BEDOUINS IN THE OTTOMAN JURIDICAL FIELD SELECT CASES FROM SYRIAN COURT RECORDS, SEVENTEENTH TO NINETEENTH CENTURIES

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Abstract

Ottoman shari'a court records together with the legal literature of the time (fatwa collections, commentaries, treatises) have proven valuable if somewhat difficult sources for the writing of the social, economic and political history of groups that are marginalised in chronicles and other historical writings, such as biographical dictionaries and the like. This article is a preliminary inquiry into how various individuals and groups that may be labelled as 'Bedouin' or 'nomadic' appear in Ottoman court records. It is based on a small number of records from the shari'a courts of Damascus and Hama in the eighteenth and early nineteenth centuries. They are supplemented by several fatwas concerning Bedouins written by Ḫayr al-Dīn al-Ramlī (d. 1671). The results of this inquiry are mixed: Though court records may provide interesting examples of social and political interactions involving Bedouins as individuals and as groups, they need to be contextualised by other source material for a more thorough analysis of long-term developments.

Ḫayr al-Dīn al-Ramlī (d. 1671), when asked whether a qadi could admit in court the testimony of an *aʿrābī* even against a learned person (*ṭālib ʿilm*), thought it permissible on the condition that the man could prove his probity and moral rectitude (*ʿadl*).[1] The term '*aʿrābī*' is difficult to translate because of its long history and multilayered meanings.[2] The usual

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[1] al-Ramlī, Ḫayr al-Dīn, *Kitāb al-fatāwā l-ḫayriyya li-nafʿ al-barriyya*, 2 vols. (Istanbul: al-Maṭbaʿa al-ʿuṯmāniyya, 1311/1893-4): II, p. 26: *suʾila: fī šahādat al-ummī wa-l-qarawī wa-arbāb al-ṣināʿāt al-dunyā ka-l-zabbāl wa-l-ḥāʾik wa-l-qanawātī wa-l-aʿrābī iḏā kāna ʿadlan hal tuqbal šahādatuhu ḥayṯu ʿadlan wa-law kāna al-mašhūd ʿalayhi ṭālib ʿilm am lā. ajāba: naʿm tuqbal šahādatuhu ḥayṯu kāna ʿadlan wa-law ʿalā ṭālib al-ʿilm*.

[2] For a long-term discussion of the term, see Leder, Stefan, "Nomadische Lebensformen und ihre Wahrnehmung im Spiegel der arabischen Terminologie", *WO*, XXXIV (2004): pp. 72-104, here pp. 89-99. The term could also be applied to non-Arab groups, see e.g. Ibn Ḫaldūn's "*Aʿrāb al-ʿajam*", transl. as "Bedouins among the non-Arabs" by Haarmann, Ulrich W., "Ideology and history, identity and alterity. The Arab image of the Turk from the Abbasids to modern Egypt", *IJMES*, XX/2 (1988): pp. 175-96, here p. 179.

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rendering is 'Bedouin' or 'nomad'. In this context, these terms apply only insofar as they constitute a residual category of people who had in common that they were not listed by the authorities as living in a city or town (*madīna, qaṣaba*) or a village (*qarya*).[3] Other terms that describe, in sometimes inconsistent and confusing ways, people belonging to this group are the related nouns *aʿrāb*, *ʿurbān*, 'people of the steppe', and 'Bedouins' (*ahl al-bādiya*, adj. *badawī*), and also words such as ''Arab', 'Turkmen', 'Kurd' and 'Turk' that were used as linguistic or ethnic markers and stereotypes.[4]

The wording of the question addressed to the mufti of the Palestinian town of al-Ramla highlights the low social standing of people so designated, as they were mentioned last in a series that listed the "illiterate" (*ummī*), "villagers"' (*qarawī*) and "people of inferior occupations" (*arbāb al-ṣināʿāt al-dunyā*). Ḫayr al-Dīn al-Ramlī, as this article will show, probably thought it highly unlikely that people described in this way could be approved as witnesses by establishing they had a "solid social and religious reputation".[5] In the mufti's eyes, however, they were not alone in their moral laxity and depravity; he also excluded categorically people who worked for the political authorities (*aʿwān ḥukkām siyāsa*) or members of the local administration (*mašāʾiḫ al-balad*) from being admitted as witnesses, adding a cutting comment on the *mores* of his times: "because we see in our times many a worker in a low profession who possesses more faith and piety than we see in those in high political positions or the religious establishment... and God knows best".[6]

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[3] For this tripartite categorisation of the population stemming from tax lists, see also Hütteroth, Wolf-Dieter and Abdulfattah, Kamal, *Historical geography of Palestine, Transjordan and Southern Syria in the late sixteenth century* (Erlangen: Fränkische Geographische Gesellschaft, 2007); Guérin, Alexandrine, "Interprétation d'un registre fiscal ottoman. Les térritoires de la Syrie méridionale en 1005/1596-7", *JNES*, LXI/1 (2002): pp. 1-30; and a more precise elaboration of the topic below.

[4] See Haarmann, "Ideology and history", pp. 176-9. In Ottoman-Turkish, similar meanings are rendered by terms such as 'göçer', 'konar göçer', translated as 'nomadic', 'unsettled'. In this article, 'Arab' and 'Bedouin' (from *badw*, somebody from a *bādiya,* pl. *bawādin*, desert, steppe)' will be used mainly to describe Arabic-speaking groups, while Kurds and Turkmen are differentiated as such if possible. 'Nomadic' is used generically in the sense defined above, not implying a distinct degree of mobility or manner of pastoral production.

[5] See Johansen, Baber, "Signs as evidence. The doctrine of Ibn Taymiyya (1263-1328) and Ibn Qayyim al-Jawziyya (d. 1351) on proof", *Evidence in Islamic law* (*Islamic Law and Society*, IX/2 [2002]): pp. 168-93, here p. 171.

[6] Ramlī, *Fatāwā*: II, pp. 25-6; here 26: *fa-innā narā fī zamāninā kathīran min arbāb al-ṣināʿāt al-dunyā ʿindahu min al-dīn wa-l-taqwā mā laysa ʿinda kathīr min arbāb al-*

Probity and morality were core characteristics of people living in the jurists' ideal Muslim society.[7] The juridical field did not welcome the coming and going of nomadic groups, whom it saw as disturbing elements on many levels and whom it had already labelled early on as 'outsiders' *par excellence*.[8] This marginalisation on various levels is also found in the writings of Ottoman jurists.[9] In the last 50 years, Ottomanists have studied a growing number of groups operating in the complex social fabric that was the Ottoman Empire, using the documentation produced by the judicial system, in particular the shari'a courts.[10] Shari'a court records, complemented by the legal literature of the time (fatwa collections, commentaries, treatises), have proven valuable if somewhat difficult sources for the writing of the social, economic and political history of groups that are marginalised in chronicles and other historical writings, such as biographical dictionaries and the like. One group, however, is conspicuously missing from most studies based on court records. If we consider only the 'Syrian Lands' (*Bilād al-Šām*), a geographic region that spans approximately the Syria, Lebanon, Israel/Palestine and Jordan of today, only a small number of studies have even touched on the subject of nomadic people. They rely mainly on material produced by the Ottoman financial administration and present only select features of cases culled from the court records.[11]

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wajāha wa-aṣḥāb al-manāṣib wa-l-marātib... wa-llāhu aʿlam; cf. Ibn ʿĀbidīn, Muḥammad Amīn, *al-ʿUqūd al-durriyya fī tanqīḥ al-fatāwā l-ḥāmidiyya*, 2 vols. (Bulaq: al-Maṭbaʿa al-kubrā l-mīriyya, 1300/1882-3): I, pp. 314-5

7 Shaham, Ron, *The expert witness in Islamic courts. Medicine and crafts at the service of the law* (Chicago-London: University of Chicago Press, 2010): pp. 33-8; for a discussion of the concept in an Ottoman context, see Peirce, Leslie, *Morality tales. Law and gender in the Ottoman court of Aintab* (Berkeley: University of California Press, 2003): pp. 176-208.

8 E.g. Steppat, Fritz, "'Those who believe and have not emigrated'. The Bedouin as the marginal group of Islamic society", in Id., *Islam als Partner. Islamkundliche Aufsätze 1944-1996*, ed. Scheffler, Thomas (Beirut-Würzburg: Ergon, 2001): pp. 331-8; or Leder, "Nomadische Lebensformen": pp. 89-99, particularly p. 97.

9 For an overview of their political significance, see Kasaba, Reşat, *A moveable empire. Ottoman nomads, migrants, and refugees* (Seattle-London: University of Washington Press, 2009).

10 For a survey of the sources, see Faroqhi, Suraiya, *Approaching Ottoman history. An introduction to the sources* (Cambridge: Cambridge University Press, 1999).

11 Douwes, Dick and Lewis, Norman L., "Taxation and agriculture in the district of Hama, 1800-1831. New material from the records of the religious court", in Philipp, Thomas (ed.), *The Syrian Land in the 18th and 19th century* (Stuttgart: Steiner, 1992): pp. 261-84; Ze'evi, Dror, *An Ottoman century. The district of Jerusalem in the 1600s*

This article is a tentative first step towards taking a closer look at the potential of court records for introducing nomadic people into the Ottoman juridical field. In respect of the Syrian court records and what they contain as information about nomadic groups, one certainly would have to differentiate between specific locations and time periods. At this preliminary stage of research, it is difficult to account for the marked regional differences. Bedouins and people of Bedouin origin play a notable role in the court records of the small towns of Hama and later Homs, both situated close to the pasture lands in Central Syria. Bedouins appear occasionally in the court records of Jerusalem,[12] but remain nearly invisible in the voluminous documentation produced by the various courts in large urban centres such as Aleppo and Damascus.

This may be primarily a problem of missing indices, as we cannot (yet) survey the contents of the records with any precision. It is, however, also a problem of identification. People who came to the courts appear in the documentation as individuals identified by their own and their father's name. This was supplemented by the court clerks with an indefinite number of labels that placed the individual in one or several of the many corporate groups that in the parlance of the courts constituted the basic elements of Ottoman society.[13] Those used to describe groups relevant for taxation and other administrative purposes tend to be rather exclusive: people belonged either in a 'village' (*qarya*), a 'town' (*qaṣaba*, *madīna*) or 'urban quarter' (*maḥalla*, *ḥāra*), or to the rather vague residual category translated loosely as 'groups' (*jamāʿa*) or 'tribal groups' (*ʿašīra, qabīla*) of

(Albany: State University of New York Press, 1996); Douwes, Dick, *The Ottomans in Syria. A history of justice and oppression* (London: I.B. Tauris, 2000); Reilly, James A., *A small town in Syria. Ottoman Hama in the eighteenth and nineteenth centuries* (Bern: Peter Lang, 2002); Winter, Stefan, *The Shiites of Lebanon under Ottoman rule, 1516-1788* (Cambridge: Cambridge University Press, 2010); Id., "Les Kurdes de Syrie dans les archives ottomans (XVIII^{e} siècle)", *Études Kurdes*, X (2009): pp. 125-56; Id., "The province of Raqqa under Ottoman rule, 1535-1800. A preliminary study", *J*, LXVIII/4 (2009): pp. 253-68; Id., "Osmanische Sozialdisziplinierung am Beispiel der Nomadenstämme Nordsyriens im 17.-18. Jahrhundert", *Periplus: Jahrbuch für außereuropäische Geschichte*, XIII (2003): pp. 51-70. Bedouins are also a focus in Bakhit, Muhammad Adnan, *The Ottoman province of Damascus in the sixteenth century* (Beirut: Librairie du Liban, 1982); and Rafeq, Abdul-Karim, *The province of Damascus, 1723-1783* (Beirut: Khayyats, 1966).

12 Ze'evi, *Ottoman century*: p. 218, n. 60.

13 See also Ze'evi, *Ottoman century*: p. 111; Nef, Annliese, "La nisba tribale entre identification individuelle et catégorisation. Variations dans la Sicile des X^{e}-XII^{e} siècles", *REMM*, CXXVII (2010): pp. 45-8.

Arabs, Turkmen, Kurds or other ethnic or religious entities.[14] In a Hama tax list of 1829, a heading reads "what the Arab tribal groups pay in place of taxes" *(badal takālīf ašāʾir al-ʿarab)*.[15] An individual could only belong to one of these tax categories, and thus people of nomadic background who were counted in other groups cannot be identified. For people living in cities or villages, one could probably start by looking for personal names that can be related to specific genealogies, but such an investigation into naming practices must be left for another time.

Looking for the traces that Bedouin and other nomadic people left in the *sijill* therefore resembles the proverbial search for a needle in a haystack. This apparent underrepresentation certainly does not reflect their economic, military or political importance for the functioning of empire. However, the court records are by no means a mirror that reflects the composition of the population in the various parts of the empire. We are only just beginning to understand how and why people from various ethnic and social backgrounds made use of the Ottoman courts in different locations and over time. Accounting for this diversity is a necessary, but not easy, step towards a better understanding of the conditions that shaped the production of the documentary record. Adding the Bedouins and other nomadic people brings out yet another aspect of this difficult equation.

In this article, I try to come to terms with nomadic people in the Ottoman juridical field by examining in what ways people identified as such in the sources appeared in the judiciary system. The documentary base for this preliminary inquiry is an unsystematic sample of 21 documents culled from the Damascus and Hama court records, mainly of the eighteenth and first half of the nineteenth century (listed in detail in the reference section). These documents cover various places and periods up to the time when Tanzimat measures began to be implemented at the provincial level in the 1840s and 1850s.[16] They touch upon a variety of

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[14] Together with 'uninhabited cultivated land' (*mazraʿa*), these are the categories used in Ottoman tax listings (*Tahrīr defterler*) (see e.g. Hütteroth and Abdulfattah, *Historical geography*: passim; Guérin, "Interprétation d'un registre fiscal ottoman": pp. 1-30; or Douwes, *Ottomans*: pp. 20-43). In using these categories, the Ottomans do not seem to have paid much attention to the inner structuring of the groups; in the case of Bedouins, for instance, terms such as *qabīla* and *ʿašīra* were used quite indiscriminately, see Douwes, *Ottomans*: p. 35, n. 56. In one of the sixteenth-century tax lists, *qabīla* is rather exceptionally also used for subgroups of the Jewish community (see Hütteroth and Abdulfattah, *Historical geography*: p. 39).

[15] H 49/328/1154 (23 Rabīʿ I 1245/22 September 1829).

[16] The Damascus documents were selected from samples I have collected together with Brigitte Marino in relation to other projects. The references to Hama documents are based mainly on the studies by Dick Douwes and Jim Reilly, who also provided

subjects and it is difficult string them together in a concise argument. They do, however, allow some interesting glimpses into how nomadic people interacted with each other, with other social groups, and also with the Ottoman authorities. For long-term historical analysis, they need the backing of other sources that can provide more insight into the political, economic, social and also legal contexts in which these juridical documents originated.

For this article, the court material has been supplemented by a select reading of the legal literature of the period, focussing mainly on fatwa collections. Like others before me, I have noted the lack of interest in nomads in the formal legal literature. A notable exception is Ḫayr al-Dīn b. Aḥmad b. Nūr al-Dīn al-Ramlī (1585-1671) who acted as an independent Hanafi mufti in the Palestinian town of al-Ramla.[17] His connection with local Bedouin groups has already been noted by his biographer, the Damascene Muḥammad Amīn al-Muḥibbī (d. 1699): "When one of his fatwas reached the Arabs of the steppes, they would not dispute it even though in most of their affairs they do not respect the shari'a."[18]

Muḥibbī's observation as to the impact of Ramlī on Bedouin groups has certainly to be interpreted with caution and, in my opinion, does not indicate, as Dror Ze'evi and others following him assume, that "the good relations between Bedouin tribes and the governors of Gaza in the seventeenth century stemmed in part from their respect and admiration for the *mufti*...".[19] Rather, Muḥibbī's remark highlights the commonly shared attitude of the

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some additional help for which I am very grateful. I also thank Boris Liebrenz for a reference to a document in the Hama *sijill*. The registers of the Series *Maḥakim šarʿiyya* are stored in the Syrian National Archives, *Dār al-waṯāʾiq al-taʾrīḫiyya*, in Damascus. In what follows, the documents of the court registers (*sijill*) will be referred to with D for the Damascus or H for the Hama series, followed by three numbers and the registration date: register/page/document (*hijrī* date/CE date).

[17] Tucker, Judith E., "Biography as history. The exemplary life of Khayr al-Din al-Ramli", in Fay, Mary Ann (ed.), *Auto/biography and the construction of identity and community in the Middle East* (New York: Palgrave, 2001): pp. 9-17; Abbas, Ihsan, "Ḫair Ad-Dīn Ar-Ramlī's Fatāwā. A new light on life in Palestine in the eleventh/seventeenth century", in Haarmann, Ulrich & Bachmann, Peter (eds.), *Die Islamische Welt zwischen Mittelalter und Neuzeit. Festschrift für Hans Robert Roemer* (Beirut/Wiesbaden: Franz Steiner, 1979): pp. 1-19.

[18] al-Muḥibbī, Muḥammad, *Ḫulāṣat al-aṯar fī aʿyān al-qarn al-ḥādī ʿašar*, (Beirut: Dār Ṣādir, n.d.): II, pp. 134-9, here: "*wa-kānat aʿrāb al-badāwī iḏā waṣalat ilayhim fatwāhu lā yaḫtalifūna fīhā maʿ annahum lā yaʿlamūna bi-l-šarʿ fī ġālib umūrihim*" (p. 139); my translation after Tucker, "Biography", p. 16, with additions.

[19] Ze'evi, *Ottoman century*, p. 111; see also Muḥibbī**,** *Ḫulāṣa*: II, p. 88, where in the entry for Ibn Riḍwān, Governor of Ghazza, it is only said "the Bedouins followed his orders" (*wa-aṭāʿathu l-ʿurbān*).

learned towards nomadic people that they were on the margin, not only in terms of locality, but also with regard to ethics, morality and religiosity.[20] This article is a first step towards showing that in Ottoman judicial practice, however, the relationship between nomadic and sedentary people appears in much more complex constellations. By looking closely at some instances of this interaction, it attempts to point out the potential for a more comprehensive understanding of the role of nomadic people in the Ottoman legal field.

In the following, I shall present my source material in three sections. The court cases will be examined as closely as possible at this stage of research, ordering them along an imagined line of integration into the Ottoman judicial and sometimes also the administrative system, first looking at instances where nomads and Bedouins are clearly depicted as 'outsiders', second trying to identify moments of becoming and being part of the system, and third examining cases in which nomadic people appear as normal users of the court system.

Outsiders

Nomadic groups were part of the Ottoman political scene and provided vital services such as protection and transportation in a number of important fields, including the military, communications and, especially important in the Syrian context, the yearly pilgrimage to Mecca, a huge undertaking of imperial dimensions.[21] At the same time, they were suspect, not only as a security risk, particularly in their dealings with peasants and travellers, but also on a more moral level, as their doubtful adherence to the precepts of Islam was seen to undermine the ethical base and the social order of the empire.

This negative perception of nomadic groups as disturbing and disintegrative elements on a social as well as on a moral level is a common feature of much of Muslim legal literature. The Ottoman-Syrian jurists of the eighteenth century, however, at least those who lived and worked mostly in Damascus, do not seem to have been preoccupied by the presence of Bedouin groups on their territory.[22] It is the more surprising to

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[20] See also Berger, Lutz, *Gesellschaft und Individuum in Damaskus, 1550-1791* (Würzburg: Ergon, 2007): pp. 121-37.

[21] Faroqhi, Suraiya, *Pilgrims and sultans. The Hajj under the Ottomans, 1517-1683* (London: I.B. Tauris, 1996).

[22] Cf. Mundy, Martha and Smith, Richard Saumarez, *Governing property, making the modern state. Law, administration and production in Ottoman Syria* (London: I.B. Tauris, 2007): pp. 11-52.

find in the seventeenth-century fatwa collection of Ḫayr al-Dīn al-Ramlī a very detailed and elaborate example of outright condemnation of what appear to be nomadic groups in general.[23] The mufti seems to have considered the groups roaming the steppes of Bilād al-Shām, the Hijaz and Egypt to be nothing short of infidels (*kuffār*, sing. *kāfir*).[24] When asked about "God's judgement of them and [...] the duty of the authorities in view of their persistence [in wrongdoing] though they have been reprimanded and ordered [to do right] repeatedly", Ramlī maintained that it was the duty of the ruler and the Muslim community to fight them till death, which constituted in his eyes a jihad.[25] The reasons for this harsh judgement were listed in the long question that begins as follows:

> Question about Bedouin groups such as the Saʿādina and the Banī ʿAṭiyya and other Arabs of Syria, Egypt and the Hijaz and Arabs from other steppes (*ʿarab al-bawādī*) who divorce their women and then marry another's wife the next Friday or even sooner; the same after the [husband's] death, they do not respect the appropriate waiting period at all and they declare this licit.[26]

The petitioner then goes on to enumerate other offences, such as violating the revealed inheritance rules by advancing close male kin (*ʿaṣaba*) and neglecting female heirs, particularly daughters who are said not to inherit at all; and though they seemed to believe in the mission of the Prophet Muhammad,

> they are sceptical about the truth of resurrection after death and the last judgement and say 'We don't know'. They do not pray, do not give *zakāt* and are prone to criminal behaviour, such as highway robbery (*qaṭʿ al-ṭarīq*) and killing people without just reason, which was forbidden by God; they sell free people as

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[23] The fatwa has been mentioned in another context by Gerber, Haim, " 'Palestine' and other territorial concepts in the 17th century", *IJMES*, XXX (1998): pp. 563-72, here p. 567.

[24] Ramlī, *Fatāwā*: I, pp. 107-8: *hāḏā ḥukmuhum maʿ kawnihim kuffār wa-bihi yuʿlam ḥill qatlihim muṭlaqan wa-l-ḥāl hāḏihī wa-yuṯāb qātiluhum wa-ajr al-muqātil ka-ajr al-muqātil li-ahl al-ḥarb maʿ ḫulūṣ al-niyya li-annahu mujāhid fī sabīl Allāh taʿālā wa-llāhu aʿlam*.

[25] Quoting Qur'an 5.33.

[26] Ramlī, *Fatāwā*: I, pp. 107-8: *suʾila fī naḥw ʿArab al-Saʿādina wa-Banī ʿAṭiyya wa-ġayrihim min ʿArab al-Shām wa-Miṣr wa-l-Ḥijāz wa-ġayrihim min ʿArab al-bawādī allaḏīna yaṭlaqūna nisāʾahum fa-yatazawwaj al-rajul minhum zawjat al-āḫar al-madḫūla baʿd ṭalāqihi bi-l-jumʿa aw-aqall wa-kaḏālika baʿda al-mawt lā yaʿtaddūna muṭlaqan wa-yastaḥallūna ḏālika*.

they see fit [...]."[27]

In another fatwa, Ramlī referred in passing to the "rebels of the steppe" (*ašqiyāʾ al-bādiya*), a term very likely used synonymously with the more usual 'Bedouins'.[28]

In Ottoman legal practice as well as in politics, however, Bedouin groups were not treated collectively as infidels. In a number of court documents, the negative attitude and general suspicion towards nomadic groups becomes manifest in the use of generic terms such as 'the Arabs' (*ʿarab*), the 'rebellious Bedouins/nomads' (*ašqiyāʾ al-ʿurbān*), or just 'Bedouins/nomads' (*ʿurbān*).[29] In most cases, the use is unspecific and the groups remain unidentified.[30] For instance, the motive of a group of farmers for moving back to the main village of Jayrud after they had been settled in a remote farm for some years is given as "fear of the hostility of Bedouins" (*ḫawfan min taʿaddī ṭāʾifat al-ʿurbān*).[31] "Bedouin rebels" are said to have robbed a silk caravan belonging to a number of merchants from Aleppo near Hama in 1791.[32] In the Hawran region, the villagers of 'Aṣim had to pay a local strongman in addition to paying their taxes, because he protected them against "Bedouin rebels" (*naẓīr ḥimāyatihi lahum min ašqiyāʾ al-ʿurbān*).[33] In the Hama records of the mid-eighteenth century, the name of the tribal confederation called 'ʿAnaza' seems to have come to be used in the same generic way: a plaintiff claimed having lost his horse on a military campaign against them (*rakabtu maʿ al-ʿaskar ʿalā ʿArab ʿAnaza*).[34]

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[27] Ibid.

[28] Ramlī, *Fatāwā*: II, p. 152: *suʾila fī rajul saʿā bi-āḫar li-rajul min ašqiyāʾ al-bādiya... fa-ġarramahu mālan...*.

[29] For a discussion of the term 'rebel' (*šaqī*) in Ottoman usage, see Hathaway, Jane, "Ottoman responses to Çerkes Mehmed Bey's rebellion in Egypt, 1730", *International Journal of Turkish Studies*, VIII/1-2 (2002): pp. 105-13; Piterberg, Gabriel, "The alleged rebellion of Abaza Mehmed Pasha. Historiography and the Ottoman state in the seventeenth century," *International Journal of Turkish Studies*, VIII/1-2 (2002): pp. 13-24.

[30] D 52/204/579 (8 Šawwāl 1138/9 June 1726).

[31] D 52/219/610 (4 Šawwāl 1138/5 June 1726).

[32] H 46/118/244 (15 Ṣafar 1206/14 October 1791), see also Reilly: *Small town*: p. 87.

[33] D 25/30/47 (date illegible 1112/1700-1).

[34] H 45//297 (27 Ḏū l-Qaʿda 1164/17 October 1751); for an overview, see the forthcoming article by Meier, Astrid and Büssow, Johann, art. "'Anaza", *EI*[3]: in press.

Becoming and being part of the system

From the perspective of the central administration, controlling the unruly elements of Bedouin groups often meant curtailing their movements and making them settle down. A document from the Damascus main court, issued on 23 July 1740, however, allows an insight into the ways in which administrative measures of control could be accommodated in the courts.[35] Four shaykhs and a group of ten men, listed by name and father's name, had come from the village of Ḍumayr, situated north-east of Damascus at the foot of the Qalamun Mountains on the route to Palmyra, to present themselves before the Chief Judge of Damascus and a delegate of the Governor of the Province. This setting underlines the highly official and public character of this visit, as there was no higher authoritative body in the province, short of a session in the Governor's own council (*dīwān*).

Nevertheless, the official act in question took the simple but legally powerful form of a declaration (*iqrār*, *iʿtirāf*).[36] The dozen men collectively acknowledged that from that moment on they would follow "the path of rectitude" (*annahum min al-ān yakūnū sālikīn nahj al-istiqāma*). Their former wrongdoings are not stated in the declaration, but the following sentences imply it was something related to Bedouins. The men solemnly promised they would inform the neighbouring villages and the authorities about the moves of the groups called the ʿArab al-Jabal, who were under the control of two men named Rāšid al-Nuʿaym and Ḫalīfa b. Naṣr.[37] The wording of the declaration makes it possible almost to hear the distant echoes of the words spoken aloud on that occasion: If the Bedouins came to Ḍumayr without the written authorisation of the Governor, they would inform him of their arrival, and if they came to cause harm to the villages of the Marj, a region of pastureland to the south of the village, the villagers would not allow them to camp on their land and

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35 D 94/177/304 (28 Rabīʿ II 1153/23 July 1740).

36 Linant de Bellefonds, Y., art. "*iqrār*", *EI*^{2}: III, p. 1078.

37 Rāšid al-Nuʿaym is said to have been installed as chief over the "Jabaliyya" in Hauran by Asʿad Pasha al-ʿAẓm in 1726-7 (see Ibn Kannān, Muḥammad b. ʿĪsā, *al-Ḥawādiṯ al-yawmiyya min taʾrīḫ aḥad ʿašar wa-alf wa-mīʾa*, ed. al-ʿUlabī, Akram Ḥasan [Damascus: Dār al-Tabbāʿ, 1994]: p. 380). ʿArab al-Jabal is the name of a confederation of smaller nomadic groups in the Hauran (see Muṣṭafā, Maḥmūd and ʿAbd al-Azīz, Hišām, *Qurā wa-ansāb Ḥawrān (alif-ḥā)* [Damascus: al-Muʾassasa al-Ḥawrāniyya, 1996]: pp. 107-8; Bakhit, *Ottoman province*: pp. 195-6). The Nuʿaym were roaming the Ghuta and Marj in about 1806, according to Ulrich Seetzen ("Mémoire pour servir à la connoissance des tribus arabes en Syrie et dans l'Arabie déserte et pétrée", *Annales des voyages, de la géographie et de l'histoire*, V [Paris: F. Buisson, 1810]: pp. 281-324, here p. 291.

would inform the authorities of their movements; they would also inform them and the surrounding villages if the Bedouins simply passed by them going in the direction of the Marj. Their willingness to act as informants was backed by a serious threat: they acknowledged that if they saw the Bedouins pass without an authorisation and did not apprise the authorities of the fact, the village would have to pay a fine of 1,500 piastres (Arabic *qirš*, *qurš*, Turkish *kuruş*).

There is no way yet of knowing whether and for how long the people of Ḍumayr stood by this declaration. It is also impossible to assess whether or not the group in question had been roaming the steppe themselves. Stefan Winter has shown in various articles on northern Syria that forced settlement (*iskān*) was one of the main Ottoman policies for restraining and punishing nomadic groups.[38] This administrative practice was considered suspect, if not outright illegal by most Syrian-Ottoman legal experts, at least in theory.[39] As for the success of these policies, Winter's findings would call for some caution, because the integration of nomadic elements into the Ottoman political and administrative system did not work without inherent contradictions. Around 1700, a Damascus court sanctioned the paying of a protection fee (*ḥimāya*) in the village of ʻAṣim, which was apparently threatened by Bedouin groups roaming the Hauran.[40] A man called Shaykh Ḥasan b. Shaykh Ḥasan was authorised to take from the villagers a certain amount of wheat, barley, sorghum and money, in addition to what they had to pay as taxes to two Ottoman officials (*zaʿīm*). It is unclear whether Shaykh Ḥasan was a Bedouin himself, though he is said to have cultivated some land in the village.

On 25 March 1690, a Turkmen named Ḥājj ʻAlī b. Walī, of the "Turkmānān al-Qabiliyya", came to Damascus to file a suit against two men who were described as the two guards (*ḥāris*) of the village of Qunaytira, also located in the Hauran.[41] He claimed that the previous night they had taken six of his sheep without legal cause. He demanded either the return of the animals or payment of their value of 3.5 piastres. The defendants denied all involvement and wanted proof of his accusation, which he failed to provide, so the judge dismissed his case. This is one of

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[38] See note 9; for a general survey, see Kasaba, *Moveable empire*: pp. 66-83.

[39] Many contemporary Syrian jurists defended the right of people to move freely from one place to another as they saw fit (see the overview of the literature in Mundy and Smith, *Governing property*: pp. 32-4).

[40] D 25/30/46 (date illegible 1112/1700-1).

[41] D 18/293/472 (14 Jumādā II 1101/25 March 1690); for the Turkmen of the Qabiliyya or Jabiliyya Mountain near the village of al-Jābiya in southern Syria, see Guérin, "Interprétation d'un registre fiscal ottoman": pp. 15-6.

many cases that leave scholars wondering why they had been brought to court in the first place. The court fees and travelling expenses alone must have made this excursion into the legal arena a costly one, far beyond the limited value of the sheep.

In addition, some powerful Bedouin groups were also known to raise so-called 'brotherhood fees' (*ḫuwwa*) from villages situated near their summer pastures. Various sections of the ʿAnaza confederation are known to have collected such fees near Hama from the late eighteenth century, if not before. In Hama court registers, there is an interesting document regarding this practice, registered on 23 June 1841, soon after the Ottoman re-occupation of Syria. It is again a unilateral declaration (*iqrār*), delivered in the presence of Hama's highest military, administrative and judicial authorities, and said to be deposited with the Treasury (*li-yuḍaʿ bi-ḫazīnat Ḥamāh*).[42] This declaration is less conventional than the one described above and does not rigidly follow notary rules, and the language and structure are rather informal. Honorifics and titles are kept at a minimum, but one of the Bedouins is introduced by the formula "he who is in need of Him" (*al-faqīr lahu taʿālā*), which was often used by Ottoman functionaries – for example, in the Damascus court registers by judges when signing the documents.

With regard to structure, the declaration begins from an outsider's perspective, describing the composition of the council, and then changes to the first-person voices of three shaykhs of the Sbaʿa and the Ḥasana: Fāris al-Hudayb, Shaykh of the Mawāʾija (also Mawāʾiqa), claimed to speak for the whole of the Sbaʿa and their allies of the Fidʿān and the Salqa (also Salqā), the latter part of the ʿAmarāt;[43] Maḥmūd al-Nāṣir and his cousin Farīd al-ʿAbd al-ʿAzīz spoke for the Ḥasana and their associates, the ʿAmūr.[44] They solemnly declared that they would no longer impose any form of 'brotherhood fees' (*ḫuwwa*) on villages, nor intercept travellers, in an area between Šamsīn (south of Hama) and Khān al-Subul near Idlib. To judge the importance of this administrative measure in the overall relationship of these tribal groups with the Ottoman authorities would call for more insight into its context and history.[45]

The "ambivalent attitudes of the authorities towards the raising of

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[42] H 51/413/1588 (3 Jumādā I 1257/23 June 1841).

[43] For these groups, see Oppenheim, Max von, *Die Beduinen* (Leipzig: Harrassowitz, 1939): I, pp. 85-6; 116-7.

[44] Ibid.: pp. 188-90.

[45] See the forthcoming article by Johann Büssow, ("Negotiating the future of a Bedouin polity in Mandatory Syria. Political dynamics of the Sbaʻa-ʻAbada during the 1930s", *Nomadic Peoples*, XV [2011]).

ḫuwwa"[46] and also towards the handling of blood money are evident in another case from the Hama court of 1823. A man called ʿĪd b. Ḥadūd from the Ḥasana came to court in order to acknowledge the receipt of blood money (*diya*) and thus close the legal case concerning the death of his cousin (*ibn ʿamm*).[47] An Ottoman officer had killed the latter the preceding year when he was doing the rounds to collect *ḫuwwa* money in the village of Tall Sikkīn. One interesting aspect of the document is the respectful way in which the scribe addressed two of the witnesses to the declaration with honorific titles: 'Pride of the tribes and confederations' (*faḫr al-ʿašāʾir wa-l-qabāʾil*), applied to Shaykh Muhannā l-Fāḍil of the Ḥasana, and 'Pride of the tribes' (*faḫr al-ʿašāʾir*) to Farīd b. ʿAbd al-ʿAzīz, whom we already met in another context.[48]

Another interesting aspect of the case is the handling of blood money by both these Bedouins and the Ottoman authorities.[49] As the only legal heir of the deceased, the cousin had received a sum of 100 piastres. This amount is only a fraction of the fixed sum prescribed by shari'a norms in cases of wrongful killing, which are often quoted in normative legal texts, including several fatwas of Ḫayr al-Dīn al-Ramlī and the official Mufti of Damascus, Ḥāmid al-ʿImādī (d. 1757). The compensation for an adult Muslim man was 100 camels of various ages, 1,000 gold dinars or 10,000 silver dirhams.[50] In Ottoman currency, these sums would have corresponded to about 2,500 piastres at the beginning of the eighteenth century.[51]

What accounts for this considerable difference? The discussions of the jurists open up several lines of inquiry. Ḫayr al-Dīn al-Ramlī, for instance, was once asked to address the question of what should be done with

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[46] Douwes, *Ottomans*: p. 32.

[47] H 43/53/157 (1 Ḏū l-Ḥijja 1238/9 August 1823), cf. Douwes, *Ottomans*, p. 32.

[48] For Shaykh Muhannā, see Burckhardt, John Lewis, *Notes on the Bedouins and Wahábys* (London: Colborn and Bentley, 1830): pp. 1-2; Jabbur, Jibrail S., *The Bedouins and the desert. Aspects of nomadic life in the Arab East*, trans. Conrad, Lawrence I., ed. Jabbur, Suhayl J. and Conrad, Lawrence I. (Albany: State University of New York Press, 1995): pp. 519-20; Douwes, *Ottomans*: p. 32.

[49] For blood money, see Tyan, Emile, art. "diya", *EI*^{2}: II, p. 340; and Heyd, Uriel, *Studies in old Ottoman criminal law*, ed. Ménage, V.L. (Oxford: Clarendon Press, 1973): pp. 308-10.

[50] Ramlī, *Fatāwā*: II, pp. 197-200, particularly p. 198; Ibn ʿĀbidīn, *al-Fatāwā l-ḥāmidiyya*: II, pp. 241-58; the reference to the shari'a was still particularly strong in such cases in the nineteenth century, see Miller, Ruth A., "Apostates and bandits. Religious and secular interaction in the administration of late Ottoman criminal law", *StIs*, XCVII (2003): pp. 155-78, here p. 158.

[51] Heyd, *Criminal law*: p. 309.

villagers who declared they would follow not the shari'a, but "Bedouin and peasant customs" (*daʿāʾim al-ʿarab wa-l-fallāḥīn*) with respect to injuries and homicide.[52] The mufti answered:

> If they say this either because they doubt the veracity of the shari'a or because they want to joke about it (*istiḫfāfan*), the consensus of Muslim opinion is that they are certainly infidels and should be judged according to the rules of apostasy. If none of the two [causes] applies, there are diverse opinions (*iḫtilāf*) as to whether they are infidels.[53]

Yet, even if it was only by neglect (*ihmāl*) that people did not follow the shari'a rules, Ramlī argued, they should be punished by the authorities, because otherwise such indulgence would undermine the shari'a as a whole. If these rules were not important, why would God have revealed them through his messenger and why would the Companions of the Prophet have fought so hard against those who resisted them in their day?

In his explanation, the mufti does not dwell on what actions had been committed and in what ways they deviated from what he called the shari'a. This is interesting, because the normative and moral system of shari'a had already early on developed instruments that could accommodate different approaches to compensation for bodily harm and wrongful killing. One of the most flexible was the amicable settlement (*ṣulḥ*) by which the parties concerned could come to an agreement between themselves about the sum to be paid. Ramlī himself declared the reduction of the fixed rates by agreement to be permissible.[54] Payment was, however, due, either in money or in other commodities (*māl*). He categorically forbade the handing over of unmarried women in compensation for a death.[55]

In the case of Tall Sikkīn, an agreed settlement by which the sum was fixed at 100 piastres had evidently preceded the act of acknowledgement that we find in the written document. This sum is well within the range of amounts paid in other cases from Ottoman courts of the eighteenth

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[52] Ramlī, *Fatāwā*: I, p. 106. *suʾila fī ṭāʾifa min al-fallāḥīn daʿaw ilā l-šarʿ al-wāḍiḥ al-mūbīn fī qaḍiyya tataʿallaq bi-l-jināyāt min qatl wa-jarāḥāt fa-abaw qāʾilīn lā naʿmal bi-l-šarʿ wa-innamā naʿmal bi-daʿāʾim al-ʿarab wa-l-fallāḥīn māḍa yutarattab ʿalayhim šarʿan.*

[53] *ajāba in qālū ḏālika li-ʿtiqādihim ʿadam ḥaqqiyyat al-šarʿ aw istiḫfāfan fa-lā rayba fī kufrihim bi-ijmāʿ al-muslimīn wa-yajib an yujrā ʿalayhim aḥkām al-murtaddīn wa-in lam yakun wāḥid minhumā fa-qad uḫtulifa fī kufrihim.*

[54] Ramlī, *Fatāwā*: II, p. 104-5.

[55] Ibid.: p. 104.

century.[56]

The procedure is slightly different in the case of a confrontation between members of two smaller local Bedouin groups near the fortress of Salamiyya, who came to court in Hama on 19 April 1764.[57] A man of the al-Ḫarajī Bedouins, named Marʿī b. Ḥasan "the Bedouin" (*al-badawī*), had called a member of the Bašākim to court and told the following story: two month before, he was passing through a vineyard near the fortress on the way to his people when he met the defendant and another Bedouin who did not want to let him pass. He had tried to reason with them but they had started to hit him with a stick, so that in the end he had lost his eye. The two acknowledged these facts and the judge then fixed the sum of 250 piastres as compensation for the loss of the eye (*diyat al-ʿayn*).[58] This sum was handed over in court, after which the plaintiff declared all claims on his part to be met.

In both these cases, the facts were not in dispute between the parties concerned; we, however, have no way of ascertaining whether these facts were accurate. The judge was probably involved as a kind of notary or registrar to make sure the written proof of the end of the lawsuit was kept in the court archives. In the second case, however, the amount of compensation seems to have been set by the qadi. Thus, while it is easy to infer that in the first case the settling of the sum depended on the power relations between the people involved and those who backed them, like the prominent witnesses to the first declaration, this is more difficult to ascertain in the second case.

A last detail of the second case merits some attention: among the witnesses registered at the end of the document, is the name of Shaykha Mahā bint ʿAbd Allāh, qualified as the Shaykha of the Šaʿʿār Bedouin – a woman is serving as a witness in court for a case not related to

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56 Tamdoğan, Işık, "*Sulh* and the 18th-century Ottoman courts of Üsküdar and Adana", *Islamic Law and Society*, XV (2008): pp. 55-83, here p. 69: "As for the actual sums of money paid in the 18th century, the evidence of a court register from Üsküdar covering the year 1764-65 indicates that the range of *sulh* payments made for wrongful death varied widely from 16.5 to 250 *guruş*, while in cases of bodily harm, the payments ranged from 4 to 11 *guruş*. It is difficult to compare the sums found in the Adana court registers with those of Üsküdar because in the former, *sulh* arrangements were not concluded exclusively on the basis of money. The payment of cash was almost always accompanied by a transfer of items, whose values were not always given."

57 44/41/94 (17 Šawwāl 1177/19 April 1764). This document is heavily damaged on its left side, so that some words are illegible.

58 According to the muftis, the compensation for loss of an eye is half the *diya* for a death (*diyat al-nafs*), see Ramlī, *Fatāwā*: II, p. 198; Ibn ʿĀbidīn, *al-Fatāwā l-ḥāmidiyya*: II, p. 251.

gynaecological expert knowledge. This is as rare and as welcome as the reminder that women also played important roles within Bedouin societies, and that, like women in other social groups, they participated in a number of activities that in the main remain hidden from the eyes of researchers.[59]

Users of the court system

The cases cited above point to the fact that at least some people from a nomadic or Bedouin background did make use of the Ottoman court system. This will become even more evident in this section, which examines a number of cases that are less related to problems of tribal administration and integration, but concern more everyday activities and show nomadic people to be 'normal' users of the court system.[60] With regard to identification, some of these cases are noteworthy because of the vague way they address people labelled clearly as Bedouin.[61]

A divorce settlement of 1724 brings a Bedouin woman to court as a relevant party: On 13 August, Kifāya bint Ḫalaf, a woman qualified by the scribe as both "Bedouin" (*al-badawiyya*) and "respectable wife" (*ḥurma*), presented herself with her then husband, Šāhīn b. Yūsuf, a Kurd.[62] Five days before, the woman claimed, the latter had sworn an oath that he would divorce her if she did not pay him back a debt incurred that same day. When the designated day had passed and she had not yet paid him, he had announced that he would come and kill her that night. The night passed and the next morning he uttered the three-fold divorce formula. Upon this, she demanded from him the sum of 37 piastres, 15 piastres for

[59] For an interesting anecdote highlighting the role of a woman in the political dealings of a Bedouin group, see Berger, *Gesellschaft*: pp. 134-6.

[60] For four other cases of the Hama *sijill*, "a Bedouin creditor of the Iskandar Arabs, a Bedouin of the Bani Ḫālid indebted to a Hama notable, another credit relationship, and a partnership between a Bedouin and a man linked to Hama's dye trade", see Reilly, *Small town* : p. 60.

[61] E.g. "Abū Šilla the Bedouin" (*al-badawī*) H 45//297 (27 Ḏū l-Qaʿda 1164/17 October 1751); "Muḥammad the Bedouin" H 46/191/426 (13 Jumādā I 1208/17 December 1793); 46/445/533 (27 Rajab 1211/26 January 1797). Both these documents were drawn up in relation to the inheritance of a man residing in Hama, and in both cases the Bedouin is said to have in his possession sheep or goats belonging to the deceased; it is noteworthy that, despite being designated as partner (*šarīk*) in one of the acts, the man's name is not given in a fuller form; "ʿUṯmān the Bedouin" H 49/81/329 (27 Ḏū l-Qaʿda 1240/13 July 1825), a lawsuit concerning the division of inherited animals, mainly sheep and goats.

[62] D 50/332/618 (23 Ḏū l-Qaʿda 1136/13 August 1724): In the Damascus *sijill*, the title *ḥurma* is not given automatically to all married women; it denotes therefore a kind of social marker, translated here by the addition of 'respectable'.

her delayed dowry (*muʾaḫḫar ṣadāq*), plus payment of an outstanding debt. When asked, the husband acknowledged that all this was true, so that the judge declared the divorce valid. The couple then agreed that instead of the money the woman would take her tent (*bayt al-šaʿr*), various household items, some gold jewellery and a quantity of wheat. Though at first glance, the story seems to border on the sensational, divorce by oath was a fairly common procedure.[63]

We do not know anything about the background of this couple, whether they lived in Damascus or were there in transit. The courts of the province's capital were sometimes also used by people residing in other places. This might be the case in a lawsuit of 1690 concerning a female slave (*jāriya*) called Qarataqla. She belonged to a man called Ḥusayn b. Darwīsh of the Mawālī Arabs, a "follower" (*tābiʿ*) of the prominent Shaykh Ḥusayn al-ʿAbbās. He wanted either to have her returned or to be paid her value in money.[64] We know nothing about this woman except her name and her status as a slave. The case did not focus on her but on two military men, a Janissary and an Agha, who were in dispute about which of them had been granted legal proxy (*wikāla*) by the Bedouin to settle the matter of the slave.

The rather strange and adventurous story of another woman "on the move" is at the centre of a case that came to court in Damascus in June 1726.[65] A woman named Ṭarafa bint Zāʾyid b. Mubārak claimed to be a resident of Mecca who had married there a man from Diyarbakir. She was on her way to Damascus when the pilgrimage caravan was attacked by Arabs (*fa-waqaʿa min al-ʿarab muḥāraba*) and an Ottoman officer (*bölükbaşı*) took her and gave her to a relative of his who then sold her to the Secretary of the Damascus High Council. This was the first of four consecutive sales that ended with her being in the hands of the defendant, a man called ʿUṯmān Agha b. ʿAlī Agha b. Safar Bey. He declared that he had bought her for 37 piastres, a very small price for a slave, and demanded proof of her claim to be a free woman. She was able to call as witnesses two men of the highly respected Sharifian family of Barakāt who were distantly related to her mother. At that time, a member of that family

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63 Tucker, Judith, *In the house of the law. Gender and Islamic law in Ottoman Palestine and Syria* (Berkeley: University of California Press, 1998): pp. 80, 101-8.

64 D 18/295/476 (22 Jumādā II 1101/2 April 1690); for Ḥusayn al-ʿAbbās of the Mawālī, at that time probably the Emir of the Arabs (*amīr al-ʿarab*), the supreme representative of the Bedouins in northern Bilād al-Shām, a mainly nominal function in the Ottoman administration by this time, see Winter, "Les Kurdes de Syrie": p. 146; cf. Bakhit, *Ottoman province*: p. 200.

65 52/204/579 (8 Šawwāl 1138/9 June 1726).

held the post of Sharif of Mecca.[66] The judge declared her to be free and advised her 'owner' to demand his money back from the seller. A strange story, even stranger circumstances and we have no way to investigate any of the background: One would assume such a tale would be unique, but this is not the case. Amazingly, a comparable and similarly enigmatic story was registered in the Adana court in 1700.[67]

The last five cases to be considered in this section involve animals of a certain value and are fairly similar in structure, procedure and documentation. They all also leave the reader wondering about the motives behind the obvious surface meaning of the legal cases. A man called Sayyid ʿAbd al-Baqī al-Maghribī came to court in Damascus on 21 September 1763 to claim a white camel that was standing in the courtyard.[68] At that time, it was in the possession of a villager from al-Ṭayyiba near Damascus. The plaintiff claimed to have bought it for 65 piastres from an unnamed Arab in the Damascus market about four months prior to the court session. He had then lost his animal in the environs of al-Kiswa. The defendant declared he had bought the camel for 35 piastres from an Arab in Muzayrib when he was there with the pilgrimage caravan the preceding year. He demanded proof of ownership from the plaintiff, who produced two witnesses to confirm his claim. The judge then made the plaintiff take an oath (*ḥilf*) that he had not given away the camel after he bought it and finally returned the animal to him, basing his decision not on the plausibility of the two stories, but on which of the litigants was able to produce legally acceptable evidence of his version of events. As in the case of the female slave, the judge advised the defendant to have recourse to the man who had sold him the camel to reclaim his money.

Another lost camel, "yellow", i.e. blackish[69] (*jamal aṣfar*), waiting at the entrance of the court, occasioned a litigation in the Hama court on 16 August 1850.[70] A man named ʿUjayl b. ʿĪd of the Sbaʿa, a subsection of ʿAnaza, sued Dandal b. Ḥamad of the local Bašākim tribe.[71] He claimed that his camel had been lost in the region of al-Ṭāma 45 days before and

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66 Rafeq, *Province of Damascus*: p. 57.

67 Tamdoğan, Işık, "La fille du meunier et l'épouse du gouverneur d'Adana. L'histoire d'un cas d'imposture au début du XVIII[e] siècle", *L'identification. Des origines de l'islam au XIXe siècle* (*REMM*, CXXVII [2010]): pp. 143-54.

68 D 170/51/63 (13 Rabīʿ I 1177/21 September 1763).

69 al-Muqbil, Ḥasan al-Ḫuḍayr, *al-Ḥasana*. *Ḥumāt al-šunbul wa-usūd al-naqʿa* (Hims: Dār al-Iršād, 1993): p. 163.

70 H 53/56/d (7 Šawwāl 1266/16 August 1850).

71 Douwes, *Ottomans*: p. 36.

that he had found it that day in the possession of the defendant. The latter claimed to have bought the camel 30 days before for 255 piastres from a man named Muḥammad al-ʿAnzī (or Ġazzī?) of the Ḥusayn Šalḥūm Arabs. Asked to prove his claim, the plaintiff called two men from the Saḥāḥīr section of the Sbaʿa, who confirmed his ownership. As in the preceding case, the judge returned the animal to the plaintiff.

Sbaʿa were also involved in a similar case that came to court in 1852, concerning a blackish female donkey (*ḥimāra ṣafrā*).[72] The claimant, a man called Ḫalaf b. Ḥammūl from the Ibn Muršid subsection of the Qumuṣa,[73] told the court that his donkey had been stolen from the region of al-Mubarakāt. The defendant, a man named Ḥājj ʿUmar b. Ṣawk, claimed to have bought the animal the preceding year for 70 piastres from a man called ʿAlawī al-Ḫālidī. Two witnesses belonging to the Qumuṣa confirmed the ownership of the plaintiff and the judge again returned the animal.

The loss of a "red horse" (*fars ḥamrā*) seemingly triggered a lawsuit between two members of local tribes in the region of Hama.[74] Ḥamūd al-Mubārak of the Bašākim sued Darbās b. Ruḥaym of the Rutūb for a horse worth 1,000 piastres that he claimed had been stolen 16 years before by a man of the Šarīf section of the Mawālī. At that time, he had demanded the return of his horse, but had been given a "red nag" (*kadiš aḥmar*) worth only 500 piastres. He demanded the remaining 500 piastres from the defendant because he had been an accomplice in the theft. The defendant denied this accusation and said that the suit should be dismissed after such a long time had passed for no legal reason. The judge accepted the defendant's argument.

The most elaborate of these cases concerned the theft of a "blue" i.e. grey or black-and-white[75] stallion (*ḥiṣān azraq*). The case came to court in Hama on 17 October 1751.[76] A soldier of the Dalatiyya (a mercenary force at the disposition of governors and other officials) called Aḥmad al-Ḥazūrī,

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[72] H 53/257/c (20 Šaʿbān 1268/9 June 1852). For the designation of colours in camels and horses, see al-Muqbil, *al-Ḥasana*, p. 136.

[73] The Ibn Muršid appear as the shaykhly family of the Qumuṣa in the second half of the nineteenth century (see Büssow, "Negotiating the future" [forthcoming]).

[74] H 53/257/b (19 Šaʿbān 1268/8 June 1852); for the name of the tribes and more information, see the listing of Hama tribal groups in the year 1245/1829-30 in Douwes, *Ottomans*: pp. 223-3.

[75] al-Muqbil, *al-Ḥasana*: p. 136.

[76] 45//297 (27 Ḏū l-Qaʿda 1164/17 October 1751); for another case highlighting the relationship between horse breeder and horse owner, see Ze'evi, *Ottoman century*: p. 104.

confronted Ḥājj ʿAlī b. Muḥammad b. Zaʿfarānbūlī, whose ancestor had come from Safranbolu on the Black Sea coast. The plaintiff claimed that the stallion in question had been bred at "Abū Šilla the Bedouin's" and that he had bought it from Ḥājj Ibrāhīm Agha al-Turkumānī and ridden it on a military campaign against the ʿAnaza, who had taken it from him. Now that he had found his horse again, it was in the possession of the defendant.

The defendant, in turn, claimed that he had bought the horse in Damascus from a man called Ḥusayn Agha, that the breeder was named ʿUmar Agha and that the horse had stayed at the breeder's premises for three years before it was sold to Ḥusayn Agha. Usual court procedure now demanded that the plaintiff present proof of his claims. However, the roles of plaintiff and defendant in a lawsuit are defined by the judge and can be exchanged in the course of the procedure.[77] In this case, the defendant produced a fatwa written by the Mufti of Hama, Sayyid Shaykh ʿAlī Efendi al-Kīlānī, which said that the right to produce evidence belonged to the person who had the object in question in his possession (*yad*).[78] It was therefore the defendant who called his witnesses – two men called Ibn Zaʿfarānbūlī like him, who corroborated his claim. The judge then confirmed his ownership of the horse in the presence of the Mufti and other notables of Hama.

In all these cases, no matter what the facts that are stated in the matter, one is left wondering about the motivations of the parties involved. Without additional information, the background is open for speculation, but two points are worth noting. First, only two of these lawsuits call what happened a 'theft' (*sariqa*). The others carefully refrain from that accusation by referring only to the loss (*faqaḍ*) of an animal. For the judge, the problem therefore simply presented itself as a matter of confirming rights of ownership.

The second point concerns the rather exceptional constellation of plaintiffs, defendants and witnesses in some of these cases. Confirmed in their probity by proper court procedure, the Bedouin witnesses are not suspect on moral grounds, as suggested by Ḫayr al-Dīn al-Ramlī's opening statement, but some seem to have been so closely related to the claimant as

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77 For the qadi's role in litigation, see Johansen, "Signs as evidence": pp. 168-93.

78 This is the wording of the fatwa as it appears in the document: *mā qawl al-sāda al-Ḥanafiyya fī-mā iḏā iddaʿa Zayn ʿalā ʿAmr anna hāḏā l-ḥiṣān al-azraq al-lawn milkuhu ʿaqaba fīhi wa-annahu nattāj ʿind bāʿihi fa-ajāba ʿAmr anna hāḏā l-ḥiṣān ishtaraytuhu min Bakr wa-huwa nattāj ʿindahu jahlan taqaddama bayyinat ʿAmr ḥayṯu iddaʿa annahu nattāj ʿind bāʿihi li-annahu ṣāḥib al-yad am kayfa al-ḥāl. fa-kāna al-jawāb: al-ḥamdu li-llah naʿm, taqaddama bayyinat ʿAmr iddaʿa annahu nattāj ʿind bāʿihi wa-llāhu ʿalam. qāla fī l-Kanz fa-bayyinat ḏī l-yad awlā.*

to render them suspect on grounds of partiality. It is however noteworthy that various groups and sections of the Sbaʿa were working together against people who seem to come from a more local background.

Conclusion

Though it is often difficult to find references to nomadic people in the extensive Ottoman court record archives, once found they can shed some new light on various aspects of the social, economic and political interactions in which they were involved. For the Syrian case considered here, the contemporary attitude towards such groups, as outsiders on both the societal and the moral level, becomes apparent in a number of documents in which they are addressed collectively as wrongdoers who set out to disturb the peace of the empire. This negative attitude is even more pronounced in the fatwas of Ḫayr al-Dīn al-Ramlī, who seems to have been highly sceptical of the possibility of integrating Bedouin groups into the moral order of a true Muslim community.

However, a more thorough search through the archives would probably bring to light more instances of nomadic people appearing in various roles in and outside the courtroom. The motivations behind some of these cases remain rather obscure, as court documents often do not contribute to an understanding of the background and interests of the individuals involved. This also applies to the documents in which people are said to act as a collective, as, for instance, in both cases of one-sided declarations (*iqrār*) described above. Both are interesting in their own right as legal documents because they highlight the flexibility of the Ottoman judicial system to accommodate marginal groups it wanted to integrate. Declarations (*iqrār*) and amicable settlements (*ṣulḥ*) are both, therefore, juridical instruments that deserve scholarly attention.

Court litigation was often only one focal point in a more or less extended series of confrontations, which, were we able to survey them as a whole, would expose the shifts and drifts in the relationships in question, be they between individuals or between groups. A focus on long-term developments might often also help explain the otherwise astonishing delays in bringing problems to court that we encountered in some of the cases presented above. Though court records can provide valuable insights, it remains the task of the historian to look for other sources to help explain their place in the oftentimes complex webs of relationships, not only between the protagonists, but also between them and the political and judicial authorities. On their own, the cases can only hint at the potential value of such an inquiry.

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