

# Judicial Biases in the Ottoman Empire: The Roles of Inter-Court Competition and Personal Exchange

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## The Roles of Inter-Court Competition and Personal Exchange

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**Abstract.** A key ingredient of the transition to impersonal exchange and modern economic growth has been the emergence of courts that enforce contracts efficiently and resolve disputes fairly. This paper shows that the Islamic courts of the Ottoman Empire exhibited biases that would have limited the expansion of exchanges, particularly those between Muslims and non-Muslims. It thus identifies a reason why the Islamic world's economic modernization required the establishment of secular courts. In quantifying the biases of Ottoman courts, the paper also discredits both of the opposing claims found in Ottoman judicial historiography: the view that these courts treated Christians and Jews fairly and the counter-view that as a matter of practice they ruled against non-Muslims disproportionately. Biases against non-Muslims were in fact institutionalized. By the same token, non-Muslims did better than Muslims in adjudicated interfaith disputes, because they settled many of them out of court in an effort to limit the effects of judicial biases.

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## 1. Introduction

The efficient enforcement of contracts facilitates the realization of gains from exchange. Reputation-based mechanisms and courts provide two alternative means for contract enforcement. The role of the latter grows as an economy makes the transition from personal to impersonal exchange. This is because impartial courts give individuals who belong to essentially unconnected social circles the confidence to trade with one another in the expectation of mutual gain. People may belong to unconnected social circles by virtue of differences in location, ethnicity, religion, or social status, among other possibilities.

Interregional differences in court systems, and in the evolution of these systems, may account, then, for interregional differences in economic performance.<sup>1</sup> This paper develops the theme in relation to the Islamic court system of the Ottoman Empire, until modern times the largest and most powerful state of the Eastern Mediterranean. As Western Europe gradually came to dominate the global economy in the last third of the second millennium, the Ottoman Empire slipped, like the rest of the Islamic world, into a state of underdevelopment. In the course of this decline in economic standing, the Islamic court system, known also as its *sharia* (*şeriat*) court system, came to be perceived as a source of the problem. Thus, the 19<sup>th</sup> century saw the establishment of secular commercial courts in many cities, starting with Istanbul, Cairo, and Alexandria. Among the justifications was that the region's age-old Islamic courts were biased against both native and foreign non-Muslims, who were becoming increasingly important economic players. Insofar as this justification was grounded in facts, and the secular courts adjudicated more impartially, the reforms would have contributed, for those reasons alone, to jump-starting the Middle East's catch-up process, which has yet to run its course.

It may seem self-evident that societies benefit from unbiased adjudication of disputes. Yet the near-universality of the goal of judicial impartiality is a modern phenomenon. To one degree or another, premodern courts openly discriminated against outsiders everywhere. In the absence of the equal-rights norms that are central to modern judiciaries, they favored local interests without apology. The Islamic courts of the Ottoman Empire provide no exception. They barred non-Muslim witnesses, including both Ottoman subjects and foreigners, from testifying as a witness against Muslims, the largest and politically dominant religious group. This procedural discrimination lends credibility to Western accounts of these courts, which are replete with bitter complaints of abuse against foreigners who endured Ottoman trials (Porter 1771, pp. 139-43; Masters 2001, pp. 65-68). Westerners of all stripes considered the courts discriminatory. Yet, distinguished Ottoman historians who are familiar with the historical records report that, although these courts were prone to various forms of corruption, they were not noticeably biased against local Christians and Jews, or European foreigners, or any other group (Ekinçi, 2004, especially p. 43). Lacking evidence of bias, they infer that Ottoman judges treated all groups fairly.

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<sup>1</sup> A voluminous literature identifies connections between legal systems and economic development. See, for example, North (1981), Greif (2006), Platteau (2000), and La Porta, Lopez-De-Silanes, Shleifer, and Vishny (1997).

These observations may seem contradictory. If the evidence-generating procedures of the Islamic courts were stacked in favor of Muslims, how could their judgments have been unbiased? Conversely, if the courts were unbiased against non-Muslims, why did European observers find them blatantly unfair? It could be that the European claims reflect hostility to Islam or the Ottomans. Yet, certain critics of Islamic courts heaped praise on other Ottoman institutions, which raises the question of why they were negative in this particular context. This paper tackles these questions, all of which relate to the Islamic legal system's role in Middle Eastern economic performance, by focusing on the Islamic courts of Istanbul, the Ottoman capital and a highly cosmopolitan commercial hub of the Eastern Mediterranean. To this end we use Istanbul court records of the seventeenth century, a time when the need for impartial courts started to grow as a result of a rising foreign presence in the city. The records enable us to identify, building on the theoretical literature on judicial biases, the institutions relevant to court decisions as well as incentives of the players involved.

We start with a description of the judicial system of the Ottoman Empire. Although certain pertinent facts have left no traces in the records, enough information is available to resolve the puzzle at hand with reasonable confidence. Theoretical insights from the judicial bias literature follow. We use its insights to construct benchmarks for evaluating observed patterns and generating clues about their determinants. Subsequent sections of the paper address, in turn, the various factors that affected Ottoman judicial outcomes. The paper concludes with lessons regarding links between Islamic institutions and the economic trajectory of the Middle East.

## 2. Legal Marketplace in Seventeenth-Century Istanbul

Every Ottoman court of the Ottoman Empire was headed by a judge (*kadi*) who served two related judicial functions. On the one hand, he registered, and in so doing authenticated, contracts, settlements, and transactions. Registration enabled the consultation of a written court record should it become necessary to forestall or resolve a dispute. On the other hand, he conducted trials to resolve disputes brought before him.<sup>2</sup> A dispute could involve a criminal matter or what we would now characterize as a civil matter. In either case, the judge would hear the plaintiff, give the defendant a chance to respond, conduct an investigation of his own if necessary, and, ordinarily, pronounce a verdict. Occasionally he would postpone a verdict to allow a litigant to bring evidence. A verdict might involve an order to settle a debt, fulfill a contractual term, or pay damages. The burden of proof did not differ according to the type of case, and neither did procedures.

Each judge had scribes record accounts of his activities in a "register of cases" (*sicil defteri*), and during his tenure at any one court he might use more than one register. In small

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<sup>2</sup> Ordinarily a judge also had executive functions. For example, he might be charged with enforcing public morals and maintaining a record of official orders sent to his area. Ortaylı (1994), Imber (2002, chap. 6), and Gaudefroy-Demombynes (1950, chap. 10) discusses their functions.

towns, judges had scribes record all their court's business more or less chronologically in a single notebook, moving to a second notebook when the first was full. In major cities, the norm was to use a separate register for estate inventories and perhaps another for orders to the court from various branches of government. All other records ended up together, sometimes with certain government orders in the back, in "regular" registers.<sup>3</sup>

When the tenure of a judge ended, his registers came to an end as well; his successor started one or more new registers. The departing judge generally handed over his registers to his successor, or, in places with a court building, simply left them behind for storage (Faroghi 1997). The notebooks used as court registers vary greatly in size. A judge who opted for a thick notebook with huge pages could manage to fit the entire record of his tenure into one book, especially if his tenure was short. If his successor started a skinny notebook, he might go through several notebooks before being replaced by another judge. Many old registers must have been discarded eventually; others perished in fires, earthquakes, floods, and wars; still others must have been destroyed deliberately by individuals with something to hide.

The tenure of a judge was limited to prevent him from developing local political ties. It could last as short as three months, but the norm was about a year, and rarely did a judge serve more than 20 months in any one post. The judges of courts located in politically sensitive places, such as Istanbul, tended to be rotated more frequently than those in strategically unimportant towns, which is consistent with the political considerations that guided appointments (Ortaylı 1994, pp. 16-20).

For their services some judges received a salary; all were also authorized to charge litigants fees (*harç*) set by law. Their fees were usually proportional. In a commercial dispute they might collect, for instance, 2% of the amount at stake (Ortaylı 1994, pp. 67-69; Bayındır 1986, pp. 88-89; Gaudetroy-Demombynes 1950, p. 150-51). There appears to have been no set standard concerning the payee. The plaintiff and defendant might be expected to share the cost. The winner of a lawsuit had to pay, at a minimum, a fixed fee for a document certifying the outcome, known as a *hujjet* (*hüccet*). Records of the Ottoman palace are replete with complaints about judges who charged much more for their services than the authorized amount (Uzunçarşılı 1965, chaps. 9-10). Although judges were assigned to a jurisdiction, such as the town of Amasya or the Eyüp neighborhood of Istanbul, Ottoman subjects and visitors were not required to use the court located where they lived or worked. They were free to take a dispute to a judge of their choice. In practice, then, the judges of Islamic courts were in competition for legal business.

The vast majority of the Ottoman subjects adhered to one of the three monotheistic religions. Muslims, who formed the largest group, were required, as Muslims, to live by Islamic law. This meant that to register a contract legally, or to get a dispute adjudicated formally, they had to use an Islamic court. For their part, non-Muslims enjoyed "choice of law": though entitled to use an Islamic court, on civil matters they were free to use a court of their own

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<sup>3</sup> Prior to the 19<sup>th</sup> century, judges had discretion in selecting a system of recording and categorizing. See Mandaville (1966), pp. 313-14.

choice.<sup>4</sup> Thus, a Greek Christian could have a debt dispute with a co-religionist litigated before an official of the Greek Orthodox Church. All litigation involving both Muslims and non-Muslims had to be handled by a Muslim judge, because of the rule that Muslims had to live by Islamic law (Kuran 2004). This system of asymmetric legal pluralism meant that, at least in cases among non-Muslims, Muslim judges competed also with Christian and Jewish courts. Although it is certain that non-Muslims used courts of their own, they left no records, as far as is known. This is undoubtedly because in trying to minimize their tax obligations Christian and Jewish communities sought to withhold information about their financial matters from state officials.

Under Islamic law, the responsibility to deliver justice belonged to the sovereign—in the Ottoman case, the Sultan. He was free to litigate any dispute himself, and in principle anyone could take a case directly to him. In practice, he let his appointed judges try the vast majority of the lawsuits brought to an Islamic court. These judges differed in status and responsibility. Two chief judges (*kazasker*), one for Ottoman provinces in Europe and the other for the rest, handled appointments on behalf of the Sultan. Moreover, the judges of politically strategic places such as Istanbul and Cairo, like those posted in the holy cities of Mecca and Medina, ranked above the rest. The salaries of judges were tied to rank. Presumably higher ranked judges also earned more in fees by virtue of being posted to courts with exceptionally prosperous litigants.

In principle, high ranking judges did not have greater legal authority than the rest. The youngest judge on his first assignment in a sleepy town had as much authority to deliver a verdict as a chief judge. His verdict was final, and from a doctrinal standpoint it carried as much authority as a verdict delivered by the most experienced judge. Under Islamic law there exists no standardized appeals process (Shapiro 1981, chap. 5). Accordingly, an Ottoman disputant who felt that the court ruled incorrectly could overturn the decision only by appealing directly to the Sultan. The appeals system was thus biased in favor of prosperous and powerful individuals with access to the Sultan's palace. For most Ottoman subjects, appealing a court decision was not a realistic option; and it was particularly costly for individuals who lived far from the Sultan's palace in Istanbul. None of this implies that Ottoman judges were free to rule whimsically. As we shall see, they were subject to checks and balances.

### 3. Economic Theory of Dispute Resolution

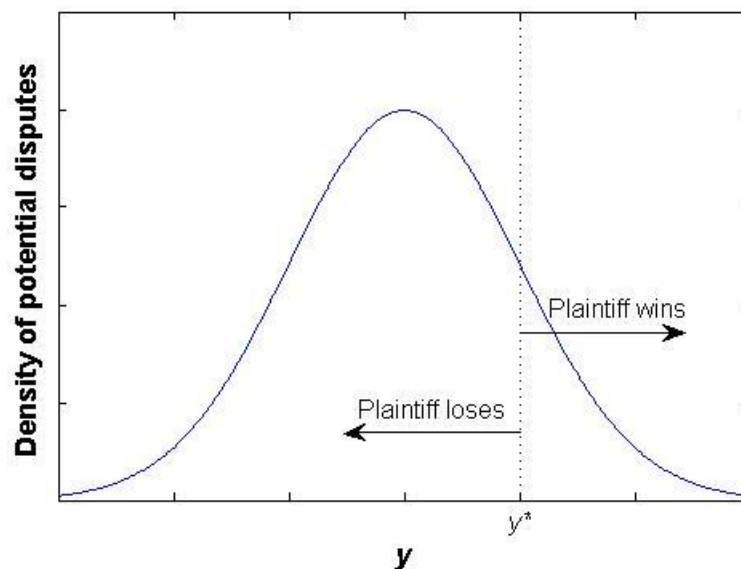
Since our goal is to explore biases in the operation of the Ottoman Empire's Islamic courts, it makes sense to start by defining how a completely just and unbiased system would function. A judicial system is unbiased or fair when judges render decisions on a defendant's liability by comparing the merits of the case, as determined through evidence offered by the litigants, against a consistent and reasonable decision standard that is identical for everyone, regardless of creed, ethnicity, sex, class, profession, or wealth.

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<sup>4</sup> All criminal matters, regardless of the identities of the accused and the victims, fell under the responsibility of Muslim officials.

In modeling the behavior of an unbiased court, we draw from Priest and Klein (1984), who have developed a model of conflict adjudication that we shall review shortly. Suppose that we rank disputes in such a way that those with the most spurious charges of wrongdoing lie at the left extreme of the spectrum and the most credible claims at the right end. According to our definition, an unbiased judicial system would produce some threshold such that the judge will rule in favor of the defendant on all cases to its left and in favor of the plaintiff on all cases to its right (Fig. 1). Complex disputes cannot be reduced to a single value along a single dimension. But this simple framework provides key insights into matters of interest here.

**Figure 1.** Distribution of disputes and decision standard



As we see in Figure 1, there exists some perfectly observable and universally known decision threshold  $y^*$  such that each dispute described by a  $y > y^*$  would be adjudicated in favor of the plaintiff in the event of a trial and each  $y < y^*$  would produce a ruling in favor of the defendant. The dotted line in the figure represents the underlying distribution of disputes that could be litigated. This distribution is characterized by a single peak at some value along the support of  $y$ , which we may interpret as the relative strength of the plaintiff's case to the defendant's case. Although the distribution of disputes need not be single-peaked, this is very likely. In instances where a potential plaintiff's case is overwhelmingly strong ( $y$  is very high), a dispute is unlikely to arise between the parties. This is because the parties are unlikely to disagree about the case. Similarly, when the potential plaintiff's case is very weak, ( $y$  is very low), a dispute is very unlikely. In instances where the property rights of both parties are poorly defined or the details of an economic transaction are relatively ambiguous, the probability of a dispute arising between two parties will reach a maximum for some intermediate value of  $y$ . In combination, these patterns point to a distribution whose density lies mostly in the middle.

In any given society only a small portion of all disputes result in a trial, and it is easy to see why. In general, rational and forward-looking disputants have a good sense of where their



argument fits along the culpability spectrum just defined. Potential litigants who are considering approaching the court about a case that is obviously near an extreme know with near-certainty how an unbiased judge would rule. Given the costs of going to trial, they thus have an incentive to settle the dispute outside of court.

To underscore this point, imagine that both of two disputants know with certainty the  $y$  of their potential trial. Both sides understand also that if they end up in court, the judge will rule according to the relationship between  $y$  and  $y^*$ . They both know the fee structure of the court, including the up-front fees of the two sides and the post-trial fees paid by the winner, or the loser, or both. Finally, they are aware that all court costs are avoidable by settling out of court. Under this setting of perfect information, the dispute will not go to court. Knowing what a judge would decide, the disputants will settle the case without formal adjudication.

We can now add realism to the model by positing that neither litigant can observe  $y$  perfectly. Rather, each receives a noisy signal of  $y$ ,  $\hat{y}_i = y + \varepsilon_i$ , where  $i \in \{p, d\}$  denotes the plaintiff or the defendant and  $\varepsilon$  is normally distributed white noise with variance  $\sigma^2$  and characterized by the cumulative distribution function  $F(\cdot)$ . Both disputants know the distribution of the white noise, so they can form expectations of how close the true measure,  $y$ , is to the decision standard  $y^*$ . Hence, both individuals are able to calculate the probability of a plaintiff victory if the case goes to trial. Given potential litigant  $i$ 's knowledge of his subjective  $\hat{y}_i$  and of  $y^*$ , he can compute the probability that  $y > y^*$  as

$$P_i(\text{plaintiff wins}) = P_i(y > y^* | \hat{y}_i) = P_i(\hat{y}_i - \varepsilon_i > y^*) = F(y - y^* + \varepsilon_i). \quad (1)$$

Let  $J$  represent the value of the damages that will be awarded if the plaintiff wins,  $C_i$  litigant  $i$ 's court fee, and  $S_i$  litigant  $i$ 's settlement fee. Further, let  $p$  represent the plaintiff and  $d$  the defendant. In terms of this notation, the plaintiff's expected gain from going to trial is

$$A = P_p \cdot J - C_p + S_p$$

and the defendant's expected cost of going to trial is

$$B = P_d \cdot J + C_d - S_d.$$

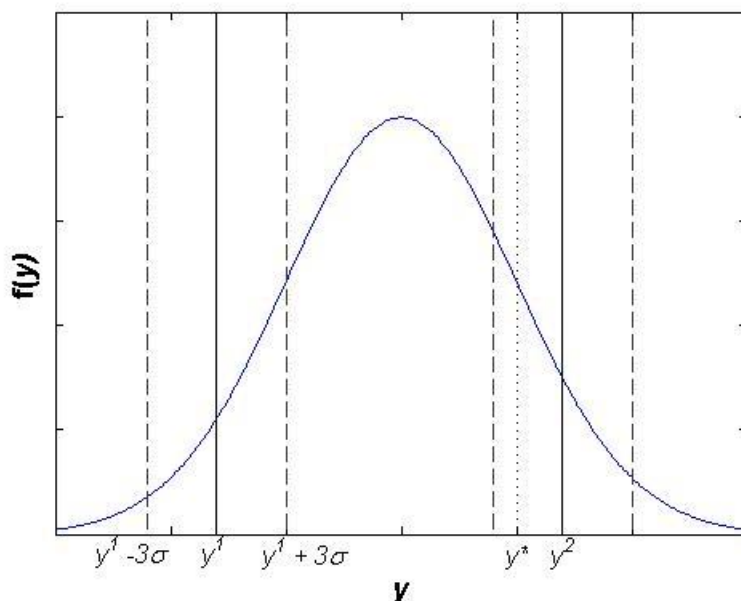
If  $A \leq B$ , there is room for a settlement. However, if  $A > B$ , both parties will believe that he has more to gain from a trial and, hence, that it is not worth settling out of court. Thus the necessary and sufficient condition for a trial is:

$$A > B \Leftrightarrow F(y - y^* + \varepsilon_p) - F(y - y^* + \varepsilon_d) > (C + S)/J, \quad (2)$$

where  $C = C_p + C_d$  and  $S = S_p + S_d$ . In other words, it is a double coincidence of errors that leads to trials.



**Figure 2.** Two potential disputes under imperfect information



For an illustration, consider the two disputes shown in Figure 2,  $y^1$  and  $y^2$ . Under perfect information, neither dispute would progress to trial, since both potential litigants can observe that  $y^1 < y^*$  (implying that the plaintiff will lose) and  $y^2 > y^*$  (implying that he will win). The judge's ruling being self-evident ex ante, the parties will both prefer to settle out of court.

Under imperfect information, neither party observes the true value of the disputes  $y^1$  and  $y^2$ . Rather, they receive noisy signals that are drawn from the vicinity of each true value, according to the distribution of white noise. The dashed lines define a window around each dispute,  $y^j \pm 3\sigma$  for  $j \in \{1, 2\}$ , which incorporates over 99 percent of the observed values of  $y^j$ . The figure thus demonstrates that even under imperfect information disputes may not go to trial. As a case in point,  $y^1$  is located so far from the decision standard  $y^*$  that the plaintiff is highly unlikely to observe a value of  $\hat{y}_p^1 > y^*$ , which is necessary to satisfy Equation 2.

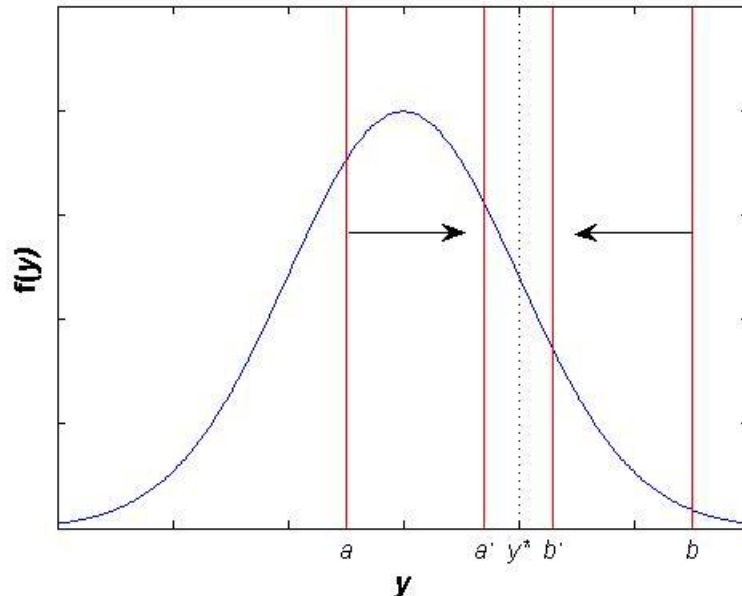
When the dispute is located closer to the decision threshold, the probability of the double coincidence of errors necessary for a trial can be high. In the case of dispute  $y^2$ , the decision threshold  $y^*$  is located within three standard deviations of the dispute. Hence there is a statistically significant probability that the defendant will observe a sufficiently low noisy signal of the case's merits to make him refuse to settle out of court at a price acceptable to the plaintiff.

Drawing on these examples, we may note that almost all adjudicated disputes will be drawn from a window symmetrically around the decision threshold  $y^*$ . The width of this window is dictated by the variance of the white noise that perturbs the litigants' signals of a potential dispute's value  $y$ . The greater the variance of the error term, the less potential litigants can infer about how a judge will rule on their dispute, and, hence, the greater the variability of cases that a single judge will adjudicate. By the same token, as a population

becomes accustomed to how a judge weighs the merits of a case, and thus becomes more adept at predicting the true value  $y$  from commonly known evidence, potential litigants will develop a better understanding of where their dispute lies on the  $y$  spectrum. Accordingly, the variance of the white noise will decrease, improving the parties' ability to determine the probability of passing the decision threshold. Settlements will become more common, lowering the number of adjudicated cases. This result is depicted graphically in Figure 3.

In this figure given a variance of the error term and a decision standard  $y^*$ , the only cases that are litigated are those between  $a$  and  $b$ . As shown previously, for any dispute outside this region, it is practically impossible for the litigants to draw sufficiently extreme error terms to allow the double coincidence of errors necessary to bring it to court. However, if the variance of the white noise drops, certain areas in the region  $[a, b]$  that could potentially go to trial are no longer feasible now that the error terms are drawn from a narrower distribution. Therefore, the region of potential litigation forms a narrower band around the decision standard  $y^*$ ,  $[a', b']$ . More generally, anything that refines the decision standard and improves litigants' ability to predict the true value  $y$  of a dispute will reduce the number of cases that end up in court. Earlier we saw that Ottoman judges were rotated frequently. Insofar as decision standards differed across judges, that would have encouraged litigation.

**Figure 3.** The shrinking window of observed cases



#### 4. Judicial Bias and the Probability of Litigation

Turning now to the possibility of adjudication partial to one side or the other, we can identify three forms of judicial bias: prejudicial, institutional, and market-based. Prejudicial bias

results from mistrust or hostility on the part of the judge toward certain groups, such as the adherents of a particular faith. In contemporary judicial systems, this risk is mitigated by the random assignment of judges to cases and a lengthy appeals process whereby the losing party in a trial can challenge the verdict as flawed. Institutional bias results, among other possibilities, from differential rights to present evidence. A rule that keeps non-Muslims from providing witness testimony harmful to a Muslim litigant offers an example. Finally, market-based bias involves favoritism motivated by competition with other courts. A court may favor plaintiffs in order to increase its caseload by making itself attractive to plaintiffs.

The Priest-Klein model of court adjudication allows a judge to be biased. In other words, it allows the judge to set  $y^*$  anywhere in the  $y$  spectrum. It also allows disputants to react to any bias by varying the cases that end up in court. Insofar as the set of cases brought to court changes, the set of disputes that an analyst observes through court records is altered. The analyst faces, in other words, statistical “sample selection bias.” The key prediction of the Priest-Klein model is that as a population becomes more informed about how to weigh the merits of a dispute and predict how a judge would adjudicate a case, the incidence of plaintiff victory at court tends towards 50 percent.

The underlying logic may be conveyed with reference to Figure 3. Suppose that the judge sets  $y^*$  to the right of the median of the underlying distribution of potential disputes, as shown. The disputants know the exact location of the decision standard. Initially, the variance is such that the cases that will go to trial will be drawn from the region  $[a, b]$ . As the figure indicates, the area under the density function between  $y^*$  and  $b$  exceeds that between  $y^*$  and  $a$ . Since all litigated cases are located between  $a$  and  $b$ , the difference in the areas in our region of interest imply that the judge will rule in favor of the plaintiff more frequently than for the defendant, in other words, that rulings will exhibit a pro-plaintiff bias. As disputants learn how the court weighs the evidence to arrive at the true value of  $y$  and improve their estimation of the dispute’s true value. In other words, the variance of the white noise perturbing the true value  $y$  decreases, shrinking the set of litigated cases. As the region  $[a, b]$  shrinks to  $[a', b']$  and the window of litigated cases collapses toward the decision standard  $y^*$ , the pro-plaintiff bias will also shrink. This is because the density of cases to the left of the decision threshold becomes closer to the density of cases to the right. In the limit, the cases decided in favor of the plaintiff will shrink to 50 percent, thus eliminating the pro-plaintiff bias by definition.

Priest and Klein thus posit a partial equilibrium model involving litigants who develop rational expectations of their probability of winning at trial. Neither party to the dispute knows its true measure of liability with certainty. Each observes a noisy signal, which entails the true measure plus some white noise, whose distribution is common knowledge. Hence, each party is able to compute the probability that the true value of the measure lies above the decision standard. Because of this uncertainty, some cases that should be settled out of court go to trial, and some that should be tried get settled. Whenever both parties believe that they are likely to win, the dispute goes to trial and the judge pronounces a verdict. If one side or the other considers the probability of winning low, a negotiated settlement is likely.

## 5. Competing Legal Jurisdictions

So far we have treated judges as indifferent to the number of cases that come before them. We have also assumed a single court. In fact, judges may have reasons to increase the number, and litigants may be able to choose among courts. Judges can encourage plaintiffs to sue and also to favor their own court by varying their decision standard. Incorporating this insight into a general equilibrium model of the legal marketplace, Daniel Klerman (2007) posits that judges determine the decision standard, and litigants whether to go to trial, simultaneously.<sup>5</sup> Klerman observes that since plaintiffs decide whether to sue and also the adjudication forum, the courts have an incentive to tilt their verdicts in favor of plaintiffs.

Under a regime in which the earnings of judges depend on how many cases are brought to trial, they are incentivized to choose the decision threshold  $y^*$  with an eye toward maximizing the number of cases. The probability that disputes randomly drawn from the distribution of potential cases will go to trial is maximized when  $y^*$  maximizes the conditional expectation of Equation 2. For a judge who has a monopoly over litigation, this maximum is located at the peak of the underlying distribution of potential disputes. However, if there are multiple judges competing for cases, each will be tempted to lower  $y^*$  in a bid to entice plaintiffs to bring cases to his own court. Other judges will respond by setting their own  $y^*$  even lower. The Nash equilibrium of this game is  $y^*=0$  for all judges, which will wipe out all trials. Every defendant will prefer to settle if his probability of winning in court is nil.

Following Landes and Posner (1979), Klerman asks what institutions may limit inter-jurisdictional competition between courts from unraveling into a corner solution such that plaintiffs always win. Studying England's pre-modern legal history he finds that, in addition to the Chancery and the Parliament, the monarch's ability to appoint and remove judges limited the pro-plaintiff bias of courts. The monarch had an interest in maintaining a degree of stability under his rule. Judges who judged unfairly routinely would threaten the legitimacy of the king's rule. His oversight of the legal marketplace constrained judges' ability to compete with each other by tilting decisions in favor of plaintiffs.

Court fees serve as a complementary obstacle to pro-plaintiff bias. If the initiation of adjudication guaranteed the defendant's paying restitution to the plaintiff, the latter would prefer to settle out of court so as to avoid paying adjudication fees. The plaintiff, too, would prefer to settle, for the opportunity to bargain with the defendant over the distribution of what would have been the judge's fees. Hence, court fees, along with the ability to settle out of court, will make judges limit their pro-plaintiff bias.

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<sup>5</sup> Building on Klerman, Dilanni (2010) adds that jurisdictional competition between courts will not necessarily generate pro-plaintiff bias if both the plaintiff and the defendant must agree on the adjudication forum.

## 5. The Courts of Galata and Istanbul

Our analysis is based on the largest existing data set of transliterated, translated, and coded Ottoman court records. It includes 10,080 cases from the courts of Galata and central Istanbul (hereafter, simply Istanbul) and spans the entire seventeenth century.<sup>6</sup> In each dated account, the scribe would record the identity of the litigants—always including their religious affiliation and title and often listing what city or neighborhood they hailed from—the nature of the dispute, the evidence brought to the trial, and the verdict. These two courts were the most prominent of the 16 courts serving the Ottoman capital, which at the time had around 700,000 inhabitants. The Galata court was located near the city’s main port, and the Istanbul court near the fabled Grand Bazaar. Precisely because of their proximity to Istanbul’s two main commercial centers, the caseloads of these two courts consisted primarily of commercial registrations and commercial trials. What interests us here are the latter.

Table 1 shows that these records contain 2,291 commercial trials. Its top 15 rows refer to the court registers in the data set. The register number is that assigned by the Turkish archive where the registers have been housed since 1894. Thus “Galata 130” refers to the 130<sup>th</sup> register in the Galata series within the archive. The registers were chosen to provide coverage across the seventeenth century among surviving unspecialized registers; thus, registers reserved for estate inventories or official correspondence were excluded. Over certain time spans, the registers tended to be small; to be able to check for repeat use of a given court over the periods in question, some consecutive registers were included. The main motivation for constructing the sample was to see whether the standards and processes of Ottoman courts, and the economic life that they supported, changed over the course of the 17<sup>th</sup> century.

Dividing our trials by court, we find that 60.1 percent belong to Istanbul. As shown in Tables 2a and 2b, the two subsamples differ in terms of the demographic composition of the litigants, and also the distribution of cases by topic.<sup>7</sup> Disproportionately few defendants were Muslim in Galata relative to Istanbul. Galata had a higher share of tax cases than Istanbul, but a lower share of cases concerning a waqf (Islamic trust). Without controlling for the differences in question, we might conclude, erroneously, that the two courts judged cases according to different standards and differed in their biases. In fact, multinomial analysis to be presented later shows that the court in which a dispute was resolved mattered significantly to the outcome.<sup>8</sup>

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<sup>6</sup> It is reproduced in Kuran (2010-11), with full transliterations of the records in the Latin alphabet of modern Turkish, along with detailed summaries in both English and Turkish. The records are in Ottoman Turkish, which few Turkish speakers now understand, due to the high number of Arabic and Farsi loanwords. Scribes kept the records, for the most part, in an Arabic script known as broken divani (*kırma divani*).

<sup>7</sup> Cases that present arguments over related topics, such as a dispute over who should inherit a parcel of rented property, are counted more than once. There were also other topics. For both reasons the rows of Table 2b do not sum to 100.

<sup>8</sup> The pattern could reflect year-specific fixed effects. The years of the Galata registers do not overlap with those of the Istanbul registers.

| Table 1. Trial records by register |         |       |       |
|------------------------------------|---------|-------|-------|
| Register                           | Years   | N     | %     |
| Galata 24                          | 1602-03 | 46    | 2.0   |
| Galata 25                          | 1604    | 139   | 6.1   |
| Galata 27                          | 1604-05 | 155   | 6.8   |
| Istanbul 1                         | 1611-13 | 78    | 3.4   |
| Istanbul 2                         | 1615-16 | 50    | 2.2   |
| Galata 41                          | 1616-17 | 40    | 1.7   |
| Galata 42                          | 1617    | 85    | 3.7   |
| Istanbul 3                         | 1617-18 | 143   | 6.2   |
| Istanbul 4                         | 1619    | 107   | 4.7   |
| Istanbul 9                         | 1661-62 | 549   | 24.0  |
| Istanbul 16                        | 1664-65 | 163   | 7.1   |
| Galata 130                         | 1683    | 201   | 8.8   |
| Galata 145                         | 1689-90 | 247   | 10.8  |
| Istanbul 22                        | 1694-96 | 172   | 7.5   |
| Istanbul 23                        | 1696-97 | 111   | 4.8   |
| Galata total                       |         | 913   | 39.9  |
| Istanbul total                     |         | 1378  | 60.1  |
| Total                              |         | 2,291 | 100.0 |

| Table 2a. Adjudications by court: Muslim share of litigants                           |      |                  |                      |
|---|------|------------------|----------------------|
| Court   | Obs  | Muslim plaintiff | Muslim defendant *** |
| Galata  | 913  | 71.4             | 63.0                 |
| Istanbul  | 1378 | 75.9             | 70.9                 |
| <i>p</i> -value   |      | 0.02             | 0.00                 |
| ***: Difference between Galata and Istanbul statistically significant at 99.9% level. |      |                  |                      |

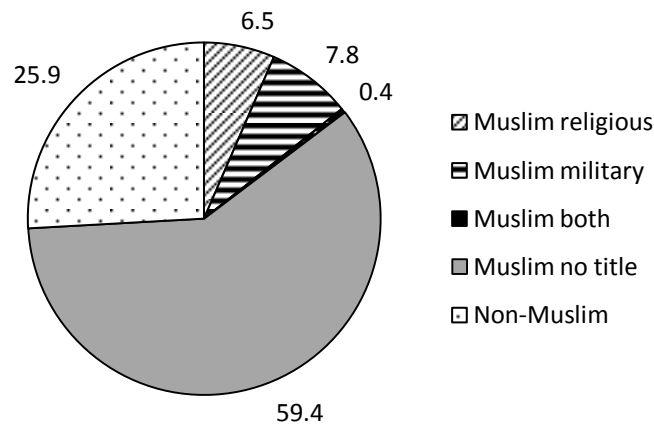
| Table 2b. Adjudications by court: Shares of categories                             |      |        |         |      |          |      |       |
|--|------|--------|---------|------|----------|------|-------|
| Court  | Obs  | Tax ** | Waqf ** | Rent | Property | Sale | Guild |
| Galata   | 913  | 6.7    | 12.8    | 8.8  | 21.0     | 26.1 | 3.5   |
| Istanbul   | 1378 | 3.6    | 17.3    | 8.9  | 19.1     | 27.3 | 2.8   |
| <i>p</i> -value  |      | 0.00   | 0.00    | 0.89 | 0.26     | 0.52 | 0.37  |
| **: Difference between Galata and Istanbul statistically significant at 99% level. |      |        |         |      |          |      |       |

Since the vast majority of the litigants appear in the records as Muslim, Christian, or Jewish, the lower shares of Muslims among the Galata litigants points to a higher share of non-Muslims. In the seventeenth century Galata had an unusually high concentration of non-Muslim residents, especially Greek and Armenian Christians. That could explain why the Galata court's clientele was more heavily Christian. We hasten to note that, in contrast to a modern legal system, plaintiffs in seventeenth-century Istanbul did not need to sue in the district where the dispute arose or where they lived. They could choose among multiple courts within walking distance of one another. Christians might well have favored the Galata court because of greater convenience. In principle, another reason could be that the Galata court had a reputation for ruling in favor of Christians more often than the competing court in Istanbul.

Shortly we shall examine the interfaith pairings of plaintiffs and defendants, with an eye toward quantifying the judicial biases at work. First, however, we shall review the titles of the court participants, to derive insights into the economic interactions that gave rise to the disputes recorded in the registers. Our findings will help us interpret subsequent empirical results.

The titles recorded in the registers fall into two categories: religious and military.<sup>9</sup> These two categories of titles, which were assigned only to Muslim Ottoman subjects, conveyed substantial prestige. They were undoubtedly correlated positively with personal wealth.<sup>10</sup> Collectively, the title holders thus constituted the elites of Ottoman society.

**Figure 2.** Distribution of plaintiff titles



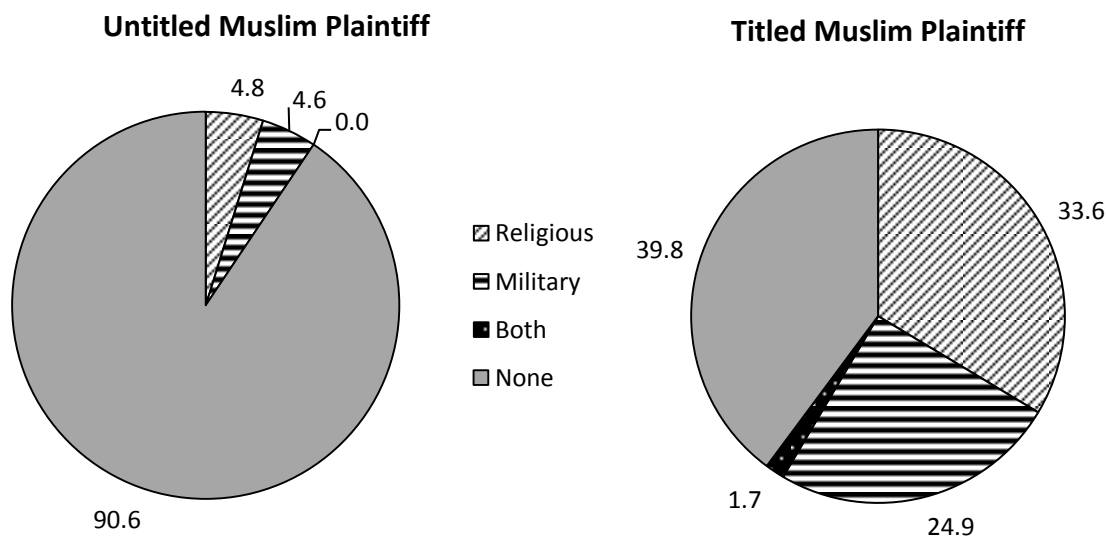
<sup>9</sup> Our title categories come from Ergene and Berker (2009), who categorize *Ağa*, *Beşe*, and *Beğ* as military titles and *Efendi*, *Molla*, *Halife*, *Imam*, *Şeyh*, *Çelebi*, and *Dede* as religious titles.

<sup>10</sup> The mean *akçe*-denominated value of non-rental disputes is larger when the plaintiff has a title than when he does not, at the 99.9% level of significance ( $t=3.71$ ).



Figure 2 indicates that Muslim commoners—those without titles—formed a large majority of the plaintiffs who brought cases to Ottoman courts. The second largest group consisted of Christians and Jews, who did not carry titles, at least none of relevance to the court, except if they were a priest or a rabbi. The remaining plaintiffs, 14.7 percent, consisted of the titled Muslim elites. This distribution says nothing, of course, about the economic relationships recorded in the court registers. Did elites interact primarily with each other? As Figure 3 shows, this was indeed the case. In a dispute involving only Muslims, the social status of one litigant is a good predictor of that of the other. When a Muslim elite filed a commercial lawsuit, he was about 15 times more likely to sue an elite Muslim than if he was a Muslim commoner.<sup>11</sup> This finding supports the notion that in seventeenth-century Istanbul economic interactions were predominantly personal in nature. Indeed, they tended to occur among people of similar social status who, therefore, were likely to know one another through repeated interactions in diverse spheres of activity. Evidently, Muslim elites bought and sold primarily from each other, and entered into contacts generally with people like themselves. Likewise, Muslim commoners interacted primarily with each other. These findings shed light, we shall see, on the next section’s results concerning the role of religion in judicial adjudication.

**Figure 3.** Distribution of Muslim defendants’ titles for untitled and titled Muslim plaintiffs



<sup>11</sup> The odds ratio differs from 1 at the 99.9% level of significance ( $t=16.19$ ). When the sample is expanded to include registrations along with trials, the contrast becomes even more pronounced: a Muslim elite is about 23 times more likely to be interacting with another Muslim elite than if he were a Muslim commoner ( $t=33.19$ ).

## 6. Pro-Plaintiff Bias and Its Variations across Religious Groups

Given that courts were in competition with one another for lawsuits, they were all incentivized to tilt verdicts in favor of plaintiffs as a means of attracting more lawsuits. With all of them playing this game, the plaintiff bias would have grown, and in the limit plaintiffs would have won all cases in every court. In the process, the temptation to launch frivolous lawsuits would also have increased, especially if judges took to making side deals with plaintiffs to share whatever could be extracted from hapless defendants.

In fact, the verdicts delivered in our two courts did display an unmistakable bias in favor of plaintiffs. They won 59.7 percent of all cases that appeared before a judge.<sup>12</sup> This number is far lower than 100 percent figure we would have found if the judges of the Galata and Istanbul courts decided cases with a single goal, namely, encouraging people to bring them lawsuits. Other considerations must have been in play. Fairness is, of course, the most obvious competing consideration. Yet the plaintiff victory rate is significantly higher than the 50% result predicted by the Priest-Klein model. Evidently, inter-court competition was making favor plaintiffs.

Table 3a gives the breakdown of the trials in terms of the nine possible pairings among our three religious communities. Table 3b provides the corresponding plaintiff victory rates.<sup>13</sup> We see that a pro-plaintiff bias is present irrespective of the pairing. It is significantly greater than 50% in intra-Muslim, intra-Christian, and intra-Jewish cases, but also when the litigants are from different faiths.<sup>14</sup>

| Table 3a. Number of trials by religion |           |           |        |      |
|--|-----------|-----------|--------|------|
| Plaintiff                              | Defendant |           |        |      |
|  | Muslim    | Christian | Jewish | All  |
| Muslim                                 | 1411      | 223       | 41     |      |
| Christian                              | 96        | 377       | 7      |      |
| Jewish                                 | 20        | 29        | 20     |      |
| All                                    |           |           |        | 2224 |

<sup>12</sup> This plaintiff victory rate lies above the Priest-Klein benchmark of 50 percent at the 99.9% level of significance ( $t=9.35$ ).

<sup>13</sup> The figures exclude the small number of trials involving gypsies, foreigners, and new converts to Islam (*mühtedi*).

<sup>14</sup> Testing the intra-faith results in Table 3 against the null hypothesis that the plaintiff victory rate equal 50%, we reject the null for Muslims and Christians at the 99.9% level of statistical significance and reject it for Jews at the 90% level of statistical significance ( $p$ -values: 0.00 for Muslims, 0.00 for Christians, 0.07 for Jews). We reject the null also in inter-faith cases involving Christians and Muslims ( $p$ -values: 0.00 for Christian suing a Muslim, 0.02 for Muslim suing a Christian), but cannot do so consistently in cases involving Jews or “others”, in all likelihood due to their small numbers in the data.

| Table 3b. Plaintiff victory rate by religion |           |           |        |      |
|--|-----------|-----------|--------|------|
| Plaintiff                                    | Defendant |           |        |      |
|  | Muslim    | Christian | Jewish | All  |
| Muslim                                       | 59.0      | 57.9      | 65.9   |      |
| Christian                                    | 71.9      | 59.4      | 57.1   |      |
| Jewish                                       | 65.0      | 55.2      | 70.0   |      |
| All  |           |           |        | 59.7 |

This is not to say that religion itself was irrelevant to the probability of victory. Focusing on the Muslim-Christian cases, where the numbers are high enough for meaningful statistical analysis, we find that the plaintiff victory rate differs depending on whether the Christian side is the plaintiff or the defendant. In view of the debates concerning abuses against Christians, the nature of the difference may come as a surprise. The plaintiff victory rate is higher, not lower, when a Christian sues a Muslim than when the roles are reversed.<sup>15</sup> Equally surprising, it may seem, is that Christian plaintiffs do better when the defendant is Muslim than when he is a co-religionist (71.9% vs. 59.4%). For Muslim plaintiffs, by contrast, the religion of the defendant does not matter significantly.<sup>16</sup> Not even the Ottomanists who reject the strident charges of anti-Christian bias in Islamic courts would have predicted these findings. Based on casual observations, they have suggested that the Islamic courts treated Christians fairly, not that Christians benefited from judicial discrimination in their favor.

Counter-intuitive as these findings may seem, they will not surprise students of modern litigation involving foreigners. In American courts xenophobia in adjudication goes hand in hand with a high foreign victory rate in foreign-initiated lawsuits against Americans. Clermont and Eisenberg (1996) identified an apparent xenophilic pattern in American trials involving patent disputes. In particular, they found that American courts rule in favor of foreign firms suing American firms at a significantly higher rate than they do in favor of domestic American firms suing other American firms<sup>17</sup> What made this an intriguing result is that it conflicts with perceptions of foreign experiences in American courts. Clermont and Eisenberg note that foreign firms consider American patent courts to be biased against them. In particular, they believe that in patent cases pitting a foreign firm against an American firm the foreign side will

<sup>15</sup> The plaintiff victory rate is relatively higher in the former case at the 95% level of statistical significance ( $t=2.52$ ).

<sup>16</sup> For Christian plaintiffs the victory rate is greater when the defendant is a Muslim at the 95% level of statistical significance ( $t=2.37$ ). For Muslim plaintiffs, the null hypothesis that the rates are equivalent cannot be rejected ( $t=0.39$ ). For the sake of completeness, we may compare across plaintiffs, holding the defendant's religion constant. When the defendant is Muslim, it matters whether the plaintiff is Muslim or Christian at the 99% level of significance ( $t=2.69$ ). When the defendant is Christian, the plaintiff's religion does not matter ( $t= 0.44$ ).

<sup>17</sup> In lawsuits between domestic firms, the plaintiff victory rate is 64 percent. By contrast, in those that involve a foreign plaintiff and a domestic defendant, the plaintiff victory rate is as high as 80 percent. The difference is significant at the 99.9% level. In lawsuits by domestic firms against foreign firms, the plaintiff victory rate drops to 50 percent. This percentage differs statistically from 64%, again at the 99.9% level of significance.

generally lose. The authors reconcile this perception with their finding of a high foreign victory rate in practice by suggesting that it reflects selection bias. Expecting American juries to be biased against them, foreign firms do not sue an American firm unless their case is very strong. Their high victory rate thus reflects not xenophilia but the strength of their lawsuits. This interpretation is supported by Bhattacharya et al. (2007), who study the impact of litigation on stock prices as a measure of public expectations of judicial outcomes. They find that foreign firms sued in American courts are expected to do substantially worse than American firms sued in the same courts.<sup>18</sup>

These findings may make one wonder whether American courts differ at all from Ottoman courts of the seventeenth century in regard to anti-outsider biases. The institutional biases of the Ottoman courts have no parallel in American courts, where American and foreign litigants enjoy rights concerning witnesses, who are not limited in any way with regard to creed or nationality. What has not disappeared is prejudicial bias, which cannot be eliminated through legislation. Like juries everywhere throughout history, American juries are drawn from people who are predisposed to give the benefit of the doubt to people like themselves, in other words, Americans rather than foreigners. Likewise, judges are predisposed to seeing conflicts from the perspective of American litigants.<sup>19</sup>

## 7. Non-Muslim Participation in Islamic Courts

If selection bias accounts for the high victory rate of Christians in their lawsuits against Muslims, they would have had special reasons to avoid Islamic courts; and these would be reflected in an underutilization of Islamic courts by Christians. To determine whether Christians were indeed underutilizing Islamic courts, we need to know the shares of each religious group in Istanbul's population. Although no population census was conducted in the 17<sup>th</sup> century, Mantran (1962) estimates that at the time Istanbul was 58.8 percent Muslim, 34.8 percent Christian, and 6.4 percent Jewish (Fig. 4).<sup>20</sup> Although Christians formed numerous subgroups, the vast majority belonged to one of the two largest groups, the Greeks and the Armenians.

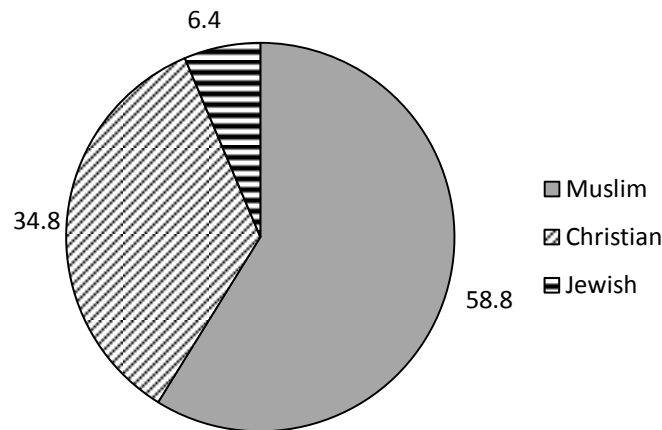
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<sup>18</sup> The authors employ a Heckman two-step regression process. In related work, Moore (2003) examines the number of international patent disputes while controlling for U.S. patents held by foreign and domestic firms, thus weighing the foreign litigation rate in U.S. courts against the number of foreign-held US patents, in order to examine how often international firms sue relative to American firms. She confirms that foreigners sue disproportionately less, given the distribution of patents held. This result is consistent with the inference that sample selection bias drives the high foreign victory rate in foreign-initiated lawsuits.

<sup>19</sup> Bodenhausen (1988) presents two experiments concerning the psychological mechanisms through which juries interpret and internalize evidence presented in trials. The experiments show that individual jurors tend to retain evidence that confirms their preexisting stereotypes and to discount potentially exculpatory evidence at odds with their stereotypes.

<sup>20</sup> In his monumental history of Istanbul Mantran (1962, p. 44-47) provides, on the one hand, the population size of the Christian and Jewish communities in 1690, and on the other, the Muslim and non-Muslim shares in the 16<sup>th</sup> century. There is no reason to believe that population shares changed significantly between the 16<sup>th</sup> and 17<sup>th</sup>

**Figure 4.** Population shares of the religious communities in 17th century Istanbul



Given these shares, let us conduct a counter-factual exercise to determine how often the three groups would face one another in an Islamic court under three assumptions: (1) irrespective of faith, the residents of Istanbul interact in pairs randomly, (2) for every type of pairing (Muslim-Muslim, Christian-Muslim, etc.), interactions result in litigation with the same probability, and (3) all litigation takes place in an Islamic court. Under this “random litigation” scenario, the distribution of pairwise litigation would be as shown in column (1) of Table 4. The intrafaith cases equal the squared shares of the communities in the population.<sup>21</sup> They could be lower if Christians and Jews had an outside option, namely, adjudication in a court of their own religious community. The interfaith disputes are, of course, symmetric: the share of Christian-initiated lawsuits against Muslims equals that of Muslim-initiated cases against Christians. Implicit in this random litigation scenario is that neither side in an interfaith pairing has a greater incentive to settle out of court, because they both perceive the same chance of victory.

Column (2) of Table 4 provides the observed adjudication shares in seventeenth-century Istanbul.<sup>22</sup> It is apparent that intra-Muslim cases are vastly overrepresented relative to random adjudication, as are intra-Christian cases.<sup>23</sup> The reason is that pairings did not occur randomly;

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centuries. By holding the relative sizes of the Muslim and non-Muslim communities constant, we are able to extrapolate the three shares.

<sup>21</sup> For example, the Christian intra-faith share is  $(0.35)^2 = 12.3\%$

<sup>22</sup> These calculations exclude cases involving a state official, because they involved matters between individuals and the state, rather than between individuals alone. They also exclude the small number of cases involving others (gypsies, foreigners, and new converts to Islam).

<sup>23</sup> The intra-Muslim and intra-Christian shares are both significantly greater at the 99.9% level than what one would see under random adjudication ( $t=27.66$  and  $t=7.15$ , respectively). Every other religious pairing differs at the same level of statistical significance from the corresponding share under random adjudication ( $t=15.31$  for JvJ,  $t=16.06$  for MvC,  $t=40.21$  for CvM,  $t=5.73$  for MvJ,  $t=14.04$  for CvJ, and  $t=5.77$  for JvC).

Muslims interacted disproportionately with Muslims, and Christians with other Christians, resulting in disproportionately many intrafaith disputes. This is because people found it advantageous to deal with individuals known to them personally; and typically they knew more about a co-religionist than about a religious outsider. In the case of Christians, another reason was that the two major Christian groups, Greeks and Armenians, favored Islamic courts over their own communal courts as a neutral ground for adjudicating Greek-Armenian disputes formally.

| <b>Table 4. Shares of non-state adjudication by religion of litigants</b> |                  |                   |                     |
|---|------------------|-------------------|---------------------|
| Litigants   |                  | (1)               | (2)                 |
|   |                  | Random litigation | Observed litigation |
| Plaintiff   | Defendant        |                   |                     |
| <b>Muslim</b>   | <b>Muslim</b>    | <b>34.6</b>       | <b>63.3</b>         |
| Muslim  | Christian        | 20.5              | 9.9                 |
| Muslim  | Jewish           | 3.7               | 2.0                 |
| Christian   | Muslim           | 20.5              | 3.7                 |
| <b>Christian</b>  | <b>Christian</b> | <b>12.1</b>       | <b>18.1</b>         |
| Christian   | Jewish           | 2.2               | 0.3                 |
| Jewish  | Muslim           | 3.7               | 0.9                 |
| Jewish  | Christian        | 2.2               | 1.0                 |
| <b>Jewish</b>   | <b>Jewish</b>    | <b>0.4</b>        | <b>0.9</b>          |
| Total   |                  | 100.0             | 100.0               |

It is in interfaith disputes that evidence exists of the selection bias in question. Whereas under random adjudication the share of Muslim-Christian lawsuits with the Muslim as plaintiff and the Christian as defendant would equal the share with the roles reversed, in fact the two shares were starkly different: 9.9% of all disputes consist of a Muslim lawsuit against a Christian, but only 3.7% involve a Christian lawsuit against a Muslim.<sup>24</sup> This asymmetry holds regardless of whether the cases are adjudicated in Galata or Istanbul.<sup>25</sup>

The asymmetry in question suggests that Christians considered the courts biased against them, at least in cases in which they faced a Muslim. Two sources of institutionalized bias stand out. First, the officials of the Islamic judicial system were exclusively Muslim. The judges and their assistants were Muslim, as were the court-appointed professional witnesses (*şuhud ül-hal*) present at every adjudication or registration procedure. These officials would have been attuned more to the customs, perspectives, and aspirations of their co-religionists than to those

<sup>24</sup> The two interfaith proportions differ at the 99.9% level of statistical significance ( $t=8.54$ ).

<sup>25</sup> Muslim-Christian trials exceed Christian-Muslim trials in both courts at the 99.9% level ( $t=8.28$  for Galata and  $t=4.39$  for Istanbul).

of Christians and Jews. As such, even if they tried to be meticulously impartial, they would have been more receptive to arguments of Muslims than to those of non-Muslims. In Muslim-Christian cases, the benefit of any doubt would have gone to Muslims. [SL: Refer again to empirical source that we cite in connection with US anti-foreign bias case]

Second, Muslims and Christians did not have equal rights as regards testifying in court as a litigant-invited witness. Whereas a Muslim witness could testify against anyone, non-Muslims were allowed to testify only against other non-Muslims. Our own sample of cases shows that the ban on non-Muslim witness testimony against Muslims, which became institutionalized early in Islamic history, was obeyed in seventeenth-century Istanbul. A total of 1177 witnesses were called to testify in our 2280 commercial lawsuits. Of these, an overwhelming majority (89.0%) were Muslim. Equally striking is that no Christian or Jewish witness appears in any lawsuit in which both parties are Muslim. By contrast, Muslims do appear in trials among Christians; in fact they represent the majority of all witnesses called to testify on intra-Christian disputes (56.6%).

| <b>Table 5. Distribution of litigant-selected witnesses by religion of litigants and witnesses</b>  |           |           |           |        |       |
|---|-----------|-----------|-----------|--------|-------|
| Litigants   |           | Witnesses |           |        |       |
| Plaintiff   | Defendant | Muslim    | Christian | Jewish | Total |
| Muslim  | Muslim    | 741       | 0         | 0      | 741   |
| Muslim  | Christian | 62        | 12        | 0      | 74    |
| Muslim  | Jewish    | 42        | 0         | 0      | 42    |
| Christian   | Muslim    | 39        | 16        | 0      | 55    |
| Christian   | Christian | 99        | 76        | 0      | 175   |
| Christian   | Jewish    | 0         | 4         | 0      | 4     |
| Jewish  | Muslim    | 5         | 0         | 0      | 5     |
| Jewish  | Christian | 9         | 5         | 0      | 14    |
| Jewish  | Jewish    | 0         | 0         | 13     | 13    |
| All above combinations  |           | 997       | 113       | 13     | 1123  |
| All three religious groups  |           | 27        | 0         | 0      | 27    |
| Other combinations <sup>a</sup>   |           | 23        | 4         | 0      | 27    |
| All lawsuits  | number    | 1047      | 117       | 13     | 1177  |
|   | %         | 89.0      | 9.9       | 1.1    | 100   |
| <sup>a</sup> : Lawsuits in which one or both sides includes a foreigner ( <i>müstemen</i> ), gypsy ( <i>çingene</i> ), or recent convert to Islam ( <i>mühtedi</i> ). |           |           |           |        |       |



| Table 6. Categories as percentage of interfaith adjudication  |                               |  |                               |   |
|---|-------------------------------|--|-------------------------------|---|
| Category  | (1)<br>Christian suing Muslim | (2)<br>All cases with Christians and Muslims | (3)<br>Muslim suing Christian | <i>t</i> -test of equivalency (1 and 3) |
| Guild   | 6.3                           | 3.8  | 2.7                           | 1.31                                    |
| Debt  | 53.1                          | 65.5   | 70.9                          | 2.97                                    |
| Waqf  | 14.6                          | 17.9   | 19.3                          | 1.05                                    |
| Property  | 22.9                          | 11.0   | 5.8                           | 3.72                                    |
| Tax   | 7.3                           | 6.0  | 5.4                           | 0.62                                    |
| State   | 19.8                          | 11.9   | 8.6                           | 2.51                                    |
| Sales   | 36.5                          | 30.1   | 27.4                          | 1.58                                    |
| Partnership   | 29.2                          | 21.0   | 17.5                          | 2.20                                    |
| Inheritance   | 29.2                          | 20.7   | 17.0                          | 2.29                                    |
| Number  | 96                            | 319  | 223                           |   |
| Note: Columns sum to more than 100% because many cases involved several of these topics simultaneously. |                               |  |                               |   |

The finding of institutionalized bias raises the question of why Muslims and Christians sued each other at all on economic matters. After all, Christians could have avoided the possibility of commercial lawsuits involving Muslims simply by doing business with other Christians. Yet potential gains from trade would often have trumped the risk of biased litigation. A content analysis of the issues over which cases arose shows that Christians and Muslims interacted most commonly through credit markets. Of all trials between Christians and Muslims, 65.3% involved a disagreement over debt. Typically, the plaintiff accuses the defendant of having failed to settle a debt linked to an installment sale with an implicit interest charge; hence, debt and sale are positively correlated with one another in the data.<sup>26,27</sup>

To sum up thus far, we have (1) found a higher pro-plaintiff bias for Christians than for Muslims, (2) observed that Islamic courts were institutionally biased against “outsiders,” (in this case, non-Muslims) in line with the global norm of anti-outsider judicial bias, and (3) that the anti-Muslim bias of the Islamic courts led Christian Ottoman subjects to avoid suing Muslims except when their cases were particularly strong, resulting in a selection bias in our data base. Table 6 raises a potential problem with the first and third points. Could the figures in question be reflecting differences across the religious groups in the types of issues they brought to

<sup>26</sup> The coefficient of correlation between debt and sale is 0.16. It is significant at the 95% level.

<sup>27</sup> The plaintiff is the creditor and the defendant is the debtor 94.1% of the time. Given that the Muslim litigant is the plaintiff in 75.6% of the Muslim-Christian lawsuits involving a debt, we can infer that the Muslim was more often the creditor and the Christian generally the debtor. Evidently, in the seventeenth-century, in contrast to later times, Muslims supplied more credit than Christians. This disparity does not reflect a sample selection bias, because our usual indicator is absent: even though the number of disputes brought by Christians is lower than those brought by Muslims, the plaintiff win rates of the groups are not statistically different ( $t=1.37$ ).

court? This possibility will be addressed in due course, but only after we address a possible objection to point 2.

## 8. Documented Contracts as Insurance against Judicial Bias

We already know that the courts under consideration here did more than adjudicate lawsuits. Of the 10,080 records in our 15 court registers, 6,494 comprised the registration of a contract or settlement. Ottoman subjects registered agreements in court to have a record in writing as insurance against misunderstandings. When an agreement was entered into a court register, a copy of the agreement was given to each side. Either one of those copies, or the record in the register itself, could be consulted in the event of a dispute.

Could any institutionalized bias of the Islamic courts be mitigated through documentation of agreements? To be more specific, could non-Muslim Ottoman subjects alleviate the risks of biased litigation by documenting their commercial interactions with Muslims? In fact, the litigants who appeared in seventeenth-century trials did present documents to bolster their arguments before the judge. As Table 7 indicates, a document was introduced by one side or the other, or both, in 15.2% of all trials. The table also shows that the introduction of a document massively increased the chances of winning the case. The plaintiff victory rate, which is 60.2% when the sides make their cases without reference to any documentation, jumps to 83.9% when the plaintiff alone introduces a document in support of his case, and it plummets to 7.2% when the defendant alone presents a document.<sup>28</sup>

| Table 7. Document use in trials |             |                        |                        |                   |       |
|---------------------------------|-------------|------------------------|------------------------|-------------------|-------|
|                                 | No Document | Presented by plaintiff | Presented by defendant | Presented by both | Total |
| Plaintiff win rate              | 60.3        | 83.9                   | 7.2                    | 21.1              | 59.6  |
| Number of cases                 | 1938        | 218                    | 111                    | 19                | 2286  |

By themselves, these figures do not establish the commonness of documenting commercial transactions. A potential plaintiff's decision to seek a judicial ruling would have been influenced by whether he had documentary evidence in his favor. By the same token, he would be motivated to avoid court fees by settling out of court insofar as the document would convince the defendant was bound to lose. A better proxy for the rate of document use is the rate at which defendants introduced documentary evidence, because it was not they who sought adjudication. But defendants, too, could settle out of court, and they could deter a lawsuit against them simply by showing a potential plaintiff their relevant documents. Nevertheless, potential defendants probably ended up in court at a higher rate if they had

<sup>28</sup> The two differences (83.9% vs. 60.1%) and (7.2% vs. 60.1%) are both statistically significant at the 99.9% level ( $t=8.69$  and  $t=19.61$ , respectively).

documentary evidence likely to exonerate them. Accordingly, the share of trials involving documentation probably overstates the level of commercial documentation in seventeenth-century Istanbul.

We are still left with the question of why documentation use was so low. The courts charged for documents. The judges of our two seventeenth-century courts collected a 2% ad valorem fee registering an estate settlement and between 8 and 30 aspers for a document certifying a court registration or verdict (*hüccet*); lesser fees were collected by their assistants (Uzunçarşılı 1965, pp. 85-86). All in all, the cost of registering a debt or sale contract corresponded to what a skilled worker made in one to three days.<sup>29</sup> For small transactions, these fees alone would have discouraged registration. Low literacy rates—probably no greater than 10% for any group—would also have limited the demand for documentation. Yet another reason to forego documentation was that in Islamic jurisprudence documents themselves lacked evidentiary value in the absence of corroboration by witnesses to their preparation. The witnesses could charge for their services.

In a modern economy, a signed and notarized contract signals that the signers read, understood, and agreed to its contents and that the terms of a transaction were set in advance. In a lawsuit it will serve as evidence that the parties were aware of their duties associated with the transaction. In the present context, the document includes a list of witnesses to its creation and signals that they could resolve any disagreement as to what was agreed. If parties to a court-registered contract end up in court, and one side introduces the registration document, it serves notice that witnesses are available to speak to its validity and testify to its particulars. The other side might concede the case at that point.<sup>30</sup> In the absence of a concession, witnesses will be called, and it is their testimony that will clinch the case for the document presenter.<sup>31</sup> Hence, witnesses play the same role as the documented contract in a modern legal system.

Any contract between a Muslim and non-Muslim posed a special challenge in terms of the identity of the witnesses. Given the ban of having non-Muslim witnesses testify against a Muslim, the witnesses had to be Muslim for the contract to be of value to the non-Muslim side. The need was met partly through witnesses for hire—individuals prepared to witness contracts for a fee. Although little is known about this practice, we do know that it was common, and its abuses constitute a major theme in accounts of the Ottoman legal system.<sup>32</sup> The upshot is that registering a contract in court was not simply a matter of drafting its terms and putting it in

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<sup>29</sup> Özmucur and Pamuk (2002) estimate that in Istanbul a skilled worker made around 22.5 aspers per day at the start of the seventeenth century and about 36.9 aspers per day at the end.

<sup>30</sup> In our data set, one or more documents is introduced in 351 of 2287 trials. In 184 (52.9%) of these, no witnesses were called because the other side conceded the case.

<sup>31</sup> One or more documents was presented in 351 lawsuits, of which 11 produced no verdict. In 148 of the cases, the opposing party decided not to contest the document. In only 6 of the contested cases did the judge rule on the favor of the document-submitting party without authentication by witnesses. On the roles of witnesses in certifying documents, see also Tyan (1955; 1960, pp. 236-52).

<sup>32</sup> Uzunçarşılı (1965, chap. 18). The theme appears in one of our registers: Istanbul 22 (1695), 93a/1.

writing. A cadre of mutually agreed witnesses had to be found. And a special challenge was present whenever the sides included one or more Muslims along with one or more non-Muslims. The rules of Islamic jurisprudence put non-Muslims at a disadvantage in documenting such contracts. We would expect the degree of trust between members of the same religious community would be higher than between different communities, and therefore the use of documentary evidence to be greater in interfaith cases than in intrafaith cases. While the raw numbers tentatively support this hypothesis—document use in 16.3 percent of all interfaith cases versus 14.3 percent of all intrafaith cases—the small number of observations preclude statistical significance.

Perhaps the most important reason for the low rate of documentation observed in our registers is not the cost of documentation itself but that in the seventeenth century the Ottoman economy had not yet begun the transition from personal to impersonal exchange. Commercial organizations were tiny and short-lived, and business took place largely among acquaintances (Kuran 2010). Irrespective of religion, people enforced contracts largely through reputation-based means, turning to courts only as a last resort and in extraordinary circumstances. Indeed, extrapolating from the average number of disputes in our registers, we find the probability of any given business transaction leading to litigation to be around 0.05%.<sup>33</sup> In borrowing from acquaintances, or buying an object from a seller with whom one has interacted repeatedly, the expected benefit of documentation is limited. In fact, it may damage the relationship itself by signaling mistrust.

## 9. Multivariate Analysis of Judicial Decisionmaking

Having examined the institutional biases in the Ottoman judicial system, noted the apparent asymmetries in court participation among Istanbul's religious communities, and explored the role of documentary evidence as insurance against pro-plaintiff bias, we are left to question to whether the differing plaintiff victory rates between religious communities—specifically the asymmetries involving Muslim-Christian trials—were driven by intergroup differences concerning the substance of adjudication. Muslims and Christians might have appeared in debt or *waqf* cases at disproportionate rates, and any judicial bias may have varied according to topic. A related factor that could sway a judge is the presence of an official among the litigants. Consider the case of a Muslim suing a Christian over the rental of a *waqf* property to the defendant. The following factors might all have affected the judge's ruling: the religion of the litigants; the involvement of a *waqf* official; and prevailing judicial norms regarding rental disputes.

The relative weights of such influences can be disaggregated through a multivariate probit regression framework. This exercise will enable us to separate the impact of the litigants' religion, their status in relation to the state, the substance of the dispute, and the use of

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<sup>33</sup> This estimate is based on the assumption that every adult participates in 20 important commercial interactions per year and that the adult population of Istanbul amounted to 66.7% of 700,000 residents.

documents. To facilitate interpretation, we supplement the probit results with odds ratios determined through logistic regressions.

### *Model*

The probit regression estimates the equation  $\text{Prob}(y_{it} = 1 | \beta, \sigma^2) = \text{Prob}(x'_{it}\beta + z'\eta + \epsilon_i > 0)$  where  $\epsilon_i \sim N(0,1) \forall i, t$ . More specifically, we decompose the vector  $x'_{it}\beta$  as equal to

$$x'_{it}\beta = a'_{it}\delta + b'_{it}\gamma + c'_{it}\xi,$$

where  $y_{it} = 1$  when the adjudicator of case  $i$  in year  $t$  rules in favor of the plaintiff and  $y_{it} = 0$  otherwise; and  $a_i$ ,  $b_i$ , and  $c_i$  are vectors that identify, respectively, whether either or both litigants are Muslim, whether either litigant is employed as a state official, and which litigant introduced documentary evidence at the trial. The vector  $z$  consists of year-specific dummy variables to control for fixed effects on cases adjudicated in the same year.

Implicit in this model are several assumptions particular to the standard assumptions of probit estimation. Since the religion-specific variables are not interacted with the employment or document variables, we are assuming that the weight of documentary evidence in the judge's decision making process is invariant to the faith of the party introducing the evidence into the court. In addition, we are assuming that the testimony of state-employed individuals is weighed by the judge consistently irrespective of their religion.

### *Specifications*

Under these assumptions, we present estimates for four specifications, each of which adds a class of controls to the previous one. (1) controls for religion of the litigants; (2) adds controls for the litigants include a state official; (3) adds controls for the dispute topic; (4) and (5) estimate specification (3) on cases that include or exclude documentary evidence, respectively; and, finally, (6) includes controls for documentary evidence. The results are presented in Table 8.

In all the regressions, our reference specification involves a non-Muslim plaintiff and a non-Muslim defendant. Hence, the coefficient for the variable called "Defendant Muslim" indicates the change in the relative probability of the judge ruling in favor of the plaintiff when the defendant is Muslim rather than non-Muslim. The specifications determine whether the above-discussed asymmetries in the plaintiff victory rates in Muslim-Christian trials are robust when controlling for factors that might have influenced judicial decisions.

| <b>Table 8. Probit regression on adjudication outcome</b> |        |          |          |          |         |          |
|---|--------|----------|----------|----------|---------|----------|
|   | (1)    | (2)      | (3)      | (4)      | (5)     | (6)      |
|   | All    | All      | All      | No Doc   | Doc     | All      |
| Plaintiff Muslim  | -0.01  | 0.02     | 0.04     | 0.04     | 0.07    | 0.05     |
| Defendant Muslim  | 0.41** | 0.34*    | 0.31*    | 0.30*    | 0.47    | 0.24     |
| All Muslim  | -0.40* | -0.39*   | -0.39*   | -0.44*   | -0.26   | -0.38*   |
| Plaintiff state official                                  |        | -0.61*** | -0.62*** | -0.75*** | -0.35   | -0.67*** |
| Defendant state official                                  |        | 0.86***  | 0.89***  | 0.72***  | 1.39*** | 0.84***  |
| Waqf  |        |          | -0.14    | -0.21*   | 0.19    | -0.14    |
| Sale  |        |          | 0.06     | 0.01     | 0.30    | 0.06     |
| Property  |        |          | 0.20**   | 0.30***  | -0.32   | 0.29***  |
| Tax   |        |          | -0.03    | 0.15     | -0.46   | 0.11     |
| Guild   |        |          | 0.52**   | 0.35     | 0.85**  | 0.45*    |
| Plaintiff document  |        |          |          |          |         | 0.73***  |
| Defendant document  |        |          |          |          |         | -1.78*** |
| All document  |        |          |          |          |         | -1.12**  |
| Year-specific fixed effects                               | Yes    | Yes      | Yes      | Yes      | Yes     | Yes      |
| Number of trials  | 2286   | 2286     | 2286     | 1935     | 345     | 2286     |
| Pseudo R <sup>2</sup>                                     | 0.04   | 0.05     | 0.06     | 0.06     | 0.14    | 0.12     |

### *Religion of litigants*

Of immediate interest in all specifications is the observation that the plaintiff's religion has no bearing on the judge's decision making process. Consistently we find that the estimated coefficient of this variable is statistically insignificant. Furthermore, we note that the religion of the defendant is statistically significant at the 99% level in specification (1), and significant at the 95% level in (2), (3), and (4). Hence, a judge is more likely to rule in favor of the plaintiff when a Christian sues a Muslim than when a Muslim sues a Christian if we do not control for documentary evidence, mirroring the results in Table 3b.

To interpret the lack of statistical significance in specification (6), we estimate specification (3) twice more while limiting our dataset first to cases without documentary evidence and then to those with documentary evidence. The estimated results of specification (4) are similar to those presented in (3). By contrast, in specification (5) the evidence of sample selection bias indicative of prejudicial bias is no longer statistically significant. Evidently, non-Muslim apprehensions about encountering a prejudiced judge are alleviated when documentary evidence is present. Although documentation cannot change the judge's attitudes toward non-Muslims, it keeps judges from disregarding persuasive evidence, thus limiting the role of prejudice. That is why, in specification (6), which controls for documentary evidence, the previously observed effect of non-Muslim litigants appearing in court only when certain of a win is diminished.

Finally, the statistically significant coefficient on the variable “All Muslim” helps interpret the coefficient of “Defendant Muslim.” In each specification it indicates that when a Muslim sues another Muslim, the probability of the judge ruling in favor of the plaintiff returns to the baseline specification of adjudication among non-Muslims. Evidently, judges were just as likely to rule in favor of the plaintiff in intra-Muslim cases as in cases involving non-Muslims alone.<sup>34</sup>

### *Presence of a state official*

Why might it be desirable to control for state officials? State officials were usually tax collectors who worked on behalf of the Sultan to finance the Ottoman government. A conflict of interest arose when they appeared in court, since the judge himself served at the pleasure of the Sultan. The Ottoman judiciary depended upon the will of the executive. Hence, judges might be expected to have avoided putting themselves in conflict with state authority.

Each specification that controls for the presence of state officials offers evidence of a strong anti-state bias. As demonstrated in Table 9, which restates the econometric results of Table 9 in terms of odds ratios, specifications (2) through (4) indicate that judges are about 4 times more likely to rule in favor of the plaintiff when the defendant is a state official. Moreover, the plaintiff is 3.3 times more likely to lose a case if he is a state official, all else being equal. As with the high plaintiff victory rate for minorities, these results probably reflect a sample-selection bias. Potential defendants threatened with a lawsuit by a state official would have been inclined to settle out of court unless they were very confident of prevailing in court. Similarly, potential plaintiffs would have refrained from suing a state official before a state-appointed judge unless their case was very strong.<sup>35</sup> In brief, the lawsuits involving a state official that made it into a court register represent the disputes in which the official case was particularly weak. By the logic of the Priest-Klein model, only the weakest cases of state officials came to court precisely because judges were strongly biased in their favor.

Examining specification (5), we see that the results for trials involving state officials differ from the preceding specifications. For cases where documentary evidence is presented, a plaintiff who is a state official has the same probability of winning as a private individual, irrespective of religion. In other words, document-holding state officials who initiate adjudication have no greater chance of winning than any other document holder. Revealingly, these results are not repeated in instances where the defendant is a state official. Since state officials are more likely than private individuals to possess documentary evidence, when we

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<sup>34</sup> When both litigants are Muslim, the Plaintiff Muslim, Defendant Muslim, and All Muslim indicator variables are equal to 1. In this case, the statistically negligible coefficient of Plaintiff Muslim plays no role, but the coefficient on All Muslim is statistically the negative of that of Defendant Muslim. In each specification, the sum of the two coefficients is statistically equal to 0 ( $\chi^2=0.01$  for specification (1),  $\chi^2=0.35$  for specification (2),  $\chi^2=0.81$  for specification (3),  $\chi^2=2.41$  for specification (4),  $\chi^2=0.83$  for specification (5), and  $\chi^2=2.16$  for specification (6), all with 1 degree of freedom.).

<sup>35</sup> Unfortunately these hypotheses cannot be tested directly without data on settlement rates, which are unavailable. In seventeenth-century Istanbul, no records were kept of out-of-court settlements.



limit the sample to trials where documents are submitted as evidence the plaintiff will have to be highly certain of victory to challenge an official; in itself documentary evidence does not provide a high likelihood of winning since the defendant may be able to rest his case on documents of his own. However, in the sample restricted to cases with documents Revealingly, plaintiffs who challenge a state official in court are 11 times more likely to win, relative to our baseline specification.

| <b>Table 9. Odds ratios of logistic regression of adjudication outcome</b> |        |         |         |         |          |         |
|--|--------|---------|---------|---------|----------|---------|
|  | (1)    | (2)     | (3)     | (4)     | (5)      | (6)     |
|  | All    | All     | All     | No Doc  | Doc      | All     |
| Plaintiff Muslim   | 0.97   | 1.03    | 1.07    | 1.07    | 1.14     | 1.07    |
| Defendant Muslim   | 2.02** | 1.81**  | 1.71*   | 1.67*   | 2.18     | 1.56    |
| All Muslim   | 0.50** | 0.51*   | 0.51*   | 0.47*   | 0.64     | 0.51*   |
| Plaintiff state official   |        | 0.36*** | 0.35*** | 0.28*** | 0.55     | 0.31*** |
| Defendant state official   |        | 4.41*** | 4.62*** | 3.55*** | 11.01*** | 4.45*** |
| Waqf   |        |         | 0.80    | 0.71*   | 1.37     | 0.79    |
| Sale   |        |         | 1.11    | 1.02    | 1.61     | 1.10    |
| Property   |        |         | 1.38**  | 1.62*** | 0.59     | 1.61*** |
| Tax  |        |         | 0.98    | 1.35    | 0.45     | 1.24    |
| Guild  |        |         | 2.31**  | 1.73    | 4.07***  | 2.09*   |
| Plaintiff document   |        |         |         |         |          | 3.52*** |
| Defendant document   |        |         |         |         |          | 0.05*** |
| All document   |        |         |         |         |          | 0.15**  |
| Year-specific fixed effects  | Yes    | Yes     | Yes     | Yes     | Yes      | Yes     |
| Number of trials   | 2286   | 2286    | 2286    | 1935    | 345      | 2286    |
| Pseudo R <sup>2</sup>  | 0.04   | 0.05    | 0.06    | 0.06    | 0.14     | 0.13    |

### *Topic of dispute*

When the dispute topic is controlled for, the estimates of the earlier regressions remain statistically significant and consistent (specifications (3) through (6)). Evidently, the qualitative nature of the dispute, while undoubtedly germane to the adjudication process, does not make the judge weigh the religion of the litigants differently. The last four specifications suggest also that judges were more likely to rule in favor of the plaintiff when adjudicating disputes over guild business and property transactions.

## *Documentary evidence*

Specification (6) offers overwhelming support to our earlier observation that documentary evidence carries significant weight in the adjudication process. According to Table 9, if the plaintiff introduces documentary evidence to the court, the odds of the judge ruling in favor of the plaintiff increase fourfold. More dramatically, when a defendant challenges the plaintiff's account through documentary evidence, the judge is 25 times less likely to rule in favor of the plaintiff! As proposed earlier, putting contracts in writing provides substantial insurance against breach of contract. Whatever the biases of the Ottoman judicial system, people could improve their chances of prevailing in a commercial lawsuit dramatically merely by having a written document to support their case.

## **10. Conclusions**

Historians examining the judicial system of the Ottoman Empire fall into two main camps with regard to fairness: those who depict its Islamic courts as biased against non-Muslims, and those who portray them as unbiased and fair. To evaluate these competing claims, we turned to newly available seventeenth-century court records from the central Istanbul and Galata courts, two of the sixteen courts that served Istanbul. These records contain information on the religion of the participants in commercial trials, the substance of the dispute, the evidence submitted to the judge, and the judge's verdict.

To determine whether a judicial system is fair, one must define how it would run in the absence of bias. Turning to the landmark Priest-Klein model, we characterize a fair judicial system as one which, regardless of the underlying distribution of potential disputes, tends toward a plaintiff victory rate of 50%. However, the judicial marketplace of seventeenth-century Istanbul provided powerful incentives, including adjudication fees charged to litigants, for judges to compete over cases. Since the forum of a trial is determined by its initiator, namely the plaintiff, judges could attract cases by implicitly adjusting the threshold against which the merits of lawsuits are measured. By tilting the table in favor of the plaintiff a judge would entice potential plaintiffs to adjudicate their disputes in his court rather than that of another. Our data show that inter-court competition raised the plaintiff victory rate to around 60% on average.

In the Islamic judicial system, Christian witnesses could not testify against Muslims, and court officials, including judges, were exclusively Muslim. The implied institutionalized biases, which are starkly observable in our data, did affect judicial decisions. The number of Christian lawsuits against a Muslim is much lower than the number of Muslim lawsuits against a Christian. The institutionalized biases of the courts must have been among the major reasons. A related finding is that the plaintiff victory rate is higher in the former case. In other words, in interfaith trials Muslim Ottoman judges ruled in favor of Christian plaintiffs at a higher rate than in favor of Muslim plaintiffs. This result holds up in a multivariate analysis that controls for involvement by a state official, the issue in dispute, and the use of documentary evidence.

On the surface, this finding of asymmetry stymies claims that the Ottoman judicial system was biased against non-Muslims. In fact, it goes further by finding the Christian plaintiff win rate to be higher than the Muslim rate, not equal. However, in line with research on selection biases in adjudication, we suggest that the pro-Christian decision patterns in the data stem from potential Christian litigants settling out of court due to expectations of unfair treatment and taking to court only the cases they were reasonably confident of winning. The surest way to test our interpretation would be to compare our court data with coeval data on disputes settled out of court, without involvement of a judge. Unfortunately, the necessary data do not exist. Commercial disputes that bypassed the legal system left no historical traces. Nor is there any way to measure the rates at which different groups interacted with one another outside the judicial context.

Both camps in this controversy are partly right and partly wrong. It is true that in the judicial records non-Muslims do no worse than Muslims when facing each other as litigants. But the reason is not that judges treated all religious groups fairly, which would have been an anomaly in any case, given that explicit and unapologetic pro-local biases were the norm in all known pre-modern courts. The records give the appearance of impartiality precisely because all Ottoman subjects took account of institutionalized judicial biases in deciding when to take a dispute to court.

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