



BRISMES

British Society for Middle Eastern Studies

New Middle Eastern Studies

Publication details, including guidelines for submissions:

<http://www.brismes.ac.uk/nmes/>

Review of Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity*

Author(s): Omar Y. Cheta

To cite this article: Cheta, Omar Y., review of Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), *New Middle Eastern Studies*, 2 (2012), <<http://www.brismes.ac.uk/nmes/archives/751>>.

To link to this article: <http://www.brismes.ac.uk/nmes/archives/751>

Online Publication Date: 13 March 2012

Disclaimer and Copyright

The NMES editors and the British Society for Middle Eastern Studies make every effort to ensure the accuracy of all the information contained in the e-journal. However, the editors and the British Society for Middle Eastern Studies make no representations or warranties whatsoever as to the accuracy, completeness or suitability for any purpose of the content and disclaim all such representations and warranties whether express or implied to the maximum extent permitted by law. Any views expressed in this publication are the views of the authors and not the views of the Editors or the British Society for Middle Eastern Studies.

Copyright New Middle Eastern Studies, 2011. All rights reserved. No part of this publication may be reproduced, stored, transmitted or disseminated, in any form, or by any means, without prior written permission from New Middle Eastern Studies, to whom all requests to reproduce copyright material should be directed, in writing.

Terms and conditions:

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

NEW MIDDLE EASTERN REVIEWS

Ottoman Nizamiye Courts: Law and Modernity

Avi Rubin

New York, Palgrave Macmillan, 2011, 224 pp., \$85 / £58, Hardback

ISBN: 978-0230110434

REVIEWED BY OMAR Y. CHETA

PhD Candidate, Department of Middle Eastern & Islamic Studies and Department of History, New York University; e-mail: oyc203@nyu.edu

This is a book about judicial reform in the Ottoman Empire during the second half of the nineteenth century. Specifically, it is a study of the *Nizamiye* court system inaugurated in 1864, which had a jurisdiction that included civil, commercial and criminal cases. Avi Rubin situates his analysis within larger scholarly debates about modernity and the sociology of law. As such, he provides a powerful critique of the *Şeriat/Kanun* dichotomy that dominates much of the writing on Ottoman legal and institutional history. The book focuses on developments in the Ottoman center and pays little attention to parallel judicial experiments that took place elsewhere in the Empire, especially in Egypt.

The *Nizamiye* was a three-tier court system that generally followed continental European legal norms. Rubin's main objective is to explain how this institutional innovation became both thinkable and practically feasible. From the start, he dismisses the simplistic, albeit common, characterization of nineteenth-century reforms as a move from the medieval Islamic to the modern Western. Instead, he understands these reforms as "neither a *project*, nor a neatly designed program. Rather they were heuristic in nature" (p. 23, emphasis in original). This understanding is crucial to shifting the discussion away from metanarratives, such as secularization, toward more tangible historical dynamics, such as bureaucratic reorganization and institutional competition. But the question lingers: if not an urge to secularize, what informed Ottoman judicial reform? The answer the book proposes is "a mode of legal formalism" (p. 84). Most of the book is dedicated to tracing the manifestations of this formalistic mindset, locating it in the increased emphasis on proceduralization (chapter 3), the adoption of novel methods of accountability among judicial personnel (chapter 4) and the introduction of public prosecution as a centralized and hierarchical institution (chapter 5).

To write this book, the author had to overcome two fundamental methodological obstacles: one related to the existing archival sources, the other conceptual. Because the *Nizamiye* was a modern institution that valued codification and procedural correctness, it is both surprising and unfortunate that almost none of its court registers (*sicil* in Turkish) survived. After all, the *sicils* of the *şeriat* courts are one of the principal sources for writing the history of Ottoman society since the sixteenth century. Be that as it may, the book relies heavily on the little-known Journal of the Courts (*Ceride-i Mehakim*). The *ceride* was a weekly publication that contained "routine notifications, circulars, new regulations... new nominations... [select] case reports, statistical charts, articles authored by court officials, and occasionally full protocols of criminal proceedings" (p. 9). Aware of its edited nature, Rubin views "the *ceride* as a kind of archive that allows reading along and against the grain, being a source for both discourse and praxis" (p. 14). Put differently, he sees the text as containing two levels: a surface level that reflects the ideas of senior *Nizamiye* officials about how the courts ought to work, and a deeper level in which these officials' concerns are taken as indications of how the courts were actually working (or not working).

The book's greatest merit is that it not only aims to debunk certain assumptions about Ottoman legal institutions in the nineteenth century, but also ventures to provide an alternative framework for studying Ottoman law. Law in the Ottoman Empire is often characterized as falling into one of two distinct categories: *Şeriat*, often translated as Islamic (i.e. religious) law, and *Kanun*, state-enacted law, which some inaccurately call secular. Historians who accept this dichotomy usually go on to view nineteenth-century judicial reforms, which among other innovations introduced codified laws and multi-tier court systems, as an expansion of *Kanun* and a simultaneous (and logically inevitable) contraction of *Şeriat*. In their view, codification signaled Westernization, while increased *Kanun* legislation meant secularization. Because the reforms emulated a secular Western model, they are also considered modern. To take this narrative apart, Rubin draws on a number of analytical tools.

First, following Dipesh Chakrabarty and Harry Hartoonian, he argues that modernity is not a Western phenomenon. Rather, it is a global phenomenon that resulted from the interaction of Europeans and non-Europeans, and was experienced concurrently by all. Throughout the nineteenth century, similar ideas about modern law were circulating and being put into effect not only in France but also in the Ottoman Empire and Japan.

Second, drawing on socio-legal studies, Rubin maintains that the concepts of "legal pluralism" and "legal borrowing" capture the ethos of Ottoman judicial reforms. The creation of the expansive *Nizamiye* court system was not meant to displace *Şeriat* courts. In fact, they "were neither antithetical nor competing 'legal systems'... but rather two entwined components of a single judicial system converging in some aspects and departing in others" (p. 55). In other words, while nineteenth-century reforms aimed to rationalize the operation of judicial bodies and to improve the coordination among new and existing institutions, they did not intend to do away with the legally pluralistic character of the judicial system. For example, in the late 1860s, a group of Ottoman jurists undertook the task of compiling a civil code known as the *Mecelle*. In terms of substance, the *Mecelle*'s articles drew largely on Hanafi law but its structure was borrowed from French codified law. "What made [the *Mecelle*] a 'real' civil code... was its mode of application as a legal standard in force in *Nizamiye* and *Şeriat* courts throughout the empire, whereas previously, the judge... in the *Şeriat* court had a considerable leeway in choosing the sources relevant to this or that case" (p. 31). Furthermore, the *Şeriat*-based *Mecelle* was applied alongside procedural laws that were adapted from French legal codes. In short, legal borrowing was a complicated process that resulted in a uniquely Ottoman legal amalgam.

Finally, in order to further undermine the secular/religious dichotomy, Rubin draws our attention to the interaction between the Ministry of Justice, which oversaw the *Nizamiye* courts, and the *Meşihat*, which administered the *Şeriat* courts. Theoretically, civil and criminal cases were heard before *Nizamiye* courts, whereas divorce, inheritance and other family-related disputes were tried in *Şeriat* courts. Although the courts' jurisdictions were not meant to overlap, occasionally Ministry and *Meşihat* officials disagreed over the status of certain legal disputes. Ottoman officials attempted to resolve these disagreements in several ways, including reasserting the legitimacy of "forum shopping," or the right of the litigant to choose which court hears his or her case. For example, if both parties to a dispute consented, they could take their civil case to the *Şeriat* court. In some cases, litigants would demand damages from the *Nizamiye* court after initially winning at the *Şeriat* court. Further evidence of the fluid interaction between the Ministry and the *Meşihat* is the fact that until 1908 the same judges who served on local *Şeriat* courts also presided over *Nizamiye* courts of first instance.

On a critical note, the author remains committed to the view that Ottoman history is primarily the history of the Ottoman center. The only comparative aspect of the book is the

relationship between the production of judicial reforms in Istanbul and the French legal culture that informed it, however inconsistently. The rest of the Ottoman Empire appears as a large site for the application of Istanbul-made reforms. This view would have been uncontroversial had Egypt not been part of the Ottoman Empire. Egypt was a largely autonomous Ottoman province for most of the nineteenth century, and it was the site of momentous legal changes, which intersected at many different points with Istanbul's reforms. From the 1840s onward, the period that witnessed the genesis and eventually the formal establishment of the *Nizamiye* court system, a similar network of judicial councils was being put in place throughout Egypt. Historians of nineteenth-century Egypt such as Rudolph Peters and Khaled Fahmy have raised similar questions regarding the relationship between *Shari'a* courts and *Nizamiye*-like judicial bodies.¹ Taking this literature into account would give us a more complete picture of Ottoman judicial reform.

This is an empirically solid and conceptually sound study of the *Nizamiye* court system and of nineteenth-century Ottoman judicial reform at large. Its originality derives from its subject, which hitherto has been little understood, and from its meaningful engagement with socio-legal studies. As a result, it is relevant to students of the late Ottoman Empire, as well as anyone who is interested in the genealogy of modern law in post-Ottoman states.

¹ For example, see Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth-Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society* 4 (1997), pp. 70-90; Khaled Fahmy, "The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth-Century Egypt," *Islamic Law and Society* 6 (1999), pp. 224-71.