Halil İnalcık

Islamization of Ottoman laws on land and land tax

Following the Ottoman occupation of Hungray in 1541, the practical question arose as to how Islamic-Ottoman land law was to be applied in this newly-conquered Christian country. Out of concern for acting in strict conformity with the precepts of Islamic Law, Sultan Süleyman apparently asked the Ottoman jurist Ebū's-Su'ūd Meḥmed (who was the Rumeli ḳaḍī-'askeri in 1537 and Şeyḫülislām in the period 1548-75) to give an authoritative opinion on this matter based on the Sharī'a.

In the introduction to the survey registers of Budin (Hungary),[1] Ebū's-Su'ūd first summarizes the Sultan's order[2] to the effect that in this newly conquered land the population is not to be relocated, and full security is to be guaranteed for the people and their offspring. The decree continues:

"They are to keep their movable properties as well as their houses and shops and other buildings in the towns and villages, and their vineyards and orchards in the countryside, as their freehold property (*mülk*) to dispose of as they wish, by sale, donation, etc. When they die these properties are to pass to their heirs in full ownership, and no one shall interfere with them on condition that they pay legal taxes (*ḥuḳūḳ*) on their vineyards and orchards. Also, the fields (*tarla*) which they have cultivated are to be left in their possession, and [their rights of possession] confirmed (*muḳarrer*).

The fields, however, are not considered as freehold property in the manner of their other possessions. As elsewhere in the well-protected territories [of the Ottoman Sultans] they are rather considered as *memleke* lands, also known as *mīrī*.[3] On these lands the *dominium eminens* (*raḳaba*)

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[1] The first survey of the Budin province, now preserved at the Başbakanlık Ottoman Archives, Istanbul, is drawn up in 1546. See G. Káldy-Nagy: *Kanuni Devri Budin Tahrir Defteri.* Ankara: DTC Fakültesi, Pub. no. 177, 5. This defter does not have the text of the *ḳanūnnāme*. A later survey (BOA, no. 987), also made under Suleyman I, has it. Apparently it is originally written by Ebū's-Su'ūd as a *fetvā* and it appears to have been re-formulated later on as the Sultan's order.

[2] See Barkan: *XV. ve XVI'ıncı Asırlarda Osmanlı İmparatorluğunda Ziraî Ekonominin Hukukî ve Malî Esasları.* İstanbul 1943, 296-297; cf. "Osmanlı Kânunnâmeleri". *Millî Tetebbu'lar Mecmuası* (hereafter MTM) I (1331 H.), 49-50.

[3] According to Ebū's-Su'ūd the *mīrī*, or, *memleke* (mamlaka) land as found in the Ottoman practice, means the land under the state *raḳaba* or ownership; the term *arḍ al-mamlaka*

1) Festgabe an Josef Matuz: Osmanistik - Türkeiforschung - Diplomatik
   eds. C. Fragner and K. Schwarz, Istanbul,
   Klaus Schwarz Verlag, 1992, 100-116
2) Essays in Ottoman History, ed. Eren, 1998

belongs to the public treasury (*beytü'l-māl*) of the Islamic community. The fields are considered to be in possession of the *re'āyā* on a lease (*'āriye, 'āriyet*); the *re'āyā* may sow grain or other crops as they choose, and must render the *ḫarāc-i muḳāseme* under the name of tithe (*'öşr*) and other taxes. Thus, they may cultivate these lands as they wish. No one shall interfere and transgress [their possession of their lands] as long as they continue to cultivate and improve them appropriately and to render taxes in their entire amount. They possess the land during their lifetime and at their death their sons inherit and hold possession in the same manner as described above. If no son survives, the land is to be given on a lease to a person outside the family who is capable of cultivating it in return for the payment of a rent paid in advance (*ücret-i mu'accele*). Thereupon he too holds the land in his possession under the aforementioned conditions. The plots of their vineyards and orchards are also included in the category of state lands (*mīrī*) when the vines and trees are depleted. Then the plots are to be possessed in the same manner as fields. Thus, the plots should not be assumed to be their private property in the same manner as their vineyards and orchards".

In this document Ebū's-Su'ūd, following Şeyḫülislām Ibn Kemāl[4] and other Ottoman şeyḫülislāms before him, attemps to interpret the nature of state ownership of the land and peasants' possession rights in terms of the notions of Islamic jurisprudence. The point he emphasizes is that *mīrī* land, as a specific category, comprises only the fields reserved for the cultivation of grain, and excludes vineyards and orchards. The entire land, however, including vineyards and orchards, as well as the building lots in the towns, is considered under the *raḳaba* (*dominium eminens*) of the Sultan. When the land was no longer used as a vineyard or an orchard it was again included in the category of *mīrī*.[5] Ebū's-Su'ūd, always following the classic interpretation of the ninth century Muslim jurists,[6] interprets the *ḫarāc* tax as

instead of *mīrī* with the same meaning is in common use in the works of Islamic jurisprudence (*Tātārhāniyye*, for example).

4 In: "Osmanlı Kânûnnâmeleri". *MTM*, I, 54-55, 62.

5 Since the land of a vineyard is considered *mīrī* it is subject to rent for the state treasury. Bursa court records witness to the application of this principle. Likewise a rent, *muḳāṭa'a*, is to be paid for building plots in the conquered cities. See H. Inalcik: *The Policy of Mehmed II Toward the Greek Population of Istanbul and the Byzantine Buildings of the City*. In: Dumbardon Oaks Papers 23-25 (1969-1970), 242-249.

6 Abū Yūsuf Ya'kūb b. Ibrāhīm: *Kitāb al-Ḫarāc*. Bulak 1302, second edition Cairo 1352 H. Chapter on Sawād: 47-62; H. M. Tabātabā'ī: *Kharāj in Islamic Law*. London: Anchor 1983, 88-89; Ziaul Haque: *Landlord and Peasant in Early Islam*. Research Institute, Islamabad 1977, 164-171, 328.

a rent (*ücre* or *kirā'*) on the land, which is leased (*icāre* or *'āriye*) by the state. In 1568, when he was asked to make the surveys of Üsküp (Skopje) and Salonica, Ebu's-Su'ūd, in the introduction of the register he drew up,[7] summarized in a more systematic manner his interpretation of the existing Ottoman land law in accordance with Islamic Law. Here is a translation of this important text in its entirety:

"In the former registers no attempt was made to determine the true nature of various forms of landholding in the well-protected territories of the Ottoman state. Since it was not scrutinized and clearly stated whether the lands are *'öşrī* or *ḫarācī*, and whether they are the freehold property (*mülk*) of their possessors, the peasant *re'āyā*, considering the lands in their possession as *'öşrī* (private property subject to tithe), dispute paying as much as one-eighth of their produce, and also buy and sell land among themselves like the rest of their property; some even think they can make *evḳāf*. And the judges, being unaware of the true *mīrī* status of the land, deliver certifying documents for their buying and selling, and draw up *vaḳf* deeds contrary to the sacred Sharī'a. Since this situation has caused a substantial deterioration in the orderly functioning of state affairs, and confusion in the transactions made among the people, the present Sultan [on his accession to the throne] ordered that, in the introductions to the imperial survey registers, the true nature of land and the possession rights of their owners in the well-protected territories be thoroughly investigated with the task of making a survey of the provinces of Üsküp (Skopje) and Selânik (Salonica), he set about drawing up the survey, placing his trust in God.

At the outset it is to be explicity stated that, in accordance with the sacred Sharī'a, there are three categories of land in the Islamic territories. The first is tithe land (*öşrī*) which are granted to the Muslims as their private property (*mülk*). It is legally their freehold property, to dispose of as they wish in the same manner as the rest of their properties. Because it is against Islamic Law to subject the Muslims to *ḫarāc* at the beginning [i. e., at the time of the conquest], only the tithe is imposed [as the land tax]. They cultivate the land and pay tithes out of the grain which they harvest, and nothing else; and the tithes are distributed to the poor and the disabled. The religion forbids that the tithe be taken by the military or others. Lands in the Hejaz and Basra are of this category.

7 Barkan: *op. cit.*, 297-299; the regulation is drawn up on the accession of Selim II in 976 of the hijra year beginning on June 26, 1568; here, apparently Ebū's-Su'ūd expanded one of his early fetvās compare fetvā no. II and III in the facsimile.

The second category is *ḫarācī* lands, those which were left in the hands of the unbelievers at the time of the conquest. They are recognized as their freehold property (*temlīk*). Tithe is imposed on these lands at the rate of one-tenth, one-eighth, one-seventh or one-sixth, up to one-half, depending on the fertility of the soil. This is called *ḫarāc-ı muḳāseme*. In addition, they are subject to pay annually a fixed amount of money which is called *ḫarāc-i muvaḍḍaf*. This category of lands, too, is considered the legal freehold property (*mülk*) of their possessors, which they may sell and purchase, or dispose of in any kind of transaction. Likewise, those who purchase such lands may cultivate them and must pay the *ḫarāc* due in both its forms of *muḳāseme* and *muvaḍḍaf*. If the purchasers are Muslims, the two kinds of *ḫarāc* which were paid by the unbelievers do not lapse; the new owners, too, must render them in full. Although it is not legal according to the Sharī'a to impose *ḫarāc* on Muslims at the beginning, it is lawful to exact it as transferred from an initial status of the land. Those who are in possession of such land, whether *Dhimmī* or Muslim, dispose of it as they wish without any interference from outside as long as they keep it under cultivation. When its owner dies, the land is inherited by his heirs in the same manner as the rest of his property, whether movable or immovable. The land of the Sawād in Iraq is of this category. The categories of land which are known and are dealt with in Islamic legal treatises consist of these two.

There is a third category of land which is neither *'öşrī* nor *ḫarācī* of the type explained above. This is called *arḍ-i memleke*. Originally it, too, was *ḫarācī*, but its *dominium eminens* (*raḳaba*) is retained for the public treasury (*beytü'l-māl-i müslimīn*) because, were it to be granted as private property to its possessors, it would be divided among his heirs, and since a small part would devolve on each one, it would be extremely difficult, perhaps impossible, to determine the share of *ḫarāc* tax to be paid by each in proportion to the land in his possession. Therefore, such lands are given to the peasants on a lease (*'āriye*). It is ordered that they cultivate them as fields, or make them into vineyards, orchards or vegetable gardens, and render *ḫarāc-i muḳāseme* and *ḫarāc-i muvaḍḍaf* out of the harvest.

According to some of the legal schools established by the great imams, the land of the Sawād in Iraq are of this category. Lands in this fertile country also belong to the *memleke* category and are known as *mīrī*. They are not the private property of the peasant *re'āyā*, who hold it in their possession on a lease (*'āriye*), farm it or otherwise cultivate it and, render *ḫarāc-i muḳāseme* under the name of tithe (*'öşr*) and *ḫarāc-i muvaḍḍaf* under

the name of *çift aḳçası*. So long as they continue to cultivate it and maintain it in the proper condition in the manner described above, and pay the taxes (*ḥuḳūḳ*), no one is allowed to interfere in their possession. They may dispose of it as they wish until their death; when they die their sons shall take their place and possess the land in the same manner as described above. If no son survives, the land is given in *tapu* to a person other than a family member who is capable of cultivating it in return for a rent paid in advance (*ücret-i mu'accele*). Thereupon he too holds it in his possession under the aforesaid conditions. If the possessor of the land ceases to cultivate it for three [consecutive] years it is taken from him with the legal decision of the cadi (*şar'ile*) and given to another peasant's possession under the *tapu* regulations. No one is permitted to hold the land in his possession in contravention of the conditions specified above. All transactions relating to selling, buying, donating, endowing, or otherwise disposing it as freehold property, in any way whatsoever, are entirely null and void. Also the certifying documents and endowment deeds which judges may issue on such transactions are all null and void. However, when a peasant wishes to cede the land in his possession to someone else, he may do so under the supervision of his *sipāhī* who takes a certain amount of money for fee paid (*ḥaḳḳ-i ḳarār*); then it is lawful and acceptable if the *sipāhī* gives the land under *tapu* to the party [for whom the cession is made]. By God, the Omniscient and Wise."

In this document, Ebū's-Su'ūd's insistence on the *ḫarācī* character of *mīrī* land is the key to his argument, reconciling the Ottoman and Islamic traditions. Some of the early authorities held that the religious status of the landholder determined the nature of land possession. Abū Ḥanīfa maintained that land held originally by a non-Muslim remainded *ḫarācī* even if acquired later by a Muslim.[8] In general, the Ottoman jurists followed this opinion; but some jurists held that the status of the land was ultimately decided by the Imām or Caliph. The identification of *ḫarācī* lands with "those lands belonging to all Muslims or to the Imām" best fits the Ottoman definition of *mīrī*. The *ḫarāc* tax is interpreted as a rent, whether the land was acquired by force or by agreement, or belongs to the category of ownerless lands (the so called *enfāl*, comprising wasteland, forests, meadows, abandoned lands, or

[8] Tabātabā'ī: *op. cit.*, 109; Z. Haque: *op. cit.*, 198, 207-210, 216-218.

lands belonging to the pre-conquest rulers).[9] It appears that in Iran as well as in the Ottoman Empire this broad interpretation became prevalent.

As Ebū's-Su'ūd indicated, and as court records attest, *mīrī* lands became the subject of sales among the people. Although it was extremely difficult to sell a piece of *mīrī* land —since the local sipāhīs or other agenst had a vested interest in keeping the *mīrī* status of the land intact, and when sold it was supposed to revert to its original *mīrī* status, the buyer losing its sale price— there were loopholes and legal devices by which the law, however, could be circumvented.

Once sold with a court document, land could not revert *mīrī* to status because it became the subject of a sale contract which, under the Sharī'a, established absolute ownership.[10] It required the Sultan's radical decision to recover such lands for the state. The Sharī'a, of course, was supreme, and it was a sin to act contrary to its prescriptions. It is for this reason that, in the survey books and cadis' registers, in records concerning private estates and *vaḳf* land, we frequently find a note emphatically stating that the land in question was acquired through a Shar'ī sale. Sometimes the transaction even gives the impression of a collusion. The same device was widely employed by private interests to convert *ḫarācī/fey'* lands into private estates in the early centuries of the caliphate.[11] It was obviously to serve the state that some jurists introduced the rule that any sale of *ḫarācī* lands was contrary to the law and consequently null and void.

Ebū's-Su'ūd's[12] words give the impression that by the middle of the sixteenth century the illegal sale of *mīrī* lands had become widespread enough to cause alarm in government circles. Since the religious courts were instrumental in these sales, the opinion of the şeyḫülislām, the leading

9 Tabātabā'ī: *op. cit.*, 112, 122; it appears that the greater part of the arable land in the Abbasid empire belonged to the category of the *ḫarācī* lands.

10 The *farāġ*, transfer or sale of the possession rights, was widely practiced as the law court documents show. Another way was the "sale" by a peasant of fields from his farm for debt. Both kinds of "sale", and the difficulty to pursue such "sales", were responsible for, the loss of the *mīrī* character of the land.

11 Ziyaul Haque: *op. cit.*, 216-219, 313-314; on *fay'* see F. Løkkegaard: *Islamic Taxation in the Classic Period.* Copenhagen 1950, 38-72.

12 On Ebū's-su'ūd, 1490-1573, see "Ebüssu'ûd efendi", *İslâm Ansiklopedisi*, IV-2, 62-69 (Cavid Baysun); after the routine service as *müderris* and *cadi* in Ottoman *ilmiyye* career line he was appointed *ḳāḍī'asker* of Rumeli in August 1537, *şeyḫülislām* in 1545, keeping this post until his death in 1573. Süleyman had a complete confidence and affection for him, calling him brother.

religious authority in the realm, was needed to stop the practice. Ebū's-Su'ūd ruled that "the delivery by the cadis of such documents of sale is absolutely null and void". In various fetvās[13] he declared such sale documents to be absolutely against Islamic Law and *ḥarām*, i. e., forbidden by Islam. The question was even raised whether a cadi who issued such a document was liable for punishment. It appears that in most cases a sale of *mīrī* land was made because the situation was ambiguous, or it was impossible for the cadi to investigate and establish the true nature of the possession. Of course, bribery or favoritism also played a role. Successive sales of such lands further consolidated the proprietary rights of their owners.

Ambiguity stemmed mainly from the fact that the transfer (*farāġ*) of state land in return for monetary compensation, which was a lawful transaction, was also called a sale. To reduce this ambiguity, the fetvā required that in such transfers the cadi in question should specifically state that "the possessor of the land transferred its full possession (*taṣarruf*) to so-and-so with the sipāhī's permission in return for such-and-such a payment of money; thereupon the sipāhī confirmed it by giving it in *tapu* for such-and-such an amount paid as *ḥaḳḳ-i ḳarār* (payment for the establishment of possession rights)". Such a formula made it definite that the object of the transaction was not a regular sale with *raḳaba* but a simple transfer of possession or tenure.

When an influential member of the ruling (*'askerī*) class entered into possession of land by sale, he usually went to the Sultan to obtain a *temlīk* document at the same time in order to consolidate his property rights.

Since they were given by the most authoritative religious scholar of the time, Ebū's-Su'ūd's fetvās had a decisive effect on the way in which the Ottomans subsequently interpreted landholding and taxation practices in the empire. His formulation on *mīrī* land was to be included in the new law codes and survey registers as the ultimate and definitive commentary on the

13 Ertuğrul Düzdağ: *Şeyḫülislām Ebus-Suud Efendi Fetvaları...*, İstanbul 1972, indentified 37 copies of *Fatāwā-yi Ebū'ssu'ūd* in Istanbul libraries. They vary in length from 30 to 517 folios. Scattered in various collections a complete list of fetvās of Ebū's-Su'ūd has still to be made. Düzdağ's selection based on the copies of Fatih Ali Emiri, no. 80, and Bayezid Umumi Kütüphanesi, no. 2757, consists of 29 fetvās directly concerning the land and land taxes (*op. cit.*, nos. 824-852). The fetvās we are publishing here are not included in Düzdağ's selection. They come from a Münşe'āt collection preserved at the Âtif Efendi Library, no. 1734.

Ottoman land law.[14] Obviously, Ebū's-Su'ūd's main concern was to give an authoritative definition of the Ottoman *mīrī* regime and land taxation in accordance with Islamic Law, in order to stop practices which threatened to undermine the Ottoman landholding system. Of particular interest is his statement that some judges who were unaware of the *mīrī* status of certain types of land were issuing documents legalizing the freehold rights on such lands, and that this malpractice had become so widespread that it threatened the entire traditional order in the public as well as the private sectors.

In effect, Süleyman the Lawgiver's şeyḫülislam tried to explain the Ottoman *mīrī* regime according to principles formulated by the great jurists of the ninth century, in particular Abū Yūsuf, the most liberal exponent of the Hanefī school.[15] Ebū's-Su'ūd stressed that all lands in the Ottoman empire were acquired by military force, and were therefore all *ḫarācī* lands, subject to land tax at the rate of *ḫarāc*. This interpretation was bound to have drastic effects on the Ottoman peasantry because, prior to this ruling, the Ottoman imperial laws had fixed the tithe at only one-eighth on lands reserved for the cultivation of grain. And the survey registers show that this law was actually applied in the conquered lands in the fourteenth (Bythinia, Thrace, Bulgaria, and western Anatolia), fifteenth (Albania, Serbia, and Bosnia) and sixteenth centuries. Only in lands conquered after Ebū's-Su'ūd issued his religious commentary –i. e., Cyprus (1570-71), Georgia (1578), Egri (1596), Crete (1669), and Kameniça (1672)– was the rate of one fifth applied. In general, tithes at the rate of one-eighth were maintained in the lands conquered earlier, while the *'avāriḍ* or extraordinary taxes were now more frequently imposed. It appears that in one way or another the state revenues had to be increased in order to meet the needs of a rapidly expanding budget. But, as Ebū's-Su'ūd informs us, in his time the peasants wished to take "tithe" (*'öşr*) in its literal

[14] Ebu's-Su'ūd's text is reproduced in the *ḳānūnnāme* of Mora dated 1716 (Barkan: *op. cit.*, 326); redactor of the *ḳānūnnāme* of Koceli followed Ebu's-Su'ūd in his identification of *čift-resmi* as *ḫarāci muvaḍḍafa* (Barkan: *op. cit.*, 33), etc. His fetvā is interpolated in the introduction of the imperial survey register of Manastir: Başbakanlık Arşivi, Tapu defteri, no. 182. The principles he formulated became the basis of the later interpretations and legal provisions: see Ömer Hilmi: *Ahkām al-Arāḍī*. Istanbul n. d., 48-62, reference to Ebu's-Su'ūd, 67; also see *Arāḍī ḳānūnnāme-i Hümāyūnu*, 2nd edition, Istanbul 1330 H., 15-32.

[15] Abū Yūsuf: *op. cit.*, Chapter 3; Turkish translation by Ali Özek: *Kitabü'l-Haraç*. İstanbul Üniversitesi publ. no. 1548; for his discussion of the *'öşrī* ('uşrī) and *ḫarācī* lands, see Chapter XI; on Abū Yūsuf see "Ebü Yûsuf", *İslâm Ansiklopedisi*, IV, 59-60 (Kufralı), and J. Schacht: *EI*^{2}, I, 164-165.

meaning of one-tenth, and so disputed their requirement to pay one-eighth.[16] This must have been another reason why the government asked him to issue his opinion on the Islamic basis of the current taxation system.

On the other hand, Ebū's-Su'ūd justified, on the basis of practical necessity, the rule that a peasant's standard farm (*çift*) cannot be divided. For if that land were distributed among the heirs in the same manner as ordinary property it would be impossible to determine the share each heir was to pay for *ḫarāc*. State control, he concluded, was imperative; a regime of private ownership and freedom of disposition would lead to the collapse of "the order of public affairs", since the fiscal, economic and military –even political– structure of the empire depended on the state's control of the land and the peasantry.[17]

In the final analysis, the question of the nature of land ownership was closely bound up with the more practical issue of taxation. In his effort to bring Ottoman taxation practices in conformity with the Sharī'a, Ebū's-Su'ūd, following the early jurists, focussed on the methods of assessment of the land tax. Considering all lands as acquired by force (*'anwā*) or *ḫarācī*,[18] he interpreted the tithes (*'öşr*) and the *çift resmi* –the two basic Ottoman rural taxes– as two different methods of assessing *ḫarāc*. He argued that in the Ottoman empire the *'öşr* had been mistakenly used for *ḫarāc-i muḳāseme*, while *çift resmi* was identified as *ḫarāc-i muvaḍḍaf*.

[16] See Barkan: *op. cit.*, Index: *a'şâr, 'öşr*.

[17] That the state ownership principle is primarily determined by the special conditions vital for the peasant subsistence becomes clear by the fact that only the fields reserved for growing grain were made subject to the *mīrī* regime. This is stressed in the regulations and fetvās repeatedly. Ebū's-Su'ūd affirms: "The lands within towns are freehold property; the *mīrī* lands are those cultivated lands that lay around the villages". Conversion of such fields into pastures, vineyards or orchards is prohibited because the latter category of lands can be disposed as private property; they can be sold, donated or given as surety. It is to be noted that under the Abbasid Caliphate "only arable, not residential, land was subject to kharadj" (Tabātabā'ī: *op. cit.*, 35). In the Ottoman empire it is made clear that "sapan girüp zirā'at olunan yerler arḍ-i mīrīdir, tapu ile verilir". "Osmanlı Kanunnâmeleri", *MTM*, I, 87). Diminshing of the grain production may result in famine, deficit in the public revenue and drop in the income of the provincial timariot cavalry.

[18] When a region is aquired through fighting the land in its entirety is considered as taken in *'anwa* even when certain groups within its boundaries submitted without fihting or accepted Islam (Tabātabā'ī: *op. cit.*, 107). During the Ottoman expansion there were towns and regions which submitted by agreement but the land was still put under the *mīrī* regime.

In this interpretation, *ḫarāc-i muḳāseme* was the land tax levied on the basis of a fixed percentage of the produce, while *ḫarāc-i muvaḍḍaf* was a lump sum paid annually per unit of land. Originally, both types were associated in Islamic tradition with the Roman and Sassanian forms of land tax assessment.[19] In Islamic terminology, the first was known as taxation by *muḳāseme* (percentage of the produce), the second as taxation by *muvaḍḍaf* (or *misāḥa*, measurement of the land).[20]

In practice, both methods of assessment were controversial as they entailed important consequences for the peasantry. In general, assessment by measurement was advantageous for the treasury as it secured a guaranteed amount of revenue from land. As early as the Sassanian period, however, objection was raised about the unjust effects of this method, since the peasant had to pay the tax even if he sufferd losses from natural disasters or the breakdown of the irrigation system.[21] In general, the peasantry preferred the percentage method.[22] Taxation based on measurement was also discouraged on religious grounds since Islamic Law did not accept speculative obligation in contract (*selem*). By the percentage method, in fact, the peasantry gained when prices were low, while the government gained when prices increased. On the other hand, the percentage method was only suitable for crops which could be stored for a sufficient period. Consequently, it was predominantly used in taxing grain, while the measurement method was used in taxing fruit.[23]

Although Ebū's-Su'ūd assumed that the percentage method (*muḳāseme*) was used in the assessment of tithes in the Ottoman lands, in actual Ottoman practice the measurement method (*misāḥa*) was used, because tithes were fixed not at every harvest year but for quite a long period of time, from ten to

[19] For Iran see Tabarī: *op. cit.*, Turkish transl. Z. K. Oğan and A. Temir, 2nd edition, III, İstanbul 1965, 1136. In Egypt there were two types of assessment of the agricultural land, a fixed money rent or payment in kind and rent as a certain portion of the corps. A. H. M. Jones: *Later Roman Empire.* Oxford 1964, II, 803; Kosei Morimoto: *The Fiscal Administration in the Early Islamic Period.* Dohosho: Asian Monographs I, 1981; Gladys Frantz-Murphy: *The Agrarian Administration of Egypt from the Arabs to the Ottomans,* Institut Française d'Archéologie Orientale, Cairo 1986, 65-79.

[20] See Løkkegaard: *op. cit.*, 108-125; Morimoto: *op. cit.*, 48-51; Frantz-Murphy: *op. cit.*, 65-79.

[21] Tabarī: Turkish trans., III, 1135.

[22] Løkegaard: *op. cit.*, 113; Abū Yūsuf: *op. cit.*, 28, discusses the advantages of the *muḳāsame* method.

[23] Løkegaard: *op. cit.*, 109.

thirty years and even longer. They were recorded in the registers in terms of a fixed amount of produce, and calculated with a price fixed by the government for the entire period. It is true that the amount to be rendered as tax was computed on an average of three years, and thus whether harvest years were good or bad was taken into consideration. But, aside from the shortcomings of this computation method, climatic conditions and prices were also factors that could fluctuate drastically within a period of thirty years. In this system the tax payer had to deliver a fixed amount, in kind or cash, for a certain amount of land in his possession, without any adjustment over a long period. The percentage method was actually applied only in sharecropping (*ortakcılık*), but in this case the landowner's share was very high, usually no less than half the produce.[24]

The Ottoman government fixed grain prices for each region; but here too, the actual measurement in use should be taken into account. The grain measure –whether *mud, kile,* or *yük*– varied widely from region to region, and this variation must have some connection with the fixed price factor.[25] We should remember that tithes were assessed according to the local measure, and the totals were given in this unit in the survey registers. In fertile regions, where the average harvest was usually high and prices low, the measure was generally larger than in the less fertile regions. Thus the sipahi, or the government, which received larger amounts of grain in a fertile area per unit of measurement, realized approximately the same amount of cash per unit as in the less fertile areas.[26] Thus, the effects of price discrepancy were evened out. This situation must be one reason why the government did not insist on the standardization of grain measures throughout the empire. We should also bear in mind that trade in grain between different regions –except in coastal areas– was impractical under normal conditions because of prohibitive transportation cost. In order to protect the peasants, the central government spent much effort to enforce the law requiring the delivery of tithes always to be made in kind, since the timariots or other government agents preferred payment in cash when grain

[24] Ziaul Haque: *op. cit.*, 310-346, considers *muzāra'a,* sharecropping, as the prevalent method on the *ḫarācī* lands. But, in general, this method is the one which was prevalent on the lands of the grandees reclaimed from the wasteland where agricultural labor lacked; Morimoto interprets *muzāri'ūn* simply as cultivators. *Muzāra'a,* metayage, is rejected by Abū Ḥanīfa.

[25] See H. Inalcik: "Yük (Himl) in Ottoman Silk Trade, Mining and Agriculture", in: *Turcica,* XV, (1984), 131-156.

[26] *Ibid.*

prices were low and in kind when prices were high. In any event, the Ḥanafī jurists, Abū Yūsuf in particular, had been against the fixing of prices by the government since, they argued, prices were determined by circumstances known only to God.[27]

Ebū's-Su'ūd's identification of the Ottoman *çift resmi,* paid annually as a fixed sum per land/household combination, with *ḫarāc* assessed by measurement of the land, should be considered with reference to its pre-Ottoman origins. *Çift resmi* was actually a combination of land and hearth tax that had been generally applied in the Middle East and the Mediterranean world since ancient times to the dependent registered or attached-to-land peasants.[28]

The points made in the lawcodes are actually formulated in Ebū's-Su'ūd's various fetvās which were compiled later on in the collection known as *Fetāwā-yi Ebū's-Su'ūd al-'Imādī.* His fetvās on landholding and land tax are partly published by Ertuğrul Düzdağ. In these fetvās the specific points Ebū's-Su'ūd ephasizes are the same as in the lawcodes, namely the state's absolute dominium eminens (*raḳaba*) on all arable lands, and the illegality of practices attempting to convert such lands into freehold estates. At the same time, he endeavors to interpret various taxes imposed upon arable lands and peasants in terms of traditional Islamic rules and notions. While the land in the towns, he asserts, are freehold (*mülk*), the cultivated fields surrounding the villages are *mīrī* lands which cannot be sold, donated, or endowed as *vaḳf* (Düzdağ: no. 825). The *mīrī* or *memleke* nature of arable lands is most emphatically declared (Düzdağ: nos. 825, 826, 836) and their conversion to freehold or *vaḳf* is absolutely frobidden by the Sharī'a. Incidentally, the term *memleke* for such lands is preferred to *mīrī* since it is a legal term meaning "land under the absolute authority of the Imām (Caliph or Sultan)".

Ebū's-Su'ūd's commentaries on the taxes connected with timar revenue of the sipāhīs also demonstrate his efforts to islamicize age-old state taxes or to reject them as incompatible with Shar'ī principles. He states, for instance, that sheep tax is to be interpreted as the *zekāt* on sheep (nos. 835, 842) and *çift resmi* and *ekinlü bennak* tax as *ḫarāc-i muvaḍḍaf* (no. 848), while there

[27] H. Inalcik: *op. cit.,* 76; Løkkegaard: *op. cit.,* 114.

[28] H. İnalcık: "Osmanlılar'da Raiyyet Rüsûmu", in: *Belleten* XXIII, (1959); it is due to the misunderstanding of the dual nature of this tax that scholars cannot decide whether *ḫarāc* is a poll tax or land tax, for a most recent discussion see Morimoto: *op. cit.,* 53-59; for *ḫarāc* as a land tax see Frantz-Murphy: *op. cit.,* 87-100; and C. Cahen: "Kharādj", in: *EI²,* IV, 1031-1034.

is no Shar'ī basis to legitimize personal taxes imposed upon unmarried (*mücerred*) and married (*müte'ehhil, müzevvec*) peasants without land (no. 838). The swine tax is not religiously lawful, but "it has been collected for a long time, so it would be inappropriate to change it" (no. 844). Here, a new principle of legitimation is introduced, viz. the commonly established tradition, or in Shar'ī terminology "consensus of the Muslims" (*icmā'-ı ümme;* nos. 844, 847). Making a general rule he asserts that "all *mīrī* lands are *ḫarācī*" (no. 839), so that tithes (*a'şār*) are in fact *ḫarāc-ı muḳāseme* (no. 845).

The *fetvās* I am publishing here are in their formulation closer to the lawcodes drawn up by Ebū's-Su'ūd himself. Evidently, he took them from his fetvās and adapted them to the language of the state regulations.

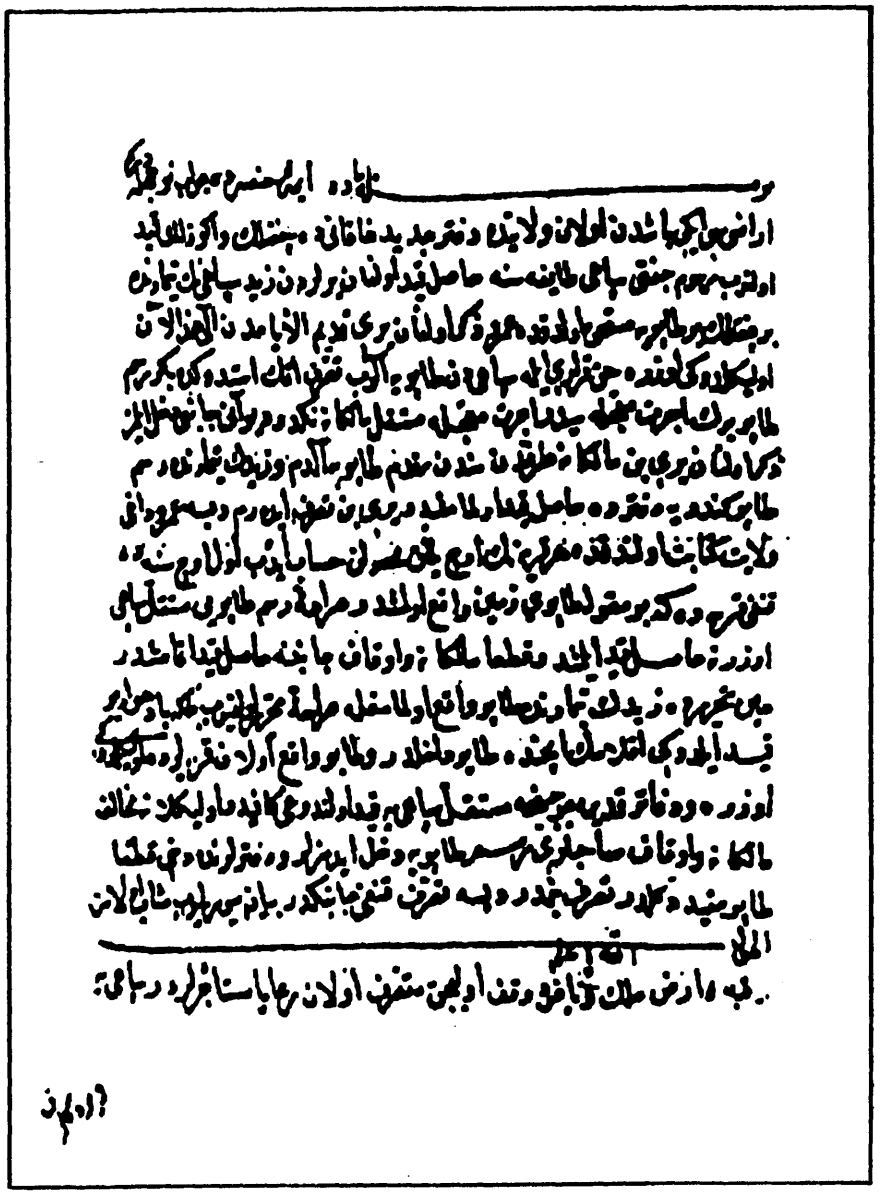
Ebū's-Su'ūd is responsible for interpreting and adjusting the existing Ottoman state laws *(ḳawānīn-i örfiyye)* to the prescriptions of the Sharī'a and the commentaries of the great jurists of the ninth century, in particular to the writings of the most liberal of the Ḥanafī jurists, Abū Yūsuf. In the introduction added to the selection of his fetvās, he reportedly said to Sultan Süleyman that "for the order of the religion and the state, and the affairs of the realm, it is appropriate to act in accordance with the commentaries of certain religious authorities on certain problems in the empire". Upon the accession of Selim II, successor to Süleyman, some of the fetvās of Ebū's-Su'ūd on certain controversial issues were compiled under the title of *Ma'rūḍāt.*, introduced with the same arguments.[29]

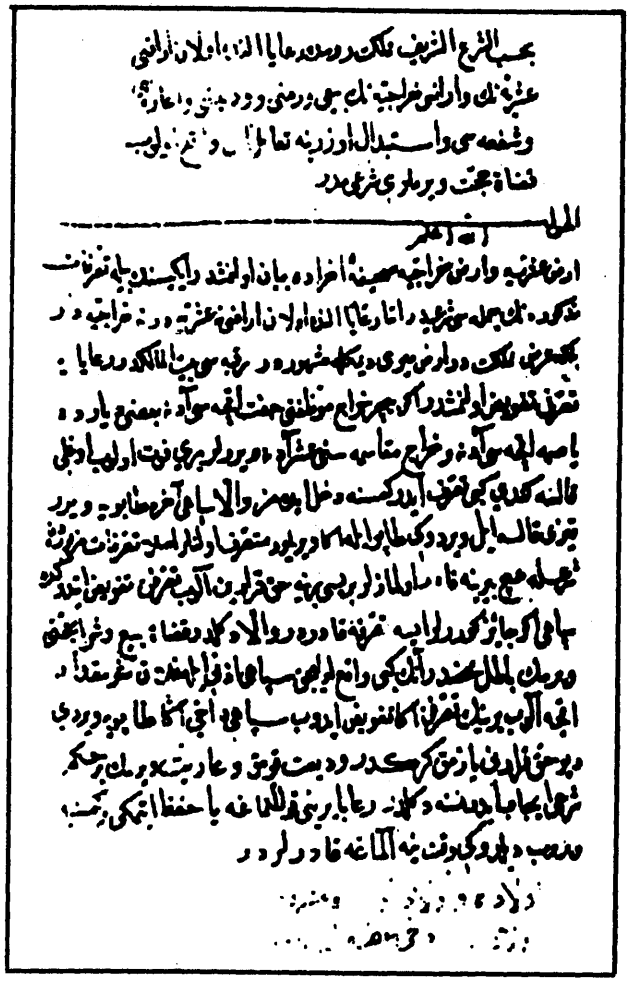
While in the sixteenth century *nişancıs*, like Hamza Paşa (died about 1605), continued the old Ottoman tradition of *'urfī*-state rulings on landholding problems now şeyḫulislams' fetvās became prevalent on such problems in the "new and valid" lawcodes of the sultans.[30] The curious thing is, however, that şeyḫulislams followed, though using Islamic terminology, the well-established Ottoman notions in landholding, so that no basic changes occured in the Ottoman *mīrī* system until 1700 when a new notion with the *mālikāne* and *icāreteyn* systems revolutionized the whole possession-ownership system of the empire.

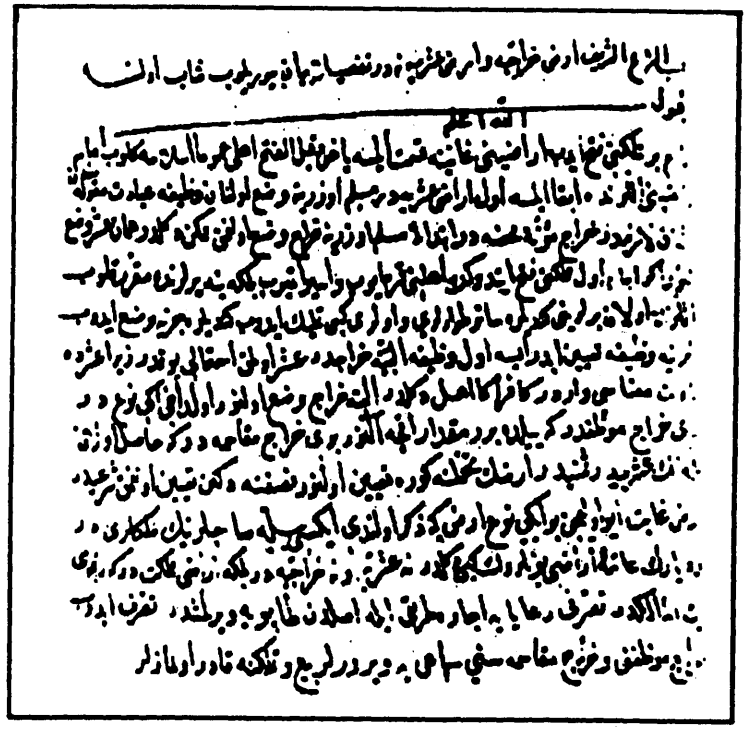
[29] H. Inalcik: "Suleiman the Lawgiver and Ottoman Law", in: *Archivum Ottomanicum,* I, 1960, 132.

[30] For the "Ḳānūnnāme-i Cedīd ve Mu'teber", see *MTM,* I, 49-112, 305-337; "Ḳānūnnāme", *EI²,* IV, 566.

I.







Ebū's-Su'ūd's *Fetvas* on Land (ca. 1540-1550). Münşe'at, Atıf Efendi Library, no. 1734.

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Tünel, İstiklâl Cad. Sofyalı Sokak No: 34
80050 BEYOĞLU - İSTANBUL
Tel: +90 (212) 251 28 58 - (212) 252 05 60
Fax: (212) 243 30 16
E-mail: eren@turk.net

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Halil İnalcık

Professor, Bilkent University

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