ABSTRACT: Court records may be the most extensively used documents in Ottoman historiography. Preserved as summaries of daily legal proceedings, these registers give historians a unique opportunity of access to the information about the inhabitants, government officials, local customs, and legal institutions of numerous court districts throughout the Empire. Although researchers have thoroughly discussed the limitations of these records in accurately reflecting court proceedings, the problem of selection bias has not been systematically studied. Since litigants would likely settle disputes in which one side is likely to be a clear winner, the cases that go to trial would likely be the difficult and uncertain ones for which there is greater disagreement, altogether comprising a non-random and unrepresentative subset of all disputes. We study the selection bias in Ottoman court records in the town of Kastamonu in northern Anatolia, from the late seventeenth and the eighteenth centuries. We separate disputes by type and study the distribution of court participants according to gender, number (individual vs. group), religious status, and socioeconomic characteristics. Our results indicate that the cases that were tried in court were selected systematically. If the selection bias is unknown or ignored, research based on Ottoman court records may be seriously flawed in its ability to yield general conclusions.

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The Selection Bias in Ottoman Court Records:
Settlement and Trial in Eighteenth Century Kastamonu

Court records (*sicillât*; sing. *sicil*) may be the most extensively used documents in Ottoman historiography. Preserved as summaries of daily legal proceedings, these registers give Ottoman historians a unique opportunity of access to the information about the inhabitants, government officials, local customs, and legal institutions of numerous court districts throughout the Empire. They have been used as primary sources for descriptions of Ottoman legal procedures, microhistories of women and gender, discourse analysis of social relationships, quantitative studies of court outcomes, and various other types of historical research.¹ Many of the original registers have survived to this day, some dating back to the fifteenth century, currently available to researchers in the National Library in Ankara and various other archives in successor states of the Ottoman Empire in the Middle East and East Europe.² Through massive projects of transliteration and publication, certain records have recently been made easily available to the general public.³

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² See Faroqhi (2009) for the administrative usage, organization, and availability of Ottoman court registers. See also Üğur (2003) for a list and review of the works based on these sources.

³ For example, the Center for Islamic Studies (2000) in Turkey has started a 40-volume project to publish Ottoman-Turkish transliterations of sample registers of certain Istanbul courts, and Kuran (2010-12) has similarly edited a bi-lingual 10-volume set that contains transliterations, along with English and modern Turkish summaries, of cases found in 15 seventeenth-century Islamic court registers from Istanbul.
Although Ottoman historians have thoroughly discussed the limitations of these records in accurately reflecting court proceedings, the problem of selection bias has not been systematically studied.\textsuperscript{4} The central concern of the selection bias is not so much whether the court record of a particular case is a true reflection of the reality of the case but whether the litigations in court records as a whole are representative of all disputes in the district. The problem arises because the litigations that wind up in court are typically only a small fraction of all disputes in a society. Since litigants would likely settle disputes in which one side is likely to be a clear winner, the cases that go to trial would likely be the difficult and uncertain ones for which there is greater disagreement, altogether comprising a non-random and unrepresentative subset of all disputes (Priest and Klein, 1984). If the selection bias is unknown or ignored, research based on litigations in court records may be seriously flawed in its ability to yield general conclusions. To ensure the robustness and proper interpretation of results, we need to identify the factors that affected the selection of cases for trial.

This paper will study the selection bias in cases tried in Ottoman courts by using data from the court records of the town of Kastamonu in northern Anatolia, from the late seventeenth and the eighteenth centuries. Ottoman court records typically give detailed information about each case that was filed in court, including the identities of disputants and whether they settled without formal trial. Although we obviously know nothing about those disputes that were never brought to court, the records nevertheless allow us to identify the cases that were filed but settled prior to or during the trial and to compare them with those that were decided by the judge. Using this information, we examine the question of whether the cases that were tried in Ottoman courts

\textsuperscript{4} For methodological discussions of Ottoman court records, see Zeevi (1998), Agmon (2004), and Peirce (2003).
were a random sample of filed cases or selected through a systematic process. More specifically, we separate cases by type and examine quantitatively the distribution of court participants according to gender, number (individual vs. group), religious status, and socioeconomic characteristics. We run regression analysis to determine the individual effects of factors that contributed to the likelihood of the case being tried in court.

Our results are directly related to the literature that uses litigations in Ottoman court records for analysis of dispute resolution or as sources of information about gender roles, social relationships, or other questions of historical interest. These attempts are typically made under the (implicit) assumption that the disputes tried in court are in some sense a random sample of all disputes. If true, researchers would certainly be justified to draw on them as unbiased sources of information. But if our results show that the selection process systematically excludes certain types of cases, researchers would have to carefully examine all presumptions about the sample and modify analysis and conclusions accordingly. By identifying the factors affecting the selection of cases, we facilitate the ability of historians to put the information from Ottoman court records in proper context. By extension, our results contribute to the larger literature on dispute resolution in history, particularly the comparative analysis of Islamic law and institutions.

**METHODS OF DISPUTE RESOLUTION IN ISLAMIC JURISPRUDENCE**

Islamic jurisprudential literature recognizes three principal methods of dispute resolution. These are adjudication or “judge-ship” (kaza), amicable and/or negotiated settlement (sulh), and arbitration (tahkim). Adjudication represents a formal legal process presided by a judge (kadi), who is a legal professional and state appointee. During adjudications, it is the judge’s
responsibility to follow the established courtroom procedures and interpret and enforce Islamic law to resolve disputes. The judge’s verdict is binding and closed to future challenges, unless it is based on a technical error in legal interpretation. In arbitrations, disputants seek resolution by presenting their cases to a third party (or third parties), presumably a respected individual knowledgeable in Islamic law. Unlike in litigations, however, disputants have to agree on the identities of the arbitrators. Arbitrators do not have to be legal professionals or state appointees, and they are expected to apply procedures flexibly towards a resolution. The disputants may dismiss the arbitrators or withdraw from the process before a decision is pronounced (Othman, 2005 and 2007).

Unlike litigations and arbitrations, amicable settlements are dyadic processes in which disputants negotiate their disagreements directly or with the meditative involvement of third parties. Jurists consider amicable settlements as contracts consisting of offers of settlement terms (ijab) and their acceptance (kabul). One important objective of the process, in addition to seeking to resolve disputes as in adjudications and arbitrations, is to protect existing relationships, especially ones involving family-members, relatives, and neighbors, from breaking down, which is why the term sulh is strongly associated with peace and reconciliation in Islamic law and legal practice (Khadduri, 1997: 845). Indeed, Islamic jurisprudential traditions recognize amicable settlements as preferable forms of dispute resolution and instruct legal functionaries, including the judge, to seek reconciliation among disputants through negotiated agreements before pursuing other methods (Othman, 2007). Ethnographic studies show various ways in which amicable settlements have been reached in Islamic societies. The procedural flexibility of the process and its ability to incorporate local customs and traditions of mediation, as long as
they did not explicitly contradict Islamic law, are contributing factors that make amicable settlements desirable for many believers.

Ottoman court records contain large numbers of litigations and amicable settlements (Mutaf, 2004; Tamdoğan, 2008). Yet, students of Ottoman court records have until recently overlooked the documentation on amicable settlements, focusing almost exclusively on litigations in studying the resolution of disputes (Ergene, 2010). They have not systematically studied the relationship between settlement and litigation and the selection of cases for litigation. As Othman (2007: 71-2) reminds us, however, Medieval Muslim jurists were quite aware of the connection that modern observers of Ottoman courts seem to have missed: “Molla Khusrew (d. 885/1480), the author of the Durar al-Ḥukkām fi Sharḥ Ghurar al-ʿAḥkām, an important legal treatise for scholars and judges since the fifteenth century, says in his introduction to his chapter on adjudication that it follows the chapter on sulḥ because ‘[Adjudication] is needed [only] when there is no sulḥ between two litigants’”.

Since only a small proportion of settlements were registered, court records typically include limited information about the overall settlement process. Unlike litigations, amicable settlements did not have to be registered in court for them to be legally binding or for disputants to enforce them in future dealings. Settlements observed in specific court records were thus most likely a small fraction of all settlements in that location, as can be seen from our sample of court records from Kastamonu, covering about thirty years in the eighteenth-century. Of the 1,281 disputes that were filed in court during this period, 847 resulted in litigations, about 2.4

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5 For some reason records of arbitrations do not exist. Perhaps these processes were recorded as amicable settlements though it is impossible to be certain.
6 They might have done this to have the court confirm the legality of their settlements or to obtain court-issued written documentation, copies of the registries in court records, for future reference.
litigations per month. This low figure suggests that the people of Kastamonu, a township of about 12,000 people during this period (see below), must have used various other methods to resolve their disputes. Although a large fraction of these disputes must have thus resulted in settlements, we only have information about those that were formally filed in court. The total number of settlement registries in our sample is 434, or about 1.2 settlements per month. Since we obviously know nothing about the large number of settlements that were never filed in court, we proceed with our analysis based on the assumption that unobserved settlements shared the same general characteristics as those that ended up in our sample, at least in comparison to litigations that were formally tried in court.

THE COST, PAYOFFS, AND UNCERTAINTY OF TRIAL

To analyze the settlement of cases in Ottoman courts in a simplified framework, we adopt insights from the law and economics literature on dispute resolution. In this literature the settlement-trial decision is typically formulated as a simple bargaining problem. Once a lawsuit is filed, parties engage in bargaining in an effort to reach a settlement prior to trial, which involves a payment that the defendant makes to the plaintiff to resolve the dispute. An agreement is reached if the defendant’s offer exceeds the plaintiff’s settlement demand. The likelihood of settlement in this simplified setup depends on three basic characteristic of the litigation environment, namely the litigants’ cost of pursuing a trial, the payoffs that they expect from the trial outcome, and their subjective assessments of the probability of plaintiff victory at trial.8

7 For the pioneering paper in this literature, see Priest and Klein (1984). See also Cooter and Rubinfeld (1989) and Miceli (2009, Chapter 8) for reviews of the literature.

8 Suppose for simplicity that the parties have the same assessment of the trial award.
Each litigant incurs cost in going to trial, including court fees and the value of time and expenditures spent in preparing and attending the trial. In the same way, they receive payoffs from trial outcome, which may include subjective benefits (such as reputation or future stakes) as well as transfer payments from the defendant to the plaintiff. Depending on the values of these variables, parties may choose settlement over trial in an attempt to avoid the cost of trial or the uncertainty of trial outcome.

Settlement is possible if there is a positive surplus to settling, the difference between the defendant’s maximum offer and the plaintiff’s minimum demand. Settlement would clearly be the preferred choice if parties agree on their assessment of the expected outcome of trial (such as when both parties know that the evidence is overwhelmingly in favor of the plaintiff) and face the same cost and expected payoffs of going to trial, because in that case they can implement the same outcome in a settlement without incurring the cost of trial and by sharing the surplus thus created.

Conversely, trial would be likely when the case characteristics are such that the expected surplus to settling is negligible or negative. If, for example, parties differ significantly in their assessment of trial outcome, particularly if the plaintiff is more optimistic about the outcome than the defendant, all else being the same, trial would be more likely because the differential assessment would raise the expected benefits from trial and narrow the range of acceptable settlement offers.

With a similar reasoning, we can see that trial would be more likely if parties face asymmetric payoffs such that the plaintiff derives some private benefit from the outcome that is not captured entirely by the amount of the damages to be paid by the defendant. This can be the case if, for example, there was a reputational benefit from the trial award that can be useful in
future trials. The extra benefit would reduce the range of settlement offers that the plaintiff would be willing to accept, thereby raising the likelihood of trial, even though the litigants may have the same assessment of trial outcome. Empirical studies of settlement behavior have shown various ways in which differential stakes or external benefits can affect the proportion of tried cases (Kessler and Rubinfeld, 2007: 381-83).

Trial would similarly be more likely in suits with lower trial costs. This could be the case if, for instance, the standard of decision at trial varied between case types such that the cost of preparing for trial in some cases was lower than others. Modern courts generally make a clear distinction between criminal and civil cases. Whereas the decision in the former category concerns determining whether the accused has committed a crime, the decision in civil cases is to determine whether the defendant is liable for the plaintiff’s alleged injuries. Typically the latter category further consists of a variety of subcategories, such as contracts, real property, worker injury, and product liability. If the trial cost varies systematically among case types, one would expect the differential to reflect in the likelihood of trial because it would affect the range of acceptable settlement offers. This expectation is generally confirmed by empirical studies of adjudication. Using data from suits initiated in the Southern District of New York after 1979 and resolved by 1989, Siegelman and Waldfogel (1999) have studied differences in trial rates across six case types. Their results show systematic differences in trial rates, ranging from being generally low for tort cases (varying between 9-25%) to significantly higher for prisoner cases (67-79%) and in mid-range within contract (29%), civil rights (37-49%), labor (33%), and intellectual property (32-44%) cases.

The cost of trial may also depend on the nature of the interactions between parties. If the litigants or their attorneys have a history of interaction with each other, settlement may be more
likely because repeated interaction may lower the cost of settlement (alternatively, raise the cost of non-cooperative behavior). Johnston and Waldfogel’s (2002) study of repeated interaction in federal cases filed in the Eastern District of Pennsylvania in 1994 shows that repeated play among attorneys had a significant positive effect on the likelihood of settlement.

According to the bargaining model of litigation, the likelihood of trial thus depends on factors that affect the cost of going to trial or cause parties to have different assessments of trial outcome or receive asymmetric payoffs. Since these factors depend on the particulars of case types and litigant characteristics, we now turn to Ottoman court records to extract information about the basic categories of cases and the observable characteristics of parties.

**TRIALS AND SETTLEMENTS IN OTTOMAN COURT RECORDS**

Our analysis of trials and settlements in the Ottoman Empire relies on data from the court records of Kastamonu, the administrative center of the eponymous sub-province (sancak), during the period between 1095 H./1684 and 1221 H./1806. Kastamonu is a good choice for this study because of its representative size and fairly complete court records for much of this period. According to tax records from the period, the population of the town and adjacent seventy-five or so villages was around 3,500 to 4,000 households, indicating that Kastamonu was a medium-sized town in contemporary standards. The vast majority of inhabitants were Muslim and

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9 The court records of Kastamonu are fairly complete for the late seventeenth and eighteenth centuries, making them suitable for our analysis. We studied the microfilm copies of these documents that are deposited in the National Library in Ankara, Turkey.

10 Based on an urban history of the town, Eyüpgiller (1999) does not regard the eighteenth century as a major era of construction. Since there is no indication of major demographic fluctuations during the eighteenth century, these figures are consistent with John Kinneir’s (1818) suggestion that town’s population was around 12,000 in 1814.
Turkish-speaking; the share of the non-Muslim population (primarily Christians) being less than fifteen percent of the total (Heywood, 1978). The main economic activities were agricultural production and animal husbandry. Commercial and manufacturing activities, with the exception of copper-ware production, were not particularly noteworthy (Ergene 2003). The town had only one court.

The court enforced the Hanafi interpretation of the Islamic law, the official legal school in the Ottoman Empire, as well as the sultanic law-codes (sing. kanunnâme). Usually non-natives to the region, judges were appointed for twelve- to sixteen-month terms. Other court functionaries, such as deputy magistrates (sing. naib), scribes (sing. katib), or summon-servers (sing. muhzîr), were often recruited from the local community. A select group of individuals appear in the court records as “witnesses to proceedings” (şuhudülhal), though they do not seem to be the only ones to serve in that capacity.

As discussed, litigations were directed by the judge, whose primary responsibility was to resolve disputes by facilitating out of court settlements or by presiding formal trials. When a dispute was brought to court, he could initiate a settlement by assigning intermediaries to hear the case and find a mutually agreed resolution, possibly resulting in the case being dropped without further action or compensation or in the defendant offering a public apology or making a transfer payment to the plaintiff. If settlement could not be reached, the judge would hear the case formally in court and issue a verdict. Rather than investigate a dispute through court personnel, he would usually decide based on the testimony and evidence provided by the litigants and witnesses.

The following is an example of a case that was settled out of court.
Esseyyid Ali bin (son of) Esseyyid Ahmed, the husband and legal representative of Zeliha bint (daughter of) Ahmed made the following statement in the presence of Zeliha’s former husband, Mehmed Beşe, and his father, Hatib Ahmed Halife: “When Mehmed Beşe divorced Zeliha, he prevented her from demanding her 60 gurūṣ deferred dowry (mehr-i müeccel) claiming that he was intending to marry her again. Also, Hatib Ahmed Halife refused to return to Zeliha her belongings in his possession, including a silver belt worth 30 gurūṣ, a red kaftan worth 25 gurūṣ, and a green kaftan worth 6 gurūṣ. When we later sued them, Mehmed Beşe submitted to court a document (hüccet) indicating Zeliha’s forfeiture of her deferred dowry. Ahmed Halife acknowledged his possession of some of Zeliha’s belongings but he too submitted a document indicating that she had abandoned her right to demand anything from him. At this point a major quarrel ensued among us. Subsequently, believers and peace-makers (Müslimun ve muslihun) intervened and we reached a settlement. In accordance with this settlement, Zeliha agreed to receive a sum of 60.5 gurūṣ from Mehmed Beşe and Ahmed Halife and, in return, she agreed to relieve them from any future claims regarding her deferred dowry and belongings that remained in Ahmed Halife’s possession.”

11 According to Islamic law, wives are entitled to two types of dowry at their marriages. The first type, “immediate” or “prompt” dowry (mehr-i mu’accel), is the amount that is supposed to be transferred to wife at the time of the marriage, before or during the wedding ceremony. The second type, “deferred” dowry (mehr-i müeccel), is also determined at the time of marriage, but transferred to the wife at the end of the marriage. This could be at the time of a divorce, or husband’s death, in which case, it would be paid by the husband’s heirs from his estate, or at the time of the wife’s death, in which case, it would be paid to the wife’s heirs. Disputes over the transfer deferred dowry following real or alleged divorces was a very common type of dispute in eighteenth-century Kastamonu.
Mehmed Beşe and the aforementioned Ahmed Halife agreed with the aforementioned Esseyyid Ali’s statement and the settlement was recorded in the court register.

18 Muharrem 1153 / 15 April 1740

Witnesses…

The document above reports a settlement and its conditions between Zeliha bint Ahmed, represented by her current husband, Esseyyid Ali bin Esseyyid Ahmed, and Zeliha’s former husband, Mehmed Beşe, as well as Mehmed Beşe’s father Hatib Ahmed Halife, involving Zeliha’s deferred dowry and personal property. As mentioned, it is not clear why the parties decided to present their settlement to court and have it registered in the court’s ledger. The statement that “believers and peace-makers (Müslimun ve muslihun) intervened and we reached a settlement” is very common in sulh registries, though the records do not further specify the identities of these individuals, presumably respected members of the community as well as court functionaries, including the judge. The registry is also vague about the phases and other details of the settlement process, typical for settlement-related documents in court records. Interestingly, the settlement amount was about half the value of the dowry and properties that Zeliha’s side originally claimed, an indication of what was considered to be fair or acceptable in such arrangements.

12 Having legal documentation from court might have made the agreement more secure from future challenges but the fact that Mehmed Beşe and Ahmed Halife’s presumably court-produced documentation alleging Zeliha’s forfeiture of her dowry and possessions had not discouraged the woman to challenge them later raises suspicions about this possibility. It is also not clear why Mehmed Beşe and Ahmed Halife agreed to a settlement given the hüccets in their possession. As is common for most such settlement registries, the document fails to answer many of our questions in regards to the circumstances surrounding the agreement.
No settlement was reached in the following property ownership dispute, and parties went to trial for resolution.

[...] The legal representative of Mehmed bin (son of) Ahmed Dede, Mütevellizade Hafiz Mehmed Ağa bin Elhac Mehmed, sued Ebu Bekir bin Abdullah, stating the following: “Ebu Bekir refuses to transfer to Mehmed the shares that he inherited from his father and sisters in the goods and equipment in a tannery workshop located in Yukarı Debşalar quarter. [...] We want him to be questioned and Mehmed’s shares be transferred to him.”

Upon questioning, Ebu Bekir denied Hafız Mehmed Ağa’s allegation, claiming the following: “I purchased the materials in question from Mestçioğlu Ustad Mustafa for a certain amount of money. I do not know that Mehmed owns any share of these goods and equipment.” Afterwards, the representative was asked to prove his claim. He presented as witnesses Mustafa bin Ismail of the Kibbeli quarter and Hüseyin bin Mustafa of the Ibn Sancar quarter, who both testified as follows: “The late Ahmed Dede [Mehmed’s father] owned a fourth of the goods and material in the workshop located in Yukarı Debağlar. After his death, these assets were transferred to his heirs and were ultimately inherited by his son. We are witnesses to the fact that a fourth of this material was owned by Mehmed and we testify as such.”
After the testimonies of witnesses were accepted, the court invited Mehmed to take an oath that neither he nor other heirs of the late Ahmed Dede had sold their shares in the materials that they had inherited to anyone. When Mehmed took this oath, the court ordered Ebu Bekir to hand over or pay the value of the materials that belong to Mehmed.

26 Cemaziyelevvel 1155 / 29 July 1742

Witnesses.

As seen in these examples, court registers typically provide the same type of information about settled and tried disputes. This information includes the identities of litigants, the evidence presented in court, and the resolution. Consisting of abbreviated descriptions of the disputes filed in court, the records typically begin by identifying the parties through their full names, honorary titles and other distinguishing markers attached to their names, religious identities, and their places of origin. If the litigants were related to each other, this information is also provided. The records then describe the nature of the dispute, typically in the form of direct quotes by the individuals who approached the court, followed by their opponents’ responses to the accusations directed at them. Next, the entries disclose the evidence submitted to court by the litigants, such as the full names and testimonies of the witnesses. If the case was tried in court, the records show how the judge decided on the dispute.

CASE TYPES, LITIGANT CHARACTERISTICS, AND TRIAL LIKELIHOOD
We use all available information about the disputes recorded in proceedings to categorize the case types and litigant characteristics observed in the Kastamonu court during this period. As noted, the data-set consists of 1,281 disputes filed in court. Of these, 434 (34%) were settled out of court, and 847 went to trial. For a systematic categorization of these cases, we classify them into three groups according to the nature of the dispute and the relationship among the litigants. More specifically, we differentiate between criminal and civil cases, and further divide civil cases into two groups based on whether the parties were related to each other by family ties. So the three categories are: 1) criminal cases (all involving unrelated parties), 2) civil cases among related parties, and 3) civil case among unrelated parties.\textsuperscript{13} Table 1 shows the total numbers of cases and the proportions of cases that went to trial in each category.

Table 1 about here

Whereas most of these disputes were filed by individuals against other individuals, some cases involved multiple individuals, such as when a group of defendants was accused of rape, or when a whole neighborhood or village claimed that a government official violated a certain public right. To distinguish among cases by the size of parties, we divide those with multiple individuals into two categories, namely the “Small Group” that consists of less that ten individuals and the “Community” that are larger in size. Entries in Table 2 show the distribution of cases according to the size of parties on each side.

\textsuperscript{13} Our sample does not include criminal litigations involving related parties.
Focusing on disputes involving single individuals, we can use the detailed information provided about their identities to determine the distribution of various personal characteristics. The characteristics that are the easiest to determine are gender and religion. The names of litigants make it easy to distinguish males from females, and court records similarly note the religious affiliation of non-Muslims in a way that makes it easy to identify them. Based on this information, Table 3 shows the proportions of (individual vs. individual) cases according to combinations of gender and religion. Although in a majority of cases (48%) the parties were both male, the proportion of cases involving parties of opposite gender was also high (42%). The proportion of cases in which the parties were both female was small (9). The proportion of disputes involving non-Muslims was also small (about 2%), particularly noteworthy given that non-Muslims constituted possibly up to 15 percent of the population.

Court records also include information about family affiliation, which allows us to determine if an individual was related to an established and prominent family. The names of these families appear frequently in court records, and litigants affiliated with them are identified with the suffix “zade.” For example, Kıbrısı-zade Ahmed Efendi, was a member of the prominent Kıbrısı extended-family, who played important roles in the judicial and administrative affairs of the region. Although there are no published studies on the economic characteristics of these families, our own unpublished analysis of eighteenth-century probate inventories indicate
that individuals who belonged to them were significantly wealthier than the rest of the society. Only a small proportion (about 5-6%) of disputes filed in court involved members of prominent families. We explore below whether these cases were more likely than others to go to trial.

Although court records do not include information on the incomes, occupations, or educational backgrounds of individuals, we can use their honorary titles and religious markers as indicators of socioeconomic status. Honorary titles appear in court records as parts of men’s names, helping to distinguish among them based on affiliation with the provincial administrative structure and relative positions within the community. Titles signify individuals who possessed specific types of professional training or education who performed various sorts of military/administrative or judicial/religious functions and enjoyed the associated socioeconomic privileges. In addition to exemption from taxation, these benefits included social influence and economic compensation.

Based on honorary titles, we can determine not just whether a man belonged to the military/administrative establishment (seyfiyye) or the judicial/religious one (ilmiyye) but also whether he belonged to the elite group within each category. For example, Ağa's were the wealthiest, most prestigious, and highest-ranking members of the military/administrative establishment, and Efendi's had the same status in the judicial/religious establishment (Ergene

14 Based on 1,600 probate estate inventories from Kastamonu in our possession, we can surmise that zades were three to four times as wealthy as non-zades in the eighteenth century.

15 Seyfiyye included those men with military/administrative responsibilities or affiliations, such as governors, members of the police force, and the officers as well as the rank-and-file of the provincial militia. These individuals carried the following titles: Ağa, Beşe, and Beğ. Ilmiyye, on the other hand, was composed of individuals with religious and judiciary responsibilities or affiliations, such as local magistrates, jurisconsults (muftis), and mosque imams. Such individuals carried the following titles: Efendi, Molla, Halife, Çelebi, and Dede. Other designations that indicate seyfiyye and ilmiyye affiliation accompanied the honorary titles listed in the present note.
and Berker, 2008). These groups included individuals who collectively managed the official affairs of the town and its environs in different capacities, played communal leadership roles, and took advantage of the economic opportunities available in their locations (Barkey, 2008, ch. 7).

Using titles as indicators of socioeconomic status, we thus divided individuals into four groups. Since titles were recorded exclusively for men, we separate females into the first category and divide males into three groups based on whether they had honorary titles and whether their title indicated membership in the elite category. So the second category of individuals is the “elite males,” consisting of Ağas as elite military/administrative titleholders and Efendis as elite religious/judicial titleholders. The third category consists of “males with non-elite titles,” and the fourth are the category of men recorded in court proceedings without titles. Although “males with non-elite titles” were not necessarily wealthier than title-less men we attribute a relatively higher social status to the first group, based on their public functions, professional affiliations, and networks of association (Ergene and Berker, 2008). Table 4 shows the proportions of (individual) litigants in each category.

Table 4 about here

In addition identifying Muslims and non-Muslims, we can further distinguish among Muslims according to their religious markers. These markers, also parts of individuals’ names, demonstrate if he or she claimed descent from Muhammad (sing. seyyid for men, serife for

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16 Ergene and Berker (2008) observe in probate estate inventories that the average wealth levels of Ağas were about two-and-a-half times as much as the average wealth levels among men in eighteenth-century Kastamonu. The average wealth levels of Efendis were about two times as much.
women) or made the pilgrimage to Mecca (sing. *elhac* or *hacı* for men, *hace* or *hacıye* for women). These markers indicate elevated socio-religious status within the community, though they should not be confused with religious/judicial titles. Indeed, men with military/administrative and religious/judicial titles, as well as the tile-less men, are often identified in the court records as pilgrims and descendants of Muhammad. Table 5 shows the distribution of litigants according to religious markers.

Table 5 about here

As seen in Table 5, about a third of all cases involved an individual with a religious marker, and a high proportion of those were against litigants who did not carry such a title. We explore in more detail below whether and why these characteristics were likely to affect the likelihood of a dispute winding up at trial.

**WHICH CASES WENT TO TRIAL?**

The law and economics literature on dispute resolution, discussed above, would lead us to expect that the likelihood of trial would depend on the cost of going to trial or on the expectations or stakes of the parties. More specifically, we would expect the trial rate to be higher for case types that have lower trial costs and for parties that differ significantly in their stakes from the trial outcome or in their expectations about the plaintiff’s chances of success. For a quantitative analysis of these arguments in Ottoman courts, we use data from the court registers of Kastamonu and examine how differences in case types affected the likelihood of trial and which characteristics of parties caused differences in stakes and expectations.
Ideally, we would analyze the determinants of trial rate by using information from all disputes, not just those that were filed in court. Since we lack information about resolutions that were never filed in court, we proceed based on the assumption that our results are generalizable to all disputes. If there was a selection effect that caused disputants to choose trial over settlement, it must have been the same selection effect that caused them to choose to file their dispute formally in court over resolving it informally.

Our data-set consists of 1,281 disputes that were filed in the Kastamonu court during the period between 1684 and 1790. Since case types and litigant characteristics likely influenced the likelihood of trial simultaneously, we use multiple regression analysis to isolate individual effects. Specifying the dependent variable as a dummy variable that takes the value of 1 if the case went to trial, we use the Probit model for estimation.

To determine factors affecting the trial ratio, we include in the analysis six categories of explanatory variables. In the first category, we consider the effect of case type on the likelihood of going to trial. We used dummy variables to distinguish between criminal cases, civil cases among related parties, and civil cases among unrelated parties. We omitted the variable “civil cases among unrelated parties” in the regression equation to avoid multicollinearity.

The next category differentiates among disputes according to the size of parties, namely whether the dispute involved only two individuals or one or both parties consisted of multiple individuals such as a “Small Group” (consisting of less than ten individuals) or a larger “Community.”

The next three categories focus on disputes between two individuals and differentiate among them based on gender and honorary titles, religion and religious markers, and family status. Each of these are dummy variables that take the value of 1 if the combination of parties is
as stated in Table 6, and 0 otherwise. The combination with the highest proportion of the total in each category has been omitted to avoid multicollinearity, as noted in the table. So the coefficient of each combination needs to be interpreted as the differential effect from the omitted one.

Finally, we include a group of variables to control for the effect of possible unobserved changes in the decision standard over time. We divided our period into three roughly equal sub-periods as follows:

1) 1095/1684 -- 1110/1698
2) 1148/1735 -- 1156/1743
3) 1195/1781 -- 1204/1790

The first period is slightly longer than the other two because of missing documentation for some years. The number of litigations heard in court is 277 in the first period, 384 in the second period, and 620 in the third period.

Differences among clusters of case types and periods suggest the possibility of correlation of the observations within these clusters. Criminal cases in the first period, for example, could be correlated with each other because of shared characteristics in legal procedures and regulations. To correct for the possibility of correlated data, we divided observations into nine clusters (based on the three case-types and three time-periods that were defined above) and used clustered robust standard errors in regression analysis.

The results of regression analysis, displayed in Table 6, show how differences in case types, litigant characteristics, and time periods (compared to those in the omitted categories) affected the likelihood of a dispute winding up at trial in the Kastamonu court during this period. As noted in the Table, in addition to omitting one of the variables in each category to
avoid multicollinearity, we had to drop two variables and three observations from the analysis because they predicted success or failure perfectly.

Table 6 about here

The results generally confirm the preliminary expectations discussed above about the difference in trial costs between case types. Compared to civil disputes among unrelated parties, criminal cases were less likely to go to trial, confirming the expectations that they were costlier for the parties to pursue in court. Disputes among related parties were also more likely to settle out of court, possibly due to the higher social costs of litigating against relatives and the greater pressure and assistance received from relatives toward settlement.

Disputes involving communities and small groups were generally less likely than those between two individuals to go to trial. The reasons could be that the parties with multiple individuals had higher costs of going to trial, faced equalized stakes as the opposing party, or had the same assessment of trial outcome. One would expect the cost of going to trial to be high for parties with multiple individuals simply due to the higher numbers in the party and the high cost of collective action. It is also reasonable to expect parties with multiple individuals to be likely to reach the same assessment of trial outcome as the other party through communication and discussion. Although these two expectations help to explain the negative and significant coefficients in this category, it is not clear whether we can expect parties’ stakes from trial outcome to be in the same direction. Since these stakes would depend on the particulars of cases and litigants, regardless of parties being single or multiple, it is quite possible for them to be
asymmetric between the parties. The possibility of asymmetric stakes may thus explain why the coefficients in this category are not uniformly negative and significant.

Of the three categories of variables that differentiate among disputes between two individuals, differences in socio-economic characteristics (as proxied by honorary titles) seem the most significant influence on the likelihood of trial. The signs and significance of variables included in this category generally support the expectation that disputes were likely to go to trial if the parties differed significantly in honorary titles. Although females were generally less likely to go to trial regardless of the other party, males were more likely to go to trial against those with a different status in honorary titles. More specifically, trial was more likely when parties were “Elite vs. Non-Elite,” “Elite vs. No-title,” and “Non-elite vs. No-Title.” Our results show that differences in religion and religious markers and in family status mostly did not affect the likelihood of trial significantly.

Another interesting result is the higher likelihood of women to settle out of court. They were less likely to take their disputes to trial, especially against other women and against men with elite titles, compared to the omitted category of men with no titles. Women must have had close enough stakes in trial outcome in their disputes against other women and men with elite titles and must have shared close enough assessments of the outcome with them so that they were able to settle out of court and share the surplus. This may also be because women interacted and transacted most frequently with their relatives and tended to protect these relationships by resolving disputes through settlements.
CONCLUSION

We use information from the court records of the late seventeenth- and eighteenth-century Ottoman Kastamonu to determine whether the cases that wound up at trial were a random selection of all disputes as commonly presumed in the literature or filtered systematically through a selection process. We categorize disputes according to case type and identify the characteristics of parties according to their size composition, gender and honorary titles, religion and religious markers, and family prominence. According to the law and economics literature on dispute resolution, parties would be expected to take a case to trial if trial costs are low or parties differ significantly in their stakes from trial outcome and in their assessments of the plaintiff’s chances of success at trial. Our results generally confirm this expectation. They show that the likelihood of trial varied by case type such that criminal cases and civil disputes among related individuals were less likely to be pursued at trial than civil disputes among unrelated individuals. They also show that parties that consisted of women, small groups, and whole communities were less likely to wind up at trial. In disputes between two men, trial was more likely if parties differed in honorary titles. The likelihood of trial also changed over time. In general, our results show that the cases that went to trial were not a random sample of all disputes but went through a systematic selection process.

The selection bias indicates that cases found in court records are not representative of all disputes. The records tended to include disproportionately fewer disputes involving women, communities, and small groups and disproportionately higher numbers of disputes involving males against other males with a different honorary title. The clear implication for Ottoman historians using court records is to determine the selection bias in their own sources and incorporate it in their analyses and conclusions.
WORKS CITED


Agmon, Iris (2006). Family and Court: Legal Culture and Modernity in Late Ottoman Palestine (Syracuse: Syracuse University Press).


### Table 1
Trial and Settlement in Court

<table>
<thead>
<tr>
<th>CASE TYPE</th>
<th>NUMBER OF CASES</th>
<th>PROPORTION TRIED IN COURT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Cases</td>
<td>193</td>
<td>79 %</td>
</tr>
<tr>
<td>Civil Cases Among Related Parties</td>
<td>486</td>
<td>53 %</td>
</tr>
<tr>
<td>Civil Case Among Unrelated Parties</td>
<td>602</td>
<td>59 %</td>
</tr>
</tbody>
</table>

*Source: Court records (sicils) of Kastamonu. See the text for definitions of categories.*

### Table 2
Distribution of Disputes According to the Size of Parties
(percent of total)

<table>
<thead>
<tr>
<th>DISPUTANT 1</th>
<th>INDIVIDUAL</th>
<th>SMALL GROUP</th>
<th>COMMUNITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIVIDUAL</td>
<td>67</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SMALL GROUP</td>
<td>27</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>COMMUNITY</td>
<td>2</td>
<td>1</td>
<td>0.5</td>
</tr>
</tbody>
</table>

*Source: Court records (sicils) of Kastamonu. See the text for definitions of categories.*

### Table 3
Distribution of Individuals According to Gender and Religion
(percent of total)

<table>
<thead>
<tr>
<th>DISPUTANT 1</th>
<th>MALE</th>
<th>FEMALE</th>
<th>MUSLIM</th>
<th>NON-MUSLIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>MALE</td>
<td>48</td>
<td>42</td>
<td>9</td>
<td>98</td>
</tr>
<tr>
<td>FEMALE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MUSLIM</td>
<td></td>
<td></td>
<td></td>
<td>98</td>
</tr>
<tr>
<td>NON-MUSLIM</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

*Source: Court records (sicils) of Kastamonu.
Note: Disputes involving communities and small groups are excluded, so the sample includes only individual vs. individual disputes.*
**Table 4**
Distribution of Individuals by Gender, Honorary Titles and Elite Status
(percent of total)

<table>
<thead>
<tr>
<th>DISPUTANT 1</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Female</td>
<td>Elite Male</td>
<td>Non-Elite Male</td>
</tr>
<tr>
<td>Female</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elite Male</td>
<td>6</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Non-Elite Male</td>
<td>15</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Male with no Title</td>
<td>22</td>
<td>6</td>
<td>13</td>
</tr>
</tbody>
</table>

*Source: Court records (sicils) of Kastamonu. See the text for definitions of elite status based on honorary titles.*

*Note: Disputes involving communities and small groups are excluded, so the sample includes only individual vs. individual disputes.*

**Table 5**
Distribution by Religion and Religious Markers
(percent of total)

<table>
<thead>
<tr>
<th>DISPUTANT 1</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-Muslim</td>
<td>Muslim, Pilgrim</td>
<td>Muslim, Descendant of Prophet Mohammad</td>
</tr>
<tr>
<td>Non-Muslim</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Muslim, Pilgrim</td>
<td>0.15</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Muslim, Descendant of Prophet Mohammad</td>
<td>0.08</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Muslim, No Religious Marker</td>
<td>1</td>
<td>12</td>
<td>14</td>
</tr>
</tbody>
</table>

*Source: Court records (sicils) of Kastamonu. See the text for definitions of religious markers.*

*Note: Disputes involving communities and small groups are excluded, so the sample includes only individual vs. individual disputes.*
Table 6
Probit Analysis of Influences on the Likelihood of Trial

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>VARIABLE</th>
<th>COEFFICIENT</th>
<th>ST. ERROR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Category</td>
<td>Civil Dispute among Unrelated Parties</td>
<td>Omitted Category</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Criminal Case</td>
<td>-0.63**</td>
<td>0.29</td>
</tr>
<tr>
<td></td>
<td>Civil Dispute among Related Parties</td>
<td>-0.63***</td>
<td>0.09</td>
</tr>
<tr>
<td>Composition of Parties</td>
<td>Individual vs. Individual</td>
<td>Omitted Category</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Small Group vs. Small Group</td>
<td>-0.42</td>
<td>0.28</td>
</tr>
<tr>
<td></td>
<td>Small Group vs. Community</td>
<td>0.10</td>
<td>0.45</td>
</tr>
<tr>
<td></td>
<td>Small Group vs. Individual</td>
<td>-0.27***</td>
<td>0.06</td>
</tr>
<tr>
<td></td>
<td>Community vs. Community</td>
<td>-0.59***</td>
<td>0.23</td>
</tr>
<tr>
<td></td>
<td>Community vs. Individual</td>
<td>-0.43***</td>
<td>0.11</td>
</tr>
<tr>
<td>Gender and Honorary Titles</td>
<td>Male, No Title vs. Male, No Title</td>
<td>Omitted Category</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Female vs. Female</td>
<td>-0.23*</td>
<td>0.13</td>
</tr>
<tr>
<td></td>
<td>Female vs. Elite Male</td>
<td>-0.25*</td>
<td>0.14</td>
</tr>
<tr>
<td></td>
<td>Female vs. Non-Elite Male</td>
<td>-0.03</td>
<td>0.13</td>
</tr>
<tr>
<td></td>
<td>Female vs. Male, No Title</td>
<td>-0.03</td>
<td>0.15</td>
</tr>
<tr>
<td></td>
<td>Elite Male vs. Elite Male</td>
<td>-0.58</td>
<td>0.41</td>
</tr>
<tr>
<td></td>
<td>Elite Male vs. Non-Elite Male</td>
<td>0.40*</td>
<td>0.22</td>
</tr>
<tr>
<td></td>
<td>Elite Male vs. Male, No Title</td>
<td>0.17</td>
<td>0.10</td>
</tr>
<tr>
<td></td>
<td>Non-Elite Male vs. Non-Elite Male</td>
<td>-0.003</td>
<td>0.28</td>
</tr>
<tr>
<td></td>
<td>Non-Elite Male vs. Male, No Title</td>
<td>0.21**</td>
<td>0.09</td>
</tr>
<tr>
<td>Religion and Religious Markers</td>
<td>Muslim, No Religious Marker vs. Muslim, No Religious Marker</td>
<td>Omitted Category</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pilgrim Muslim vs. Pilgrim Muslim</td>
<td>0.47</td>
<td>0.32</td>
</tr>
<tr>
<td></td>
<td>Pilgrim Muslim vs. Descendant of Muhammad</td>
<td>0.34</td>
<td>0.29</td>
</tr>
<tr>
<td></td>
<td>Pilgrim Muslim vs. Non-Muslim</td>
<td>Omitted -- predicts success perfectly (2)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pilgrim Muslim vs. Muslim, No Marker</td>
<td>0.03</td>
<td>0.13</td>
</tr>
<tr>
<td></td>
<td>Descendant of Muhammad vs. Descendant of Muhammad</td>
<td>0.11</td>
<td>0.17</td>
</tr>
<tr>
<td></td>
<td>Descendant of Muhammad vs. Non-Muslim</td>
<td>Omitted -- predicts failure perfectly (1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Descendant of Muhammad vs. Muslim, No Marker</td>
<td>0.10*</td>
<td>0.06</td>
</tr>
<tr>
<td></td>
<td>Non-Muslim vs. Non-Muslim</td>
<td>0.80</td>
<td>0.58</td>
</tr>
<tr>
<td>Family Status</td>
<td>Non-Prominent vs. Non-Prominent</td>
<td>Omitted Category</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prominent vs. Prominent</td>
<td>0.21</td>
<td>0.34</td>
</tr>
<tr>
<td></td>
<td>Prominent vs. Non-Prominent</td>
<td>-0.10</td>
<td>0.11</td>
</tr>
<tr>
<td>Time Period</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1684-98</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1698-1743</td>
<td>-0.50***</td>
<td>0.14</td>
</tr>
<tr>
<td></td>
<td>1781-1790</td>
<td>-0.79***</td>
<td>0.13</td>
</tr>
<tr>
<td>Constant</td>
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<td>1.42***</td>
<td>0.16</td>
</tr>
<tr>
<td>N</td>
<td></td>
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<tr>
<td>Pseudo R²</td>
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<td>0.12</td>
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<tr>
<td>Log pseudo-likelihood</td>
<td></td>
<td>-720.9</td>
<td></td>
</tr>
</tbody>
</table>

*Source:* Court records (sicils) of Kastamonu. See the text for definitions of variables.

*Notes:*

a. The dependent variable takes the value of 1 if the dispute went to trial.

b. Standard errors have been adjusted for clustering on case-type and time-period.

c. For variables that were dropped due to collinearity or predict success or failure perfectly, the number in parentheses is the number of dropped observations for which this is true.

d. *** indicates significance at 1%, ** at 5%, and * at 10% for a two-tailed test.