

ARTICLE

Contesting Juridical Authority: Sharia, Marriage, and Morality in Habsburg Bosnia and Herzegovina

Ninja Bumann

Institute for East European History, University of Vienna, Vienna, Austria

Corresponding author: Ninja Bumann, E-mail: ninja.bumann@univie.ac.at

Abstract

Following the Habsburg occupation of Bosnia, the newly built administration integrated much of the existing plural Ottoman legal system into its own. The ensuing transformation of Sharia courts saw them given “special jurisdiction” in the areas of Muslim marriage and divorce, which, in turn, fueled several legal challenges, such as how (if at all) they could prosecute “runaway” wives and unlawful marriages. This article analyzes how such legal challenges were endemic to the “translation” and transposing of Ottoman concepts of law, marriage, and morality within the new administrative setting on the basis of Sharia court records. In examining these debates, contested on the one side by Bosnian qadis and on the other by Habsburg officials, it becomes clear that Islamic and Ottoman legal understandings were reinterpreted strategically to support different views as to how an Islamic judiciary could be best integrated into the (predominantly Christian) Habsburg monarchy.

Introduction

In December 1900, a petition signed by several Muslim nobles from across Bosnia and Herzegovina¹ was delivered to Béni Kállay de Nagy-Kálló (known more commonly in Bosnian historiography by his German name, Benjamin von Kállay), then joint Austro-Hungarian minister of finance and administrator of Bosnia.² Broadly speaking, this petition demanded greater autonomy in regard to Islamic education and self-administration; however, it also decried the phenomenon of Muslim women leaving their husbands against their will and without an official divorce. According to the petition, this state of affairs was “opposed to [their] religious institutions” (*to se protivni našim vjerskim ustanovama*) and could “destroy the foundation of Islamic marriage and family life” (*ruši temelje islamskog bračnog i porodičnog života*). As a result, a demand was made that the Sharia courts be given enforcement powers and authorized to issue fines and prison sentences.³

This petition not only highlights the tensions and challenges that (majority Christian) Austria-Hungary faced when integrating Bosnia, a territory where more than one-third of the

This article is based on a paper presented at the digital workshop “Gender and Practices of Empire in Habsburg Bosnia and Herzegovina,” which took place in November 2020. The author would like to thank the workshop’s participants, and in particular Pieter Judson, Amila Kasumović, Leyla Amzi-Erdoğdular, and Fabio Gioni for their valuable comments and suggestions. The author is equally grateful to the two anonymous peer reviewers, whose remarks facilitated the improvement of the text.

¹Although the official name was “Bosnia and Herzegovina” (*Bosna i Hercegovina/Bosnien und die Herzegovina*) throughout Habsburg rule, hereafter, it is referred to as “Bosnia.” When referring to the period after 1867, “Habsburg,” “Austro-Hungarian,” and “imperial” are used interchangeably to modify Austria-Hungary and its administrators; when referring to the period prior to 1867, “Habsburg monarchy” or “Austria” are used.

²Because Bosnia was assigned neither to the Austrian nor Hungarian halves of the empire, it was administered by one of the three joint imperial ministries—the Ministry of Finance. The so-called Bosnian Bureau within this ministry regulated Bosnia’s administration from Vienna, with the provincial government (*Zemaljska vlada/Landesregierung*), based in Sarajevo, serving as the highest (local) administrative body.

³“Predstavka podnešena Njegovoj Preuzvišenosti ministru Kalaju 19. decembra 1900. godine u Sarajevu,” in *Spisi Islamskog naroda Bosne i Hercegovine u stvari vjerskoprosvjetojnog uređenja i samouprave* (Novi Sad, 1903), 136–38.

© The Author(s), 2022. Published by Cambridge University Press on behalf of the Center for Austrian Studies, University of Minnesota. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution, and reproduction in any medium, provided the original work is properly cited.

population were Muslim, but also demonstrates how conceptions of the “ideal” marriage and family life were highly debated and intricately linked to the Bosnian legal system that the Habsburgs oversaw.

In recent years, social and gender historians have utilized court records to study marriage, divorce, and concubinage in Habsburg Bosnia; however, their conclusions have largely interpreted these phenomena as manifestations of local understandings of gender relations, morality, and family values, arguably underestimating the influence exerted by the imperial legal machinery.⁴ For their part, legal historians have focused their efforts on how the Ottoman legal system was integrated by the Austro-Hungarian administration in Bosnia and how the Sharia court system was regulated, overlooking issues relating to legal practice or the understanding of family values and morality therein. Importantly, however, the latter group have posed the question as to whether the Habsburg reform of the legal system represented a continuation of the Ottoman *Tanzimat* reforms. In his seminal studies on the Sharia courts in Bosnia, Fikret Karčić often stresses the “survival” of *Tanzimat* legislation even after the demise of Ottoman rule. In contrast, Mehmed Bečić argues that the Habsburg government “transplanted” a colonial model of Sharia law into Bosnia.⁵

This study aims to bridge these two research fields by examining the interactions and negotiations between local qadis and Habsburg authorities as they pertained to “runaway” wives, unlawful marriages, and criminal competences. However, rather than seeing the Austro-Hungarian occupation either in linear terms or as an abrupt break with Ottoman understandings of marriage, morality, and law, our focus will instead rest on the transfer and “translation” processes these notions underwent in their new administrative settings. Stemming from Lena Foljanty’s suggestion to study legal transfers as processes of cultural “translations” of knowledge, values, and practices,⁶ this article contends that Islamic and Ottoman legal concepts and understandings of marriage and morality were reinterpreted by local qadis and Habsburg officials as both the result of and the precursor to complex negotiations and debates. Such exchanges were also frequently influenced by ideas circulating beyond the borders of the Austro-Hungarian and Ottoman empires, as recent works on pan-Islamic networks and discourses that operated in a “trans-Ottoman” sphere of communication have aptly demonstrated.⁷

Accordingly, this study begins by recapitulating how Sharia courts were integrated into the newly established Habsburg administration in Bosnia; namely, the process of supplying them with a “special jurisdiction” in the areas of Muslim marriage and divorce. It then addresses how the legal gridlock surrounding the issue of “runaway” wives fueled debates about the Sharia courts’ powers of enforcement. Such debates were often connected to a broader discourse pertaining to the “crisis” of family and morality in the Islamic world, which is outlined in the third section. The fourth and final part of this article assesses how Ottoman legal concepts were reinterpreted or even repurposed by Bosnian qadis and Habsburg officials, both of whom used them to pursue strategic goals beyond

⁴See Adnan Jahić, “U raljama ‘degeneracije i[li] nužde’: Prilog istraživanju Muslimanskog ženskog pitanja u Bosni i Hercegovini pod austrougarskom upravom,” *Historijska traganja* 16 (2015): 117–56; Amila Kasumović, “Konkubinast u Bosni i Hercegovini na prijelomu 19. i 20. stoljeća,” *Prilozi* 47 (2018): 69–90; Hana Younis, “Razvjenčanja kroz dokumente Vrhovnog šerijatskog suda Sarajevo u prvim decenijama nakon Austro-Ugarske okupacije,” in *Proceedings of the Fifth International Congress on Islamic Civilization in the Balkans*, ed. Eren Halit (Sarajevo, 2015), 419–36.

⁵See Mehmed Bečić, “Novi pogled na transformaciju šerijatskih sudova u Bosni i Hercegovini: Da li je 1883. godine nametnut kolonijalni model primjene šerijatskog prava?,” *Godišnjak pravnog fakulteta u Sarajevu* 60 (2017); Fikret Karčić, *Šerijatski sudovi u Jugoslaviji 1918–1941* (Sarajevo, 2005); Karčić, “Survival of the Ottoman-Islamic Laws in Post-Ottoman Times in Bosnia and Herzegovina,” in *Konflikt und Koexistenz: Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert. Band II: Serbien, Bosnien-Herzegowina, Albanien*, ed. Thomas Simon (Frankfurt, 2017), 43–69.

⁶Lena Foljanty, “Rechtstransfer als kulturelle Übersetzung: Zur Tragweite einer Metapher,” *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* 98, no. 2 (2015): 89–107.

⁷See Leyla Amzi-Erdoğdular, “Alternative Muslim Modernities: Bosnian Intellectuals in the Ottoman and Habsburg Empires,” *Comparative Studies in Society and History* 59, no. 4 (2017): 912–43; Amzi-Erdoğdular, “Afterlife of Empire: Muslim-Ottoman Relations in Habsburg Bosnia-Herzegovina, 1878–1914” (PhD diss., Columbia University, 2013); Harun Buljina, “Empire, Nation, and the Islamic World: Bosnian Muslim Reformists between the Habsburg and Ottoman Empires, 1901–1914” (PhD diss., Columbia University, 2019); Dennis Dierks, “Scripting, Translating, and Narrating Reform: Making Muslim Reformism in the European Peripheries of the Muslim World at the Turn of the 19th Century,” in *Knowledge on the Move in a Transottoman Perspective: Dynamics of Intellectual Exchange from the Fifteenth to the Early Twentieth Century*, ed. Evelyn Dierauff et al. (Göttingen, 2021).

the scope of marriage and family law. For their part, the qadis used these (together with their emphasis on morality) to argue in favor of criminal competences for the(ir) Sharia courts, whereas Austro-Hungarian administrators legitimized the curtailment of the qadis' competences on the same legal basis. Ultimately, these negotiations served as not only a contest for juridical authority but also one in which the differing visions for how an Islamic judiciary should function within a predominantly Christian empire were vocalized.

Integrating Sharia into the Habsburg Empire

At the Congress of Berlin in June and July 1878, Austria-Hungary was awarded a mandate to occupy the Ottoman province of Bosnia. Although Bosnia remained a *de jure* part of the Ottoman Empire up until its formal annexation in 1908, it would be administered by Austria-Hungary. Due to this unique legal status, Emperor Francis Joseph confirmed in his "Proclamation to the Inhabitants of Bosnia and Herzegovina" of 28 July 1878 (one day before Austro-Hungarian troops began their march into Bosnia), that he would preserve the existing legal system and laws (at least immediately) following the occupation, saying:

Your laws and institutions should not be arbitrarily overturned, but rather, your mores and customs should be preserved. Nothing should be changed by violence, without careful consideration of your needs. The old laws should remain in force until new ones are enacted. All secular and religious authorities are expected to maintain order and to support the government.⁸

Conducive to the previously mentioned text, the Austro-Hungarian administration incorporated the existing, pluralist Ottoman legal order into its own legal architecture, only gradually introducing new laws and legal reforms—and even then these were adapted to the specific legal and social situation prevailing in Bosnia. In this vein, the *Nizamiye* courts,⁹ which were established in Ottoman Bosnia in 1865/66 as part of the *Tanzimat* reforms, continued to administer all civil legal affairs, excepting those issues that fell under the purview of separate commercial, consular, Sharia, or ecclesiastical courts. While consular and commercial courts were soon abolished, the Habsburg administration continued the *millet* system, according to which family and matrimonial affairs were regulated by the respective religious institutions. Sharia courts came under the control of the Habsburg administration but were allowed to continue to adjudicate matters relating to family, marriage, and inheritance among the province's Muslim population.¹⁰ This continuity was legally codified by the adoption of the Law on the Scope of the Sharia Courts from 16 Safar 1276 (1860).¹¹

Only a few months after the occupation, the civil courts (the successors of the *Nizamiye* courts) began to be staffed by officials from other parts of Austria-Hungary. Previously, the local qadis had sat at both Sharia and *Nizamiye* courts. This change thus saw personnel separated between either the civil or the Sharia courts, marking a clear reduction in the judicial role and influence wielded by the local qadis. From then on, qadis only presided as judges at Sharia courts. As a further consequence of the new segregation of personnel, freshly arrived Austro-Hungarian judges increasingly applied the Austrian Civil Code (the *Allgemeines bürgerliches Gesetzbuch* [ABGB] of 1811) at the

⁸"Proclamation an die Bewohner von Bosnien und der Hercegovina, Wiener Zeitung vom 28. Juli 1878, Nr. 172," in *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen, I. Band, Allgemeiner Theil* (Vienna, 1880), 4.

⁹Under Habsburg rule, these were renamed "regular" or "civil" courts (*redovni/građanski sudovi; Zivilgerichte/ordentliche Gerichte*). For further reading on the *Nizamiye* court system, see, e.g., Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York, 2011).

¹⁰According to the population census from 1879, 38 percent of the inhabitants of Bosnia were Muslim, 43 percent were Serbian Orthodox, and 18 percent were Catholic. Apart from these three groups, significant Jewish communities could also be found in several cities. See Robin Okey, *Taming Balkan Nationalism: The Habsburg "Civilising Mission" in Bosnia, 1878–1914* (Oxford, 2007), 8.

¹¹"Gesetz über den Wirkungskreis der Scheriatogerichte vom 16. Sefer 1276 (1860)," in *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen, II. Band, Justizverwaltung* (Vienna, 1880), 476–81.

civil courts, although it never gained the official status of a law in force. As *Tanzimat* laws were to—at least in theory—continue to be applied and the Habsburg administration seldom enacted new (Austrian-based) laws, a “coexistence of the *Mecelle* [the Ottoman civil code based on a codification of Islamic law] and the Austrian Civil Code” prevailed at the civil courts.¹²

At the same time, Austro-Hungarian authorities desired to limit the jurisdiction of the Sharia courts, establishing a special judicial commission tasked with preparing a corresponding judicial reform at the end of 1881. This commission, headed by Alois Lapenna, a judge at the Supreme Court in Vienna and former vice president of the Mixed Court of Appeal¹³ in Alexandria, Egypt, was composed of various Austro-Hungarian officials as well as one Bosnian qadi, Nezir Škaljić. One result of the commission’s work was the compilation (in German) of Sharia principles pertaining to marriage, family, and inheritance, subsequently published in 1883 as *Matrimonial, Family, and Inheritance Law of the Mohammedans According to the Hanafi Rite* and distributed to all authorities and courts in Bosnia.¹⁴ Interestingly, this compilation was based on the collection of Sharia principles created by Muhammad Qadri Pasha—an Egyptian-born civil servant and Islamic scholar—which had been widely disseminated within the contemporary Islamic world and its colonial administrations.¹⁵ For Habsburg officials, this compilation served as a manual, but it was also frequently consulted by Bosnian qadis. Despite this, no attempts were made to codify Islamic law in the areas of marriage, family, or inheritance as applied at the Sharia courts, with the qadis there continuing to apply the Hanafi legal doctrine, albeit sometimes in conjunction with the *Tanzimat* laws (such as the *Mecelle*) or decrees issued by the Austro-Hungarian authorities.¹⁶ Nevertheless, the provincial government did reform the manner in which prospective qadis were educated and trained by creating a school for Sharia judges in Sarajevo in 1887. Students there received five years of instruction in Islamic law, as well as subjects that were referred to as “European law.”¹⁷

The aforementioned judicial commission also produced a *Regulation on the Order and the Scope of the Sharia Courts*. Disseminated in 1883, this regulation stipulated which competences the Sharia courts had, supplying the legal foundation upon which the Habsburg-era Sharia court system was built. According to it, Sharia courts were tasked with regulating family, marriage, and inheritance matters exclusively among the Muslim population.¹⁸ Although non-Muslims had, in some cases, petitioned Sharia courts to regulate marriage, family, and other civil affairs before and during the first years of the occupation, this practice, as well as “forum shopping” between different legal institutions, was subsequently prohibited.¹⁹ Hence, the legal jurisdiction of these courts, which had already been limited during the *Tanzimat* period,²⁰ was further curtailed, with the Habsburg administration seeking to transform it into a court equipped only with a “special jurisdiction” (*Sondergerichtsbarkeit*) for Muslims.²¹ This curtailment of the Islamic judiciary into courts tasked only with adjudicating in

¹²Mehmed Bečić, “Das Privatrecht in Bosnien-Herzegowina (1878–1918),” in *Konflikt und Koexistenz: Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert*, ed. Thomas Simon (Frankfurt, 2017), 82–86, 98–104.

¹³The mixed courts, created in Egypt in 1875, were intended to settle legal issues among foreigners as well as between foreigners and Egyptians. To do so, they applied civil law based upon the French Civil Code and British Common Law, all the while respecting Islamic and local norms.

¹⁴Eduard Eichler, *Das Justizwesen Bosniens und der Herzegovina* (Vienna, 1889), 243.

¹⁵Hans-Georg Ebert, ed., *Die Qadri-Pasha-Kodifikation: Islamisches Personalstatut der hanafitischen Rechtsschule* (Frankfurt, 2010), 15–20.

¹⁶Karčić, *Šerijatski sudovi*, 108–19.

¹⁷Bečić, “Privatrecht,” 116–17.

¹⁸“Verordnung über die Organisation und den Wirkungskreis der Scheriatgerichte: No. 7220/III,” in *Sammlung der Gesetze und Verordnungen für Bosnien und die Herzegovina* (Sarajevo, 1883), 538–43.

¹⁹See, e.g., Bečić, “Privatrecht,” 117–18. For a discussion on the curtailment of “forum shopping” at Sharia courts in Habsburg Bosnia, see Ninja Bumann, “Scharia nach k. u. k. Verordnung: Islamisches Recht und dessen Grenzen im habsburgischen Bosnien-Herzegowina (1878–1918),” in *Recht und Diversität: Lokale Konstellationen und globale Perspektiven von der Frühen Neuzeit bis zur Gegenwart*, ed. Christina Brauner and Antje Flüchter (Bielefeld, 2020), 174–79.

²⁰For a brief overview see Niyazi Berkes, *The Development of Secularism in Turkey* (Montreal, 1964), 169–72.

²¹Eichler, *Justizwesen*, 242–50.

Muslim marriage and family affairs was not new and had already occurred in colonial Algeria and Egypt, both of which served as examples for Habsburg administrators.²² Nevertheless, owing to their historical importance throughout Ottoman rule, Sharia courts were—in contrast to the ecclesiastical courts of the Orthodox and Catholic churches—closely integrated into the Habsburg administration.²³ Qadis were appointed by Habsburg authorities, they had to swear an oath to the emperor, and their courts were financed from Austro-Hungarian coffers.²⁴ Further, the Sharia courts were directly subordinated to the Habsburg authorities by way of the new Supreme Sharia Court (*Vrhovni šerijatski sud*), which was created in Sarajevo in July 1879. This operated as a formal appeal body and represented a significant intervention, as such an organ was not traditionally foreseen by Sharia law but had become more common during reforms in the nineteenth century. According to the aforementioned 1883 regulation, the decision-making panel of this Supreme Sharia Court was comprised of only two Muslim qadis, with the other three members represented by non-Muslim judges from the Supreme Court.²⁵

Despite the significant changes that the Habsburg administration ushered in, the role of religious authorities was minimal. For example, in the hopes of decoupling Bosnian Muslims from the highest religious authority in Istanbul, the *Şeyhülislam*, the office of *reis-ul-ulema* was established in 1882, as was a four-man *ulema-medžlis*. The former was to serve as the highest religious authority for Muslims in Bosnia, while the latter was a religious council headed by the *reis-ul-ulema* and tasked with administering the religious and educational life of the territory's Muslim population. Habsburg authorities reserved the right to appoint members to each, all the while controlling their legal and financial sovereignty.²⁶ Although these newly created Islamic religious institutions only had a say in the selection of future qadis, the Supreme Sharia Court could request the opinion of the *ulema-medžlis* before passing a judgment.²⁷

This incorporation of the Ottoman pluralist legal system, including Islamic law and Sharia courts for the regulation of family and marriage issues among Muslims, into the Austro-Hungarian administration may at first glance appear surprising, especially given the liberal reforms that had begun in the Habsburg monarchy in 1848. These called for every nationality to be granted equal rights, regardless of their faith.²⁸ At direct odds with this, the Austro-Hungarian authorities propagated the Ottoman *millet* system in Bosnia, with different family and marriage laws prescribed for each confessional group.

However, following the Ausgleich of 1867, which saw Hungary more or less made an equal partner in the empire's administration, the idea of a unified family and matrimonial law was abandoned. Legally, the empire was divided in three between Cisleithania (Austria), Hungary and Transylvania, and Croatia-Slavonia, each possessing its own body of family and marriage laws.²⁹ In this sense, the incorporation of the pluralistic legal regime in Bosnia was not exceptional but rather typical of

²²Bečić, "Novi pogled." On the transformation of Islamic law into "Muslim family law" in Egypt and Algeria, see Kenneth M. Cuno, *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt* (New York, 2015); Judith Surkis, *Sex, Law, and Sovereignty in French Algeria 1830–1930* (Ithaca, 2019).

²³There were many reasons for this; however, a discussion of these, or a comparison of the jurisdiction in marriage and family affairs by the different religious communities in Habsburg Bosnia is, unfortunately, beyond the scope of this work. A short overview on the competences of ecclesiastical courts is provided by Bečić, "Privatrecht," 122–25. For further reading on the jurisdiction of family and marriage matters by the Orthodox Church, see Heiner Grunert, *Glauben im Hinterland: Die Serbisch-Orthodoxen in der habsburgischen Herzegowina 1878–1918* (Göttingen, 2016), 144–224.

²⁴Karčić, *Šerijatski sudovi*, 21–26.

²⁵Ibid., 23–25. The composition of the decision-making body was only changed in 1913, whereupon the Supreme Sharia Court consisted of three Muslim judges and a member of the Supreme court. The non-Muslim member served only in an advisory role and did not have any voting power.

²⁶Robert J. Donia, *Islam under the Double Eagle: The Muslims of Bosnia and Hercegovina* (New York, 1981), 18–21.

²⁷Karčić, *Šerijatski sudovi*, 25.

²⁸On the liberal legacy of the 1848 revolution in the Habsburg monarchy, see Pieter M. Judson, *Wien Brennt! Die Revolution von 1848 und ihr liberales Erbe* (Vienna, 1998), 109–50.

²⁹Accordingly, family and marriage were regulated in Cisleithania by the ABGB from 1811, which provided a legal framework based on Catholic canonic legal norms. However, in Hungary and Transylvania, legal diversity (eight different confessional marriage laws) prevailed until the introduction of mandatory civil marriage in 1894. Croatia-Slavonia, in turn, was exempt from these developments due to the Croatian-Hungarian Compromise of 1868. As a result, civil law in Croatia-Slavonia took its cues from

Austria-Hungary's diverse legal patchwork. Moreover, the incorporation of different legal traditions into an imperial body of law, including the integration of Islamic law, occurred frequently in other empires throughout the nineteenth century.³⁰

Despite the theoretical precedents, the practicalities of incorporating the pluralist Ottoman legal system in practice often created problems. In particular, the curtailment of the Sharia courts' functions and their intended transformation to courts possessing only a "special jurisdiction" for marriage and family affairs led to misunderstandings and fueled debates about enforcement competences. Consequently, stalemates, such as in the case of "runaway" wives, challenged the legal system and, by extension, the Austro-Hungarian administration. As will be outlined in the following, this was also directly linked to gender-specific stipulations inherent in Islamic law, different legal understandings between qadis and Austro-Hungarian officials, and moralized visions of family and marriage.

"Runaway" Wives Challenging the Legal System

Islamic law, like other religious norms in Bosnia, was and is heavily gendered. As such, it inhibits certain rights while prescribing specific duties for women and men alike.³¹ One distinct feature of Islamic law, particularly when compared to Christian marital norms, is the definition of marriage as a dissolvable contract. As a result, a man can repudiate his wife at any time without cause, whereas women are granted only limited options for filing a divorce.³² The precise regulations depend on several factors, such as which legal school (Arabic: *madhhab*; Bosnian/Ottoman: *mezheb*) is applied, the specific institutional setting, or local customs. In Habsburg Bosnia, where the application of Islamic law was rooted in the Hanafi legal doctrine, a Muslim woman seeking to divorce her husband could pursue a mutual *hul* (Arabic: *khul'*) divorce, but only with the husband's consent. Even if she received this, the woman would have to surrender any claims to the *mehr* (Arabic: *mahr*; Ottoman: *mehir*)³³ and *nafaka* (Arabic: *nafaqa*; alimention or maintenance) that her (former) husband provided. Unilateral divorce was only possible in very specific cases, such as apostasy from Islam, alcoholism, or male infertility.³⁴ In such divorces, the (former) wife was entitled to receive the *mehr* and *nafaka* during the period of *iddet* (Arabic: *'idda*).³⁵

Despite their limited opportunities for initiating a divorce, Muslim women were still active agents of the law. For example, research on the Ottoman Empire has shown that women regularly sought redress at Sharia courts in matters relating to marriage and divorce.³⁶ Archival sources from the Supreme Sharia Court in Habsburg Sarajevo also confirm that Muslim women went to Sharia courts to resolve issues pertaining to marriage or divorce. At the same time, however, they also reveal that the practical difficulties inherent in obtaining a divorce saw many women simply leave their husbands without legally divorcing them. According to Sharia court cases examined by Hana Younis, this phenomenon

the Austrian ABGB. See Jana Osterkamp, "Familie, Macht, Differenz: Familienrecht(e) in der Habsburgermonarchie als Herausforderung des Empire," *L'homme* 31, no. 1 (2020): 17–34, esp. 24, 30.

³⁰Paolo Sartori and Ido Shabar, "Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain," *Journal of the Economic and Social History of the Orient* 55, no. 4/5 (2012): 646.

³¹An overview on the different legal norms and marriage customs in Habsburg Bosnia, albeit with a focus on the Serbian Orthodox community in Herzegovina, is offered by Grunert, *Glauben im Hinterland*, 145–86.

³²On Islamic marriage law in general, see, e.g., Mathias Rohe, *Islamic Law in Past and Present* (Leiden, 2015), 103–27.

³³*Mehr* is akin to a dowry paid by the husband or a third party (in either monies or property) to the wife. It is mandatory and specified at the time of marriage, although it can be paid in installments after the marriage.

³⁴*Eherecht, Familienrecht und Erbrecht der Mohamedaner nach hanefitischem Ritus* (Vienna, 1883), 57–86; Eugen Sladović, *Islamsko pravo u Bosni i Hercegovini* (Belgrade, 1926), 75–77, 80.

³⁵*Iddet* refers to a length of time (usually three months) in which women are to abstain from any intimate intercourse with a man following their divorce or widowhood. See *Eherecht*, 43–54, 57–86, 90–91; Sladović, *Islamsko pravo*, 75–77, 80, 91.

³⁶In recent years several studies have analyzed Sharia court records regarding family, marriage, and divorce issues. They cannot be enumerated here entirely; of particular relevance, however, to the agency of women before Sharia courts are Amira El Azhary Sonbol, ed., *Women, the Family, and Divorce Laws in Islamic History* (Syracuse, 1996); Madeline C. Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden, 1997); and Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Antaib* (Berkeley, 2003).

fueled several legal disputes, causing considerable confusion as to what competences the Sharia courts had under Habsburg administration.³⁷

Unfortunately, archival documents from the Supreme Sharia Court do not offer a great deal of information concerning the reasons women provided for “abandoning” their husbands. Some, however, allude to domestic violence, abuse, and maltreatment.³⁸ This was, for instance, the case when Emina Duratović from Bišćani in the district of Prijedor left her husband and moved to her father’s house in the spring of 1886. This caused her husband, Abdul Hamid Kadić, to file a suit at the local district Sharia court in Prijedor on the grounds of “living together” (*zajedničko življenje*), whereupon both parties were questioned. During this process, Emina claimed that Abdul insulted and beat her without reason, and that she had, therefore, fled from him. As Abdul denied these accusations and Emina could not prove them, they were not followed up on. Instead, Abdul agreed to find a separate house for them—they had hitherto been living in his father’s home—and to provide enough food and clothing for Emina, which was also confirmed by two guarantors. Following this, the district Sharia court ruled that Emina had to return to her husband.³⁹

Other cases, such as that of Hava Hadžić and Hasan Uščuplić from the village of Gajčine in the district of Vlasenica, suggest that some “runaway” wives were seeking to escape from forced marriages. In June 1893, Hasan went to the district Sharia court in Vlasenica and reported that his wife Hava, whom he had married in November 1892, had left him. When the couple was questioned by the court, Hava claimed that she had been forcefully kidnapped by Hasan and then locked up for eleven days until she managed to run away. Therefore, she knew nothing about a supposed marriage and further stated that she did not want to marry Hasan. The archival court documents do not reveal whether the Supreme Sharia Court acknowledged Hava’s claims or her first alleged marriage. Subsequent records indicate that Hava married another man named Ahmed Bajić in the district of Zvornik, but it is not known whether this second marriage was officially recognized.⁴⁰ As this case indicates, women also often left their husbands to marry or live in concubinage with another man.⁴¹

Regrettably, the Supreme Sharia Court’s archival records offer almost no information concerning the status—let alone existence—of children during such situations. In theory, custody and child support could have been handled during separate court proceedings. This state of affairs is shown, for instance, in the court proceedings between Meleka Šibić and Mustafa-beg Kapetanović regarding the maintenance of their five-year-old son, Muharem. After Meleka had left her husband and Muharem in Prijedor, she appealed the divorce and the surrender of her son at the local Sharia court in Banja Luka, where she was currently staying. Mustafa-beg’s brother also appealed, and the Supreme Sharia Court opened a separate appeal procedure on the son’s maintenance. In the end, it ruled that while Meleka could not be forced to live with her husband—and would therefore lose her right to maintenance from him—as Muharem’s mother, she still had a right to raise their son.⁴² However, according to the available records, most women who “abandoned” their husbands had typically not been married to them for very long. For instance, the aforementioned Emina

³⁷See Younis, “Razvjenčanja,” 419–36.

³⁸Hana Younis has outlined several court cases from the Supreme Sharia Court in which women left their husbands due to domestic violence. See Younis, “Razvjenčanja,” 430–32.

³⁹Arhiv Bosne i Hercegovine (ABiH), Vrhovni šerijatski sud (VŠS), box 17, B 1886/6: Kadić Abdul Hamid protiv žene Emine Duratović zbog zajedničkog življenja, Prijedor. However, Emina did not return to Abdul, who then appealed at the Supreme Sharia Court. Because he filed the objection after the usual deadline of fourteen days had passed, the court did not intervene. Domestic violence also played a role in the following case: ABiH, VŠS, box 17, B 1885/2: Sekić Omer protiv žene Behare zbog zajedničkog življenja, Derвента.

⁴⁰ABiH, VŠS, box 19, B 1893/9: Bajić Ahmed protiv Hava Hadžić zbog razvoda braka, Vlasenica.

⁴¹This was, for instance, the case in the following court proceedings: ABiH, VŠS, box 27, B 1909/6: Zahirović Mustafa protiv supruge Fate Ibričević zbog prisilnog ženinog povratka, Gračanica; ABiH, VŠS, box 30, B 1913/21: Likić Zejna protiv supruge Mušana Berberovića zbog razvoda braka, Kladanj.

⁴²ABiH, VŠS, box 19, 1893–22: Kapetanović Mustajbeg protiv supruge Meleče Šibić zbog dječije nafake, Banja Luka. This decision corresponded to how the Hanafi legal doctrine was generally applied in Bosnia, according to which mothers possessed the right to raise their sons until the age of seven and their daughters until the age of nine. Afterward, the father could request custody of the child. See, e.g., Sladović, *Islamsko pravo*, 108.

Duratović had only been married to her husband for one and a half years, while Hava Hadžić “abandoned” her husband roughly six months after their alleged marriage. Thus, within the context of Habsburg Bosnia, “running away” from the husband might have served as “early course adjustment” for women not long married, analogue to what Madeline Zilfi has suggested for mutual *hul* divorces in the Ottoman Empire.⁴³ Consequently, it seems less likely that such couples had children, not least because women with children might have been less inclined to leave their husbands in lieu of an official divorce.

As previously highlighted, several court proceedings indicate that women “abandoned” their husbands to live with another man. Barring an official divorce, this was only possible in concubinage. In a letter describing women who fell into this category to the Supreme Sharia Court in February 1889, qadi Gjonlagić of Zenica refers to the practice of concubinage as amounting to “mischief” (*nepodopština*). Interestingly, his letter not only expresses social condemnation of extramarital relationships and concubinage but also points to the legal confusion then reigning among his colleagues about how to act in such situations. As a result, qadi Gjonlagić requested “instruction on how such illegal and morally perilous behavior could be prevented” (*naputak kako bi se ovakom protuzakonitom, po opću čudorednost pogibeljnom postupku predusresti moglo*).⁴⁴ The Supreme Sharia Court subsequently ruled that women had a right to leave their husbands in certain cases, such as if the *mehri muaddžel* (Arabic: *mahr-e-mu’ajjal*; Ottoman: *mehr-i muaccel*), the prompt dower paid when the marriage was registered, had not been paid.⁴⁵ In these cases, women remained entitled to receive alimonies from their husbands and could not be forced to return to them. Women who had left their husbands without a valid reason, however, had no claims to alimony, but also could not be forced to return to their husbands.⁴⁶

Accordingly, husbands whose wives had “abandoned” them usually had the right to file a claim on “living together” (*zajedničko življenje*) at a Sharia court. In such cases, the court would typically start by investigating whether the *mehri muaddžel* had been paid to the wife. Most of the time, the court ordered “runaway” wives to return to their husbands, which also seemed to be in the interest of the husbands.⁴⁷

As Hana Younis has detailed, judgments passed by Sharia courts ordering “runaways” to return to their husbands often created ambiguities when it came to their enforcement.⁴⁸ For example, in March 1887, the district Sharia court in Gradačac turned to the Supreme Sharia Court for guidance, reporting that it often ruled that women should return to their husbands. All the same, it was unsure how it could compel a “runaway” wife to do so. The Supreme Sharia Court responded that no forceful means could be employed; however, if a wife was unable to provide a valid reason for not wanting to live with her husband, she would forfeit her right to alimony.⁴⁹ This interpretation had been advocated by Muslim religious leaders since at least August 1883, following the issuance of a fatwa (Arabic: *fatwā*; Bosnian/Ottoman: *fetva*; a nonbinding legal opinion on a point of Islamic law) by the *reis-ul-ulema* that stated that Sharia courts were not authorized to return wives to their husbands “in a forced manner” (*prisilnim načinom*).⁵⁰

⁴³See Madeline C. Zilfi, “‘We Don’t Get Along’: Women and *Hul* Divorce in the Eighteenth Century,” in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden, 1997), 292.

⁴⁴ABiH, VŠS, box 52, E 1889/4: Šerijatski sud u Zenici traži mišljenje o prisilnim sredstvama od muževa odbjeglih žena koje nisu razvjencane i su stupile u drugu bračnu zajednicu, Kotarski ured kao šerijatski sud Zenica—Vrhovnom šerijatskom sudu, br. 90, 10.02.1889.

⁴⁵*Mehr* could be paid in full when the marriage was registered (*mehri muaddžel*) or in installments (*mehri mueddžel*; Arabic: *mahr-e-muajjal*; Ottoman: *mehr-i müeccel*). See *Eherecht*, 28.

⁴⁶ABiH, VŠS, box 52, E 1889/4.

⁴⁷Around fifty cases (out of a total of 1,392) concerning “living together” can be found in the archival holdings of the Supreme Sharia Court, spanning the period from 1879 to 1918. See ABiH, VŠS, Inventar: Vrhovni šerijatski sud za BiH pri Vrhovnom sudu za BiH, Sarajevo 1879–1946, I, 25–98. Cf. Younis, “Razvjencanja,” 425–26.

⁴⁸Younis, “Razvjencanja,” 426–29.

⁴⁹ABiH, VŠS, box 47, E 1887/20: Glede prisilnih sredstava kod zajedničkog prebivanja supruga.

⁵⁰*Reis-ul-ulema*, directive from 29 Aug. 1883, no. 52, cited in ABiH, VŠS, box 18, B 1891/3: Mejrma Kamber protiv supruga Omera Bašića zbog prisile za zajednički život, Sanski Most.

Nevertheless, according to the 1883 regulation, which provided the legal basis for the Sharia courts' operation, qadis could include an enforcement clause in their rulings. This enforcement would, however, be executed by civil courts.⁵¹ Although in court this practice was usually applied for the collection of financial claims and the execution of disciplinary sanctions,⁵² it caused even more confusion because some of the abandoned husbands turned to the civil courts with requests to enforce the Sharia court's ruling to return their wives. In November 1892, for example, Muhamed Efendić went to the civil court in Brčko and demanded that it enforce a Sharia court ruling that compelled his wife, Aziza, to be returned "under threat of the Sharia's consequences" (*pod prijetnom pošljedica šerijata*). The civil court in Brčko then turned to the provincial government, which explained that such matters could not be handed over to the civil courts because the code of civil procedure was not applicable in matrimonial affairs. It further noted that Aziza could not be compelled to return to Muhamed as the Habsburg administration had, in 1881, prohibited qadis from ordering corporal punishment or terms of imprisonment.⁵³ Instead, women who did not return to their husbands, like Aziza, would be declared *našiza* (Arabic: *nāshiza*; Ottoman: *naşize*), or "disobedient," forfeiting their right to alimony as a result. In the event adultery was believed to have occurred, the provincial government noted, the husband could file suit at the criminal court, which would then conduct a criminal trial.⁵⁴

The provincial government's usage of the term *našiza*, which prescribed in classical Islamic law a wife's general responsibilities to her husband, is noteworthy. Open to varying, contextually based interpretations, these responsibilities could include a wife's sexual availability, making herself attractive to her husband, or even a prohibition to leave the husband's abode without his authorization. As such, *našiza* was usually treated in relation to the husband's duty of *nafaka*, or maintenance: so long as a wife was "obedient," she should be entitled to maintenance by her husband, but she forfeited it in the event of "disobedience." This doctrine was usually not formally enforced; however, a reinterpretation of the concept started to emerge in the late nineteenth century when colonial administrations reshaped the Islamic legal system in many Muslim societies. In colonial Egypt, for example, the hybridization of European legal concepts induced the British administration, in 1897, to begin enforcing "obedience." Under these conditions, Sharia judgments on the return of "runaways" were enforced by administrative personnel. This practice, which had its roots in France, had found its way to Egypt through the French colonial experience in Algeria.⁵⁵

The practice of not enforcing the return of "runaway" wives in Habsburg Bosnia thus corresponded to how the concept of *našiza* was traditionally applied in Islamic law rather than a liberalizing "touch" ushered in by the new administrators. In contrast, enforcing such judgments was a "modern" idea that emerged when reforming the Islamic court system. Legal debates on the merits of either approach were, however, not unique to Habsburg Bosnia but were rather part of far wider-reaching pan-Islamic debates on family and morality.

⁵¹"Verordnung über die Organisation und den Wirkungsbereich der Scheriatgerichte."

⁵²From 1887, qadis were authorized to issue disciplinary sanctions in the event of improper behavior during a court proceeding. These sanctions, either monetary fines or brief periods of imprisonment (up to eight days) would, however, be executed by the local district authorities. See "25. Verordnung der Landesregierung für Bosnien und die Hercegovina vom 3. Mai 1887, Z. 21.820/III. ex 1887, betreffend die Disciplinargewalt der Scheriatrichter," in *Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina: Jahrgang 1887* (Sarajevo, 1887), 47.

⁵³This ban was based on the Habsburg confirmation of the stipulations present in the Ottoman reform decree of 1856. See "132. Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 2. Mai 1881, Zahl 2050, betreffend das Strafbefugnis der Scheriatrichter und der Gemeindevorsteher aus Anlass von Uebertretungen der Religionsvorschriften," in *Sammlung der Gesetze und Verordnungen für Bosnien und die Hercegovina* (Vienna, 1881), 342–43.

⁵⁴"104.789/III. ex. 1892. Otpis zemaljske vlade od 4. februara 1893. na okružnu oblast u Dol. Tuzli," in *Zbirka naredaba za šeriatske sudove u Bosni i Hercegovini. 1878–1900* (Sarajevo, n.d.), 162–64.

⁵⁵Cuno, *Modernizing Marriage*, 185–204. On the discussion of enforcing the concept of *našiza* by Islamic jurists, cf. Judith Tucker, *Women, Family, and Gender in Islamic Law* (New York, 2008), 53–57, 67–68.

Negotiating in the Name of Morality

Beginning in the late 1880s, considerable debate arose concerning the expansion of the Sharia courts' enforcement powers in relation, first, to "runaway" wives and, later, to unlawful marriages. Concurrently, local qadis began to warn of an alleged increase in "marriages forbidden by the Sharia," which they claimed were indicative of the "spread of immorality." It was in this spirit that in July 1895, qadi Hadžić, who had been serving at the district Sharia court in Cazin for nearly a year, complained to the provincial government, lamenting that there existed "among the Mohammedan population a tendency that leads them in their lives on different false paths that are opposed to faith and morality." He detailed how young women would often leave their husbands and return to their parents after a period of marriage. Then, the parents would marry off the young woman again to another man for either money, a sheep, or a goat. Qadi Hadžić even claimed that some sought to generate income by "trading in women" (*pazarivanje žena*). Although we cannot be certain as to whether his claims were accurate or exaggerated, qadi Hadžić does appear to have sought to acquire new competences that would make it possible to compel wives to return to their husbands. Qadi Hadžić suggested punishing—with a prison sentence ranging from one day up to one month—all who disobeyed a qadi's decision or Sharia law or who transgressed public morality. He justified this proposal by pointing out that as matters stood, qadis were unable to enforce their rulings, which meant, in turn, that verdicts reached by Sharia courts would not be taken seriously. As such, "the evil deed [would] spread further, in turn ruining and damaging faith and morality."⁵⁶

Qadi Hadžić's proposal was followed by similar demands of other local qadis, most of whom also denounced marriages that violated Sharia law. Theoretically, marriages can violate Sharia law for a number of reasons, with many of the accompanying legal provisions applying equally to men and women. For example, for a marriage to be valid, it must include language of offer and acceptance as well as the presence of witnesses. Further requirements include the payment of *mehr* to the bride. Several legal preconditions for marriage also exist, such as provisions on age, legal capacity, religious affiliation, and a certain equal status between the spouses. Islamic law did not require marriages to be registered with court or state authorities; however, it was nevertheless standard practice to obtain a marriage license (Bosnian: *izunama*, Ottoman: *izinname*) issued by a qadi because this confirmed that no obstacles to the planned marriage existed.⁵⁷

Apart from criticizing unlawful marriages in general, the Bosnian qadis pointed specifically to "runaway" wives and marriages consummated during the bride's waiting period (*iddet*) as grave problems, thereby placing much of the blame for the "spread of immorality" (solely) upon women. In response, the Supreme Sharia Court formulated a draft regulation in October 1898 based on a proposal developed by the *ulema-medžlis* and approved by the provincial government. This sought to tackle the purported increase of unlawful marriages by making the acquisition of a marriage license by a Sharia court mandatory, with failure to do so resulting in sanctions imposable by a qadi, such as prison sentences ranging from twenty-four hours to two weeks or fines of anywhere from five to fifty forint. The Supreme Sharia Court justified these punitive measures in the name of morality and the public order, linking both to the protection of family and the state: "[M]arriage is the basis of family, society,

⁵⁶ABiH, VŠS, box 1, A 1895/8: O nevaljanim ženidbama—o prodaji žena i kćeri—o trgovanju na račun braka, Šerijatski sudac Hadžić—Zemaljskoj vladi, Cazin, 24.07.1895, 14–17.

⁵⁷On the conditions and procedures of entering into marriage according to Islamic law, see, e.g., Rohe, *Islamic Law*, 103–12. In 1881, the Ottoman Empire introduced a regulation that made it necessary to possess a marriage license in order for a marriage to be recorded by an imam. This stipulation was further confirmed by subsequent laws in 1902 and 1914. In practice, however, this legal requirement was never fully enforced. Cem Behar, "Neighbourhood Nuptials: Islamic Personal Law and Local Customs: Marriage Records in a Mahalle of Traditional Istanbul (1864–1907)," *International Journal of Middle East Studies* 36 (2004): 539–41.

and the state. Therefore, it is important for public order and private interest that marriage be preserved in its purity and that matrimonial prescriptions be precisely followed.”⁵⁸

Despite its gusto, the regulation was never implemented, meaning that not only complaints about “immorality” but also the Sharia courts’ demands for enhanced competences continued to “spread.” These again reached a climax two years later in December 1900 when the aforementioned petition signed by Muslim nobles from across Bosnia was delivered to Benjamin von Kállay. This claimed *inter alia* that Islamic marriage and family life would be endangered by Muslim women abandoning their husbands without an official divorce. Allowing Sharia courts to issue fines and prison sentences, which would then be executed by civil authorities without any changes to the summary judgments therein issued, was suggested as a remedy.⁵⁹

These developments occurred against the backdrop of shifting social and ideological family patterns. On the one hand, the available statistical data suggests an increase in divorces processed at Sharia courts,⁶⁰ as well as the number of extramarital relationships among all confessional groups. As a result, religious leaders across the province used the purported increase in “immorality” to demand stricter regulation of marriage.⁶¹

On the other hand, new thinking in regard to the constitution of a family and the role of women in society spread throughout the (post-)Ottoman lands at around the same time. Based on the influence and borrowing of Western ideals, Muslim reformers advocated the emancipation of women and lamented the “crisis of family” in newly published magazines and newspapers. For instance, Namik Kemal, a Young Ottoman, criticized the Ottoman Turkish family for its “backwardness,” calling for a new form of a nuclear family based on mutual affection and love.⁶² Such public debates impacted the legal regulation of marriage in the Ottoman Empire: following vivid denunciation by Muslim reformers of the negative effects of child and forced marriage as well as polygamy, these practices were eventually banned in 1917 by the New Ottoman Family Law (*Hukuk-i Aile Kararnamesi*)—a codification of Islamic law on marriage and family matters.⁶³

Similar discourses also emerged in Muslim-majority lands under colonial rule. In British-controlled Egypt, for example, Islamic thinkers like Muhammad Abduh and Muhammad Rashid Rida criticized polygamy and forced marriages in equal measure, proposing reforms on the basis of a new interpretation of Islamic law.⁶⁴ Such a “modernist” family discourse fused family life and notions of morality, which can be explained, as Talal Asad and Saba Mahmood contend, by the limited application of Islamic law and its transformation into “family law.” This “secularization” relegated religious and family issues to the private realm.⁶⁵

One explanation for the reception of such reformist discourses in Habsburg Bosnia was that Bosnian intellectuals of the time were part of what Harun Buljina, Leyla Amzi-Erdoğdular, and

⁵⁸ABiH, VŠS, box 20, B 1896/26: Vrhovni šerijatski sud, Nacrt naredbe o postupanju šer. sudova protiv takvih osoba koje se vjenčaju bez dozvole šer. sudova i koje kod takvog vjenčanja sudjeluju, br. 535/šer, 30.10.1898, 4–13.

⁵⁹“Predstavka podnešena Njegovoj Preuzvišenosti ministru Kalaju,” 136–38. Historiography frequently treats this petition as a manifesto of the Muslim movement for religious autonomy that emerged in 1899 following the conversion of a young Muslim woman from Mostar to Catholicism. See Xavier Bougarel, *Islam and Nationhood in Bosnia-Herzegovina* (London, 2018), 17–20; Donia, *Islam under the Double Eagle*, esp. 128–59; Nusret Šehić, *Autonomni pokret Muslimana za vrijeme austrougarske uprave u Bosni i Hercegovini* (Sarajevo, 1980).

⁶⁰According to Islamic law, however, a marriage and a divorce could be valid without any court involvement. Data on the types of proceedings at Sharia courts indicate that in 1885, 173 divorces were processed with 5,759 marriages registered. In 1898, divorces increased to 542, with marriage registrations only amounting to 6,542. See K. u. k. gemeinsames Finanzministerium, *Bericht über die Verwaltung von Bosnien und der Herzegovina 1906* (Vienna, 1906), 519.

⁶¹Kasumović, “Konkubinat,” 72–74; Grunert, *Glauben im Hinterland*, 166, 177–79.

⁶²Alan Duben and Cem Behar, *Istanbul Households: Marriage, Family and Fertility 1880–1940* (Cambridge, 1991), 194–201.

⁶³Duben and Behar, however, reveal that these much-maligned marriage traditions were uncommon in Ottoman Istanbul. Duben and Behar, *Istanbul Households*, 148–58.

⁶⁴Tucker, *Gender in Islamic Law*, 65–77; Cuno, *Modernizing Marriage*, 150–51.

⁶⁵Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, 2003), 227–35; Saba Mahmood, “Secularism, Family Law, and Gender Inequality,” in *Looking for Law in All the Wrong Places: Justice Beyond and Between*, ed. Marianne Constable, Leti Volpp, and Bryan Wagner (New York, 2019), 151–54.

Dennis Dierks refer to as a “trans-Ottoman” flow of information.⁶⁶ Consequently, books and articles written by prominent Muslim reformists in the Ottoman or Russian empires, or Egypt, such as *Muslim Woman* by the Egyptian Islamic scholar Muhammad Farid Wajdi,⁶⁷ were translated into Bosnian and disseminated in newly founded journals and magazines (the more notable of these including *Bošnjak*, *Behar*, *Gajret*, and *Biser*).⁶⁸ Bosnian Islamic reformists, like their compatriots across the Ottoman Empire or colonial North Africa, pushed for the emancipation of women, framing their arguments in terms of national or communal good. However, this sentiment was questioned by a counterdiscourse propagated by traditionalist Muslim elites, who derided the changing social and ideological conditions as fomenting a “crisis of traditional morality.” Medial voices chimed in to regularly call the reading public’s attention to “immoral conduct” relating to prostitution and adultery.⁶⁹ On several occasions, provincial authorities were called upon to intervene, such as in the case of an April 1913 announcement, made by the *ulema-medžlis* and published in *Gajret*, concerning “immorality.”⁷⁰

Nevertheless, in contrast to the Ottoman Empire, such debates in Bosnia did not result in concrete legal changes, which can be partly attributed to the reluctance of the Austro-Hungarian authorities to interfere in marriage and family affairs. On the contrary, imperial administrators publicly stressed their desire to accommodate specific Islamic customs by adjusting their own legal framework, as exemplified by the decriminalization of bigamy in the new Criminal Code for Bosnia (*Kazneni zakon o zločinstvima i prestupcima za Bosnu i Hercegovinu/Strafgesetz über Verbrechen und Vergehen*) in 1879, even though polygamy was rarely practiced by Bosnian Muslims.⁷¹

The Supreme Sharia Court in Sarajevo, however, continued to push for legal reforms pertaining to marriage and family matters. Following the adoption of the new Ottoman Family Code in 1917, it proposed that the Bosnian National Council adopt this one year later. The Supreme qadis noted how this code only recognized Muslim marriages registered at Sharia courts, stressing that it also benefited women because they could divorce their husbands unilaterally and/or prohibit him from practicing polygamy. Nevertheless, the Supreme Sharia Court’s proposal was not acted upon, and the code was never implemented.⁷²

Although the Ottoman Family Code was not adopted, claims on “morality,” particularly in regard to marriage and family, did supply the basis for several negotiations on potential legal reforms between Bosnian qadis and Habsburg officials. Austro-Hungarian authorities also invoked morality in responding to the demands made by the Sharia courts that their rulings be enforceable, flipping the qadis’ arguments of combating “immorality” and protecting “the Islamic family” to justify the curtailment, rather than expansion, of their competences. In the wake of qadi Hadžić’s aforementioned complaint in 1895, for example, the head of the provincial government, Civil Adlatus Hugo von Kutschera, ordered the Supreme Sharia Court on the 6 September 1895 to instruct local Sharia courts regarding how to contend with the cited cases of fornication, adultery, and bigamy. Although von Kutschera stated that “generally and vigorously suitable measures against the spread of these offences” (*svestrano i energično protiv širenja nerednosti* [sic] *shodne mjere*) should be taken, he stressed that the cases therein described were already punishable under existing criminal law. As a result, he argued that it would not be necessary to endow the Sharia courts with any additional competences because such acts could be prosecuted by the criminal courts. Instead, Sharia courts were obligated not only to use their moral influence and appropriate instruction to crack down on such cases but also to report

⁶⁶See Amzi-Erdoğdular, “Alternative Muslim Modernities”; Buljina, “Empire, Nation, and the Islamic World”; Dennis Dierks, “Scripting, Translating, and Narrating Reform.”

⁶⁷See Muhamed Ferid Vedždi [Muhammad Farid Wajdi], *Muslimanska žena*, transl. M. Č. Čatić (Mostar, 2015).

⁶⁸See Amzi-Erdoğdular, “Alternative Muslim Modernities”; Buljina, “Empire, Nation, and the Islamic World”; Dennis Dierks, “Scripting, Translating, and Narrating Reform.”

⁶⁹Buljina, “Empire, Nation, and the Islamic World,” 272–74; Fabio Giomi, “Daughters of Two Empires: Muslim Women and Public Writing in Habsburg Bosnia and Herzegovina (1878–1918),” *Aspasia* 9 (2015): 6; Jahić, “U raljama,” 121.

⁷⁰Jahić, “U raljama,” 123.

⁷¹Mehmed Bečić, “Recepcija krivičnog prava u Bosni i Hercegovini u drugoj polovini XIX stoljeća,” *Godišnjak pravnog fakulteta u Sarajevu* LIX (2016): 219–44; Eichler, *Justizwesen*, 149–63.

⁷²Gazi Husrev Begova Biblioteka (GHB), DZC-3-336/1918; see also Karčić, *Šerijatski sudovi*, 111–12.

any crime to the state authorities or district courts.⁷³ Thus, the provincial government intended to withhold competence in criminal matters from the Sharia courts, which in their view were responsible only for providing “moral instruction” in the private realm of family affairs.

Still, the negotiations with Habsburg authorities on enforcement powers for Sharia courts did not come to a halt. Because the 1900 petition to Kállay had not been met with success, its Muslim signatories repeated in 1907 their demand that the Sharia courts be given enforcement powers, this time in Budapest, when convening with Kállay’s successor as minister of finance, Stephan Burián von Rajecz. During these negotiations, the head of the Bosnian Department of Justice, Adalbert Shek, explained that in practice Sharia court rulings had never been revised by other courts. By the same token, as the regular courts did not have any jurisdiction over marriage affairs, they had, in some cases, been hindered in enforcing Sharia court judgments. Instead of pushing for the Sharia courts to be given criminal competences, Shek argued that qadis could and should include enforcement clauses in their judgments. In this way, he promised, regular courts could then enforce Sharia court rulings without revising their content.⁷⁴

This enforcement clause, however, did not apply directly to criminal proceedings regarding fornication, adultery, and concubinage. Instead, according to § 456 of the Criminal Code, such criminal proceedings could never be taken *ex officio*, but only at the request of the injured party within a period of six weeks after being informed of the spouse’s transgression(s).⁷⁵ However, in the 1890s, the Sharia courts often did a poor job of informing parties (generally, the husbands who appeared before court) about the steps required to initiate a criminal trial, which made it difficult for state authorities to prosecute in the respective criminal matters.⁷⁶ At the same time, the available archival documents indicate that fornication, adultery, and concubinage were on multiple occasions prosecuted by civil authorities following this 1907 round of negotiation. Nevertheless, the legal stalemate, specifically the one pertaining to “runaway” wives, remained because they could not remarry without an official divorce, and therefore often continued to live in concubinage despite the threat of punishment.

One example of this can be found in the small village of Džakule near Gračanica, where Fatima Ibričević had left her husband Mustafa Zahirović in the autumn of 1907. After staying with her father for a few months, she later rejoined her first husband, Osman Selimović, from whom she had divorced before marrying Mustafa. Unable to reregister, Fatima and Osman lived out of wedlock. Because Mustafa filed a criminal suit against Fatima, who, at least officially, remained his wife, she was imprisoned for fifteen days. However, this imprisonment did nothing to thwart her remarriage or concubinage: she immediately returned to Osman upon her release. Accordingly, Mustafa filed an appeal with the Supreme Sharia Court in February 1909 in which he asked that the local Sharia court in Gračanica compel Fatima to return to him. However, the Supreme Sharia Court found that it could not act in the matter and advised Mustafa to turn again to the civil authorities if his wife’s behavior was considered to constitute an “offensive act” (*sablažnjivo djelo*).⁷⁷ This was because civil authorities could intervene in the event of “a public scandal or turmoil and unrest” (*javnu sablazan ili nemir i uzrujanja*), per the provincial government’s guidelines on concubinage issued in 1891.⁷⁸ However, as Amila Kasumović

⁷³ABiH, VSS, box 1, A 1895/8: Zemaljska Vlada—Vrhovnom šerijatskom sudu, br. 95.756/III, 06.09.1895. On 30 December 1895, this directive was altered by the Supreme Sharia Court into general guidelines relating to how Sharia courts were “to proceed against seduction to fornication, bigamy, adultery, and fornication of a married and legally not-divorced woman.” See “590. šeriat. Naredba Vrhovnog šerijatskog suda za Bosnu i Hercegovinu od 30. decembra 1895,” in *Zbirka naredaba za šerijatske sudove u Bosni i Hercegovini. 1878–1900* (Sarajevo, n.d.), 202–5.

⁷⁴Enes Durmišević, *Šerijatsko pravo i nauka šerijatskog prava u Bosni i Hercegovini u prvoj polovini XX stoljeća* (Sarajevo, 2008), 124–25; Šehić, *Autonomni pokret*, 275–78. The Habsburg authorities acceded to most of the other demands Muslim nobles had made pertaining to religious authority by enacting the so-called Statute of Autonomy in 1909. This statute did not endow the Sharia courts with any competences in criminal matters.

⁷⁵“Strafgesetz über Verbrechen und Vergehen,” in *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen: II. Band* (Vienna, 1881), 160.

⁷⁶See ABiH, VSS, box 20, B 1896/26: Zemaljska vlada – Vrhovnom šerijatskom sudu, no. 123798, 16.10.1897.

⁷⁷ABiH, VSS, box 27, B 1909/6. Another example can be found in the following case: ABiH, VSS, box 26, B 1908/28: Ahmedbegović Fata protiv supruge Derviša Beširovića zbog razvoda braka, Konjic.

⁷⁸Eugen Sladović, *Priručnik zakona i naredaba za upravnu službu u Bosni i Hercegovini* (Sarajevo, 1915), 114.

has highlighted, provincial authorities generally refrained from directly interfering in issues relating to concubinage.⁷⁹

On other occasions, unmarried couples concocted innovative schemes to circumvent the legal prohibitions on their living together and to evade punishment. For example, Zejna Likić left her husband Mušan Berberović in June 1912, living thereafter in concubinage with Ibrahim Čorbić in the village of Tuholj. Mušan would not grant Zejna a divorce, instead filing suit in criminal court against Ibrahim, with whom Zejna was then living. As a result, Ibrahim was imprisoned; however, upon his release, he continued to live with Zejna in concubinage. Although unable to wed, Zejna bought one-half of the house in which she and Ibrahim were living. In Islamic law, marriage does not result in community of property, so Zejna's marital status was irrelevant to the house purchase. And as common owners, Zejna and Ibrahim were entitled to cohabit the same domicile. The inhabitants of Tuholj continued to protest the "wild marriage," as concubinage was called at the time. The only recourse the local Sharia court had was to declare Zejna to be *našiza*, whereby she forfeited any maintenance owed her by her legal husband Mušan.⁸⁰

Debating Control and Punishment

Due to the numerous legal challenges and debates involving "runaway" wives, concubinage, and unlawful marriages, complaints about the alleged threat these posed to public morality were common. World War I, with its mobilization of males and ensuing economic hardship, gave rise to a new wave of complaints about extramarital relations or marriages that did not conform to Sharia law. Moreover, in contrast to earlier debates, authorities, Islamic religious leaders, and qadis broadened their attacks to include not only "runaway" wives or women who neglected the *iddet* but also the frequent remarriages of soldiers. Once more, they described these developments as endemic of an increasing "spread of immorality," using them as a pretext for negotiations pertaining to an expansion of the Sharia courts' competences. However, in addition to competences in criminal matters, they now also sought stricter control of marriage through mandatory registrations in Sharia courts.

The beginnings of this can be traced to a letter written in June 1916 by the Austro-Hungarian Muslim chaplain (*k. u. k. Militärimam*) Alija Sefić to the Mostar Military Command. He cited several complaints he had heard amongst the local population in Herzegovina relating to the repeated marrying of ever greater numbers of Muslim soldiers owing to their frequent geographically disparate deployments.⁸¹ On the back of this complaint, the provincial government consulted the *reis-ul-ulema* as well as the Supreme Sharia Court. Neither, however, saw any need to restrict polygamy because it was allegedly a rare phenomenon. Still, they used the opportunity to call attention to the reportedly greater problem of concubinage, with the Supreme Sharia Court demanding a specific directive to combat unlawful marriages.⁸² The corresponding draft regulation from 24 September 1917 envisaged prison sentences ranging from eight to thirty days or fines of fifty to five hundred crowns for Muslims who solemnized marriage outside of the Sharia court. These sentences were to be issued by the first-level Sharia courts and executed by local district courts.⁸³ Ultimately, however, the draft was never enacted, with the provincial government instead issuing Directive No. 411 on the "control of immorality" and the unlawful remarriage of "reservists' women" in January 1917. According to this, authorities were to separate unlawfully wed couples by force and punish men who did not go "into battle against the enemy."⁸⁴ Still, this solution did not satisfy local qadis, as qadi Bukvica from Bugojno evidenced in a letter to the *ulema-medžlis* in May 1918. Lamenting the apparently unrelenting "spread of

⁷⁹Kasumović, "Konkubinats."

⁸⁰ABiH, VŠS, box 30, B 1913/21.

⁸¹ABiH, VŠS, box 2, A 1916/6: O neurednostima pri sklapanju braka muslimanskih vojnih lica, Alija Sefić—k. u. k. Militärkommando in Mostar, 20.06.1916. This archival file also contains the file with the original signature "B 1916/12."

⁸²ABiH, VŠS, box 2, A 1916/6, especially the following documents: Zemaljska vlada—Vrhovnom šerijatskom sudu, br. 180.815/16/III-2, 14.10.1916; Vrhovni šerijatski sud—Zemaljskoj vladi, br. 431/Šer, 18.10.1916.

⁸³ABiH, VŠS, box 2, A 1916/6.

⁸⁴Jahić, "U raljama," 130–35.

immorality” (*širenje nemoralna*) owing to the war, he described the current developments as an “illness” (*bolest*) within an “infected body” (*zaraženo tijelo*) that required healing and medical intervention. In his view, Directive No. 411 was ineffective owing to its lack of an enforcement instrument, and that it kept criminal trials for adultery within the competence of the criminal—rather than Sharia—courts. To rectify this, Bukvica demanded that Sharia courts be authorized to issue and execute punishments.⁸⁵

This case demonstrates that the regulation and control of unlawful marriages and concubinage was a hotly disputed issue right up until the end of Austro-Hungarian rule in Bosnia. While the qadis’ solution entailed granting the Sharia courts competence for criminal matters, the Habsburg authorities never wavered in their stance that these courts be limited to handling family and marriage affairs, excluding any criminal jurisdiction. As such, it could be fairly stated that Habsburg authorities legitimized this restriction of judicial competence by referring to the principle of religious equality because the “special jurisdictions” of the Catholic, Orthodox, and Jewish communities were also only competent in these areas. Supplementing this, the imperial administrators regularly invoked their “cultural mission” to nudge Bosnia toward “Western European” standards and “modernize” its legal system, of which a clear demarcation of the pluralist legal institutions and areas was considered key.⁸⁶ As an example, *The Situation of the Mohammedans in Bosnia*, an anonymously published pamphlet most probably penned by a high-ranking Habsburg official in 1900,⁸⁷ praised the Austro-Hungarian model of integrating Muslims into the empire. While the administration of Bosnia would accommodate Muslims’ special concerns, such as respecting the specific social position of women, including their veiling and sexual segregation, it also provided equality for all confessional groups before the law. Importantly for this article, the pamphlet also formulated a direct answer to the demands for the Sharia courts to be provided with criminal competences. In the view of its author, this would privilege Muslims over the Catholic and Orthodox communities, whose ecclesiastical courts did not possess any criminal competences, thereby undermining the principle of religious equality. Applying the same criminal laws to all confessional groups would correspond to “modern” and “Western” legal standards:

[T]hese special courts [i.e., the Sharia courts] have been shorn of competence in criminal matters; and this is precisely the point where those who see the essence of Mohammedanism and the often-invoked oriental outlook as endangered, place their emphasis. All these objections would be fully justified if a special confessional court adjudicated Catholics and Orthodox. Should measuring with equal standards be a Western principle and not appropriate [in this situation], but rather, the right thing to do is to act according to unilateral confessional positions, then the Bosnian government has indeed made a mistake in placing criminal law and procedures on a modern footing while at the same time taking into account those offences linked to the Mohammedan religion when determining prosecutable acts and penalties.⁸⁸

Concurrently, this paragraph seems to concede that granting equality before the law in a pluralist legal system was far easier to implement in theory than in practice. This is particularly evident in the last sentence, where the challenge in separating criminal and civil or matrimonial law is highlighted. While the civil courts often applied a mixture of Ottoman *Tanzimat* and Austrian civil law in legal practice,⁸⁹ the Austro-Hungarian government based criminal law almost exclusively on Austrian

⁸⁵ABiH, VŠS, box 32, B 1918/32: O moralnom ponašanju vojničkih žena u kotaru Bugojnu, Bugojno.

⁸⁶In contemporary discourses, Austro-Hungarian rule in Bosnia was often legitimized as a “civilizing mission” (or “Kulturmission” in German), intended to pacify and modernize the region and bring it closer to “Western European culture.” See, for instance, Clemens Ruthner, *Habsburgs “Dark Continent.” Postkoloniale Lektüren zur österreichischen Literatur und Kultur im langen 19. Jahrhundert* (Tübingen, 2018), 220–23.

⁸⁷The authorship of this pamphlet has been attributed, variously, to Benjamin von Kállay and Lajos Thallóczy—a Habsburg official and an important historian of Bosnia, respectively. See Edin Hajdarpasic, *Whose Bosnia? Nationalism and Political Imagination in the Balkans* (Ithaca, 2015), 178, n. 70.

⁸⁸*Die Lage der Mohammedaner in Bosnien: Von einem Ungarn* (Vienna, 1900), 84.

⁸⁹Bečić, “Privatrecht,” 98–104.

law. Nevertheless, the new Criminal Code for Bosnia adopted in 1879 entailed a few specific provisions understood to be concessions to the local legal tradition. Thus, besides the decriminalization of bigamy for Muslim men, men received, in accordance with the hitherto existing Ottoman Criminal Code, softer punishments for murdering their adulterous wives if caught *in flagrante delicto*.⁹⁰

In terms of family, marriage, and inheritance, however, Sharia law remained uncodified, and the Habsburg authorities generally supported the application of the Hanafi legal doctrine in addition to Ottoman laws and legal principles within the Sharia courts. The local qadis, in turn, used references to Islamic and Ottoman law strategically to substantiate their demands as well as to endow their proposals with greater authority. Thereby, these legal norms and understandings were “translated” into a new context, with their meaning(s) subsequently altered.

As an example, due to a request by the *reis-ul-ulema* in March 1897 to issue punishments for those who entered into a marriage against the prevailing legal provisions, the provincial government asked the Supreme Sharia Court to explain how Sharia laws and the Ottoman Criminal Code could be applied in such a scenario.⁹¹ This led the Supreme Sharia Court to issue the aforementioned October 1898 draft regulation on tackling marriages forbidden by the Sharia by imposing mandatory marriage licenses and criminal sanctions. The draft was accompanied by references to Ottoman legal sources and customs as well as an explanation. More precisely, the supreme qadis referred to an opinion reached by Çatalcalı Ali Efendi, a seventeenth-century *Şeyhülislam* renowned as one of the leading Hanafi jurists of his era, to buttress their interpretation. According to his collection of fatwas, the *Fetava Ali Efendi*, those committing offences against the Sharia or a government regulation that corresponded to the Sharia should face “discretionary punishment” (*ta’zir*) imposed by a qadi, such as flogging, imprisonment, or a fine.⁹² Although the choice to cite the *Fetava Ali Efendi* could have been more practical than anything else (this collection was one of the most readily available in Bosnia),⁹³ the reference demonstrated that the Bosnian qadis continued to observe the Ottoman tradition of referencing “authoritative texts” relating to the interpretation and application of Islamic law.⁹⁴

When the supreme qadis explained the legal foundation of their proposal in greater detail, they drew in large part upon codified *Tanzimat* laws and, in the process, touched on how the Austro-Hungarian administration applied the *Hatt-ı Hümayun* of 1856. This Ottoman reform edict, confirmed by decree by the Austro-Hungarians in May 1881, had *inter alia* abolished corporal punishment. The decree of 1881 stated that qadis would not be authorized to impose corporal punishment, including imprisonment.⁹⁵ The supreme qadis argued that because this provincial decree did not prescribe any specific punishment for offences against Sharia norms, Sharia courts were empowered to impose sentences within the scope of the *Hatt-ı Hümayun*, such as terms of imprisonment. They further argued that because the Austro-Hungarian decree of 1881 explicitly classified imprisonment as corporal punishment, it contradicted both Ottoman criminal and Sharia law, which permitted the imposition of prison sentences. Moreover, they hinted that the Habsburg authorities had misinterpreted the concept of “corporal punishment,” writing that “it is contrary to existing criminal law as well as the sole, general, and legitimate view that corporal punishment is that inflicted directly on

⁹⁰Bečić “Recepcija krivičnog prava,” 231–32; Eichler, *Justizwesen*, 149–63. It must be stated, however, that the Ottoman Criminal Code here mirrored the French Criminal Code of 1810, which also exonerated a husband who murdered his wife while happening upon the latter *in flagrante delicto*. See John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code: A Translation from the Turkish Text* (London, 1913), 141.

⁹¹ABiH, VŠS, box 20, B 1896/26: Zemaljska vlada—Vrhovnom šerijatskom sudu, br. 68613/III, 24.07.1898, 5.

⁹²ABiH, VŠS, box 20, B 1896/26: Vrhovni šerijatski sud, Nacrt naredbe, br. 535/šer, 30.10.1898, 7–8.

⁹³Selma Zečević, “On the Margin of Text, on the Margin of Empire: Geography, Identity and Fatwa-Text in Ottoman Bosnia” (PhD diss., Columbia University, 2007), 196–97.

⁹⁴According to Guy Burak, this tradition emerged in the sixteenth-century Ottoman Empire following the creation of an imperial jurisprudential canon. See Guy Burak, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (New York, 2015), 130–35.

⁹⁵“132. Circularerlass der Landesregierung.”

the body of a human being, while a jail term is held in all criminal law and generally as being a sentence of imprisonment. As such, it is completely and essentially different from corporal punishment.”⁹⁶

This quote demonstrates the divergent understandings of punishment between the Ottoman and the Austro-Hungarian legal systems. Classical Islamic law relied on corporal and pecuniary punishment, whereby it only provided clearly defined sanctions for a handful of offences (so-called *ḥudūd* and *qiṣās*),⁹⁷ with all other acts subsumed under the category of *ta’zīr*, the discretionary punishment determined by a qadi.⁹⁸ During the *Tanzimat* reforms, the Ottoman government also overhauled its criminal law, codifying it and establishing a new criminal court system. In this vein, the first modern Ottoman Criminal Code, promulgated in 1840, defined for the first time specific punishments for offences that had previously been punished on a discretionary basis. Some inadequacies were addressed by a new criminal code in 1851, which was soon replaced by the Imperial Ottoman Criminal Code (*Ceza Kanunname-yi Hümayunu*) in 1858. This new code was heavily influenced by the French Criminal Code of 1810 and became the foundation for the Ottoman criminal justice system’s transformation over the ensuing decades. This also proved to be a turning point as it saw fines and incarceration displace corporal punishment as the most common penalties.

These significant changes were directly connected to the *Hatt-ı Hümayun* of 1856, which, as Kent Schull has explained, mapped out “a robust programme to raise Ottoman punishment to the idealized standards of ‘modern’ civilization.”⁹⁹ Thus, in the Ottoman context, the 1856 reform decree, with its abolition of corporal punishment, served to advance incarceration; while in the context of Bosnia, the Habsburg administrators reinterpreted the decree to demarcate the competences of Sharia courts and strip them of the ability to impose any form of criminal sanctions.¹⁰⁰

Here, it is prudent to note that Sharia courts in the Ottoman Empire also lacked enforcement powers regarding family and marriage affairs. The *Tanzimat* reforms had delegated all criminal competences to newly formed criminal courts, while the competences of Sharia courts were reduced to family, marriage, and inheritance matters. Still, the clear demarcation of competences proved difficult, largely because no separation of personnel between the different courts existed, with qadis presiding over all proceedings.¹⁰¹ In Habsburg Bosnia, as explained in the preceding text, qadis only presided at Sharia courts, and even then were limited to family, marriage, and inheritance matters.

The archival documents consulted do not disclose the provincial government’s immediate reaction to the discussion of different forms of punishment and criminal competences elaborated by the Supreme Sharia Court in 1898. However, the Habsburg authorities did not deviate from this interpretation, nor did they accept the proposal made by the Sharia courts regarding mandatory marriage licenses and criminal jurisdiction. Thus, when debates and complaints about “immorality” and the issues of concubinage and irregular marriages flared up over the course of World War I, the Supreme Sharia Court pushed for mandatory marriage registration at Sharia courts, again in combination with expanded criminal competences. During one negotiation with the provincial authorities, the supreme qadis mentioned an Ottoman law that apparently allowed penalties to be imposed if a couple entered into marriage without a license from a Sharia court, paving the way for further negotiations. In turn, the provincial government saw an opportunity to reference the Ottoman law and urge compliance with it, and so, in January 1917, they requested that the Supreme Sharia Court outline the precise Ottoman laws to which they were referring.¹⁰² In their response from March 1917, the supreme

⁹⁶ABiH, VŠS, box 20, B 1896/26: Vrhovni šerijatski sud, Nacrt naredbe, br. 535/šer, 30.10.1898, 10.

⁹⁷Such clearly defined penalties included *ḥudūd*, or crimes mentioned in the Quran and understood as offences against Allah, and *qiṣās*, which called for compensation of a victim in the event of a homicide or bodily harm and allowed retaliation in kind.

⁹⁸For an overview on the criminal provisions in classical Islamic law see, e.g., Rohe, *Islamic Law*, 155–81; Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge, 2006), 6–68.

⁹⁹Kent F. Schull, *Prisons in the Late Ottoman Empire: Microcosms of Modernity* (Edinburgh, 2014), 26–27.

¹⁰⁰See “132. Circularerlass der Landesregierung.”

¹⁰¹For an overview on the transformation of Ottoman criminal law, see Schull, *Prisons*, 17–41.

¹⁰²ABiH, VŠS, box 2, A 1916/6: Zemaljska vlada—Vrhovnom šerijatskom sudu, br. 241577/16/III-3, 17.01.1917.

qadis surprisingly acknowledged that the Ottoman Criminal Code had transferred criminal competences from the Sharia courts to the criminal courts. However, they also indicated that the 24 Safar 1302 (13 December 1884) edition of *Ceride-i Mehakim* (Journal of the Courts), an official periodical issued by the Ottoman Ministry of Justice,¹⁰³ indicated that a violation of the decree on marriages or on the issuance of an *izunama* be punished in accordance with the Criminal Code. Following from this, the supreme qadis pointed to another reference in an Ottoman decree from 23 Jumada 1297 (3 May 1880), according to which state authorities would have to proceed against parties and imams who contracted marriages without a license—a rule that, it was claimed, had already been provided for in the *qānūn*.¹⁰⁴ In alluding to these Ottoman laws, the supreme qadis reinforced their right to prevent marriages that violated Sharia law by punishing those who contracted such marriages outside of their courts.¹⁰⁵

What is most telling, however, is that the supreme qadis referenced Ottoman laws issued *after* the Habsburg occupation of 1878, demonstrating that Bosnian qadis continued to follow legal developments in the Ottoman Empire, which, after examining their educational backgrounds, should not come as much of a surprise. All three supreme qadis of the time, that is Salih Mutapčić, Hilmi Hatibović, and Ali Riza Prohić, were educated, at least partially, in Islamic and legal affairs in Istanbul.¹⁰⁶ As such, legal knowledge continued to flow between Bosnia and the Ottoman Empire, even after the imposition of Austro-Hungarian rule.

This explanation of Ottoman laws, as well as the *ulema-medžlis*'s concurrence with the Supreme Sharia Court's claim in late May 1917,¹⁰⁷ seemed to have convinced the provincial government, which subsequently ordered the Supreme Sharia Court to elaborate the aforementioned draft regulation, according to which persons who officiated marriages outside of the Sharia courts be punished. The resulting draft, from 24 September 1917, was never enacted. For the duration of Austro-Hungarian rule in Bosnia, Sharia courts were denied criminal competences, despite the frequent demands made by local qadis.

Debates and correspondence surrounding this issue highlight how Ottoman laws were reinterpreted and “translated” to fit into an Islamic court system under the rule of a predominantly Christian empire. Habsburg authorities pursued integration of the Sharia courts by clearly limiting their competences to a “special jurisdiction,” equal to those of the province's Christian and Jewish communities regarding marriage and family affairs. To support these ends, they made use of certain Ottoman legal norms, the same norms that also provided figurative ammunition to Bosnian Muslims in their legal debates with those very same Austro-Hungarian authorities. Bosnian qadis referenced Ottoman laws to reinforce their demands for expanded judicial competences. In addition, a common Ottoman understanding of rights, justice, and public good were also invoked in petitions sent by Muslim Bosnians to the Ottoman sultan and, on occasion, the Austro-Hungarian emperor. As Leyla Amzi-Erdoğdular convincingly argues, such references can be understood as a vehicle that maintained the relationship between Bosnian Muslims and the Ottoman Empire.¹⁰⁸

¹⁰³The *Ceride-i Mehakim* was first published in 1873 in an effort to assist the *Nizamiye* courts in their daily tasks. See Rubin, *Ottoman Nizamiye Courts*, 9.

¹⁰⁴*Qānūn* (Ottoman: *kanun*) refers to sultanlic laws, which were supplementary to Islamic law, addressing those issues not clearly defined by the Sharia, such as fiscal, state, or criminal matters.

¹⁰⁵ABIH, VŠS, box 2, A 1916/6: Vrhovni šerijatski sud—Zemaljskoj vladi, 03.03.1917.

¹⁰⁶Salih Mutapčić was born in Zenica, spending twelve years in Istanbul, where he also pursued Islamic studies. In 1890, he returned to Bosnia and began to work as a qadi. See “Salih Mutapčić,” Wikipedia, https://cs.wikipedia.org/wiki/Salih_Mutapčić, accessed 20 Nov. 2020. Hilmi Hatibović was born in 1879 in Jezero, receiving training at a madrasa in 1889 in Istanbul, whereupon he returned to Bosnia. He graduated from the Sharia Judge School in Sarajevo in 1894, working thereafter as a qadi. See “Merhum Hilmi ef. Hatibović, predsjednik Vrhovnog šerijatskog suda u miru,” *Osvit*, 3. godina, br. 109, 26.03.1944, p. 5. Ali Riza Prohić was born in 1867 in Gračanica and went to Istanbul at the age of thirteen to pursue a religious education. When the Sharia Judge School in Sarajevo opened in 1887, he returned to Bosnia, graduated from it, and became a qadi. See “Merhum Ali Riza ef. Prohić,” *Osvit*, 1. godina, br. 32, 04.10.1942, p. 5.

¹⁰⁷ABIH, VŠS, box 2, A 1916/6: Ulema-medžlis—Zemaljskoj vladi, br. 744/1917, 31.05.1917. A detailed description of this court case can also be found in: Jahić, “U raljama,” 130–35.

¹⁰⁸Amzi-Erdoğdular, “Afterlife of Empire,” 135–45.

However, it would be unwise to dismiss the strategic dimension of these efforts. The provincial government willingly accepted the qadis' claims because doing so was conducive to their goal of integrating the Muslim population into the empire. Guaranteeing Muslim participation in the new administration, along with efforts to "modernize" and industrialize the region, were intended to transform Bosnia into a "model province" (*Musterstaat*).¹⁰⁹ To reinforce these, the provincial government deliberately authorized and tasked local Bosnian qadis with explaining and interpreting Ottoman laws. This strategy was not unique to Austria-Hungary and can be seen elsewhere in the imperial administrations of colonies with Muslim populations. This is because the incorporation of Sharia courts and law served to confer the legitimacy these enjoyed upon the entire colonial legal system and, arguably, its administration.¹¹⁰

Conclusion

Upon the occupation of Ottoman Bosnia, Austria-Hungary needed, for the first time in its history, to integrate a Muslim population, along with its religious and legal institutions. Rather than a linear continuation or sharp rupture with the Ottoman legal and cultural past, imperial authorities negotiated family, morality, and legal concepts with the territory's Muslim elites. When the Sharia courts were subordinated to the newly established Austro-Hungarian administration, it was thought that these should be competent largely in Muslim marital, divorce, and inheritance matters. However, this transformation created several challenges: latching on to the issue of "runaway" women, Bosnian qadis reinterpreted traditional Islamic concepts to their benefit, demanding increased enforcement powers. Soon, these debates widened to encompass complaints about unlawful marriages, which were claimed, at the time, to be endemic of the alleged "spread of immorality." As outlined, these claims were central to an even broader discourse regarding a "crisis" of family and morality in the Islamic world. At least in Habsburg Bosnia, these debates did not usher in a reform of family law. Instead, Bosnian qadis mostly used moral arguments to attempt to enhance their competences.

On the other side, Austro-Hungarian authorities neither wished to interfere in the administration of Muslim marriage and divorce nor to grant Sharia courts additional competences. By analyzing the negotiations between local qadis and imperial administrators on the basis of Sharia court records, one can trace the varying interpretations and strategic use of Ottoman legal concepts and their "translation" into new administrative settings. These discussions reveal contrasting views as to how an Islamic judiciary should be integrated into the bureaucracy and legal framework of a non-Muslim state, as well as the ways in which each were affected by emerging legal and practical challenges.

Ninja Bumann is presently a PhD candidate at the Doctoral School of Historical and Cultural Studies at the University of Vienna, where she also serves as a university assistant at the Institute for East European History.

¹⁰⁹ Amzi-Erdoğdular, "Alternative Muslim Modernities," 917; see also Hajdarpasic, *Whose Bosnia?*, 186–96.

¹¹⁰ Sartori and Shahar, "Legal Pluralism," 644–45.