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Restoring the Property: The Land Code of 1858 and Private Property in Ottoman Kurdistan.

Ugur Bayraktar

(Bogazici University, Istanbul & EHESS, Paris)

ugurbahadirbayraktar@gmail.com

Abstract: As the harbinger of private property in Ottoman realm, the Land Code of 1858 mostly made smallholder peasants cultivating state-owned lands owners of their possession. Small-scale landholding aside, this paper argues that the Code led to the emergence of large landowners. Outside the domain of state-owned lands, family domains (*yurtluk-ocaklık*), which were granted to the local rulers in the eastern borderlands of the empire, were confiscated as a result of the fiscal and political centralisation. The Ottoman government, however, auctioned the escheated family domains following the promulgation of the Code with fiscal concerns. Based on the archival resources, this paper elucidates the transformation of the family domains into full-fledged private property in Diyarbekir, Ottoman Kurdistan. The transformation was a highly contested process by which the central government has encountered many actors. As once-family domains and now-state-owned lands were auctioned as a result of the economic policy of the Ottoman government, the encounter involved actors from the same family, but also local notables in the environs of land and peasants. Focusing on the auction process, this paper will shed light on the creation of large landholding patterns in the Ottoman Empire, contrary to the Code's attempt to maintain small landholding patterns. As the Kurdish rulers, who inherited and possessed the lands from the mid-sixteenth to early nineteenth century, had readily adopted in their petitions a repertoire in accordance with the Code, they succeeded in restoring their "now-private" property. Highlighting the extraordinary transfer of the family domains, this paper will therefore underline the creation of large tracts of land in accordance with the Code taking the political and economic aspects into account.



1. The Ottoman Land Code of 1858: A Brief Evaluation

The Ottoman Land Code of 1858, with both its aims and consequences, brought about a contested domain in Ottoman historiography (Aytekin, 2005). The code introduced private property rights on the state-owned lands (*mîrî*) which were mostly the possession of peasants cultivating them. Given the context of political and fiscal centralisation of the Ottoman government, i.e., *Tanzimat* reforms (1839-1876), the Code has been mostly discussed within the dichotomy of continuity and rupture. With regard to continuity, Barkan (1980) argues that the Code emerged as a culmination of the existing legal practices of the previous centuries on different land tenure arrangements, and therefore a transformation of what had been *de facto* into *de jure*. Even though there was no association with respect to the Ottomanist “continuity” view on the Code, Haim Gerber’s (1994, 71) argument that “[i]t was intended neither to reduce nor to augment anyone’s right to the land.” As Mundy states (Mundy, 1994), Gerber’s easy generalisation between the thrust of the code and earlier codes (*kanunnames*) contributes to his argument for continuity by which he substantiated the argument that Middle Eastern, or “Oriental,” countries were stagnant societies *vis-à-vis* the ones in the West. Noting the preceding reforms of the Ottoman government, Jorgens, in a rather recent study, maintains the continuity view, stating that the code “also represented a continuation of the classical Ottoman system of landholding, which sought to maintain state ownership of arable land and at the same time to consolidate and strengthen the rights of the actual cultivators on lands” (Jorgens, 2000, 95).

Concerning the rupture the code brought about, the paradigm was expectedly drawn along the modernisation theory whereby the Ottoman government, similar to European governments, subjected agricultural wealth, particularly land, to state regulation, to which the ordering of property relations in terms of individual ownership rights was central (İslamoğlu, 2000, 24). Challenging in a sense the decline paradigm and therefore the continuity argument, İslamoğlu maintains that the very term property, and subsequently the Code, can be associated with a certain type of state that emerged in the nineteenth century (İslamoğlu, 2000, 3).

It can be safely argued that the consequences of the Code have attracted a wider scholar attention than its aims. While scholars emphasising the continuity with regard to the Code expectedly argue that the impact the code brought about was minimal, scholars emphasising the rupture point at the change in landholding relations. That is, Gerber (1994, 72) maintains that the code resulted in the transfer of the lion’s share of arable lands in Middle East to a few magnates rather than the smallholders. On the other hand, the contested domains the property relations created in the Ottoman lands continued from 1858 onwards with struggles among the different segments of society (Terzibaşoğlu, Spring 2001; Kaya, 2006).

While the general consequence of the Code was the predominance of smallholding peasants in the central provinces of the empire, i.e., Anatolia and the Balkans, as maintained by Keyder (1991), the change in the broader Middle Eastern context was quite the opposite. That is, the Code was often claimed to have been instrumental in creating the large “private” estates which came into existence in Syria and other parts of the empire (Sluglett and Farouk-Sluglett, 1984, 413). In this context, Ottoman Kurdistan was no exception. Basing his account on those of the contemporary British statesmen, van Bruinessen (1992, 183) argues that the Code benefited only a small elite, while it apparently intended the actual tillers of the soil to become its legal possessors, and contained clauses preventing corrupt practices.

Van Bruinessen’s account remains part of the conventional literature on the transformation of land tenure in the Middle East. Janet Klein’s study on the Hamidiye Light Cavalry (2011) touches upon the agrarian question of the late nineteenth century, the impact of the code in

Ottoman Kurdistan. Discussing this impact—spurred by the centralising policies of the Ottoman states and the emergence of a world capitalist market—upon the social organisation of tribes and settled communities, she argues that the very transformation brought about a long term shift from largely autonomous household or clan units to the cultivation of dependent individuals and families who worked as tenants and sharecroppers (Klein, 2011, 133). Klein bases her discussion on studies (Haj, 1997; Jwaideh, 1963) on lower Iraq which highlighted the period between 1860 and 1914 as a time of commercialisation and Ottoman centralisation policies. While conceding that there are few comparable studies for regions further north, she states that “there were at least some general similarities” (Klein, 2011, 133).

Given that the literature upholds views associated with the Middle East, in general, and Syria and Iraq, in particular, it would be correct to claim that most studies in this context reiterate conventional wisdom from a geographically broader perspective. Departing from these premises, the present study avoids clear-cut generalisations and focuses on the making of private property in Ottoman Kurdistan in the mid-nineteenth century. While doing that, it neither attributes a unifying meaning to the text of the code nor underlines the role of an omnipotent state. In other words, the Code was flexible in the sense that it allowed variations from region to region depending on the power relations (Rogan, 1999, 84; İslamoğlu, 2000). While acknowledging the impact of the Code, this study, however, underscores that the creation of large “private” estates was a process preceding the promulgation of the code and that the code only facilitated this creation as a result of struggles among the state and societal actors.

2. *Yurtluk-Ocaklıks* as a Contested Property

The *yurtluk-ocaklık* and *hükûmet* system, in essence, was autonomous family estates and domains held by hereditary title in return for certain services to the government (Göyünç, 1991; İnalçık, 2006, 126). Granted to the Kurdish rulers in the region prior to the Ottoman-Safavid War of 1514, the *yurtluk-ocaklık* lands in a short period became prevalent in the eastern borderlands as result of the imperial rivalry with the Safavids. The political and fiscal autonomy entailed with the family estates, however, turned into a problem in the eyes of the central and local Ottoman authorities in the early nineteenth century (Özok-Gündoğan, 2014, 221). The change was evident in the early nineteenth century in an Ottoman memo which stated that “because of the changing times (*inkılâb-ı zaman*) this kind of *yurtluk-ocaklıks* were abolished by all means” (Prime Ministry Ottoman Archives, hereafter BOA, A. AMD. 89/98, no date).

While the continuation of family estates was not to last, their abolition largely depended on the fate of the borderlands with Iran (Ateş, 2013). That is, a disturbance in the prevailing power configuration in this delicate frontier zone was not a wise policy for the Ottoman authorities, however once the status quo was altered by the rebellions of Kurdish emirs in Cizre, Van, and Hakkâri, the Ottoman government resorted to the military operations, paving the way for a centralisation phase in Ottoman Kurdistan (Özok-Gündoğan, 2014, 163; Aydın and Verheij, 2012, 37-38). Following the suppression of the rebellion, the liquidation of the *yurtluk-ocaklık* regime which started in earnest in the mid-1830s accelerated in the mid-1840s.

As *yurtluk-ocaklık* lands were family estates, they were beyond state-owned lands in terms of possession rights. The Zirki emirs, who were the Kurdish emirs in Hazro, Hani, and Lice in the environs of modern Diyarbakir, possessed vast lands in these three districts for almost three centuries with significant levels of political and fiscal autonomy. However, due to the Ottoman policies of conscription and taxation imposed on these family domains, the Zirki emirs rebelled to be subdued by the Ottoman government in 1835 (BOA, HAT. 453/22435-A, 5 March 1835).

Following the exile of the Zirki beys, the Ottoman government re-seized the family estates, and subsequently the revenues that had been out of its reach.

Despite the confiscation and restoration of the family estates to the status of state-owned lands (*mîrî*), this restoration would not be free of troubles. True, the family estates were confiscated by the Sublime Porte, however it does not mean that they were regarded as state-owned lands by the Zirki beys, the three-century-long possessors of the lands. On the other hand, despite the resemblance it was evident that these lands were beyond the lands termed as freehold property (*mülk*) in Ottoman landholding practices. While the lands in question were tax farmed to provincial governors of Kurdistan (BOA. C. ML. 364/14929, 15 June 1837), the exiled Zirki emirs started petitioning the central government frequently. In their petitions, the emirs were aware that the encounter between a petitioner and ruler was heavily asymmetrical and also dialogic, yet it did not prevent them from laying claims on the family estates they believed to have possessed (Chalcraft, 2005, 308). Having started as a process of asking for imperial pardon, the Zirki emirs gradually asked in their petitions for the restoration of their family estates to their possession. In other words, the Zirki beys manipulated their states of being in order to negotiate their exile and the restoration of the property. While their state of being was brought forward in order to justify their requests, their petitions had the ultimate end of accomplishing their pardons and consequently the restoration of wealth to which they had been entitled before the exile. Among many petitions, Bedirhan Bey, a member of the Zirki dynasty, petitioned the government stating that

It is humbly requested from his highness that his humble servants be summoned to the Supreme Council [...] be honoured with the sublime pardon of his highness in accordance with the imperial practice similar to precedents, and be allowed to be decreed an imperial grant of our landed property, vineyards, gardens, mills and rice lands and revenues of those are villages as his highness' supreme alms (BOA, İ. MVL. 444/19773, 3 March 1861).

The petitions penned by the Zirki emirs indicate that the relation the emirs established with their possessions were beyond the dichotomy of state-owned and freehold property, the conventional classification according to the Ottoman landholding practices. Considering that the distinction between freehold and state-owned property became blurred (Sluglett and Farouk-Sluglett, 1984, 413), the Zirki emirs' pleas regarding the restoration of the property strengthen the argument that the Zirki beys had already considered the *yurtluk-ocaklık* property to closer to freehold property rather than property confiscated by the imperial government.

3. Sale of Family Estates in Ottoman Kurdistan after 1858

Two years after the promulgation of the Land Code of 1858, an imperial decree furthered the sale of state-owned property in accordance with the stipulations of the Code (BOA. A. MKT. UM. 397/17, 19 February 1860). With respect to the abolition of the distinction between state-owned and freehold property, the procedure termed the transfer of property as "selling" (*satmak*). According to this decree, such property would be auctioned this time not to tax farmers but to their prospective owners and the auction of property took place in a two-tiered manner: The property in question would first be auctioned locally, the verdict of which would be dispatched to the Imperial Treasury. If the bids at a Treasury auction did not exceed the local bid, the property would be given to the local claimants. Since state-owned property attracted a wider audience in the Ottoman capital, the decree made sure that the results of auctions were dispatched in the countryside. Accordingly, the highest bidder, either in the capital or the countryside, was obliged to make a down payment (BOA. A. MKT. UM. 397/17,

19 February 1860). After an act of sale, local councils were ordered to issue signed documents as “temporary deeds” (*sened-i muvakkat*) until “official deeds” (*sened-i resmî*) were sent by the central government.

According to the investigation carried out by the council of Kurdistan, the types of property the imperial decree addressed were found in the districts of Hazro, Hani, and Beşiri, which included a *çiftlik* (a large estate), a garden, and a mill (BOA. A. MKT. UM. 474/89, 29 May 1861). Needless to say, the property in the district of Hazro was the confiscated family estates of the Zirki emirs. “The lands and vineyards, and shop lands in the district of Hazro abandoned by the deceased Receb Bey and other emirs from the Zirki beys, sale of which was required by the imperial decree,” stated the Ministry of Finance, “have been auctioned locally to be appropriated and possessed (*zabt ve idâre*) in accordance with the clauses of the Land Code and the Cadastral Regulation (*Tapu Nizamnâmesi*) (BOA. İ. MVL. 497/22480, 5 November 1863).”

The local auction carried out in Hazro concluded the transfer of the property with a down payment of 70,500 piasters and dispatched the conclusion of the affair to the Sublime Porte in line with the procedure.¹ The property in question was auctioned once again at the Treasury, and Yusuf Bey, one of Receb Bey’s sons, participated. In the auction held in Istanbul he increased the down payment to 71,000 piasters and apparently let officials in the Treasury know that the property in question had been confiscated while under the possession of his father. Yusuf Bey added that the imperial decree granted him the right to return to his homelands (BOA. İ. MVL. 497/22480, 5 November 1863). Then the case was discussed in the Supreme Council, and the members of the council approved the transfer (*tevfîz*) of the property taking into consideration circumstances such as the fact the property in question had been in his father’s possession, his license to return to his homeland, and his bid in the final auction (BOA. İ. MVL. 497/22480, 23 November 1863).

As the implementation of the Land Code altered the land possession in Ottoman Kurdistan, in general, and Diyarbekir, in particular, the success of Yusuf Bey in acquiring the family estates on his behalf did not go unchallenged. That is, in the course of the auction procedures, Bedirhan and Behram beys, another faction of the Zirki emirs, started laying claims on the once family estates that the Ottoman government was offering to their bidders. Petitioning the Sublime Porte, the two emirs argued that the property in question had been under the collective possession of the entire Zirki emirs. Furthermore, they also claimed their traditional rights on the rice lands (*madrabs*) in the districts of Hazro and Mihrani, which were claimed to be outside the bundle of the family estate (BOA. MVL. 978/27, 19 March 1864).² Out of eleven *madrabs*, the two emirs claimed that they owned shares in each *madrab* varying from one third to half shares. “We, servants of his Majesty, kindly ask our rights accrued as a result of our share in the aforementioned one hundred and six items of property that had been auctioned,” stated the beys, adding that “we supplicate the execution of [the restoration of] the said rice lands, apart from these collective property, to our party in accordance with precedents” (BOA. MVL. 978/27, 9 December 1863).

Upon this petition, the Imperial Registry immediately decided to investigate the rice lands in question, and whether they were among the same bundle of family estate sold to Yusuf Bey (BOA. MVL. 978/27, January 1864). Even though the Registry rejected the restoration of their

¹ The name of the person who bid the said amount is not mentioned in the document.

² *Madrab* usually refers to rice lands, but not limited to these types of lands. In a report on *madrabs* in Diyarbekir, it appears that the term, beyond the definition of irrigated lands devoted to the rice cultivation, has acquired the meaning of water resources and canals made on water springs irrigating not only rice lands but also lands in the immediate vicinity. BOA. DH. UMVM. 105/41 29 August 1915.

property and there was no clarity regarding the fact that the *madrabs* in question were a part of the family estates, the case was important in terms of indicating the richer vocabulary of landholding perceptions beyond the dichotomy of state-owned and freehold property. That is, the discourse of Bedirhan and Behram Beys, while resembling the inheritance rights associated with state-owned lands, had more in common with the language of freehold property with respect to possession rights, if not property rights.

In the aftermath of the implementation of the Land Code of 1858, the family estates, which had been close – if not identical – to freehold property in the early nineteenth century, were restored to their original status as private property in a modern sense. In other words, the sale of the *yurtluk-ocaklık* lands in a bundle exemplified the Land Code of 1858 in practice. This case, which revealed claims on the *yurtluk-ocaklık* lands that had been conceptualised as freehold property by previous possessors even prior to the Land Code, helps to clarify the contested domains that emerged following the implementation of the Code in the province of Kurdistan. A faction of the Zirki emirs succeeded in obtaining the family estates that the Ottoman state regarded as belonging to the state domain. However another faction's claims stressing that they had been inheritable property points at the fact that perspectives with regard to property relations in the countryside were not confined to the legal interpretations the Ottoman government pursued. In this sense, while most of the scholarly discussion entertains the notion of private property within a dichotomy of state-owned and freehold property, thus failing to offer about actual views of possessors, the present study demonstrates that the making of private property was not a straightforward process, but rather a complicated one with many actors including state officials, the Kurdish emirs, and local notables in the countryside.

4. Conclusion

The case of the Zirki emirs in Hazro shows that, the Land Code indeed resulted with the creation of large tracts of land in the province of Kurdistan. In the case of the family estates, however, there is an important point. As the creation of large tracts are argued to have been originated from the amassment of smaller state-owned lands, the family estates in Ottoman Kurdistan were far from the common category of state-owned lands. Particularly, they were maintained, administered, and eventually sold to private parties in their original statuses. In this vein, the Land Code can be said to have facilitated the emergence of large-scale landholding patterns starting from the early 1860s.

However, such conclusion should not be relegated to the tradition represented by Gerber. True, the sale of the family estates in Hazro and Mihrani strengthen Gerber's conventional argument that the lion's share of arable lands was transferred to a few landed magnates. Despite his ulterior motive was to strengthen the view that the oriental societies lacked class structures and were thus doomed to stagnation, Gerber also asks the questions of what actually happened to lands in the Middle East, how much passed into the hands of large landlords exactly, and whether this phenomenon was universal or whether it was circumscribed by other circumstances (Gerber, 1994, 73). Within the context of questions posed by Gerber, this study offers an answer to the question of what happened to the lands in Ottoman Kurdistan in the particular case of Hazro and Mihrani. The amassment of land in which Yusuf Bey succeeded led to the emergence of large-scale commercial agriculture in the two districts in the 1870s.³ However, the amassment was not similar to the case drawn by

³ In line with commercial enterprise, it was not much later that Yusuf Bey started claiming rights to the *madrabs* mentioned above, which were the main irrigation sources in the environs of the *yurtluk-ocaklık* property. In accordance with the post-1858 period, the same *madrabs* demonstrate the scope of sphere of private property delineated by the Ottoman government.

Warriner (1948), it was because of the fear of peasants to register their lands in their own names due to probable burdens of conscription, taxes, and exactions (Gerber, 1994, 72-73). Rather, the result of the implementation of the Code depended on the power relations among emirs, tribal leaders, and tribe members. That is, as poorer tribes tend to own collective property, leaders of wealthier and stronger tribes acquired large tracts of land (Rogan, 1999, 84). Even though tribal presence of the Zirki emirs begs future research, it was evident that the second case was applicable to the case in Hazro and Mihrani. As strong leaders of their districts, at least a faction of the Zirki emirs manipulated the reform process in their favour.

Land amassment aside, the present study shows that legal readings of the Code and the consequent legal categories associated with landholding does not suffice to understand the change in the property relations in the nineteenth-century Ottoman Kurdistan. Particularly, the narrow definitions of state-owned and freehold property did not always reflect what actually happened to land in Ottoman Kurdistan. Such legalist readings (Kenanoğlu, 2002) does not leave any room for family estates, a hereditary grant whose classification is beyond this narrow dichotomy. As this study demonstrates, after three-centuries of inherited possession, it was clear that the Zirki emirs no longer perceived the lands in their possession as state-owned property. Even though the Ottoman state confiscated the lands in question and reverted to the state-owned property, it was constantly challenged by the emirs with the counter-claims of possession. Criticising the political and economic visions associated with the Land Code, Mundy and Smith (2007, 234) argues that the law mediated the changes that are simultaneously political and economic. In this sense, it was the Land Code of 1858 that facilitated the transformation of *de facto* possession of family estates in Ottoman Kurdistan to the formal private ownership.

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