, the Ottoman state repeatedly denied and resisted Central Asian claims to European nationality and protection. As Can cautions, this was a complex and deeply ambivalent strategy. On the one hand, it was designed to thwart the expansion of European consular protections to those taking on "borrowed nationalities." At the same time, while the Ottoman state had no hope of dismantling the expansion of extraterritoriality to the vast majority of the *umma*, Central Asians who had fallen between the cracks of empires represented a unique opportunity for the Ottoman state to assert its jurisdiction. As she demonstrates, Ottoman legal advisors in the Office of Legal Counsel engaged in a multi-pronged strategy to deny these foreign Muslims the rights of European nationals and protégés, while simultaneously promoting the sultan-caliph's right to protect them via the very novel claim that they fell under the exclusive protection of the caliphate.

Here, she challenges the conventional wisdom that late Ottoman approaches to Turkic-speaking Central Asians were primarily a function of ethno-linguistic kinship ties. Instead, Can shows how the Porte recast the religious authority of the caliphate and Pan-Islamic rhetoric, melding them together with emerging international legal norms to assert a kind of spiritual protection over the Central Asian pilgrims and migrants residing in Ottoman lands. Through attention to the complex stories of Bukharans, Afghans, and Kashgaris who sought, often unsuccessfully, to exploit competing regimes of imperial protection, the chapter also presents a different picture of legal pluralism than in the more plentiful examples documented in the Mediterranean and Indian Ocean worlds. As Can argues, practices such as affiliation switching and forum shopping often led to dead ends and legal limbo for subjects and states alike.

In Chapter 6, Julia Stephens shifts our focus from the Hijaz to Iraq and deepens our understanding of the inherent uncertainties in imperial legal regimes. While her chapter examines the same kinds of dilemmas explored by Low and Can, Stephens provides a non-Ottoman view of how inter-imperial law and extraterritoriality functioned along the Ottoman Empire's Indian Ocean frontiers. Thus, while most of the essays in this collection primarily focus on the Ottoman state's own internal understandings of the varied threats to the empire's sovereignty, Stephens explores how Ottoman frontier provinces like Iraq served as a kind of "transnational legal laboratory," in which the principal actors were just as likely to be the mobile subjects and consular representatives of other empires as Ottoman authorities dispatched from Istanbul. Given the constant flow of Shi'i Indian pilgrims, funds for pious endowments, and merchant capital moving between India, Persia, and Ottoman Iraq, British consular authorities cast a long jurisdictional shadow over the region. As a result, this Ottoman territory "could at times feel distinctly British" to its Indian residents. By viewing Iraq's conflicted imperial legal regimes through the eyes of these mobile subjects, Stephens reveals strikingly divergent lived realities than those "presented in the legal treatises written from the centers of empire."

To tell this story, Stephens examines the lives and what she terms "legal afterlives" of Iqbal al-Daulah and Taj Mahal Begam, members of the princely family of the Nawab of Awadh who had settled among the Shi'i Indian migrant communities of Ottoman Iraq. By tracing the fate of the estates and inheritances of these border-crossing subjects, Stephens details how Ottoman officials and British consular authorities squabbled over who was responsible for administering the properties of deceased Indians. In theory, the administration of their estates, whether in Iraq or India, should have been a matter of Islamic law. However, as Stephens points out, the intractable disputes over where these cases should be adjudicated revealed a vast gulf between the interpretation of Islamic law in Istanbul, Iraq, and India. As was the case in the Ottoman Hijaz, British officials in

Iraq and India repeatedly claimed special legal privileges and asserted the British Empire's right to protect its subjects from laws and legal regimes, whether Ottoman or Islamic, that it "deemed uncivilized." In the process, Britain defined its own judicial authority as territorial, secular, and universal, and subordinated non-European laws under the rubric of personal law. This limited their scope to familial and religious domains and denigrated them as irrational and arbitrary. By doing so, British consular authorities in Iraq sought to "discipline plural legal regimes" along India's frontiers "into clear and consistent hierarchies." Yet, as the reams of legal correspondence that Stephens draws on make clear, colonial legal regimes were constitutive of the very uncertainties and inconsistencies they purported to rectify.

In Chapter 7, Faiz Ahmed's examination of Anglo-Ottoman rivalry extends the discussion of intersections between extraterritoriality, Pan-Islam, and private international law across Afghanistan, British India, and the Indian Ocean. Similar to Can, Low, and Stephens, Ahmed shows how itinerant Afghan and Indian Muslims became caught up in larger geopolitical struggles over jurisdiction between the British Foreign Office and the Sublime Porte. In this way, his contribution traces how the battle lines over extraterritoriality shifted to include Muslim subjects of protected states such as Afghanistan, as well as how Indians and Afghans were able to "pull in" multiple state actors in order to maximize their rights and protections. As Ahmed argues, one of the main points of contention for the British was whether the Ottoman sovereign could claim "anything more than a symbolic authority over Afghans." The case-studies he presents—which include Ottoman attempts to expand the empire's consular presence in the Indian Ocean world, to Afghans who were able to activate the sultan-caliph's protection and become Ottomans—show how Pan-Islam was indeed more than a matter of faith and had become deeply imbricated in international legal considerations. Here, Ahmed also makes clear how Abdülhamid II's Pan-Islamic outreach bore fruit among Afghans. As Ahmed argues, these "transborder subjects *par excellence*" were not only claiming to be Afghans and Indians, but also subjects of the Ottoman sultan-caliph. In the contested terrain of nationality, we again see Pan-Islam as much more than a religious discourse.[17]

As Ahmed, Can, Low, and Stephens all point out, the symbiotic relationship between colonialism and cheap steamship and rail travel led to a multiplication of new dilemmas surrounding extraterritoriality, consular protection, and jurisdictional quarrels. It also led to an increased interest in documenting, monitoring, and sorting the nationalities, identities, and commercial affairs of both Ottoman subjects and foreigners residing and traveling within and beyond the empire's

17. For a fuller treatment of Anglo-Ottoman relations surrounding Afghanistan, see Faiz Ahmed, *Afghanistan Rising: Islamic Law and Statecraft between the Ottoman and British Empires* (Cambridge, MA: Harvard University Press, 2017).

borders. Especially after the opening of the Suez Canal in 1869, the Porte began to recognize the increasing commercial and legal entanglements linking Ottoman ports like Jidda and Basra to major maritime transportation hubs across the colonial Indian Ocean from Bombay and Karachi to Singapore and Batavia.

In Chapter 8, Jeffery Dyer shows how this increased connectivity prompted the Ottoman state to establish a network of consulates across the region. Conventionally the rise of more formalized diplomatic contacts with South and Southeast Asia has primarily been understood as an outgrowth of the Hamidian state's strategy of Pan-Islamic outreach to Muslim subjects living under European colonial rule. However, as Dyer points out, the civil servants dispatched to "politically sensitive Indian Ocean territories were not one-dimensional Pan-Islamic firebrands." Rather, the expansion and standardization of full-time, salaried Ottoman consular postings was a global phenomenon. In the 1870s and 1880s, they joined a maturing cadre of Tanzimat-style professional civil servants and consular officers with experience in diplomatic postings from Europe and North America. In addition to experience in previous consular postings, the men tasked with representing Istanbul in the Indian Ocean were often drawn from the Foreign Ministry's Translation Bureau (Tercüme Odası) or the Office of Legal Counsel. As Dyer demonstrates, their professional backgrounds gave them the diplomatic and international legal expertise needed to navigate the Porte's increasingly complicated relations with a Muslim world populated by subjects of European colonial rule. Whether defending the rights of Ottoman subjects living abroad or regulating the flow of Indian Ocean pilgrims through newly erected passport and visa regulations, this emerging consular network met the evolving challenges of European colonialism across the Muslim Indian Ocean armed with the latest instruments of international law and diplomacy.

Just as Dyer tracks the rise of hajj-related passport and mobility controls managed by Ottoman consular officials in the Indian Ocean, in Chapter 9, David Gutman shows how the post-Tanzimat state embraced new documentary practices to manage the explosion of migration and mobility across the Mediterranean and Atlantic. Gutman specifically explores intersections and cleavages between the emergence of international systems of passport and mobility regulation and the idiosyncrasies and contradictions inherent in the parallel development of Ottoman domestic identity and mobility controls.[18] At the heart of his

18. On the international passport system, see Jane Caplan and John Torpey, eds., *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton: Princeton University Press, 2001); John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge, UK: Cambridge University Press, 2000); Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2011).

analysis is the creation of the *mürûr tezkeresi*, or internal passport.[19] Its development was meant to render domestic mobility legible to the state. In theory, the ability to permit or deny applications for this document allowed the state to distinguish between legitimate forms of mobility such as trade, labor, or pilgrimage, and those considered illegitimate or dangerous, such as smuggling, banditry, and illegal overseas migration. Gutman also interrogates the contradictions between post-Tanzimat visions of standardized nationality and subjecthood against the deep anxieties provoked by mass migration and human smuggling. He deftly exposes these contradictions by presenting the Hamidian state's divergent approaches to the management of documentary practices and mobility networks surrounding mass overseas migration among two Christian communities: Maronite Christians from Mount Lebanon and Armenians from Eastern Anatolia.

In the final contribution to the volume, Stacy Fahrenthold extends the previous chapter's discussion of Ottoman migration to the Americas into World War I, and traces the afterlife of empire in distant lands and legal regimes. Through a focus on the exceptional immigration and nationality statuses of the Syrian diaspora (*mahjar*), Fahrenthold examines the origins of American wartime legal ideas about Syrians and Syria as a people and a "territory simultaneously *a part of* and *apart from* the Ottoman Empire." According to Ottoman nationality laws requiring Ottomans to seek permission from the state before renouncing their subjecthood and naturalizing as foreign nationals, prior to 1915, Syrian migrants found it difficult to renounce their ties to the Ottoman Empire and become American citizens. On the other hand, Arab Christian migrants struggled to distinguish themselves from "Turkish" Muslims or so-called subjects of "Turkey in Asia." In both cases, their conflation with Islam and Asians placed them in distinctly undesirable groups according to the United States' increasingly restrictive immigration laws. In order to overcome these obstacles, Arab Christian activists worked to be classified as "Syrians" and racially white. By redefining themselves in this way, they sought to avoid Ottoman laws designed to prohibit their naturalization. And by claiming to be white, they sought to skirt legislation designed to limit Asian labor migration.

Beginning in the summer of 1917, Fahrenthold shows, the United States Congress began to distinguish "Syrians and Mount Lebanese claimed by Turkey as subjects" as a separate category from other Ottoman nationals. This legal adjustment, in addition to making Syrians and Lebanese eligible for military service and the draft, would have far-reaching consequences extending well-beyond the status of the migrants themselves. In effect, this change recast Syria and Mount Lebanon "not as sovereign Ottoman territories but as contested spaces held by Istanbul also claimed by America's allies." This case provides a perfect example of

19. On the *mürûr tezkeresi*, see Nalan Turna, 19. *Yüzyıldan* 20. *Yüzyıla Osmanlı Topraklarında Seyahat, Göç ve Asayış Belgeleri: Mürûr Tezkereleri* (Istanbul: Kaknüs Yayınevi, 2013).

how Ottoman practices of autonomy were used as evidence in the court of international legal opinion to undermine and even discount Ottoman sovereignty. As Fahrenthold points out, this move was based, in part, on an American reading of the pre-1914 status of Mount Lebanon as an autonomous province under French extraterritorial supervision. This reading also implicitly rejected the Ottoman state's abolition of Mount Lebanon's autonomous status in 1914. This discourse of exception allowed the United States and its army to enlist and deploy Syrian migrants as military labor. More importantly, the same American wartime laws that ignored the Ottoman Empire's identity documents and claims of sovereignty over its migrants abroad simultaneously helped France to construct and bolster its Mandate-era claims to Lebanon and Syria in the 1920s. This American precedent provided the French Foreign Ministry with a novel way of selectively claiming certain Ottoman migrants under their protection. Similarly, it provided a model for the French issue of safe conduct passports in order to claim and repatriate Syrian migrants and establish sovereignty over their lands.

Fahrenthold's essay underscores how Ottoman nationality regulations and the larger goal of turning Ottoman subjects into citizens remained incomplete projects. In the empire's final decades, international law had provided important tools in the defense of Ottoman sovereignty. However, the protections theoretically provided by international law were always a porous defense system. Ultimately, the Ottoman adoption of international legal norms and practices was only successful to the extent that other states and empires respected Ottoman law and territorial sovereignty. As was frequently the case in the empire's final decades, interpreting and applying international law to the Ottoman Empire was primarily in the hands of other states. Just as Ottoman nationality could be redefined, built up, and protected by international legal thought, as Fahrenthold's American case study reveals, those very same concepts could just as easily be turned against Istanbul. Indeed, on the eve of World War I, even Ottoman statesmen began to realize that it simply did not matter "however many books we write on international law or however many human rights laws we implement." The only way to command respect from other states was through military might. In the end, the Ottoman Empire and the Turkish Republic that succeeded it would survive or die "by war," not "by those old books of international law."[20]

20. Mustafa Aksakal, "Not 'by those old books of international law, but only by war': Ottoman Intellectuals on the Eve of the Great War," *Diplomacy and Statecraft* 15, no. 3 (2004): 507–44.

2 Freeing "The Enslaved People of Islam": The Changing Meaning of Ottoman Subjecthood for Captives in the Russian Empire*

Will Smiley

Between 1677 and 1918, the Ottoman Empire fought (and mostly lost) eleven wars to the Russian Empire in a nearly ceaseless competition for imperial supremacy in the Black Sea, Balkans, and Caucasus. As lives were lost, borders moved, local notables altered allegiances, and Eurasian geopolitics shifted, thousands of Ottoman subjects also fell into Russian hands as captives. This is a story that has only begun to be told, primarily through the social history of captivity in the late Ottoman period.[1] This chapter, drawing on Ottoman archival documents and embassy accounts as well as Russian and British archival sources, will instead take a different approach—asking what captivity meant for Ottoman diplomacy, law, sovereignty, and subjecthood in the eighteenth and early nineteenth centuries.[2]

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1. See Yücel Yanıkdağ, *Healing the Nation: Prisoners of War, Medicine and Nationalism in Turkey, 1914–1939* (Edinburgh: Edinburgh University Press, 2013); İbrahim Köremezli, "Kırım Harbi Sırasında Rusya'daki Esir Osmanlı ve Müttefik Askerleri (1853–1856)," *Belleten* 77, no. 280 (2013): 983–1030; Yücel Yanıkdağ, "Ottoman Prisoners of War in Russia, 1914-22," *Journal of Contemporary History* 34, no. 1 (1999): 69–85; Mahmut Akkor, "I. Dünya Savaşında Çeşitli Ülkelerdeki Türk Esir Kampları" (master's thesis, Sakarya University, 2006). I have written about foreign captives in Ottoman hands during the same period elsewhere: Will Smiley, *From Slaves to Prisoners of War: The Ottoman Empire, Russia, and International Law* (Oxford: Oxford University Press, 2018).

2. An alternative approach, which has proven fruitful in Western European contexts, focuses on captivity narratives, but there are few Ottoman narratives of captivity, particularly captivity in Russia, from this period. See Linda Colley, *Captives: Britain, Empire and the World, 1600–1850* (London: Jonathan Cape, 2002); Robert C. Davis, *Christian Slaves, Muslim Masters: White Slavery in the Mediterranean, the Barbary Coast, and Italy, 1500–1800* (Basingstoke: Palgrave Macmillan, 2003); Claire Norton, "Lust, Greed, Torture, and Identity: Narrations of Conversion and the Creation of the Early Modern Renegade," *Comparative Studies of South*

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