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ORIGINAL ARTICLE

The Probate Regime: Enchanted Bureaucracy, Islamic Law, and the Capital of Orphans in Nineteenth-Century Egypt

Adam Mestyan[1] and Rezk Nori[2]

[1]History Department, Duke University, Durham, NC, USA and [2]Center for Contemporary Egyptian History, Egyptian National Library, Cairo, Egypt
Email: adam.mestyan@duke.edu

Abstract

In this article, we explore the "probate regime," an administrative field of government activity of legally transferring, taxing, and administering bequests. As an example, we study the changes of the Egyptian probate regime in a longue durée perspective, with a focus on the nineteenth century when Egypt was a sub-Ottoman "khedivate." We argue that the rationalization and expansion of the previously Ottoman administration of bequests, unlike Western bureaucracies, retained religious norms in the 1850s-1860s. In the context of Egyptian legal transformation, the change in the probate regime represents a case when Islamic norms became contested between administrative bodies of the government and the Muslim judge (*qadi*). Drawing on novel archival research in Egypt and elsewhere, we first consider the institutions of the Ottoman probate regime (probate judge, fees, and a probate bureau). Next, we zoom in on the way the khedivial probate bureau became a large, de-Ottomanized, Muslim administration of death by the 1870s in a partnership between khedives and local jurists. The khedives also considered the orphans' wealth under the care of the bureau a source of government capitalism. Despite the abolishment of the probate bureau in 1896, the khedivial transformation ensured that Muslim principles remained normative during the British occupation which ushered in a new division of law into "religious" and "civil" legal domains.

Probate records are an important source in many fields of historical research. Social and cultural historians, sociologists, and economists often draw on probate records as rich sources of qualitative and quantitative data, while legal scholars frequently examine records of probate litigation in order to trace

changing historical conceptualizations of property.[1] By way of definition, a probate procedure can be understood as the legal process whereby an authority transfers or confirms the transfer of title of a deceased person's bequest to the heirs and beneficiaries, with or without a testamentary instrument such as a will.[2] Thus, for instance, in Britain today, the "probate" is a legal document type "issued by a Probate Registry which confirms the validity of a will and is issued to an executor."[3] In general, the goal is to clear title to inherited wealth. The procedure may include the enumeration of the assets, the validation of the will (if there is one), the settlement of debts, the transfer of title to the rightful heirs, and the appointment of trustees for the bequest if the heirs are missing or have limited legal ability. Such a procedure is not necessary in cases and legal systems in which title transfers automatically to heirs (*ipso jure*). Probate records may include the will, the inventory and stated value of the bequest, the documents issued by the court, registration of taxes, and related correspondence. Although probate procedures are still part of our everyday life, the detailed, minutely itemized inventory of personal estate is a distinct historical phenomenon, which had its global golden age between the sixteenth and nineteenth centuries.[4]

We suggest that the probate procedure and the trusteeship of bequests comprise a distinct administrative field, often contested between society and government in history. Thomas Piketty conceives of a shift in "inequality regimes" in global economic history from "tertiary societies" to "ownership societies."[5] In this article, we use the word "regime" in a more restricted sense. In speaking of a "probate regime," we conceive of a field of fiscal government that manages the dead's wealth. This array of postmortem legal-fiscal activities is an institutional field of legally transferring, taxing, and administering bequests (including the appointment of trustees), organized by moral-legal

[1] Recent publications include Neil Cummins, "Where Is the Middle Class? Evidence from 60 Million English Death and Probate Records, 1892–1992," *The Journal of Economic History* 81 (2021): 359–404; Thomas Piketty, *Capital and Ideology* (Cambridge, MA: Harvard University Press, 2020), 130–32, 135, 139; Lloyd Bonfield, *Devising, Dying and Dispute: Probate Litigation in Early Modern England* (London: Routledge, 2012), 3; Nelly Hanna, *In Praise of Books: A Cultural History of Cairo's Middle Class, Sixteenth to the Eighteenth Century* (Syracuse: Syracuse University Press, 2003); and Fatma Müge Göçek, *Rise of the Bourgeoisie, Demise of Empire: Ottoman Westernization and Social Change* (Oxford: Oxford University Press, 1996). See more references in the following notes.

[2] Peter V. Ross, *Probate Law and Practice: A Treatise on Wills, Succession, Administration and Guardianship with Forms* (San Francisco: Bancroft-Whitney Company, 1909); and Karen Ann Rolcik, *How to Probate and Settle an Estate in Texas* (Naperville: Sphinx Publishing, 2002).

[3] Wills and Probate Online, Probate Registry, "Useful terms," https://probatesearch.service.gov.uk/Support/Help (August 15, 2021).

[4] Gloria L. Main, "Probate Records As A Source for Early American History," *William and Mary Quarterly* 32 (1975): 89–99; Anton Schuurman and A. M. van der Woude, "Editors' Introduction," in *Probate Inventories: a New Source for the Historical Study of Wealth, Material Culture And Agricultural Development,* ed. Anton Schuurman and A. M. van der Woude (Utrecht: HES, 1980), 1–5, at 3–4; and Suri Noémi, "A *legalitas*-tól a modern öröklési eljárás megteremtéséig," *Iustum Aequum Salutare* 15 (2019): 65–81.

[5] Piketty, *Capital and Ideology*, Part One.

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principles and the economic interests of government.[6] Katharine Pistor argues that "legal encoding," guaranteed by the state, makes capital durable through generations.[7] This guarantee is an administrative framework whose capacity conditions a government's control over the transgenerational transmission of assets. Societies developed legal-bureaucratic tools for controlling the economic dimension of death. The probate regime as a category of analysis helps us to trace how norms about the transmission of property expressed in changing regulations and institutional practices. Thus, we can speak of successive probate regimes in time, which are dependent on historically changing legal and fiscal logics of government.[8]

In this article, we study the Egyptian probate regimes between the thirteenth and the twentieth centuries, with a focus on the nineteenth century, when Egypt was a "khedivate," an autonomous province in the Ottoman Empire, occupied by the British Empire from 1882. Theorists often argue that the British occupation caused a "rupture" in the legal history of nineteenth-century Egypt when "the colonial state" changed Islamic law.[9] We argue that the pre-occupation khedivial rationalization and expansion of the Ottoman probate regime represents a hitherto unstudied bureaucratic transformation in which local administrative bodies gradually took over functions of the Muslim judge (*qadi*). We follow a three-step process, passing from (1) the Ottoman imperial probate regime to (2) the khedivial rationalized and centralized one, and on to (3) the decentralized local one after 1896 when British advisors and Egyptian notables abolished the originally Ottoman probate institutions. The Ottoman imperial probate regime had rested on three elements: a probate judge (and judges applying Islamic law in general), probate fees, and a fiscal probate bureau.[10] Between the 1850s and the 1880s,

[6] In this regard, our study explores the economic-institutional dimension of "necropolitics," a concept that Achilles Mbembe poetically defined as the authority to decide who lives and who dies, and which scholars extend to the study of the relationship between foreign rule and local burial practices. Sarah Balakrishnan, "Building the Ancestral Public: Cemeteries and the Necropolitics of Property in Colonial Ghana," *Journal of Social History* 56 (2022): 89–113.

[7] Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton: Princeton University Press, 2019), 4.

[8] Today in the United States of America an estate can be transferred by contract, by trust, by law (surviving owners), and by probate. Strictly speaking, the category of the probate regime would only apply to the last case, but agencies of the government also ensure that the other types remain valid, executed, taxed, and recognized. Hence, we suggest that any postmortem estate transfer may be considered as falling within the category of the probate regime.

[9] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford: Stanford University Press, 2012), 1, 10; and Iza R. Hussin, *The Politics of Islamic Law - Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: University of Chicago Press, 2016), 10, 217.

[10] Studies include Lajos Fekete, "Egy vidéki török úr otthona a XVI században," *MTA Nyelv- és Irodalomtudományok Osztályának Közleményei* 15 (1959), 87–106; Ömer Lütfi Barkan, "Edirne Askeri Kassamı'na Ait Tereke Defterleri (1545–1659)," *Belgeler* 3 (1966), 1–479; André Raymond, *Artisans et commerçants au Caire au XVIII^e siècle* 2 vols (Damascus: Presses de l'Ifpo, 1973); Said Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri: Sosyo-ekonomik Tahlil* (Istanbul: Osmanlı Araştırmaları Vakfı, 1995); Colette Establet and Jean-Paul Pascual, *Familles et fortunes à Damas: 450 foyers damascains en 1700* (Damascus: Presses de l'Ifpo, 1994); Gilles Veinstein and Yolande Triantafyllidou-Baladié, "Les inventaires après décès ottomans de Crète," in *Probate Inventories*, 191–205; Pál Fodor, "Fur of Lynx and Arable Land: The Wealth of an Ottoman Tax Farmer in the

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khedivial bureaucrats and Muslim jurists together expanded the Ottoman probate bureau into a general, central, localized administration of death in Egypt. In this regard, this article contributes to death studies in Egypt with the often ignored fiscal-institutional dimension.[11] After 1896 a decentralized and vernacular probate regime started through trusteeship councils and *qadi* courts, which were now labelled "religious" as opposed to "civil" government courts. Islamic legal norms about intergenerational wealth transmission did not change during these large transformations. What changed was the regulatory and bureaucratic institutional environment: the scope of legal-fiscal administration, through which these legal norms were enforced.[12]

Egypt is an unusual example with which to introduce a new analytical concept, given that much historical-economic theory, including notably the Weberian theory of bureaucratic rationalization, is typically premised with reference to West European case studies.[13] These theories have little to say about putatively "irrational" and "patrimonial" non-European bureaucracies, and instead generally focus on the legal history of Western Europe and the United States of America, recounting the gradual exclusion of ecclesiastical courts from the probate process and the extension of bureaucratic power over estates.[14] The disenchantment of probate bureaucracy was accompanied

Early Seventeenth Century," *Oriens* 37 (2009): 191–208; Pascale Ghazaleh, *Fortunes urbaines et stratégies sociales - Généalogies patrimoniales au Caire, 1780–1830* 2 vols (Cairo: Ifao, 2010); and Metin M. Coşgel and Boğaç A. Ergene, "Inequality of Wealth in the Ottoman Empire: War, Weather, and Long-Term Trends in Eighteenth-Century Kastamonu," *The Journal of Economic History* 72 (2012): 308–31. Suraiya Faroqhi warns about the limits to the value of such records in her *Approaching Ottoman History* (Cambridge: Cambridge University Press, 1999), 56–57.

[11] Even survey articles on death studies ignore the postmortem economy, Shane Minkin, "History from Six-feet Below: Death Studies and the Field of Modern Middle East History," *History Compass* 11 (2013): 632–46.

[12] For the khedivate's bureaucracy, Hunter, *Egypt under the Khedives, 1805–1879: From Household Government to Modern Bureaucracy* (Cairo: American University in Cairo Press, 1999); Kenneth Cuno, *The Pasha's Peasants: Land, Society, and Economy in Lower Egypt, 1740–1858* (Cambridge: Cambridge University Press, 1992); Ghislaine Alleaume, "Les sources de l'histoire économique de l'Égypte moderne aux Archives nationales du Caire, 1: le Bureau du commerce et des ventes," *Annales Islamologiques* 27 (1993): 269–90; Khaled Fahmy, *In Quest of Justice: Islamic Law and Forensic Medicine in Modern Egypt* (Berkeley: University of California Press, 2018); and Adam Mestyan, "Seeing Like a Khedivate: Taxing Endowed Agricultural Land, Proofs of Ownership, and the Land Administration in Egypt, 1869," *Journal of the Economic and Social History of the Orient* 63 (2020): 743–87.

[13] Max Weber, *Economy and Society* 2 vols (Berkeley: University of California Press, 1978), 2:1400–1401.

[14] Albert DeLange, "Origin and Growth of Probate Procedure," *American Bar Association – Section of Real Property, Probate and Trust Law* (1938): 102–4; Lewis M. Simes and Paul E. Basye, "The Organization of the Probate Court in America: I," *Michigan Law Review* 42 (1944): 965–1008; Lewis M. Simes and Paul E. Basye, "The Organization of the Probate Court in America: II," *Michigan Law Review* 43 (1944): 113–54; Adeline Daumard, "Paris et les archives de l'Enregistrement," *Annales – Économies, sociétés, civilisations* 13 (1958): 289–303; Steiner Philippe, "L'héritage au XIXe siècle en France - Loi, intérêt de sentiment et intérêts économiques," *Revue économique* 59 (2008): 75–97; and Stefania Licini, "Assessing Female Wealth in Nineteenth-Century Milan, Italy," *Accounting History* 16 (2011): 35–54.

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by inheritance laws and new imaginations about economic justice in Western European and American societies from the 1880s.[15]

Our example of nineteenth-century Egypt, by contrast, shows a government rationalization and bureaucratic expansion that included Islamic norms. In legal terms, the great transition from the 1850s was that the administration of revealed law (its norms) in matters of probate occurred increasingly through the government instead of the *qadi*'s court. As opposed to Weberian disenchanted modernization, we call this transformation an "enchanted" bureaucratization, which was rational and universalist, and which embodied a local-national project, but retained religion and the acceptance of social inequality at the normative level. The idea of Muslim bureaucratic rationalization prompts larger questions about the competition between government and jurists over revealed law in modern Muslim polities. While we cannot discuss all aspects of this complex problem, our example is a story about how *shari'a* norms became enforced through the government's administrative-legal forums (*siyasa*), similar to earlier situations in world history in which Muslim rulers distributed justice based on revealed law without the evidentiary requirements of the *qadi*'s court.[16]

Following the lead of earlier researchers, we build this article on an important distinction between norm and practical institutionalization, which may help historians of other regions and epochs.[17] This distinction has often been overlooked by historians of Muslim societies, largely because the term *bayt al-mal* (literally, "the house of wealth" in Arabic) is generally identified to mean a Muslim government's "treasury," although there is no documentary evidence of an actual treasury under this name since the ninth century in any Muslim polity. In fact, the term *bayt al-mal* carries two meanings, one referring to a norm and the other referring to an institutional practice.

First, Muslim jurists have long used the phrase *bayt al-mal* with reference to a legal doctrine, with the term denoting the virtual depository of property rights over things that should be used for the benefit of the whole Muslim community. This doctrine of common benefit also includes a moral form of legal protection over properties belonging to members of the community with incomplete legal capability.[18] A core value is the protection of the wealth of

[15] Jens Beckert, *Inherited Wealth* (Princeton: Princeton University Press, 2008), 4–5.

[16] Yossef Rapaport, "Royal Justice and Religious Law: Siyasah and Shari'ah under the Mamluks," *Mamluk Studies Review* 16 (2012): 71–102; and James Baldwin, *Islamic Law and Empire in Ottoman Cairo* (Edinburgh: Edinburgh University Press, 2017), 68–71; see more examples in Fahmy, *In Quest of Justice,* 126–27.

[17] We follow the afore-cited works of Fekete and Barkan, plus Claudia Römer, "Zu Verlassenschaften und ihrer fiskalischen Bearbeitung im Osmanischen Reich des 16. Jhs," *Wiener Zeitschrift für die Kunde des Morgenlandes* 88 (1998): 185–211; Pál Fodor, *The Business of State - Ottoman Finance Administration and Ruling Elites in Transition (1580s –1615)* (Berlin: Klaus Schwartz Verlag, 2018), 125–73.

[18] Abu Yusuf, *Kitab al-Kharaj,* ed. Muhammad Ibrahim al-Banna (Cairo: Dar al-Islah, 1981), 176, 189; Abu Ya'la b. al-Farra' al-Qadi al-Hanbali, *Al-Ahkam al-Sultaniyya*, ed. Muhammad Hamid al-Fiqi (Cairo: Maktabat wa-Matba'at Mustafa al-Babi al-Halabi wa-Awladihi, 1938), 235; Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London: Croom Helm, 1988), 8–9,

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orphans, which in Islamic law means all legally minor children whose father has died.[19] We call this collection of norms "the doctrine of the Muslim fisc," which is to say the doctrine of a virtual treasury.[20]

The second meaning of the Arabic phrase *bayt al-mal* (also in Ottoman *beytülmal, beyt-i mal, baytmal*) is a bureaucratic practice embodied in institutions in the medieval Mamluk, Ottoman, khedivial, and even today's Saudi polities: a fiscal office in charge of heirless estates and estates with heirs whose legal capability is incomplete such as orphans, minors, slaves, absent owners, and missing persons. For lack of a better English word, we call these fiscal institutions "probate bureaus."[21] When talking about the Ottoman version of this institution we write *beytülmal* in contemporary Turkish orthography and when we refer to the khedivial bureau we write *baytmal*. We prefer to denote the legal doctrine of the fisc as *bayt al-mal* in Arabic transliteration. The governments delegated only the responsibilities of bequests following from the doctrine of the Muslim fisc to the probate bureaus, while the rest (for instance, agricultural land tax) was administered by other fiscal units. That is, various government bureaus—the treasury, the probate bureau, the *qadi*—executed the *bayt al-mal* doctrine in administrative practice. In the Ottoman and khedivial eras, the probate bureaus also intervened in cases of bequests where the deceased had died owing money or property to the government and private individuals. These offices in the Mamluk, Ottoman, and khedivial polities worked based on the assumption that the *bayt al-mal* is the legal heir of heirless estates and heirless parts of estates; that is, that the fisc owns such assets.[22]

In the first section of this article, we briefly describe the Ottoman probate regime and its actual work in the Egyptian province from the time

89–91; Adam Sabra, "Public Policy or Private Charity? The Ambivalent Character of Islamic Charitable Endowments," in *Stiftungen in Christentum, Judentum und Islam vor der Moderne,* ed. Michael Borgolte (Berlin: Akademie Verlag, 2009), 95–108, at 106.

[19] The ultimate model of the fatherless orphan in Islam is the Prophet Muhammad himself.

[20] Jean Deny, *Sommaire des archives turques du Caire* (Cairo: Ifao, 1930), 115; *Encyclopaedia of Islam – First Edition* (hereafter EI1), "bait al-mal" (C.H. Becker); *Encyclopaedia of Islam – Second Edition* (hereafter EI2), "bayt al-mal" (N.J. Coulson et al.) ; Nicolas Michel, *L'Égypte des villages autour du seizième siècle* (Louvain : Peeters, 2018), 130. This doctrine has some similarities with how medieval Christian jurists understood the fiscus. Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1997), 177–88, but the concept of *bayt al-mal* represented the community against the government until Ottoman jurists identified it with the government in the sixteenth century.

[21] The Saudi probate bureau in Mecca handled holdings to the value of approximately $45,000,000 in 2018. *Sabq*, November 12, 2018, https://tinyurl.com/y622ldgs (November 8, 2020).

[22] These are the principles of the Shafi'i and Maliki versions of Islamic legal interpretation, on which the Ottomans relied despite their preference for Hanafi rules in other administrative issues. Hanafi and Hanbali jurists deny that the fisc is the owner and argue for its mere guardianship. Abu Yusuf, *Kitab al-Kharaj*, 361; Al-Dawudi (ed. Farhat al-Dishrawi), "Kitab fi al-Amwal wa-l-Makasib," *Hawliyyat al-Jami'a al-Tunisiyya* 4 (1967): 83–100, at 85; Ibn Mammati, *Kitab Qawanin al-Dawanin* (Cairo: al-Jam'iyya al-Zira'iyya al-Malakiyya, 1943), 319; Hasan Khalil Muhammad, "Sijillat Mahkamat al-Qisma al-'Arabiyya, 1560–1880" (MA thesis, Cairo University, 1997), 201. Some incorrectly claim that all Sunni schools agree that the *bayt al-mal* is the guardian of heirless estates. Ahmad al-Daghistani, *Al-Mawarith fi al-Shari'a al-Islamiyya 'Ala al-Madhahib al-Arba' wa-l-'Amal 'Alayhi fi al-Mahakim al-Misriyya* (Cairo: Jami'at al-Azhar, 2002), 96.

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of the sixteenth-century Ottoman conquest onwards. The exploration of the institutional elements that comprised this imperial regime (the probate judge, fees, and the probate bureau) is indispensable for an understanding of its transformation to the khedivial probate regime in the nineteenth century. In the second section, we describe the khedivial regulatory rationalization and expansion of the probate bureau, which changed from a provincial *beytülmal* to a large, centralized, expanding administration of death. Next, in the general context of the 1860s and 1870s legal reforms and new legal forums, we highlight the birth of the trusteeship council (*majlis hasbi*) in Egypt, which was initially an administrative means for moral supervision over elite heirs and which challenged the *qadi*'s jurisdiction. At the end, we show how the British occupation enabled the abolition of the khedivial probate bureau in the 1890s, leaving just the trusteeship councils, which have remained characteristic of the Egyptian probate regime until today.[23]

The Ottoman Probate Regime in Egypt

The Ottoman imperial project, which started as a series of conquests in Asia and Europe in the fourteenth century and expanded to Africa in the sixteenth century, marked a new way of thinking about the relationship between the wealth of the dead and Muslim government. The Ottomans integrated the doctrine of *bayt al-mal* into their legal and fiscal administration, and they started to collect fees for the transmission of title of bequests. In addition, confiscation (Ottoman *müsadere*) became an integral part of this imperial probate regime, with confiscated bequests being carefully surveyed, registered, and taxed.[24] The aim of the Ottoman probate regime was not the complete legibility of all the dead and their wealth (although we can find sultanic instructions about universal supervision) but rather the fiscal surveillance over the military, high bureaucrats, and the economic and cultural elite to obstruct aristocratization (this obstruction was demanded by dynastic-imperial interest) and to protect orphans and their wealth (demanded by Muslim jurists to enforce the doctrine of *bayt al-mal*).

[23] We build our study on the pioneering work of two Egyptian historians: 'Imad Badr al-Din Abu Ghazi, "Watha'iq Bayt al-Mal fi al-Arshif al-Misri," *Majallat Kulliyat al-Adab* (1997): 135–79; and 'Isam Ahmad Husayn 'Isawi, "Sijillat Bayt al-Mal fi Misr fi al-Fatra Min 1252/1836 Ila 1320/1902" 2 vols (PhD diss., Cairo University, 2001). Next to our own research, we rely on 'Isawi's work, which is a unique, rich descriptive source. Historians of orphans somewhat misleadingly translate *majlis hasbi* as "probate court," see Mine Ener, *Managing Egypt's Poor and the Politics of Benevolence, 1800–1952* (Princeton: Princeton University Press, 2003); Jacqueline Gibbons, "Orphanages in Egypt," *Journal of Asian and African Studies* 40 (2005): 261–85; Beth Baron, *The Orphan Scandal: Christian Missionaries and the Rise of the Muslim Brotherhood* (Stanford, California: Stanford University Press, 2014); and Ahmed Fekry Ibrahim, *Child Custody in Islamic Law: Theory and Practice in Egypt since the Sixteenth Century* (New York: Cambridge University Press, 2018), 165–91.

[24] Fodor, *The Business of State,* 125–70; Yasin Arslantaş, "Making Sense of *Müsadere* Practice, State Confiscation of Elite Wealth, in the Ottoman Empire, circa 1453–1839," *History Compass* 17 (2019): 1–11.

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The Ottoman logic differed from the moral economy of bequests in the earlier Muslim polities. Next to the norms that constituted what David S. Powers calls the "the Islamic inheritance system," the early jurists' attention to the orphans' bequests (beyond the actual probate procedure) had acquired a form of bureau, perhaps often a temporary one, called also *bayt al-mal* in early Muslim polities.[25] For instance, available evidence shows that the *bayt al-mal* offices in Mamluk Jerusalem, Damascus, and Cairo between the thirteenth and early sixteenth centuries had been active economic actors, distinct from the government.[26] Under the joint control of Muslim jurists and Mamluk military officers, the bureau had represented the community as the legal heir (*warith*) of Muslim and Christian heirless estates.[27] The Cairo bureau had even maintained a limited mini-market of agricultural land in the late fifteenth century.[28]

The Ottoman empire-builders in the fifteenth and sixteenth centuries, however, claimed that the government, and not the jurists, represented the community in economic matters. They did not allow the existence of a post-mortem mini-economy outside of government control.

The Ottomans installed three institutional elements to administer the wealth of the dead: (1) a specialized probate judge (*qassam*), or at least the role of such a judge, who applied the Islamic rules of inheritance and knew mathematics well; (2) administrative fees associated with the circumstances of death and the transfer of title, especially the probate fee (*resm-i qismet*); and (3) a probate bureau (*beytülmal, beytmal*), which executed orders. This imperial machinery was supposed to collect and channel wealth (including

[25] David S. Powers, "The Islamic Inheritance System: A Socio-Historical Approach," *Arab Law Quarterly* 8 (1993): 13–29; and Mahmoud Yazbak, "Muslim Orphans and the Shari'a in Ottoman Palestine According to Sijill Records," *Journal of the Economic and Social History of the Orient* 44 (2001): 123–40.

[26] Although earlier researchers interpreted these offices as "treasury," this was clearly not the case. Hassanein Rabie, *The Financial System of Egypt* (London: Oxford University Press, 1972), 146–49; and Huda Lutfi, *Al-Quds al-Mamlukiyya – A History of Mamluk Jerusalem Based on the Haram Documents* (Berlin: Klaus Schwartz Verlag, 1985), 180. Historians in recent years cautiously use "public treasury" such as Tsugitaka Sato, *State and Rural Society in Medieval Islam* (Leiden: Brill, 1997), 189, 226; Sabra, "Public Policy or Private Charity?" 100; Abu Ghazi, "Watha'iq Bayt al-Mal"; and Christian Müller, "Constats d'héritages dans la Jérusalem mamelouke: les témoins du cadi dans un document inédit du Haram al-Sharif," *Annales Islamologiques* 35 (2001): 291–319, at 293. Müller still calls this institution *Staatskasse* at times; for instance, in his *Der Kadi und seine Zeugen: Studie der Mamlukischen Haram-Dokumente aus Jerusalem* (Wiesbaden: Harrassowitz, 2013), 450 ff. For documentary evidence, see Lutfi, *Al-Quds al-Mamlukiyya*, 186–92; 'Imad Badr al-Din Abu Ghazi, "Mulahizat 'ala Ikhtisasat al-'Amilin fi Bayt al-Mal wa-Musammiyatihim fi 'Asr al-Mamalik al-Jarkasiyya," *Annales Islamologiques* 33 (1999): 17–44 (Arabic pages); Imad Badr al-Din Abu Ghazi, *Tatawwur al-Hiyaza al-Zira'iyya fi Misr Zaman al-Mamalik al-Jarkasiyya* (Cairo: 'Ayn li-l-Dirasat, 2000); and Michel, *L'Égypte,* 138–40.

[27] For instance, document n. 181, recto left column (B), line 37: *mayyita la zawj la-ha warithuha bayt al-mal* in Müller, "Constats d'héritages," 309; and Muhammad Nasr 'Abd al-Rahman, "Ta'limat al-Qada'iyya," *Annales Islamologiques* 50 (2016): 343–63.

[28] The theory of Abu Ghazi, *Tatawwur al-Hiyaza al-Zira'iyya,* 18 about the sale of lands by a probate bureau as state privatization was rejected by Adam Sabra, "The Rise of a New Class? Land Tenure in Fifteenth-Century Egypt: A Review Article," *Mamluk Studies Journal* 8 (2004): 203–10.

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the tax on Christian and Jewish bequests, too) from the provinces to the imperial center.[29]

The government's control of assets did not mean the exclusion of Islamic law from this imperial probate regime. The juristic and the fiscal branches of government supervised each other during the probate process. The Muslim judge adjudicated claims against estates and guardians. He issued verdicts and the probate bureau executed these verdicts. Thus, Muslim law remained the practical code for the Ottoman probate regime even if sultanic regulations and government bureaucrats controlled the assets.[30]

The Ottoman administration in Egypt provides a good example of how the imperial probate regime translated the legal doctrine of *bayt al-mal* in provincial practice.[31] Following the conquest in 1517, the Ottoman authorities introduced the *beytülmal* bureau as the first element of their imperial probate regime. It is unclear whether this *beytülmal* bureau was related to the Mamluk bureau that had previously been in existence in Cairo. The 1524–25 sultanic administrative law for Egypt prescribed that no one (!) could be buried without the director of the probate office (*beytülmal emini*) having surveyed the deceased's bequest first. But perhaps a proper office was not set up until 1552 when a new law described the governor's legal and fiscal responsibilities including the probate office. For instance, the judge of the province, "according to the noble *shari'a*," had to adjudicate any issue related to the *beytülmal* in the presence of the governor and the *emin*. The sultan strictly prohibited the director and the scribe of the bureau from taking "in secret or in public, in whole or in part, anything belonging to the *beytülmal*."[32] The director oversaw the sale of heirless properties and the sending of the money to Istanbul if it was less than 25,000 paras-worth. In the case of heirless and confiscated bequests over 100,000 paras, the sultan sent an officer from the capital to manage the sale. However, from the late sixteenth century on, most revenues from the probate bureau remained with the governors of Egypt (the rebels and executed individuals' bequests, however, continued to be sent to Istanbul) and the increasingly

[29] Ali Yaycıoğlu notes that the Ottoman understanding of bequest (*tereke/muhallefat*) included all postmortem acts related to the bequest, not only the probate process. Lecture at Institute of Advanced Studies, Princeton, February 23, 2022, cited with permission; see his forthcoming *Order of Debt: Wealth, Power and Death in the Ottoman Empire*.

[30] Said Öztürk, "Osmanlı İlmiye Teşkilatında Kassamlık Müessesesi," *İÜ Edebiyat Fakültesi Tarih Enstitüsü Dergisi* 15 (1997): 393–429; see the sultanic instructions for a *beytülmal* in the Niğpolu (Nikopol) Kanunname in the year of 1516, Ahmet Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri* 11 vols (Istanbul: Osmanlı Araştırmaları Vakfı, 1990–2016), 3: 429–30.

[31] For general background, Jane Hathaway, *The Politics of Households in Ottoman Egypt: the Rise of the Qazdağlis* (New York: Cambridge University Press, 1997), and the masterpiece, Michel, *L'Égypte*. The records of the pre-nineteenth-century Egyptian *beytülmal* bureau were possibly destroyed in a fire in Cairo's Citadel in 1820. Studies on similar bureaus in other provinces include Lajos Fekete and Gyula Káldy-Nagy, *Budai török számadáskönyvek* (Budapest: Akadémiai Kiadó, 1962), 607–9 (the Budin – Buda, Hungary – province); Isabelle Grangaud, "Le Bayt al-mâl, les héritiers et les étrangers. Droits de succession et droits d'appartenance à Alger à l'époque modern," in *Appartenance locale et propriété au nord et au sud de la Méditerranée* (Aix-en-Provence: IREMAM, 2015) http://books.openedition.org/iremam/3512 (August 18, 2021) (the Algerian province).

[32] Akgündüz, *Osmanlı Kanunnâmeleri*, 6:2: 180–81.

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localized military. The probate revenue and the estates remained an object of contestation between the troops in Cairo and the imperial government throughout the centuries.[33]

The probate bureau of Ottoman Cairo had many other functions as well. Muslim jurists under Ottoman rule maintained that the probate bureau (as the material embodiment of the *bayt al-mal* doctrine) was a virtual legal person and represented the deceased on behalf of the community. There are examples of the *beytülmal*'s director representing murdered people, who died without heirs, in court in the seventeenth century.[34] Also, there is evidence from the late eighteenth century that the bureau confiscated the properties of those who evaded taxation.[35] Finally, the governor ordered the probate bureau to bury the bodies of dead poor people during the 1795 plague, and it is possible that the provision of paupers' burials was a regular assignment of this administration of death.[36]

The second innovation that the Ottomans introduced in the decades after conquering Egypt was to create the office of a military probate judge in 1553, and of a local (*'arab*) probate judge in 1562.[37] The military *qassam* was responsible for the Ottoman soldiers' estates (and for rich merchants' bequests that acquired protection, and for the estates of the local moral elite, such as Muslim scholars and the descendants of the Prophet) and the local *qassam* was responsible for the non-elite people's estates. The military *qassam* was also responsible for appointing trustees for orphans and their estates, and for transmitting the fees and the information to the probate bureau. In the late eighteenth century, there was an unexplained gendered bureaucratic turn: the military *qassam* became responsible for all Muslim male's estates in Egypt, regardless of their status.[38]

Finally, the Ottoman conquerors introduced various fees on bequests in Egypt. A sixteenth-century rule prescribed that the probate fee (*resm-i qismet*) of soldiers' estates had to be paid to the general judge of the army who would hand it over, together with the documentation, to the specialized probate

[33] Stanford J. Shaw, *Financial and Administrative Organization and Development of Ottoman Egypt, 1517–1798* (Princeton: Princeton University Press, 1962), 171–73; and Daniel Crecelius, *The Roots of Modern Egypt: A Study of the Regimes of 'Ali Bey Al-Kabir and Muhammad Bey Abu Al-Dhahab, 1760–1775* (Minneapolis: Bibliotheca Islamica, 1981), 112. The troops also had their own *beytülmal* bureau. Ahmad Damurdashi, *Al-Durra al-Musana*, ed. 'Abd al-Rahim 'Abd al-Rahman 'Abd al-Rahim (Cairo: Ifao, 1989), 202; and Muhammad, "Sijillat Mahkamat al-Qisma," 14.

[34] Galal El-Nahal, *The Judicial Administration of Ottoman Egypt* (Minneapolis: Bibliotheca Islamica, 1979), 21.

[35] Daniel Crecelius, "The Waqf of Muhammad Bey Abu Al-Dhahab in Historical Perspective," *International Journal of Middle East Studies* 23 (1991): 57–81, at 60; and El-Nahal, *The Judicial Administration,* 49.

[36] Al-Jabarti, *'Aja'ib al-Athar fi al-Tarajim wa-l-Akhbar*, ed. Shmuel Moreh, 5 vols (Jerusalem: Hebrew University of Jerusalem, 2013), 1:30 (Muharram 1107).

[37] The first military *qassam* register is dated hijri 961 (1553–54), the first *'arabi* is from hijri 970 (1562–63) in the Egyptian National Archives (hereafter DWQ), Raymond, *Artisans et commerçants,* 1: xxi–lii.

[38] 'Abd al-Raziq Ibrahim 'Isa, *Tarikh al-Qada' fi Misr al-'Uthmani* (Cairo: al-Hay'a al-Misriyya li-l-Kitab, 1998), 103–15; and Muhammad, "Sijillat Mahkamat al-Qisma," 14.

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judge.[39] André Raymond has provided evidence that after 1670, an average of 10–12 per cent was levied from soldiers' bequests, of which a smaller part (2–3%) was allocated for the probate court and a larger part (8–10%) was allocated for military officials. Rich merchants associated with the troops often included a dedicated amount in their will for the troops and for individual officers, to avoid even more claims on their estate. The local probate court charged less, around 6 per cent on non-military estates. Raymond has also described some exceptional cases, for instance, when a military-associated merchant's estate paid out 59 per cent of its value to various institutions and military leaders.[40] By the eighteenth century, the *beytülmal* fee became a standardized amount of about 2–2.5 per cent. If a male commoner died without heirs except his wife, the wife received one fourth and the *beytülmal* received three fourths of his estate.[41] After 1760, the troops were able to place less pressure on merchants (a shift that was perhaps not unrelated to the rise of powerful centralizing governors).[42] The French occupiers of Egypt in 1798 understood the *beytülmal* only as a tax on heirless estates, although they observed that the governors charged this tax on regular estates as well. Martin Estève, the French chief financial officer, describes "a tax (*droit*) called *beit-êl-mâl*, which must be paid after the estates of those subjects of the sultan, be those Muslims, Christians, or Jews, who died without heirs." This sum was to be sent to the sultan "in order to use it for the defense of Islam," but the governors, Estève writes, misused this institution, charged the tax on all kinds of bequests, and withheld this revenue from the sultan.[43] General Menou, leader of the occupation, established a 5 per cent tax on all inherited property in Egypt, including those transferred by testimony, but the French retreat in 1801 resulted in a partial re-establishment of the Ottoman fiscal regime.[44]

From the Ottoman to the Khedivial Probate Regime

Historians have emphasized that Egypt's nineteenth-century legal history up to the 1870s is largely a function of its non-sovereign status, directed by the localized Ottoman military elite's quest for security and wealth.[45] We follow this

[39] Akgündüz, *Osmanlı Kanunnâmeleri,* 6:2:186–87.

[40] Raymond, *Artisans et commerçants,* 2: ch. 14. There remain unclear issues; for instance, it appears that members of troops were heirs to other social groups, Damurdashi, *Al-Durra*, 202.

[41] Stanford J. Shaw, *Ottoman Egypt in the Age of the French Revolution* (Cambridge, MA: Harvard University Press, 1964), 67.

[42] Raymond, *Artisans et commerçants*, 2: ch. 14.

[43] Martin-Roch-Xavier Estève, "Mémoire sur les finances de l'Égypte, depuis la conquête de ce pays par le sultan Sélim Ier jusqu'à celle du général en chef Bonaparte," in *Description de l'Égypte*, vol. 12 (Paris: C.L.F. Panckoucke, 1822), 150–51.

[44] Shaw, *Ottoman Egypt*, 144, 163.

[45] F. Robert Hunter, *Egypt Under the Khedives; Ehud R. Toledano, State and Society in Mid-Nineteenth-Century Egypt* (Cambridge: Cambridge University Press, 1989); Cuno, *The Pasha's Peasants*; Felix Konrad, *Der Hof der Khediven von Ägypten: Herrscherhaushalt, Hofgesellschaft und Hofhaltung 1840–1880* (Würzburg: Ergon Verlag, 2008); Khaled Fahmy, *Mehmed Ali: from Ottoman Governor to Ruler of Egypt* (Oxford: Oneworld Publications, 2009); Adam Mestyan, *Arab Patriotism: The Ideology and Culture of Power in Late Ottoman Egypt* (Princeton: Princeton University Press,

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argument by stressing that one must understand first the khedivial transformation of Ottoman institutions in order to evaluate the nature of the later British impact on Islamic law in occupied Egypt. In this section we consider the mid-century regulatory changes from the Ottoman imperial probate regime to a localized khedivial one. In the next section, we turn to the general legal context of these changes in the probate field, and finally to the changes under British rule.

After the Ottoman reconquest of French-occupied Egypt, from 1805 on, the aggressive Governor Mehmed Ali Pasha and his successors, the khedives of Egypt, reorganized the provincial bureaucracy into a new, subordinated Ottoman Muslim princely polity. In the 1820s, Mehmed Ali created a new, peasant army with Ottoman, French, and Italian officers. The army's occupation of the Syrian provinces in the 1830s and their 1840 retreat in exchange for Mehmed Ali's hereditary governorship of Egypt created a constant struggle over the administration and resources of this province between the sultan and the governor. In the administration, the goal was to change the Ottoman bureaus into autonomous units, which were loyal to the khedives instead of the sultans. Next to the localized application of central legal reforms, especially from the 1850s the khedives invited, and sometimes coerced, local Muslim jurists—usually muftis, jurisconsults—to approve and authorize regulations, and even on occasion to suggest how they might be improved. 'Imad Hilal (Emad Helal) demonstrates in his monumental work that muftis sat on legislative councils, in all departments of the government, and in municipal councils. Sheikh Muhammad al-'Abbasi al-Mahdi (1827–97), the chief Hanafi mufti, became a high government official—a type of constitutional jurisconsult (later called "Grand Mufti")—who had an exceptionally long tenure in office between 1848 and 1897. The muftis of the khedivate represented the constitutional apparatus to create a new Muslim polity in the age of steam.[46]

We can follow the making of the khedivial bureaucracy, which aimed at keeping God's laws while expanding and rationalizing government through the story of the probate regime. Muftis especially paid attention to this niche of administration because of the doctrine of the Muslim fisc (*bayt al-mal*). Among the three earlier Ottoman probate elements (the *qassam*, the *beytülmal*, and the fees) the changes affected the *beytülmal* office the most. From being a relatively small fiscal bureau, it became an extensive administrative body with penetrating reach, responsible for bequests and practically everything related to the fiscal and, increasingly, legal issues of the Muslim dead and for supervising the morgues, and with branches in the countryside. (We have not seen evidence that the probate bureau intervened in the bequests of any non-Ottoman non-Muslim deceased in the nineteenth century.)[47] In

2017); and Omar Cheta and Kathryn A. Schwartz, "A Printer's Odd Plea to Reform Legal Pluralism in Khedival Egypt," *Past & Present* 252 (2021): 179–211.

[46] 'Imad Ahmad Hilal, *Al-Ifta' al-Misri* (Cairo: Dar al-Kutub, 2016), vols. 4 and 5; and Rudolph Peters, "Muhammad al-'Abbasi al-Mahdi (d. 1897), Grand Mufti of Egypt, and His al-Fatawa al-Mahdiyya," *Islamic Law and Society* 1 (1994): 66–82.

[47] Muslim jurists did notarize foreign bequests but the consulate of the deceased, and not the probate bureau, was in charge of the probate procedure. For instance, Muslim jurists certified a

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addition to the enormous number of *shari'a* court records, the 61,131 entries in the archival unit *Baytmal (Bayt-i Mal) Misr* in the Egyptian National Archives are a unique source for social-legal history. To indicate the transition from the imperial *beytülmal* office to khedivial one, we transliterate the Ottomanized-Arabic term for the probate bureau as *baytmal* in this period.

The probate bureau was part of Mehmed Ali's early policy to create more legibility of wealth and population in the province, a policy which, for instance, included land surveys.[48] In 1813, the director of the bureau sent an order to the leaders of the guilds and neighborhood sheikhs in urban and rural Egypt instructing them to report all deaths, male and female alike, and regardless of whether the deceased had heirs.[49] This order established a lasting relationship: the director came to be always notified about the election of new guild heads, and maintained a working relationship with them.[50] By the terms of this cooperation, copies of the guild leaders' stamps were kept in the probate office to enable the certification of bequests up to the 1890s.

Yet the transformation of an Ottoman *beytülmal* into a khedivial *baytmal* took some decades, reflecting the power struggle between the sultan and the governor over the rich province of Egypt. At first, the probate office remained an Ottoman fiscal unit, answerable in theory to the imperial government.[51] The sultan continued to appoint the director as late as in 1836, even in the middle of Mehmed Ali's occupation of the Syrian provinces.[52] In 1835 the pasha designated his own delegate to supervise the bureau's activity next to the sultan-appointed director, thus indicating that he had plans to abolish sultanic supervision in the province's probate regime, too.[53]

The status of the new Egyptian army answerable to the governor rather than to the sultan meant that Mehmed Ali prohibited the probate bureau from any interference with the soldiers' bequests.[54] In April 1832, the pasha ordered the heads of the troops to register the estates of deceased soldiers and to send the money to the treasury (*hazine*) directly. The officers' bequests were sequestered within a special office of the treasury.[55] There was even a government capitalist enterprise ("the company fund," *sunduq al-qumbaniya*) that used the military bequests as a form of capital in the 1830s, before subsequently collapsing.[56] Otherwise, the probate bureau of the Egyptian province

French doctor's bequest in Mehmed Ali's army, see, for instance, bequest S. Devaux (d. 1838 in the Hijaz), 354PO/2/29, Centre des Archives Diplomatiques, Nantes. It is, however, possible that the bureau intervened in the case of non-Ottoman Muslim bequests, such as those of Moroccans and Persians.

[48] Mestyan, "Seeing Like a Khedivate," 772–4.

[49] Al-Jabarti, *'Aja'ib al-Athar*, 4: 203 (Rabiᶜ al-Awwal 1228).

[50] For instance, correspondence in *warshat al-yawmiyya* in the hijri year of 1281 (1864–65), 3002–032409, DWQ.

[51] Deny, *Sommaire des archives*, 115; and 'Isawi, "Sijillat Bayt al-Mal," 1:1.

[52] Amin Sami, *Taqwim al-Nil* (Cairo: Maktabat Dar al-Kutub al-Misriyya, 1928), 2:479; and 'Isawi, "Sijillat Bayt al-Mal," 1:35–36.

[53] Sami, *Taqwim al-Nil,* 2:436.

[54] Ibid.

[55] 'Isawi, "Sijillat Bayt al-Mal," 2:20 (Appendix 6).

[56] Ibid., 1:6, n. 3; and Sami, *Taqwim al-Nil*, 2:484.

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seems to function as it did in the previous centuries. It executed both administrative orders and the verdicts of the judges, for instance, in the payment of debts to debtors on behalf of non-military, local estates (including, it seems, Coptic and Jewish bequests).[57]

In 1837, Mehmed Ali issued a famous organic law (*Siyasetname*) in which he restructured the provincial administration as a domestic part of his campaign against the sultan. All offices, including the probate bureau, were subordinated administratively to his own central council (*diwan-i hidivi*) and fiscally to his treasury (*hazine-i hidivi*).[58] Local jurists responded to this change in relation to the probate bureau by framing Mehmed Ali himself as the new director (*emin*) of the probate office.[59] After 1837, the director of the probate bureau was no longer appointed from Istanbul. After this date, this position—and the Egyptian probate economy in general—was entirely in the hands of Mehmed Ali and his successors. First, the pasha appointed a representative (*wakil*) to manage the bureau in his name, but later he restored the directorship position. With population growth, next to the Cairo bureau there was now one in Alexandria as well. The governors usually appointed a loyal Ottoman-Egyptian military official as director of the whole probate organization every couple of years.[60]

In the mid-century, the probate regime of the new local Muslim princely polity still rested on Ottoman constitutional foundations. The Ottoman word *miri* continued to denote the abstract concept of government in Egypt, and the muftis continued to recognize the sultan as the final legal authority (*imam*) in Egypt. The jurists acknowledged the governor's legislative power only as following from the delegation of authority by the *imam* (the sultan). The governors paid the tribute and maintained the Ottoman imperial distinction between employees in government service (*al-khidma al-miriyya*) and locals (*ahali*). This distinction was important for the probate regime because, as we could see in the early modern examples, the ruler could formulate a special claim on the estates of those belonging to the *miri*, such as bureaucrats, slaves, and soldiers.

The shaping of a truly local, khedivial probate regime started in 1850 when the new Governor Abbas Hilmi Pasha issued a remarkable regulation of 16 points about the probate bureau, which called for a new approach to government and capitalism while emphasizing fidelity to Islamic law. He prescribed for the *baytmal* a detailed method of recording, evaluating, and auctioning the bequests of *miri* servants, and the payment of their debts from this monetarized wealth first to the government (*miri*) and next to local (*ahali*) individual debtors (articles 2–4). More importantly, he ordered to unite the capital from the military bequests (the earlier "company fund") with the monetarized bequests of the orphans of the *miri* servants, if their value was more than 500 piasters. This united capital was supposed to be a large amount of cash

[57] Rizq Hasan Nuri, *Tujjar al-Qahira fi 'Asr Muhammad 'Ali* (Cairo: Al-Hay'a al-'Amma li-l-Kitab, 2018), 174.

[58] Ahmad Fathi Zaghlul, Al-Muhama (Cairo: Matba'at al-Ma'arif, 1900), Appendices, 4–26.

[59] 'Isawi, "Sijillat Bayt al-Mal," 36Alif (Table 6, n. 9).

[60] 'Isawi, "Sijillat Bayt al-Mal," 2: 11–3 (Appendix 3: Asma' umana' bayt al-mal, 1829–1890).

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in coins. He ordered the financial department to appoint a specialized supervisor and two or three trustworthy and wealthy notables to be the trustees of this sum. It was to be called "the orphans' fund." The coins were to be stored in chests within the probate bureau. The contribution from each orphan's bequest was to be recorded under their name in a register. The fund was to serve as a type of government bank for entrepreneurs. The idea was that if "someone" came to request an amount from this fund the supervisors would give the requested amount in cash in return for a security deposit. This deposit could be gold and silver jewelry, real estate, and agricultural land. The materials and the certificates of ownership were to be registered according to Muslim law, with Muslim witnesses. The government was to provide the borrowed capital for a 12 per cent interest rate (!) "according to the *shari'a* principles;" 2 per cent of this rate was to cover the administration expenses and the rest of the profit was to pay for the expenses of orphans (article 5). The bureau was to send monthly reports to the financial department and annual ones to the High Judicial Council and the Privy Council of the governor.[61] There must have been many struggles over this arrangement. The fund had to suspend its activity several times and started to function properly only in the 1860s.[62]

The making of this Muslim institution of governmental capitalism in Egypt was connected to the larger Ottoman probate regime; perhaps it served as an inspiration for the imperial planners. One year later, in 1851, the imperial government in Istanbul also created a department for the orphans' wealth under the office of the imperial mufti.[63] In parallel, new Ottoman regulations assigned bureaucratic roles to religious professionals; for instance, the local *imam* (or even the local priest) in villages had to notify the government whenever a child was orphaned; that is, when the father died.[64]

In Egypt, the khedivial probate regime became fully articulated in 1860 when the government issued a 44-article regulation to professionalize and extend the activity of the *baytmal*. The director of the bureau, the mufti in the Council of Egypt, and Sheikh 'Ali al-Baqli, the important mufti of the High Judicial Council, created the final text based on instructions that they received from the Interior Ministry. They summarized the bureau's regulations since 1837, including the 1850 order about the orphans' fund and a twelve-page description about the bureau's procedures. They decided that the bureau should become part of the Cairo Governorate instead of the Ministries of Finance and Interior. It thus also became a fundamental element in Cairo's urban institutional framework of health and death.[65] The bureaucrats and the Muslim jurists followed principles that, we suggest, guided khedivial

[61] This regulation and the changes in the early 1850s need more research. The document calls this fund *sunduq al-yatama*. It is a later Arabic translation (dated 28 Rajab 1288; October 13, 1871) of the original Ottoman Turkish order, issued on 8 Rabi' al-Akhar 1266 (February 21, 1850) from Majlis al-Khususi to Maliyya, in 096024–3002, DWQ.

[62] 'Isawi, "Sijillat Bayt al-Mal," 1:6–7, esp. n. 3.

[63] Khalil al-Khuri, ed. *Al-Dustur*, trans. Nawfil Ni'mat Allah Nawfil, (Beirut: al-Matba'a al-Adabiyya, 1301), 104, 108–9; Yazbak, "Muslim Orphans and the Shari'a," 135–36.

[64] *Al-Dustur*, 108.

[65] Fahmy, *In Quest of Justice,* 153–68.

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governmentality and the making of elite transgenerational economic inequality. Let us elaborate on these principles.

The first principle was the control over the legibility of the dead's economy: the morgues and the hospitals each had to send detailed daily reports about the dead, their supposed heirs, and the bequests to the probate bureau. Importantly, the regulators paid attention to the dead in the countryside as well, in which case the district governorates had to sell those bequests that belonged to the probate bureau, and send the money to the treasury in Cairo. In the case of protégés of foreign powers, foreign subjects (*ra'aya al-duwal*), Jews, and Copts, the *baytmal* did not intervene but had to be notified; in the case of Persian subjects (*Iranli*), the *baytmal* bureaucrats had to compare the dead's name to pre-existing lists in the bureau (article 1). In cases of death at home that necessitated intervention (because the heirs were orphans, minors, or missing persons, or there were debts) the probate bureau sent a group of experts (the office servant, the inventory-maker, the registry scribe) to the house to record and enumerate the assets (articles 1–2, 5–6). The second principle, meanwhile, was Ottoman-Egyptian elite exceptionality and social inequality: the bequests of the manumitted slaves of Mehmed Ali and khedivial family members had to be sequestered immediately and released only upon an order from the khedive; heirs of the ruling household and their elite did not have to provide security deposits so as to receive their shares in advance from elite bequests (articles 3, 30, 34, 42, 45). The third principle was the cooperation between revealed law (*shari'a*) and khedivial regulations (*siyasa*) with an emphasis on *shari'a* norms and the importance of the *qassam*'s register as the basis on which the probate office releases the value of the bequests (see more on this subsequently).[66] And the final principle was what we may call "procedural fever": the regulated cooperation between *baytmal* and other bureaus such as the tax registry office and the treasury: the minute details prescribed regarding the procedures to be followed by officials of the probate bureau, from the registration of bequests on the day of death to the auctioning of assets. The government also declared precise fees for each part of the probate process; for instance, they took about 1 per cent from the sale of gold and silver objects in auctions (one third of this amount was given to the cashier and two thirds was given to the auctioneers) (article 39); the general tax (*rasm*) was about 2.16 per cent (they expressed this value in piasters) on all estates under the *baytmal*, except landed property, because on those there was a separate tax for the transfer of ownership (article 44).[67]

This regulation reflects rationalization and Muslim norms at the same time. On the one hand, it enabled the bureau to increase the details of estates and personal data and thus to create statistics of death in all of Egypt, to archive this information centrally, to collect outstanding debt from indebted bequests,

[66] For *siyasa* in criminal law, see Fahmy, *In Quest of Justice*; and Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society* 4 (1997): 70–90.

[67] *La'ihat Bayt al-Mal al-Sadira fi 11 al-Hijja Sanat 1276 Hijriyya* (Bulaq: al-Matba'a al-Kubra al-Amiriyya, 1307), 3–26; and the same in Filib b. Yusuf Jallad, *Qamus al-Idara wa-l-Qada*, 7 vols (Alexandria: Al-Matba'a al-Bukhariyya, 1890–1897), 2:5–19.

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to professionalize bureaucrats and make them accountable, to define the interaction and responsibilities with other government units, to monetize assets in a transparent way, and to pay the employees from the fees.

On the other hand, the muftis ensured the maintenance of Muslim norms in bureaucratic government. The legality of the *baytmal* procedures was based on testimonies from Muslim witnesses, registers of the *qassam*, and the verdicts of the judge. For instance, at the moment of death, a bequest falling within the doctrine of the Muslim fisc had to be recorded in a detailed inventory immediately, and stamped by the stamp of the deceased in the presence of "free, Muslim witnesses"; next, the bureau had to call on the witnesses for taking their formal testimony (article 4). Furthermore, from being an imperial institution which, in theory, could administer the assets of all dead Ottoman subjects regardless of religion, the khedivial probate bureau became restricted to the wealth of Muslims only. In 1861, the Ottoman imperial government and, in turn, the khedivial one, codified the already existing practical exclusion of the bequests of Ottoman Christians and Jews and Iranian subjects from among the responsibilities of the probate bureau (which, in cases involving Ottoman Christians and Jews was authorized to act only in instances in which orphans were involved, or upon the explicit request of heirs.)[68]

The confinement of the *baytmal* just to Muslim bequests might explain why the governor allowed Muslim jurists to take over this important bureaucratic niche of social life. Among the many later additions and modifications of the 1860 regulation, one particularly notable instance was a long appendix in 1865. A distinguished group of Muslim jurists wrote this text of eighteen articles and the governor Ismail Pasha (r. 1863–79) agreed to promulgate its enactment. The muftis 'Abd al-Qadir al-Rafi'i, 'Ali al-Baqli, the Grand Mufti Muhammad al-'Abbasi al-Mahdi, and Mustafa al-'Arusi (the Sheikh of al-Azhar) signed the text that simplified many procedures prescribed by the 1860 law. They eased the work of the legal guardian (*wasi*) of orphans and missing persons by allowing only the temporary freeze of the bequest without physically sequestering the assets until receipt of the necessary papers; and by dismissing the evidentiary requirements and prohibiting the *baytmal* from intervention in cases in which the deceased themselves chose the guardian (articles 1–4). A significant help for poor families was that the muftis abolished the requirement for a guaranty deposit (*damana*) when the *baytmal* released the bequests to heirs (article 4). They even defined the fees payable for the court procedures of appointing guardians (articles 6, 11). The regulation emphasized the jurists' claims to care for the people (the Arabic text repeats attention to the "ease" and "comfort"—*suhula*, *raha*—of the heirs during the probate procedure).[69] This appendix was accompanied by an even more detailed, 118-point

[68] Kharijiyya to Muhafazat Misr, 7 Safar 1278 (August 14, 1861) in *La'ihat Bayt al-Mal,* 34–36; repeated in Greek patriarch's appointment firman (dated 1 Safar 1286/May 13, 1869) in Haïm Nahoum, *Recueil de Firmans Impériaux Ottomans adressés aux Valis et aux Khédives d'Égypte 1006 H.-1322 H. (1597 J.-C.-1904 J.-C.)* (Cairo: Ifao, 1934), 305; and Jallad, *Qamus al-Idara*, 2:25.

[69] "Dhayl La'ihat Bayt al-Mal," in *La'ihat Bayt al-Mal,* 28–31.

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regulation to clarify and improve the work of the probate bureau and the "orphans' fund."[70]

It may be useful here to provide a concrete, everyday example about the work of the khedivial probate bureau. 'Abd Allah Efendi al-Jabi, a lower middle-class Muslim professional, died in Cairo on May 13, 1872. His main job was operating the measuring scales at one of the Cairo markets in the Bab al-Shar'iyya neighborhood. On the day of his death, the Muslim judge recorded that his heirs were Banba bint al-'Arusi, his widow, and their two daughters, both minors. The judge also recorded immediately that Banba bint al-'Arusi was the legal guardian of their daughters. However, given that these two fatherless minor individuals were defined by Islamic law as orphans, the Cairo *baytmal* had to intervene to protect their rights. The same day, an official from the bureau enumerated and evaluated the items of the bequest in a register (*daftar hasr*). There were twenty items, including cloths, some cash, a share in a house (the ownership evidenced by a court certificate), a small heritable stipend from the tax registry office, and, of course, many scales and weights. In this register, there was also the testimony of someone else who similarly operated weighing scales, plus the stamp of the leader of their guild. On August 4, 1872, the specialized probate judge, on the basis of this list of items, calculated the shares owing to each heir and sequestered the bequest, including the cash. His final register, together with the assets, was sent to the probate bureau's office of assets (*warshat al-usul*). The auctioneers sold the share in the house and registered their fees; in addition, there was also a fee of the cashier after the sequestered amount of cash. A month later, on September 5, 1872, the probate bureau released the remaining sum to the widow as the legal guardian of the two girls, after registering and checking that everything was in order, remarking that the final amount of the bequest was less than 5000 piasters, so no additional authorization was required. The legal and fiscal probate procedure to transfer and protect the orphans' rights and to charge the bequest for this protection thus concluded in about four months after death.[71]

Despite khedivial autonomy, the localized probate regime in Egypt remained closely connected with the Ottoman imperial one. If someone had relatives outside of Egypt in other Ottoman provinces, their estate remained sequestered in Egypt until a judge from the heirs' location sent a legal certificate confirming entitlement to their share.[72] In cases involving bequests whose heirs were in Egypt and whose assets were located elsewhere in the Ottoman Empire, the given provincial governor's office handled the procedure after the heirs' shares had been registered in probate courts. For instance, Asim Agha, a rich aide-de-camp of Mehmed Ali, had properties and investments in both Egypt and Crete. When he died in 1842, his family members soon received their share of the estate's

[70] In shortage of space we cannot analyze this text here. *La'ihat Ijra'at Diwan Bayt al-Mal wa-Sunduq al-Aytam* (Bulaq: Matba'at Bulaq, 1282).

[71] "Qayd tarikat al-qussar bi-maslahat Bayt Mal Misr – 1588," 230–31, 3002–105803 , DWQ.

[72] For instance, Diwan al-Khidiwi to al-Majlis al-'Ali, 11 Dhu al-Qa'ida 1247 (April 12, 1832), wathiqa 581, daftar 870, al-Ma'iyya al-Khidivi Turki (Bitaqat al-Dar), DWQ.

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Egyptian holdings, and a council of the aides-de-camp made sure that the governor of Crete collected and sent the agha's outstanding claims in Crete to Egypt.[73] Some Ottoman provinces had representatives in Alexandria and Cairo; these representatives were mostly commercial agents, who were also responsible for the probate process and burial for their provincial co-patriots. The khedivial *baytmal* did not intervene in these cases. However, in 1874, the probate process of all Ottomans became centralized, "without distinction among the subjects," as the representative of Tripoli province (Libya) wrote to the Alexandria municipality at the time. After this date, the khedivial probate bureau in theory could supervise the estates of non-Egyptian Ottoman subjects, too.[74]

In sum, the construction of a subordinated Muslim princely polity in Egypt included the rationalization and expansion of the previously Ottoman imperial probate bureau by the involvement of local Muslim jurists. The chief mufti al-'Abbasi al-Mahdi, the muftis of the High Judicial Council, the Interior Ministry, and the Pious Endowments Ministry all provided legal opinions regularly.[75] The probate bureau acquired its own mufti by the 1880s.[76] In his answers given to the probate bureau's enquiries, the chief mufti always upheld the principle that the *qadi* alone has authority over the sale of estates of the disappeared and legally incapacitated and in general upheld the *qadi*'s court as the ultimate legal forum for probate adjudication.[77] These legal opinions were necessary because the government machinery created new legal forums in the mid-century, which had unintended consequences for the khedivial probate regime. This is where we must turn now.

Legal Change and the Probate Regime in the 1870s: The Birth of the Trusteeship Council

Let us step out from the khedivial probate office in order to survey its changing legal and institutional environment. James Baldwin has argued that in the 1700s *qadi*s served both in governmental legal forums—judicial councils—and in the *qadi* courts (what today we call the *shari'a* court) in Ottoman Cairo. He therefore rejected Wael Hallaq's argument that the premodern judicial councils in Muslim polities were "extra-judicial."[78] We have described that the early Ottoman probate regime worked with this logic as well, in an organic

[73] Mehmed Ali to Abbas, 18 Jumada al-Awwal 1258 (June 27, 1842), wathiqa 344, daftar 286, Diwan Shura Ma'awuna (Bitaqat al-Dar), DWQ.

[74] Filib b. Yusuf Jallad, *Qamus al-Idara wa-l-Qada,* 7 vols (Alexandria: Al-Matba'a al-Bukhariyya, 1890–1897), 2:30–31.

[75] For instance, Muhammad al-'Abbasi al-Mahdi, Al-Fatawa al-Mahdiyya (Cairo: al-Matba'a al-Azhariyya, 1301) 2:258 (doctrine of *bayt al-mal, fatwa* dated 27 Sha'ban 1274); 2:264 (the bureau can sell properties if heirs are not known and if the *qadi* allows it, *fatwa* dated 11 Jumada al-Thaniyya 1265).

[76] Hilal, *Al-Ifta' al-Misri*, 4:1995–2000 claims that the khedivial probate bureau did not have its own mufti but the journal *al-Waqa'i' al-Misriyya,* November 21, 1887, 1307–9 indicates that there was one.

[77] Even his last fatwa from 1882 in the Book of the Disappeared emphasizes this principle, Al-'Abbasi al-Mahdi, *al-Fatawa al-Mahdiyya*, 2:281.

[78] Baldwin, *Islamic Law and Empire*, 68–69.

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relationship among the *qadi*, the specialized probate judge (*qassam*), and government officials. Khaled Fahmy has extended this argument to the nineteenth century by suggesting that the new judicial councils established in the 1850s and the *qadi* courts composed one, unified penal legal system, in which the government enforced revealed law through both types of legal forums.[79] This argument holds true in matters of probate in the 1850s–70s as well, because the new judicial councils started to take over some functions of the *qadi*'s court in estate adjudication and trusteeship appointments but still administered revealed law. In 1873, even the trusteeship council (*majlis hasbi*), a new specialized legal forum in the probate regime (which could decide about trusteeship over orphans' estates without the *qadi*'s evidentiary requirements) operated using this logic. But from the early 1880s on, new legal codes came to be applied in the governmental judicial councils (now called "courts") creating a genuine difference between codified and uncodified *shari'a*.

The new governmental legal forums in the modern Ottoman Empire and in its distinguished province of khedivial Egypt originated from the general fever of administrative reorganization. In the 1850s, the imperial government established judicial councils in the directly ruled provinces in which notables, bureaucrats, and Muslim jurists participated. In the 1880s, these councils became a system of governmental, "administrative" (*nizamiye*) courts next to the *qadi*, whose court now came to be known as *shari'a* court.[80] In 1852, the governor of Egypt also set up judicial councils in the cities of the Nile Valley, too, to adjudicate offenses based on localized Ottoman laws. These councils joined the already functioning merchant councils under the authority of the governor. In the 1860s, the Governor Ismail Pasha and his legislative council extended the council system and in 1871, they institutionalized the councils; the councils were now able to adjudicate economic issues such as inheritance, which had hitherto come under the sole jurisdiction of the *qadi*. Similar to the Ottoman imperial trajectory of the *nizamiye* courts, in 1883, now under British occupation, the Egyptian judicial councils also became an institutionalized system of "local" (*ahli*; the British word was "native") courts.[81] A third legal institution, the Mixed Courts (first named "mixed councils") started to adjudicate cases between foreigners and locals from 1876 on, while consular courts continued to adjudicate cases mostly between foreign subjects.[82]

[79] Fahmy, *In Quest of Justice*, 96–97; 102; 117.

[80] Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası* (Istanbul: Ari Sanat, 2004), 241–45; Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011); Jun Akiba, "Shari'a Judges in the Ottoman Nizamiye Courts, 1864–1908," *Osmanlı Araştırmaları / The Journal of Ottoman Studies*, LI (2018), 209–37.

[81] Omar Youssef Cheta, "Rule of Merchants: The Practice of Commerce and Law in Late Ottoman Egypt, 1841–1876" (PhD diss., New York University, 2014). The *ahli* courts are the least researched in Egyptian legal history; Rudolph Peters, "Administrators and Magistrates: The Development of a Secular Judiciary in Egypt, 1842–1871," *Die Welt des Islams* 39 (1999): 378–97; 'Aziz Khanki, *Al-Mahakim al-Mukhtalita wa-l-Mahakim al-Ahliyya* (Cairo: al-Matba'a al-'Asriyya, 1939); and Fahmy, *In Quest of Justice*, ch. 2.

[82] Will Hanley, *Identifying with Nationality: Europeans, Ottomans, and Egyptians in Alexandria* (New York: Columbia University Press, 2017).

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The probate regime received a new governmental legal forum in the form of the "trusteeship council." Early twentieth-century Egyptian jurists explained this innovation as being inspired by the French *conseil de famille*.[83] Today's Egyptian historians evaluate it as a truly "national" institution, which adjusted law to the "situation of the Egyptian family."[84] However, its origin reflects the Ottoman context and discloses the government's care for the moral disciplining of the Ottoman-Egyptian elite heirs; and we can observe a specific example of how governmental legal forums enforced Islamic norms instead of the judge's court due to the needs of the Muslim elite.

The trusteeship council's foundation started with an Ottoman-Egyptian elite scandal. The khedive appointed (!) Hüseyin Pasha, an Ottoman-Egyptian high bureaucrat, as legal guardian over the orphans and the bequest of the deceased Selim Pasha Silahdar, an important army general, who died in 1867. But Hüseyin Pasha resigned in 1872 because the (apparently adult) children "had no decency" and "did not follow his advice." The Interior Ministry asked the Finance Ministry to order that the *baytmal* should take care of the issue but, as we know by now, the probate bureau could not be in charge unless there were orphans, minors, missing persons, or debt claims. The Privy Council of the khedive was notified at this point. They remarked on the general problem of elite Ottoman children in Egypt (in Arabic, *awlad al-dhawat*) "behaving carelessly" with their inherited wealth, and especially those "without education or profession" falling into poverty, which "causes harm to the public interest." Hence the Privy Council decided to create a trusteeship council within the Cairo *baytmal*, with legal and executive powers to supervise elite children. It was to be composed of notables "who are known of their good *siyasa* and administrative skills."

However, the final khedivial order in 1873 extended the scope of this elite plan to ordinary local (*ahali*) orphaned heirs, too, and ordered the creation of similar councils in all countryside directorates. The text of the regulation referred to the *shari'a* to prohibit any legally unable person from possessing great wealth. It ordered the inclusion of at least one Muslim jurist in the trusteeship councils, next to notables, merchants, and bureaucrats (article 1). In Cairo, this specialized judicial council had the right to supervise the affairs of the *baytmal*, whose director was to be a member of the council (article 2). The police stations and neighborhood sheikhs were to report those individuals who exhibited "careless behavior" or "incapacity" to take care of their inherited wealth to the councils (articles 3–4). Once this was established in an investigation involving the police, family members, and neighbors, the trusteeship councils could limit the person's legal competence (*al-hajr 'alayhi*) and appoint "someone who accepts this appointment" in Cairo (in the countryside, the directorates were to execute the decisions) (articles 6–7).[85]

[83] *Majallat al-Ahkam al-Shar'iyya,* April 24, 1902, 8–9. For the French *conseil de famille*, see Bernard Schnapper, "La correction paternelle et le mouvement des idées au dix-neuvième siècle (1789–1935)," *Revue Historique* 263 (1980): 319–49, at 322.

[84] 'Isawi, "Sijillat Bayt al-Mal," 1:8.

[85] Qararat al-Majlis al-Khususi, n. 178 (5 Safar 1290 / April 4, 1873), daftar 81, 105–8, DWQ. See also 'Isawi, "Sijillat Bayt al-Mal," 1: 10.

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Until this moment, the three main elements of the previous Ottoman probate regime (the probate bureau, the *qassam*, and the fees)—even if transformed—still existed in the khedivate. However, in 1875, the khedivial government abolished the office of the specialized Muslim probate judge (*qassam*).[86] This move must be related to the fact that in 1873, the sultan gave almost complete authority to the governor Ismail Pasha over the khedivate's legal infrastructure. In terms of the probate economy, these changes meant a decreasing jurisdiction of the Muslim judge in Egypt. In the directly ruled Ottoman provinces, the *qassam* remained in existence.[87]

While these early 1870s changes reflected the old practice of governmental bodies administering revealed law, some khedivial jurists soon implemented a new idea about the *form* of the revealed law administered in governmental legal forums. The Ottoman-Egyptian Muhammad Qadri (or Mehmed Kadri in Turkish) Pasha issued codified norms of "personal affairs" (according to the Hanafi teachings) in Arabic in 1875, in which inheritance law occupied a large section.[88] This invention followed the Arabic translation of the Napoleonic Civil Code (which includes an extensive regulation about bequests and the probate regime) and five other French codes that the khedivial government had published in 1866. Qadri, an Azhar-trained Ottoman bureaucrat who had also worked in the mid-century imperial administration in Syria and Istanbul, had been one of the translators of the French codes. His 1875 *shari'a* code was an innovation that differed from previous Muslim governmental regulations that harmonized with Islamic norms. Qadri's work limited the scope of available Islamic legal norms, restructured the hierarchy among these norms, and made the introduction of new norms difficult. Parallel to his activity in Egypt, and possibly not unconnected, a central Ottoman government committee also started to codify Islamic norms (again, according to the Hanafi teachings) into an imperial civil code (*Mecelle*) between 1869 and 1876. The *Mecelle* became the civil code of the imperial *nizamiye* courts.[89] In Egypt, Qadri also participated, with Italian judges and a government mufti, in the adaption of the code of the Mixed Courts and Islamic norms for a new Egyptian Civil Code, which became the code of the khedivial local courts, the "native" ones, in 1883.[90]

[86] Muhammad, "Sijillat Mahkamat al-Qisma," 14. The last registry book out of the 683 *qisma* registry books is dated hijri 1292 (1875) according to the electronic catalogue in DWQ, and according to Ghazaleh, *Fortunes*, 1:62, n. 99.

[87] In the Ottoman Ministry of Imperial Pious Endowments, the *qassam* even received a new role in adjudicating matters of pious endowments. Ekinci, *Osmanlı Mahkemeleri*, 310.

[88] *Al-Ahkam al-Shakhsiyya fi al-Ahwal al-Shahsiyya 'Ala Madhab al-Imam Abi Hanifa al-Nu'man*, vol. 1 (Bulaq: al-Matba'a al-Saniyya, 1292); and Hans-Georg Ebert, *Die Qadrî-Pâshâ-Kodifikation: Islamisches Personalstatut Der Hanafitischen Rechtsschule* (Frankfurt Am Main: P. Lang, 2010), 18–19.

[89] More research is needed on the sultanic-khedivial legal reform in this period. Şerif Mardin, "Some Explanatory Notes on the Origins of the 'Mecelle' (Medjelle) – Second Installement," *The Muslim World* 51 (1961): 274–79; and Samy Ayoub, "The Mecelle: Sharī'a, and Ottoman State: Fashioning and Refashioning of Islamic Law in the 19th – 20th Century CE," *The Journal of the Ottoman and Turkish Studies Association* 2 (2015): 121–46.

[90] Khanki, *Al-Mahakim,* 92–93.

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Baldwin's and Fahmy's arguments about the two types of legal forums with procedural difference but essentially administering the same revealed law cease to hold true once the new legal codes came into force in the 1880s. From this point onwards, the governmental legal forums (the *nizamiye* courts in the directly ruled provinces and *ahli* courts in Egypt) do not administer the same type of revealed law as the *qadi*'s court. Even if Islamic norms remained in the *Mecelle* and the Egyptian Civil Code, the fact of codification created a new, rigid, and governmental form of law. The ministries issued detailed procedural regulations for the new courts which increased their distance from the *qadi*'s court even more. We must emphasize that given the novelty of codes, the expansion of legal administration, and the scarcity of legally trained staff, the transition was slow, and the *qadi* remained important in many non-urban locations up to the 1920s and later. Still, the law of the government and the law of the *qadi* became markedly different from the 1880s on, in all Ottoman regions including Egypt.[91]

The 1880s khedivial probate regime exemplifies this increasing gap. The *ahli* courts provided an alternative legal forum for non-Muslim litigants against estates. For instance, the 1883 Egyptian Civil Code declared that "the adjudication of estates shall be according to the personal status laws of the religious community (*milla*) to which the deceased belonged" (articles 54, 55) while the procedural code explicitly forbade the local courts from appointing guardians for Muslim orphans and from engaging in the probate process itself, leaving these issues to the trusteeship councils and the *qadi*.[92] The old division between governmental forums and the *qadi*'s court also continued when the government rendered probate cases that did not fulfill the evidentiary requirements of the *qadi* back to the *ahli* courts. For instance, cases in which Muslim witnesses did not give testimony in support of a claim (such as, say, for repayment of a debt) on a bequest had to be adjudicated "through administrative means" (*siyasatan, bi-l-wajh al-siyasi*; that is, through the *ahli* courts) and *not* "through the means of revealed law" (*shar'an*); that is, not according to a *qadi*'s court procedures.[93]

In sum, by the early 1880s, the khedivial probate regime and its center the probate bureau became engulfed in a new institutional and regulatory environment. This was the consequence of a long, genuine thinking and planning process of Ottoman and khedivial bureaucrats and jurists beginning in the 1850s about the best ways to answer the challenge of European pressure while maintaining Muslim norms and elite privileges. Importantly, the creation of the trusteeship councils, the abolishment of the *qassam*'s office, the 1880s *ahli* courts and their new codes did not result in a conflict of norms but rather in a conflict of procedure between the *qadi*'s court and the governmental legal forums. The British occupiers took advantage of this institutional

[91] Rudolph Peters, "From Jurists' Law to Statute Law or What Happens When the Shari'a is Codified," *Mediterranean Politics* 7 (2002): 82–95.

[92] Filip Jallad, *al-Qamus al-'Amm li-l-Idara wa-l-Qada'* (Cairo: Matba'at al-Ma'arif, 1908), 7:30–34.

[93] Ibid., 2:28, 30, 32.

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compartmentalization after 1882 and introduced their own ways of thinking about law and society.

The Transformation of the Probate Regime Under British Occupation

In this final section, we explore the regulatory changes in the khedivial probate regime under British occupation. These changes accomplished the erasure of the Ottoman probate regime, including the abolition of the probate bureau itself, and created a British-inflected khedivial vernacularized regime whose institutional basis was the trusteeship council. Importantly, in this period the *qadi*'s court became decisively labelled as "religious" while the government courts came to be labelled as administering "civil" laws. For the probate regime, this new epistemic division meant that Muslim estates were now labelled as "religious" ones while non-Muslims ones became labelled as "civil."

In the 1880s and 1890s, the global transformation in probate regimes was prompted by larger social debates about the family, religion, social justice, and equality. In the new German Empire, the imperial Civil Code contained a compromise between full individual freedom and the interest of the family concerning inheritance. In France, some attempted to introduce progressive taxation of estates from the 1840s on. After the 1880s, French Solidarism and the ideas of Émile Durkheim about restricting individual testamentary rights prompted a public debate.[94] The British government regularly debated the "death duties" as a balance to income tax; and in 1894 they united all probate expenses.[95] These large debates about individual power over property, intergenerational social justice, and the increasing automatization of title transfer led to the transformation of imperial probate regimes.

In 1890s Egypt, the regulatory changes were prompted not by a public debate about social equality but by the struggle over the probate regime among local Muslim jurists, khedivial bureaucrats and notables, and the British advisors. As well as querying the now "religious," overregulated, and complex structure of the probate bureau (to take a single example, in 1890 in the town of Banha alone there were 8000 delayed probate cases), the British and khedivial officials also saw it as an economic burden.[96] (At some unknown point, the government also took a loan whose security was the bureau's revenue. This became known in English as the "Beit-al-Mal" loan.[97]) Its growing responsibilities resulted in the fact that its expenses amounted to more than its revenues. As early as 1880, a commission found that it had too many responsibilities for which it did not take a fee and that it relied exclusively on fees deriving from bequests to cover all its expenses, including salaries. The khedive now prescribed a general fee of 2 per cent for all bequests under the care of the probate office and 1 per cent for the real estates in

[94] Beckert, *Inherited Wealth*, 50–64 (German inheritance law), 245–53 (French taxation).

[95] M. J. Daunton, *Trusting Leviathan: the Politics of Taxation in Britain, 1799–1914* (Cambridge: Cambridge University Press, 2001), 242–45.

[96] *Al-Ahram*, November 21, 1890, 2.

[97] Lord Cromer, *Modern Egypt* 2 vols (New York: MacMillan Company, 1916), 1:53–54.

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cases when there was a missing heir.[98] This helped to balance this bureau: in 1887, its revenues were 14,017 Egyptian pounds and its expenses were 12,952 Egyptian pounds.[99]

In the 1880s, the occupied government at first enlarged the probate infrastructure possibly due to a British misinterpretation, which understood it to be representing the government fisc with all its responsibilities about ownerless lands and government properties. The probate bureau expanded its activities. For instance, in 1885, the Interior Ministry created new *baytmal* agencies in all rural districts and assigned to them, among the usual tasks of probating and sequestering bequests, control over ownerless agricultural lands and properties everywhere. This control was the task of a different fiscal office in the pre-occupation khedivate.[100] In 1886, the ministry made it clear that no heir could sue the probate bureau because "all their rights emanate from the *bayt al-mal*...[the heirs] cannot request, nor sue the probate bureau by any reason."[101] Here the Arabic text is ambiguously using the doctrine of the fisc (*bayt al-mal*) to denote the actual probate bureau.

The prohibition on suing the *baytmal* was a reaction to the fact that the local (*ahli*) courts provided a forum in which the government could sue local individuals and, more importantly, local individuals could sue government agencies. We will consider this 1886 verdict that forced the probate bureau to pay out shares in a bequest to the ladies Habiba and Zübeyde several years after the time of their relative's death. The case also illustrates the new legal environment and the complexity of the khedivial probate regime. Ali Agha Islambuli, whose domicile was in Alexandria and who was possibly an Ottoman officer in the army, died in 1852 in khedivial Sudan. His bequest was sequestered in the Khartoum *baytmal* because no heirs were present in that city. His brother's son Mustafa Agha and his sister Hatice claimed their share in his bequest only 20 years later, in 1872 in Alexandria; but soon both also died. The Khartoum bureau meanwhile auctioned the assets in 1867 (after 15 years of waiting). In 1869, it sent the money, 180 Egyptian pounds, to the Cairo bureau, which, in turn, sent it to the Alexandria bureau in the early 1870s and requested its director to look for the heirs, but these latter were nowhere to be found (possibly they were deceased by that time). A few years later, the daughters of the deceased Mustafa Agha, Habiba and Zübeyde, renewed the claim to Ali Agha's bequest. They established their rights at a *qadi* court in Alexandria and submitted the evidence to the Alexandria *baytmal* in 1883, but the bureau denied the release of the money. Upon this denial, in 1885 the two daughters brought their claim against the Alexandria bureau at the *ahli* court of first instance in Alexandria, this time also demanding a 7 per cent profit on the bequest from the previous decades and the expenses of the trial. The representative of the Alexandria probate bureau (Philip Jallad—Gélat—in fact, a Christian lawyer) first denied the validity of the court's jurisdiction. After this line of argument was rejected, he then

[98] Jallad, *Qamus al-Idara,* 2:37–38.
[99] "Budget pour exercice 1888," HIL 436/1/122, Special Collections, Durham University Library.
[100] Jallad, *Qamus al-Idara*, 2:44.
[101] Ibid., 2:46.

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argued that the court must decide in favor of the bureau, since the original claim had been made 20 years after the death, and all claims on bequests were invalid after the passing of 15 years. The court looked at the documents and decided that the bureau had to pay because the heirs had had special reasons for not advancing their claims earlier in the absence of notification; and the Cairo bureau had already acknowledged their claim once. Hence a bequest from 1852 in Khartoum was finally paid out to the heirs in Alexandria in 1886.[102] But after this case, there is no further mention of a similar trial.

The probate regime illustrates well the legal genesis of the "civil" (*madani*) domain in khedivial Egypt in contradistinction to "religion" (*din*) during the British occupation. For instance, in 1885, the Justice Ministry decided a debate about whether the local (*ahli*) or the *shari'a* courts—the *qadi* courts—could hear the debt claims on bequests that were introduced without Muslim witnesses but that involved Muslim litigants. The Solomonic solution was that the local courts had jurisdiction in these cases, except when the item under claim was the dowry of a deceased wife. The Ministry argued that debt claims on bequests were "pure civil issues," but that the issue of a wife's dowry belonged to the realm of religion.[103]

Muslim jurists also advocated the new understanding of the whole probate regime as a Muslim "religious" domain. They continued to enforce Islamic norms through this niche of administration. For instance, the government reorganized the morgues and the guild of the corpse-washers in 1887. The Grand Mufti al-'Abbasi al-Mahdi asked the Legislative Assembly (*Majlis Shura al-Qawanin*) to include the *baytmal* and its mufti in the debate about the new regulation. Indeed, the probate bureau became the supervisor of the morgues; its mufti was commissioned to educate even the corpse-washers in *shari'a*, and to register and certify them; and the morgue's director became part of the inventory-making team going to the house of the deceased (article 10).[104] Others were less sure in the work of the probate bureau. In the Legislative Assembly, the debate about the law included a speech by a certain Shawaribi Bey, in which he called attention to the compartmentalized probate bureau and the many confusing fees, and suggested a new regulation of this administration.[105]

The concern about economy, the growing power of notables in the administration, and underperformance resulted in the abolition of the probate bureau. In 1890, the government abolished the general office in Cairo and decentralized the countryside branches. An 1893 commission of Egyptian notables, with members such as the important jurist Fathi Zaghlul, which was charged to create a law of trusteeship councils, in fact recommended the complete abolition of the *baytmal*.[106] In 1896, the Legislative Assembly at first

[102] Case dated January 26, 1886, *Al-Huquq*, May 15, 1886, 106–8.

[103] Jallad, *Qamus al-Idara*, 2:42–43; for the rise of Muslim family law in Egypt, see Kenneth M. Cuno, *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt* (Syracuse: Syracuse University Press, 2015).

[104] *Al-Waqa'i' al-Misriyya*, November 21, 1887, 1307–9.

[105] *Al-Waqa'i' al-Misriyya*, December 12, 1887, 1420–21.

[106] *Al-Ahram*, September 25, 1893, 2.

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approved only a law about "the trusteeship councils and the probate bureau administration of bequests."[107] Yet a khedivial order in the same year finally abolished the bureau, its branches, and its fees, and instead, transferred the tasks of the bureau to three-member trusteeship councils in all rural centers and urban directorates.[108]

The trusteeship councils, in addition to moral supervision, now assumed full authority to appoint guardians over (Muslim) orphans, missing heirs, and mentally ill persons. The members in these councils were the director of a district, a Muslim jurist (appointed by the Justice Ministry), and a local notable (appointed in consultation with the Interior Ministry) (articles 3, 4). The district directorate was responsible for sequestering a bequest if such a measure was needed. Importantly, the decentralized councils belonged no longer to the Interior Ministry but rather to the Justice Ministry (article 5).[109] In 1911, the government created a central body, the High Trusteeship Council in Cairo. In the 1920s, the new royal government re-codified the trusteeship councils.[110]

In sum, the doctrine of the Muslim fisc (*bayt al-mal*) remained in effect while the administrative bodies and the shape of the law administered in governmental forums changed. The British-khedivial regime institutionalized already existing legal forums, codified laws and procedures, and introduced a new conceptual division between religious and civil affairs to denote a new difference between the *qadi* court and administrative legal forums. Instead of a full rupture, the occupation reorganized the conceptual domain of Ottoman-khedivial government. Instead of a centralized probate office, decentralized governmental offices sequestered the wealth of the dead. Muftis maintained the norm of protecting legally incapacitated individuals, enforced now through the governmental trusteeship councils. The *qadi*'s court still adjudicated shares in estates and drew up probate inventories, but it now did so in a legally plural landscape.[111] Thus ended the transformation of the Ottoman imperial probate regime into a local, rationalized, and "enchanted," Muslim one in the khedivate of Egypt under British occupation.

Conclusion

In this article, we have introduced the category of the probate regime to denote a moral-administrative field that secures the transfer of title and the trusteeship of bequests; and that regulates intergenerational inequality. In using the

[107] *Al-Ahram*, July 10, 1896, 2.

[108] Wizarat al-Haqqaniya, *Amr 'Ali bi-Ilgha' Aqlam Bayt al-Mal wa-Bi-Tartib al-Majalis al-Hasbiyya* (Cairo: al-Matba'a al-Amiriyya, 1916).

[109] Ibid.

[110] For the full story of these councils, see Asma' 'Abd al-Tawab Majli, "Al-Majalis al-Hasbiyya fi Misr, 1873–1947" (PhD diss., Cairo University, 2022).

[111] Cuno, *Modernizing Marriage*, 74–75; see anecdotal evidence in Aaron Jakes, *Egypt's Occupation: Colonial Economism and the Crises of Capitalism* (Stanford: Stanford University Press, 2020), 100, and notes 74–78. Lawsuits in marital matters in the 1900s could be brought in the *qadi*'s court and in the *ahli* court, and there is even a vivid example of a French consular court applying Qadri's code of Muslim family law (although finally their verdict was not enforced) in the 1900s. Cuno, *Modernizing Marriage*, 188–91.

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example of the khedivate of Egypt, our aim has been to replace categories of analysis that are premised on Eurocentric notions of cultural superiority with other categories that better describe the practices of modern government in non-Western societies. Given the constraints of space, we have been able here just to sketch a brief theory of "enchanted" rationalization through the example of modern Egyptian statecraft. The Egyptian muftis successfully cooperated with and pushed the khedives, the British occupiers, and modernizing Egyptian notables to maintain the *bayt al-mal* doctrine through immense administrative and epistemic changes.

The category of the probate regime provides an analytical distinction between moral-legal norms and administrative practices concerning the post-mortem economy. It helps to study the ways that imperial norms migrate among temporally changing governmental institutions and changing conceptual divisions of human life. It helps to articulate the emerging division between civil and religious domains in the late nineteenth and early twentieth centuries in the legal institutions of postmortem wealth transmission. It also provides an analytical tool to follow the changing moral-legal ideologies about the wealth of the dead from one constitutional regime to another or, the opposite: the remarkable continuity of norms across centuries. While in 1924 the new Turkish republic and in 1955 in Egypt the Nasserite government abolished the *qadi* courts, in Egypt the trusteeship councils have continued to uphold the doctrine of moral trusteeship over the wealth of Muslim orphans until today.

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Adam Mestyan is Associate Professor in the History Department, Duke University. His most recent publication is *Modern Arab Kingship: Remaking the Ottoman Political Order in the Interwar Middle East* (Princeton: Princeton University Press, 2023). <adam.mestyan@duke.edu>

Rezk Nori is senior researcher at the Center for Contemporary Egyptian History, Egyptian National Library. His most recent publication is *Tujjar al-Qahira fi 'Asr Muhammad 'Ali, 1805-1848* (Cairo: al-Hay'a al-Misriyya al-'Amma li-l-Kitab, 2018). <rezkhist@gmail.com>

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