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## What Kind of End for the Ottoman Empire?

A Critical Reading

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## Abstract

In 19<sup>th</sup>-century Europe, the juridical texture of space changed entirely. The state came to dominate the new normative and ontological landscape, inducing homogeneity. This phenomenon was more massive, critical, and contradictory in Central and Eastern Europe, as the states there were pursuing a territorialization plan to balance the Mediterranean area. Europe's strategy moved in step with the Westernization/modernization process of the Ottoman Empire and its attempt to survive the crisis and keep up with the first »global« competition. This article investigates the effects of the ambiguous European inclusion/exclusion policies towards the empire, highlighting the interplay of the Christian paradigm and international law. In so doing, it lays bare the functioning of Western ideas, patterns, and devices to support both the survival of the empire and the territorialization plan within its borders through the claims of nascent, unaware, and fictional nation-states. The aim is to reveal the responsibilities and wrongs of international law as premature and undefined law and to apply the appealing concept of »entanglement« to a new, more global historiography on the fall of the Ottoman Empire.

Keywords: Ottoman Empire, international law, 19<sup>th</sup>-century Europe



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## What Kind of End for the Ottoman Empire?

A Critical Reading

»Despite efforts in words and war to put national unity at the center of political imagination, imperial politics, imperial practices, and imperial cultures have shaped the world we live in«.

(J. Burbank, F. Cooper, *Empires in World History: Power and the Politics of Difference*, Princeton-Oxford 2010, p. 2)

### The Premise

In 19<sup>th</sup>-century Europe, the juridical texture of space changed entirely. The state came to dominate the new normative and ontological landscape. As the Western model, it was established as the global point of reference; as a device of modernity, it replaced »empire«, which was the subject (but not the victim) of the previous century.<sup>1</sup> As a secular order, it challenged and unhinged the ecclesiastical compromise. In its frenzied rush to homogenize, the state crushed and delegitimized all the other possible juridical alternatives to control space, and it defined the new dominant actors of European (and global) geopolitics.<sup>2</sup> In 2015, Sandra Halperin, a political analyst, asserted that state-building in Europe was analogous to colonialism in that it involved reshaping the social and economic institutions of conquered areas to fit the needs of a militarily powerful »core« that imposed physical control over culturally distinct groups.<sup>3</sup> As a territorialization plan, the state-building process led to invented (or »decided«) spaces, presented as »historically given and providentially »identitary« and waiting for further and different forms of legitimation.<sup>4</sup> The phenomenon was displayed in a more massive and, at the same time, critical and contradictory way in so-called »Middle East Europe«,<sup>5</sup> which refers to the area where less exposure to the processes of state construction had

always favored deeply permeable spaces and the settlement of different populations. This area had the multicultural, multi-religious and multiethnic composition of typical imperial societies, like the Ottoman one.<sup>6</sup> In the 19<sup>th</sup> century, as the state apparatus became ever more organized and efficient, that permeability failed, and physical control replaced it. »Fluid and criss-crossing relations between the Ottoman and European polities« promoted, at different levels, a great deal of modernization,<sup>7</sup> radically changing the internal structures of the empire and the entire peripheral area.<sup>8</sup> The Ottoman identity was not spared. The empire reversed very quickly, squeezed between desperate manoeuvres of resistance and survival as well as the looming long grasp of the powerful European core: a »new era of fixed boundaries« began.<sup>9</sup> The mirage of Westernization convinced the old empire to re-imagine itself as a state among states,<sup>10</sup> while a new space was emerging, betrayed and territorialized by small and fragile national-state realities, enduring the penetrating tutelage of the Great Powers. That is when the first Turkish Republic rose.

For Europe's strategy<sup>11</sup> or for a manifest inability to keep up with the times of the »global« first competition,<sup>12</sup> the Ottoman Empire was making great strides towards the end, interrupting a long history of more than six hundred years. I propose a critical reading of this crisis. In order to underline

1 BURBANK/COOPER (2010) 219.

2 RODOGNO (2016) 1, 10.

3 HALPERIN (2015) 78 s.

4 MECCARELLI (2015) 247.

5 Cf. LEWIS (1961).

6 GRAZIOSI (2007). Cf. DEL ZANNA (2012) 7.

7 ARAL (2016) 76. For the details on the reform process, see BRISKU (2017).

8 TODOROVA (2002) 46–55.

9 ARAL (2016) 75.

10 Cf. COSTA (1986).

11 Cf. AUGUSTI (2013).

12 Cf. OSTERHAMMEL/PETERSSON (2005) 66–68; REYNOLDS (2011). See also KENNEDY (2003). According to the world-system perspective, formulated by WALLERSTEIN (1979), the Ottoman transformation took place in the context of the »peripherelization« of

the Ottoman socio-economic structure, once it came in contact with world economic forces. Decisive factors of the change in its social structure are considered from a perspective in which forces of the capitalist world economy prevail. See ÖZDEMİR (2003) 30.

the peculiar nature of the Ottoman Empire – both political and confessional – the work investigates the effects of the ambiguous European inclusion/exclusion policies towards the Porte, highlighting the game played by the Christian paradigm and international law and examining the role of Western ideas, patterns, and devices to implement the territorialization plan in the empire through claims of premature, unaware, and fictional nation-states. To do this, an unconventional agenda is required to mark the time of the challenges and the changes. The so-called »Eastern Question(s)« suggest a plurality of aspects contained in the big boiling Balkan pot.<sup>13</sup> This narrative is affected by an inevitably Western point of view. However, I also try to activate other narratives in order to stimulate thought and to imagine a more complex, more global reconstruction of the crisis of the Ottoman Empire and its consequences on the Mediterranean area in the 19<sup>th</sup> century. This aim is ambitious, but the attempt to tangibly transfer the appealing thesis of entanglement to a new, more global, historiography is worthwhile.<sup>14</sup>

#### Goals and Agenda

There were at least eight moments that marked the transformation of the Ottoman Empire. The first, 1839, was the nominal date of the beginning of Westernization reforms. The year 1856 saw the Congress of Paris and peace after the Crimean War, the controversial participation of the empire in the Concert of Europe, the compromise of the *Islahat Fermani* (the Imperial Reform Edict), and the long history of »betrayed love« begins. In 1869 came the first Ottoman nationality law along with fear and suspicion toward Europe. The year 1876 saw an attempt to constitutionalize along with the advent of the Ottoman nationalist mythology and its failure. The Congress of Berlin occurred in 1878, and the empire split due to the colonial contamination of international law and the new awareness of its strength and potential in addition to European imperialism and the beginning of the Ottoman delusion. 1908 brought the Kemalist

cultural revolution, a wind of change bearing the aspirations of a new generation, which was increasingly disoriented in the face of strong imbalances of the Middle Eastern Islamic world. The First World War with its secret games and the manipulation of the Caliphate unforgettably began in 1914. The aftermath of that war continued until 1923 and the proclamation of the Turkish Republic and, a few months before, the Treaty of Lausanne, which defined the new borders and sealed the capitulation agreement with Europe. This essay does not presume to reconstruct all these episodes in detail, but seeks instead to contextualize them, critically reading a complex, fragmented history.

#### The Origins

The year 1839 conventionally marks the formal beginning of the *Tanzîmât*, the period of imperial reforms during which the Ottomans increasingly came under the influence of Western civilizational standards.<sup>15</sup> The Serbian uprisings and the Greek experience, no less than the Egyptian or the Algerian ones, had proved that the imperial apparatus was, on all fronts, more precarious than ever. The empire was caught in Russia's grip after the Treaty of Küçük Kaynarca legitimized its protectorate on the Orthodox Christian communities of the Porte. The empire was also fraught by suspicions and fears of Europe, the bonds of Islam, the frantic management of its government policy, the shadow of the Ottoman legacy and the weight of its sumptuous history. A complex picture was emerging, one that confirmed the structural collapse of the empire and concern about its strategic position as the keystone of the Mediterranean. The Western powers pressed for a shared intervention policy to end the Russian-Ottoman dynamics, to prevent Russia from impromptu and fearsome expansionism and, therefore, to protect the integrity of the empire and their own leading positions.<sup>16</sup>

Evaluating this precariousness, Thomas Naff summarized the fate of the Ottoman cabinet in the phrase »to change or to perish«. <sup>17</sup> »To change«

13 I allude to the Edwardian Cartoon of *The Boiling Point*, in: Punch, February 10 (1912) 275.

14 Cf. DUVE (ed.) (2014). See also AUGUSTI (2016).

15 ARAL (2004) 455.

16 CARNAZZA AMARI (1868) 20; HEFFTER (1844) 24.

17 NAFF (1984) 160.

meant to adapt the Ottoman apparatus to the Western model. The reforms were to resuscitate »the declining empire« and facilitate »the Ottoman Empire's accession to the Public Law of Europe«. <sup>18</sup> To have any hopes of the Great Powers' support in the struggle for its survival, the Ottoman Empire had to emulate to them, to be juridically reliable and recognizable as a peer, for if the empire persisted in a condition of weakness, it would perish. The reforms, which had started quietly in the previous century, <sup>19</sup> were officially proclaimed <sup>20</sup> under »massive European influence« <sup>21</sup> and the subtlety of Mustafa Reşid, the *pacha rebelle* who had drafted them. <sup>22</sup> Europe, for its part, remained ambivalent. The paradigm of Christianity bifurcated its attitudes, which oscillated from friendly policies, including new international agreements and open support for the Ottoman reforms, to debatable interventionist initiatives that fostered the secessionist pressure of Christian communities in the empire. <sup>23</sup> In this climate, the old institution of intervention was resumed, repurposed, and reconceptualized by most Western internationalist scholars in order to resist the challenge of Islam and to legitimize real disturbances in the internal and external politics of the Sublime Porte. <sup>24</sup>

The Ottoman answer came in the first act of reform, the *khatt-i hümayûn* of Gülkhâne. The imperial edict spoke of justice, religious tolerance, freedom of conscience, equitable distribution of taxes, public spending, and so on. In order to »satisfy and disarm« Europe and to forestall its interventionist intentions, <sup>25</sup> the Sultan rehabilitated Christian subjects of the empire, recognizing and applying a principle of equality that smoothed out the differences between Muslims and Christians. But, expectations were betrayed, and his good intentions failed to produce appreciable results. The equality proclaimed in 1839 between

Muslim and non-Muslim subjects »could not easily [be] establish[ed] without serious and dangerous prejudice« <sup>26</sup> to the whole doctrinal construction of the Ottoman nomocracy. <sup>27</sup> Nevertheless, the Islamic-Christian symbiosis, the delicate mechanism inspired and regulated by the Koranic rule over the semi-autonomous small communities of different confessions (*millet*), lost sight of the empire's characteristic multiculturalism, which was forever eroded.

Expressed improvisationally by the French revolutionary experience and the *Déclaration des droits de l'homme et du citoyen* of 1789, <sup>28</sup> the egalitarian principle would have definitively weakened the social fabric of the empire. This outcome was clearly inevitable. Lodewijk W. C. van den Berg, a Dutch scholar of the Near East, critically questioned the project of the *Tanzîmât* generally and the extension of Western principles and devices in particular. According to him, if the empire had really wanted to emancipate itself, it could have simply taken inspiration from what the Western systems had »in even higher form at home«, implying the Ottomans should simply borrow Western models without betraying their identity. <sup>29</sup> In 1896 he added that »The products of a secular civilisation in the Occident cannot simply be mechanically transplanted into a heterogeneous civilisation«. The fundamental principles of justice and governance of a state, concluded van den Berg, necessarily had to manifest themselves in different forms »according to the times and climate«. <sup>30</sup>

Modernization continued in the meantime. Ottoman institutions persisted in the myth of the »common modernity« that they were going to share with Europe. <sup>31</sup> The transplantation of juridical models, principles, and legal formulae, in particular, was active proof of this changed direction, but also marked the beginning of a new political, juridical, and economic dependence of

18 Cf. ARAL (2016) 76–77.

19 I refer to the reforms of Selim III directed mainly at the military, but also at the administration and the treasury (1792–1793). Cf. FINDLEY (1980); ÇAKIR (2010).

20 The proclamation of Gülkhâne took place in the presence of the European diplomatic community, »who were for the first time associated with Turks in a public ceremony«, TEMPERLEY (1964) 161.

21 ÖRÜCÜ (1992) 44. KARPAT (1972) 243.

22 ANONIMO (1877) 66.

23 Cf. DJORDJEVIC (1965); VIDARI (1868) 66 ss. For an historiographic reconstruction see AUGUSTI (2012) 285 ss.

24 RAPISARDI-MIRABELLI (1940) 188.

25 ENGELHARDT (1880) 4.

26 Cf. DE LEONE (1967) 127.

27 Cf. HALLAQ (2004).

28 TOPRAK (2007) 28 ss.; BRIGHTFIELD JELAVICH (1983) 171 ss. »For empires based on the recognition of differ-

ence, the move toward equal rights was risky«, BURBANK (2010) 367.

29 Unless otherwise indicated, all translations are the author's.

30 VAN DEN BERG (1896) 443.

31 BAYLY (2007) XX.

the empire on the Great Powers.<sup>32</sup> Just on a whim of Europeanism or a lost bet with Europe, the violent<sup>33</sup> proclamation of Western principles (like equality) or the activation of Western devices (like code) triggered disgraceful reactions. One of these was to ruin the juridical, political and social endurance of the empire: everything (and everyone) appeared uncomfortable in the new imperial structures. So the political project of modernization, bankrupt on several fronts, would have paradoxically catalyzed new and unmanageable inter-confessional conflicts, social instability and, subsequently, it would have played into the hands of European territorialization plans. To the extent that the Ottoman crisis was the result of European machinations, the reading of the »modernization« processes as an existential challenge for the empire blurs, and Western reforms are immediately recast as the effect of a strategy to restructure the region by rendering it more easily controllable by the Great Powers.

#### Telling the Story of »Illusory Love«

For the Porte, 1839 marked the beginning of a kind of »illusory love« encouraged by ambiguous European policies towards it. The Sultan misjudged the geopolitical plan of the Great Powers and nurtured the false hope of being indispensable to the European balance. Thus, he convinced himself of having political weight in Continental decision-making processes – an attitude that culminated in the reforms. The peak of this false certainty came a decade and a half later. Contrary to appearances, as I have demonstrated elsewhere,<sup>34</sup> for the Great Powers the Crimean War was just an occasion to defang a thorny situation. The Treaty of

Paris of 30 March, which was officially a peace settlement, provided the occasion to tame the empire's periphery, to bring the Ottoman Empire under Europe's guarantee, and to contain, if only temporarily, its domestic rifts for a more interesting (and shared) purpose. The treaty, a masterpiece of diplomacy,<sup>35</sup> represented the turning point of European-Ottoman international relations. Especially article seven includes, first, the »declaration« of the Sublime Porte »to be admitted to participate in the advantages of the Public Law and System of Europe« and, second, the common engagement of the contracting parties »to respect the independence and the territorial integrity of the Ottoman Empire« as a »guarantee« to be strictly observed (any act tending to its violation would have been considered as a »question of general interest«). Article nine contains a *renvoi* to a concomitant edict, the »Firman, which, while ameliorating their condition without distinction of Religion of Race, record[ed] [the] generous intentions [of the Sultan] towards the Christian population of his Empire«; to his will to give a »further proof« of his sentiments in that respect, the Sultan resolved »to communicate« the Firman to Europe.<sup>36</sup> To all appearances, both articles could be read as a message of openness. In fact, article seven was neither a formal (and real) recognition of the international subjectivity of the Ottoman Empire, nor its admission into the European System, but a meaningless »admission to participate in the advantages of the Public Law and System of Europe«. In that vein, article nine was not to assuage European mistrust in Ottoman policies towards Christian communities, but a procedural device to instigate, thanks to the incorporation in a covenant, legitimate intervention as a sanction for possible infractions of the Sultan towards his Christian subjects. The empire

32 »First, the Ottoman state introduced a series of legal codes: among others, the Penal Code in 1840 (which was revised in 1851 and 1858), the Commercial Code in 1849, the Land Code in 1858, the Maritime Trade Code in 1863, the Ottoman Code of Public Laws in 1865, and the Ottoman Civil Code between 1866 and 1888. Second, the Ottoman state established new courts: commercial courts, mixed trade courts, administrative courts for state officials, and Nizamiye courts«, BASKAN (2014) 34.

33 The attribution of violence is in DEL ZANNA (2012) 13, as the »strumento attraverso cui delimitare e consolidare i rapporti di lealtà allo Stato ottomano«.

34 For the complex demonstration of this thesis, I refer to AUGUSTI (2013).

35 Reading »extensively« the expression by ROLIN-JAEQUEMYS (1876a) 324.

36 *Traité de Paix signé à Paris le 30 mars 1856 entre la Sardaigne, l'Autriche, la France, le Royaume Uni de la Grande Bretagne et d'Irlande, la Prusse, la Russie et la Turquie avec les Conventions qui en*

*font partie, les protocoles de la Conférence et la Déclaration sur les droits maritimes en temps de guerre*, Torino 1856.

had definitively mortgaged its future, and its sovereignty (external and domestic) was irrevocably compromised by the formulae of »guarantee« and »communication«, but it lacked the wherewithal to understand what was happening.

One of the limits of the empire, in fact, was the embarrassment in handling the instruments of new diplomacy and international law. According to Berdal Aral, in the past, the Ottoman Empire had ignored European diplomatic dynamics and public law to its own detriment. If Ottoman officials were cognizant of them, they could have been useful at international meetings and negotiations. The tardiness in becoming familiar with emerging international law, then, had devastating consequences, as in 1856. With the Paris Treaty, the illusion was activated, as was the misunderstanding with Europe. Recently, Turkish historiography has highlighted and revisited this point of Ottoman illusion. Aral has spoken of »key-states«, »admissions«, and »proper incorporation«. In other words, »With the signing of the Treaty of Paris in 1856«, he writes, »the Ottoman Empire *became the first non-Christian State to be admitted* to the Concert of Europe, the system of balance of power and intermittent diplomatic conferences *between key European states* that originated in the 1814–1815 Congress of Vienna [...] In light of the long history of diplomatic, economic, political, and military entanglements between the Ottoman Empire and the European powers, the former's *incorporation* into the European states system should be viewed neither as »abrupt« nor as »extraordinary«. So, according to Aral, the recognition of the Ottoman Empire, »the only Islamic state [...] in constant intercourse with the Christian powers of Europe«, was a matter of course. The Ottoman Empire was a key state, and its presence in the system was strategically advantageous for Europe.

The empire participated in other ways too. It »came to be seen as a »model state« within the broader Muslim world«, and its association with »anti-colonial internationalism« yielded important gains for the entire Muslim world.<sup>37</sup> In view of

this, its prestige in the non-Western world increased enormously, and it soon earned an irreplaceable role as mediator role with Europe. According to Cemil Aydin, in 1856 the empire overcame the challenge presented by the Eurocentric international order in 1839 by forcing Europe to finally take a consistent position on the question of how to include an Islamic entity, »suggesting that [the Ottoman] multiethnic and multireligious empire, which included most of eastern Europe, should be a part of the European state system, even though it was ruled by a Muslim dynasty«. The operation should have been feasible given the European »common legal conscience« and »Christian solidarity«, privileging a »diplomacy based on civilisational principles«. <sup>38</sup> The Crimean War was »the biggest achievement of Ottoman diplomacy«. <sup>39</sup> The empire, adjusting itself suddenly and effectively, to Western parameters – above all, those of formal dialogue – and strengthening a new desire for peace with the infidel West through diplomatic offices, assumed a civilized image that would have helped it to be rightfully admitted in the »nucleus of international society«. <sup>40</sup> The empire, wrote Aydin, »had [finally] gained a legitimate right to international existence as a recognised member of the Concert of Europe«. <sup>41</sup>

To participate in the European concert, then, meant being able to share its history, which had begun in Vienna almost forty years prior. Sharing this history meant being able to accuse the West of having »deviated from the rules of the Vienna system« (»peace, security, and the territorial integrity of other civilised empires«), during the Greek revolt. The European intervention, on that occasion, had offended the empire, but the Ottoman government could not be too harsh with Europe, nor blame it, because the Greek episode happened when the Ottoman government was not ready. On that occasion, the empire had given the powers just a »bad image as [an] uncivilized empire: no influence had certainly had the conduction by a Muslim sultan«. <sup>42</sup> Participating, moreover, meant sharing contemporary choices: the empire, now in

37 ARAL (2016) 84, 77–78. Emphasis added.

38 AYDIN (2013) 173, 164. According to Aydin, the leader of reformist party, Sadık Rifat Paşa, in *Treaties on the Circumstances of Europe (Müntehabat-i Asar, Takvimhane-i Amire, Istanbul*

1858, pp. 1–12), used the French word *civilisation* without translating it in order to explain »the political, economic, and social secrets of European power and superiority«.

39 ARAL (2016) 75 s.

40 LAWRENCE (1915) 83.

41 AYDIN (2013) 165; BULL (2002) 32.

42 AYDIN (2013) 164; WEITZ (2008).

the West, would not have supported Muslim brothers in India, as in the revolts against the British colonial power of 1857. »As other European empires recognized the Ottoman sultan's civilized rule over its Christian populations, the Ottomans likewise recognized the British, Russian, Dutch, and French empires' rule over various Muslim populations.«<sup>43</sup> The new position of the empire was oriented by the coherence of civilization, guaranteeing its preservation and consolidation.

On the other side, Western scholars reacted unenthusiastically. The diplomatic event in Paris was recorded vaguely and without revolutionary merit, but in fact, the ingenious efforts to preserve the Ottoman Empire's territorial integrity by bypassing the obstacle of Islam (with the fiction of an »admission to participate in the advantages« of the European – and Christian – system and public law) seemed useless. In 1896, Leonid Kamarowsky, a Russian internationalist, qualified the preservation of the empire's »existence« as »un mal et une erreur«: the empire, as a collective entity, was clearly an »anomalie en sein des peuples civilisés«,<sup>44</sup> and in Paris a mistake had been made. Despite the guarantees, false expectations would have arisen and, more generally, the relations with the Ottoman government would have been definitively compromised. Its sovereignty was deficient in spite of Western scholars' efforts to speak of *suzeraineté*,<sup>45</sup> Islam hollowed it out and carried on conditioning the political machine. Western consular courts remained in operation for all disputes with and between foreigners (resident or in transit on Ottoman territory) and the regime, the last bulwark of Western mistrust towards the Sublime Porte as a semi-civil state. In the meantime, entire socio-political bodies continued to detach themselves from the empire, »comme des pierres d'un édifice qui tombe en ruine«. So, why did the Great Powers decide to »assurer la vie« of an empire practically »incapable de vivre«?<sup>46</sup>

European historiography interrupted these reflections and did little to investigate the events of Paris in 1856, and internationalist scholarship

reacted to the text of the treaty dismissively, superficially, and, in many respects, this attitude served to mark 1856 as year zero of the new international law, of epochal change, of opening to the Other, and of overcoming the foundational paradigm of Christianity. Paradoxically, this fueled rough alignment with Turkey and strengthened misunderstanding.<sup>47</sup>

#### Snares, Dark Horses, and Europe's Reverse Gear

As an effect of the »coveted recognition as a European power«, the empire tried to overcome skepticism (and aversion) towards the humiliating terms of a difficult past. Terms like *nation*, *country*, and *culture*, could not be »just about a gang of bandits«. After the Ottoman bureaucracy had been dismantled, such concepts required revision.<sup>48</sup> A first strong signal of appropriation came in 1869, when these terms were synthesized in the Ottoman Nationality Law, which was a clumsy attempt to convert an unbearable dictionary and to instantiate, inside and outside the empire, an »imaginary Ottoman – and national – community«. <sup>49</sup> Suddenly, peoples of different creeds became intermingled, as the emergence of a global call created common ground and obliged them to share the same juridical and cultural space.<sup>50</sup> Then, the *Osmanlılık*, the top-down project »to create one Ottoman nation through the rule of law and promising to regard all Ottoman citizens as equal in rights and privileges in exchange for their fidelity and loyalty to the nation and the state«,<sup>51</sup> and the *Mecelle*, the »remarkable achievement«<sup>52</sup> of the civil codification project to integrate and strengthen both the state and civil society, made a triumphant entrance. After the »collision« with European law, modernization and centralization dynamics continued unabated.<sup>53</sup> Nationalization and codification, as »avant-garde« processes, clearly revealed the influence of Europe and blended two dark horses, nation and code, unknown to the

43 Cf. DERINGIL (2003).

44 KAMAROWSKY (1896) 401.

45 The European legal dictionary introduced the *suzeraineté* as »oriental« and hybrid category of sovereignty based on an institution of French feudal law, see Cf. AUGUSTI (2016).

46 KAMAROWSKY (1896) 403.

47 Cf. NUZZO (2012).

48 The reference was to the Greek rebels. See KECHRITIS (2014) 107.

49 ANDERSON (2009) 91. Cf. AUGUSTI (2017a) 79; AUGUSTI (2015); BREDI (2006).

50 Cf. TOPRAK (2007) 29 ss.

51 YAVUZ (2016) 441; TAGLIA (2016) 281.

52 RUBIN (2016) 845.

53 It happened with the adoption (with few modifications) of the Swiss Civil Code in 1926. See TANDOĞAN (1965–1966) 424 ss.



Ottoman traditions, with the texture of the Ottoman system. Even if, for Avi Rubin, Ottoman socio-legal change can be read as »a process of dynamic interaction between local and foreign forces, involving negotiations both between center and periphery and within the ruling elites«, and the challenge activated »Ottoman agency and inventiveness in the socio-legal field«,<sup>54</sup> in the end the undertaking did not prove successful for the empire. The Porte's traditional foundations started »to lose its cohesion, its inner strength, the basic rationale of its laws, and consequently, its powerful sense of identity«. According to Aral, this was the »background of a new era which ended with the destruction of the Ottoman society«. <sup>55</sup>

The first Western reactions to the Ottoman transformation were surprise and fear. In its rush to modernity, the empire could not do too much to build confidence with Europe: too many ventures, even if Western-inspired, could compromise old and new policies of Europe towards it. The intermediate geopolitical strategies remained, and the vacillating attitude of Europe towards the empire evidenced this. Everything showed renewed and widespread interest in the territorial change of the Ottoman space as an expression of the imperial security culture of the »club« of the Great Powers. Competitive and cooperative purposes drove that common European security culture, which was indeed, as Ozan Ozavci says, »global in scope« but nonetheless »imperial in character«. <sup>56</sup>

Whether European geopolitics were tense or stymied, European international law was quasi-indifferent, allowing the facts of 1856 and the personal initiatives of the empire to fade into the background. In 1873, Gustave Rolin-Jaequemyns, a Belgian internationalist, gathered the most famous and active European internationalists in Ghent to discuss the state of discipline and to imagine new paths for its future. <sup>57</sup> The *Institut de droit international* emerged, and within a few years it became the stronghold of scholarship on international law. In 1875 in The Hague, the internationalists paid attention to a critical (and pressing) question: could international law apply to non-

Christian states?<sup>58</sup> Nineteen years after Paris, the science of international law still lacked any effective non-Christian presence in the international system. In 1875, the Ottoman Empire, in spite of its personal certainties and modernization and Westernization projects, was just a »non-Christian state«. It was still out of the European loop, and international law sought a common juridical language to overcome its confessional limits.

While the *Institut* tried to combine theory with praxis carefully and reasonably, the Ottoman Empire drafted its own doctrine of international law. Without completely abandoning the feeling of being manipulated by great European powers, it questioned the feasibility of combining the two systems of regulating relations with the Other, the *Siyar* and European public law, in order to preserve trust with the West. Responsibility and proactivity were needed, recognizing »the reception, study, and implementation of the evolving and rapidly expanding international law as a kind of »technology transfer« on the side of the empire. <sup>59</sup> Incomprehension was the matter of capitulations. The fuel of Ottoman skepticism and the trigger of its frustration towards the West was the latent decision by European powers, in spite of new relationships, to preserve the regime. In a very short time, the conviction that concessions had »diminished the economic strength of the Empire and weakened Ottoman sovereignty« passed. »One of the greatest calamities faced by Islam today – Hakkı Paşa said – is the privilege enjoyed by aliens [in the Ottoman realms, and] the intrusions by consuls; consequently, the favours accorded by our forefathers as a matter of grace and benevolence are used as weapons against us«. The tension between the perception of capitulations as an instrument of duress, and the admission of the Ottoman Empire to the European concert as an equal member in 1856, confused the establishment, which strenuously continued its rush to modernity and to perfect its approach to international law in the »happy« conviction that »religious and political differences between states no longer constituted grounds for the exclusion of states from inter-

54 RUBIN (2016) 829, 846.

55 ARAL (2004) 468. According to Max Weber, the Ottoman reforms of the 19<sup>th</sup> century were entirely futile because they did not involve an overall extraction of religion from the sys-

tem, WEBER (1978) 822; RUBIN (2016) 842.

56 OZAVCI (2018) 2. According to ZIELONKA (2012) 502, Europe »look, talk and walk like empires«.

57 Cf. KOSKENNIEMI (2012) 24 ss.

58 BULMERINCQ (1888) 379–382.

59 ARAL (2016) 86.

national law and diplomacy«. »States, like humans, need to interact«, Hasan Fehmi Paşa wrote in 1884, and the empire had new reasons to believe it, re-establishing a system that, representing the *Dār al-islām*, had preferred in the past »to keep its relations with European states to a minimum«. <sup>60</sup>

These progressive (and optimistic) visions of international relations fed the Ottoman »elusive dream of sovereignty«, as Turan Kayaoğlu says, while the punishment for its »brutal« approach to the Western reforms started to appear. <sup>61</sup> In spite of all Westernization efforts, the empire did not appear ready to stay at the European level, its position in the international community proved weak and tired, its new arrangements did not work well for global competition, and it remained Muslim and, for this reason, un- or semi-civil. The collective authority of Europe ruled a new order: »new states would have been carved out of it«. <sup>62</sup> Finally, Europe emerged from apathy and was determined to intervene, threatening the empire »by its greed«. <sup>63</sup> The Parisian strategy of preserving the partition passed, while the Ottoman Empire came to understand that a people with a common identity was easier to govern through consent than coercion, and that legal standardization could work better than the despotic strategies of »divide and rule«. In the meantime, international law came down with a new instrument of action, namely humanitarian intervention: <sup>64</sup> »dans l'intérêt de civilisation et d'humanité«, <sup>65</sup> the concert could (and, now, had to) legitimately violate the integrity and independence of the empire.

Officially »in a state of liquidation«, to use an incisive expression of Rolin-Jaequemyns, the empire suffered the distorting effects of an improvised *turcophobia*, the result of rhetoric that disavowed the illusion of a coherent path of modernization, and it revealed the persistence of a hostile attitude towards Christians. Everything led to an »entente

mutuelle«, a great federation, a *peaceful change* of the Balkan area to the detriment of the empire. After the proclamation, »pure et simple«, of the decline of the empire, the new awareness was that the Turks had to return to Asia, »d'où ils sont venus«, and that Constantinople had to be declared a »ville libre placée sous la garantie des puissances«. <sup>66</sup> According to Rolin-Jaequemyns, a »commission européenne de curatelle« had to take office to watch over the execution of essential reforms and to represent the interests of Christians in the empire.

From October 1876 to January 1877, European delegates met in Constantinople to determine the destinies of the Ottoman provinces of Serbia, Montenegro, Bosnia, Herzegovina, and Bulgaria. The Ottoman Empire, through a concerted effort by the European powers, did not participate at the conference. Twenty years after Paris, all the principle points of guarantee and non-intervention were being rendered obsolete by practice. As Rolin-Jaequemyns wrote in 1876, »a l'indépendance du gouvernement turc, serait substitué une surveillance et même une ingérence constante de l'Europe«. <sup>67</sup> The empire's last-ditch effort was, in that embarrassing defeat of all its good intentions, the promulgation of the Ottoman constitution. According to Edward Mead Earle, the constitution belongs to the range of *Tanzîmât* initiatives, <sup>68</sup> but its short life and the anomalous process of its drafting (which was entrusted to a special commission nominated by the sultan himself) supported its strategic nature, in that it served to finally present Europe an image of the Ottoman Empire as an »equal player on a world stage of civilization«. <sup>69</sup> Thanks to the constitution, the empire officially proclaimed the *Osmanlılık* and translated it into the prototype of an Ottoman parliament, the third dark horse, and, as Bernard Lewis said, »le moins intelligible« for the Muslim observer. <sup>70</sup>

60 ARAL (2016) 87, 92.

61 KAYAOĞLU (2010) 104; DUMONT (1989).

62 HOLLAND (1885) 2.

63 KARPAT (1972) 243.

64 ROLIN-JAEQUEMYS (1876b) 673. Cf. KOFI (1999) 21–60; SIMMS / TRIM (eds.) (2010); RODOGNO (2012); GOZZI (2006) 24–25.

65 ROLIN-JAEQUEMYS (1876c) 524. AUGUSTI (2013) 332 ss.

66 MÉRIGNHAC (1912) 387.

67 ROLIN-JAEQUEMYS (1876a) 293 ss., 373.

68 MEAD EARLE (1925) 73.

69 MAKDISI (2002) 601. On the constitutionalization program of the empire, see PETROSYAN (1983). For ÖZBUDUN / GENÇKAYA (eds.) (2009) 7, the constitutional process in Turkey started in the 19<sup>th</sup> century, with the *Sened-i Ittifak* of 1808 first and the

Firmans of 1839 and 1856. They »paved the way for a still more important step, the promulgation of the first Ottoman Constitution in 1876«.

70 LEWIS (1984) 219.

The moment »to regulate the disintegration of Turkey«, however, arrived in 1878.<sup>71</sup> Germany, France, Great Britain, Austria-Hungary, and Italy adopted the Russian-Ottoman Treaty of San Stefano and, in Berlin, with the participation of Russia and the Ottoman Empire, formalized their second formal commitment towards the Eastern Question and sanctioned the definitive partition of the empire. The treaty formally recognized the independence of the *de facto* sovereign principalities of Romania, Serbia, and Montenegro, together with the autonomy of Bulgaria. The proclamation of the independence of these principalities was connected to the processes of nation-building in the Balkans, fostered by Europe thanks the inner support of *millet*, and used as a wedge to break and definitively disrupt the Ottoman arrangements. They were not only a series of unique events, but also a sample of analogical events that exemplifies the specificity of a macro-regional unit. This occurred in the context of the general process of nations' formation as a genuine part of European history.

#### Christianity as Persistence

In the residual territories of the empire, the capitulations and the Western consular jurisdictions remained a hot point of the betrayal. This resolute conservative policy, which was common in Europe and America, stole sovereignty from the Sultan in the practice of judicial functions and was like a sword in the hip of the empire, a proof of its substantial weakness and defeat and of the continuous European fiction, the grey space between Western international law and colonial procedures. Like the Orient Express, the long-distance passenger train service from Paris to Constantinople, created in 1883 as a symbol of continuity between Europe and the modern rest of the Ottoman Empire, consular jurisdictions extended European sovereignty over Ottoman territories as an incredible long grasp of the Great Powers.<sup>72</sup> The moment when the empire became aware of this, its

conduct towards Europe changed completely. Ottoman ruling elites came to believe that the ambitious European-inspired reforms they had instituted were ineffective as a defense against European imperialism. The empire continued to suffer territorial losses, mistreatment at the hands of European diplomacy, and acute social and economic problems.

In these seesawing strategies towards the Eastern Question, Europe maintained a single, well-disguised point of coherence: the insurmountable and persistent paradigm of Christianity. Like a lighthouse in a storm, Christianity, in spite of the efforts of international law to universalize and cross confessional boundaries, was still able to orient decisions-making processes in Europe, to mark the betrayal of the Ottoman Empire, and to feed the mistrust of Islam. Christianity, directly and indirectly, still worked and conditioned international affairs and, in particular, international relations with the Islamic theocracy of the Ottoman Empire. Complicated by new reflections on civilization and solidarity,<sup>73</sup> and translated in complex (and ambiguous) institutions of international law, Christianity did not disappear; it remained transparent, sometimes as an alibi, and it insinuated itself continually in many global phenomena, all ascribable to a kind of international »protectorate«. Both the treaties of Paris (1856) and Berlin (1878) promoted the religious equality of all Ottoman subjects, but they also conserved this kind of »international protectorate« over the Christians (Ottoman subjects and Western traders entering the Ottoman Empire) as a device to a) legitimate all the cases of intervention first, reformulated as humanitarian intervention; b) support nationalistic aims; and c) confirm the capitulation regime and European consular jurisdictions. The same device of the international protectorate was visible in the colonial policies »missions for the civilization«,<sup>74</sup> formally inspired by the spirit of compassion and generosity of the civil (Christian) states towards barbarous populations of the Ottoman *vilayet* and provinces of North Africa.

71 This project was already present in Paris: there were four partition projects, and they would be revealed 40 years after Paris by KAMAROWSKY (1896) 405–414. These interesting and ambitious projects of a »confédération balkanique«, in that climate

of acceleration and international competition, remained however »dans le domaine des utopies«. Cf. ANONIMO (»par un Latin«) (1903) 6–7.

72 On this point, see AUGUSTI (2017b) 2.

73 Cf. WOOLSEY (1871) 14 ss.

74 The so-called »White Man's Burden« of RUDYARD KIPLING (1899). Cf. COSTA (2004/2005) 186.

This was the context throughout the young and restless Ottoman leadership of the early twentieth century, which became mistrustful of the game of international law. To make matters worse, Kemalist culture was gradually maturing. The new generation wanted to reshape Ottoman/Turkish identity. Resentment, rage, disillusion, frustration, and anguish became the common sentiment of the wounded empire toward Europe. The first act of Ottoman redemption was revolt against the capitulations, recognized as a »humiliating system with deleterious economic, legal and political consequences«, but the formal abrogation of the regime came too late, in 1923, with the Treaty of Lausanne, thanks to the obstinacy of a large Ottoman delegation.<sup>75</sup>

While the Ottoman Empire accelerated the emancipation from Europe in the illusion of having filled the civilization gap and rethought old and new strategic alliances, the prestige and standing of the Sultan grew in the *Umma*, the Muslim community. In the Islamic imaginary started reviving the desire for a caliphate. »The incorporation of the non-European world in the new global society«, Adam Watson said, represented the empire's just desserts.<sup>76</sup> Muslims saw the policies of the Sultan towards Christian subjects, which were forward-looking and protected civil liberties, as more suitable than those of the British, French, and Russian Empires toward Muslim subjects. While Europe organized humanitarian intervention in the East to protect Christians, Muslim communities in India and Asia asked for Ottoman humanitarian intervention against Christian colonizers.<sup>77</sup> This state of things, this germ of pan-Islamism, encouraged the investiture of the Sultan as Caliph and the identification of the Ottoman Empire with the »greatest Muslim Empire in the world«. <sup>78</sup> But the events of 1914 and, then, the Ottoman involvement in the First World War, was the final act of the empire. The final decay of its balanced role in Europe marked the acceleration toward the reshaping of its structure, the redrawing of its borders, the invention of Turkish nation, the displacement of Islam, and the proclamation of the republic. Max von Oppenheim, German diplomat and advisor to the Kaiser, believed that a

well-orchestrated propaganda campaign would stir up a mass Muslim uprising against Britain and France from within colonial territories such as India, Indo-China, and North and West Africa. With the certainty of having a secret weapon with Islam, the Kaiser convinced the Sultan to join the World War, declaring *jihad*<sup>79</sup> to be the last »political instrument in the hands of a modern Mohammedan government, [...] taken from the arsenal of a theocratic form of sovereignty«. <sup>80</sup> Misperception and the outcome of the war led the Sultan to adjust the empire's recent European past: losing his status of emperor along with his territories, his respectability as Caliph shattered, suffering a last, deeper, disappointment.

### Conclusions

Old Ottoman/Turkish historiography retraced the events of the last two centuries with emphasis on the significant continuities in the economic, social, and cultural spheres from the late-Ottoman through the early-republican periods. No specific attention has been devoted to the examination of frictions, discontinuities, and rifts. Fortunately, new studies are approaching these processes from a more multi-dimensional and world-historical perspective, starting to reconsider this complex phase of transition.<sup>81</sup> A new, entangled historiographical reflection is emerging that is able to connect, in a global approach, different dimensions, perspectives, and narratives (internal and external) of the crisis and the end of the Ottoman Empire.

The history of the end of the Ottoman Empire is definitely an interstitial history because of its interstitial position. Western legal historiography in the last fifty years has started to show growing interest for this approach. The emergence of the Eastern Question and the encounter with the Other tested the Restoration order; the resolutions of European »Congress system«; the solidity of the Christian paradigm; the endurance of Western legal theories, institutions, and rule of law; the certainties of scholarship; and the credibility of international law as a science compared to international policies.

75 AUGUSTI (forthcoming).

76 WATSON (1984) 28.

77 Cf. ÖZCAN (1997).

78 AYDIN (2013) 166.

79 LÜDKE (2016); RYAD (2016).

80 Cf. SNOUCK HURGRONJE (1915) *Introduction*, iii.

81 See BEŞİKÇİ (2012) 12.

Recent research has disclosed these connections and traced their relations to habitual geopolitical strategies in the area, showing a renewed and widespread European core interest in the territorial change of the Ottoman space as an expression of the imperial security culture of the club of the Great Powers. This view has opened more interesting (and rarely entertained) perspectives on the end of the Ottoman Empire, venturing into the area of international law proper.

In the 19<sup>th</sup> century international law was still appropriated by praxis and theories that were American- and Euro-centric and confessionally conditioned. As Arnulf Becker Lorca said, it contained »both regimes of equality and inequality, both conferring and denying sovereignty«;<sup>82</sup> it moved between inclusion and exclusion and, because of this, it consecrated itself to misunderstanding. The latter emerged in 1856 with the admission of the Ottoman Empire to the advantages of the public law and system of Europe. Like all peoples of the world, the Ottoman Empire could benefit from the twin forms of Western modernity: international law and sovereign statehood. While inter-

national law provided the *lingua franca* to take part in the universal dialogue and the first global competition, nation-state building became »the center of political imagination« as »natural, necessary, and inevitable« process towards progress.<sup>83</sup> But, the »dark side«<sup>84</sup> of this illusory policy of inclusion was the gradual deactivation of Ottoman imperial devices, the aggressive insertion of Western »dark horses« (nation, state, sovereignty, code, constitution, parliament, etc.) in its obsolete system, intervention policies, and the territorialization plan within its borders through the claims of premature, unprepared, and fictional nation-states, condemned to the penetrating tutelage of the Great Powers. The inevitable collapse of the Ottoman apparatus became one of the most interesting observation points in recent thought on the connections between the international-law and imperialism discourses,<sup>85</sup> while the awareness and disappointment of Ottoman/Turkish scholarship give us some accurate instruments to understand the actuality of the Middle East crisis.



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82 BECKER LORCA (2010) 477, 520–521.

83 BURBANK/COOPER (2010) 2–3. See  
ESLAVA/OBREGÓN/URUEÑA (2016)  
26; PAHUJA (2011) 38.

84 KENNEDY (2004).

85 See KOSKENNIEMI (2012); ANGHIE  
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