

# International Lawyers without Public International Law: The Case of Late Ottoman Egypt

*Will Hanley*

Assistant Professor of History, Florida State University, Tallahassee,

FL, United States

*whanley@fsu.edu*

## 1 Introduction

Late nineteenth-century Egypt was a key site for the development of international lawyers and international law. It was a site of experiment with forms of imperial law suited to informal empire. The work of Nubar Pasha during the 1860s and 1870s to establish the Mixed Tribunals was a remarkable early experiment in international institution-building.<sup>1</sup> Because Egypt was not subject to the direct and explicit sovereignty of either the Ottoman or the British empires, its multinational mixed courts tended to attract foreign legal workers pursuing careers outside of imperial government. As a result, Egypt became a training ground for international lawyers and a place where they could enrich themselves early in their careers. It was also a labour market entrepot: when the King of Siam needed a legal advisor in the 1890s, for example, he looked to Harvard and to Cairo.<sup>2</sup>

If turn-of-the-century Egypt was a hotspot for foreign-born lawyers, the legal profession was equally important for Arabic-speaking local subjects. Law was one of the classic professions for members of the *effendi* class, ‘subject[s]

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1 Nubar’s negotiations are chronicled in Jasper Yeates Brinton, *The Mixed Courts of Egypt* (New Haven: Yale University Press 2nd ed. 1968); Byron Cannon, *Politics of Law and the Courts in Nineteenth-Century Egypt* (Salt Lake City: University of Utah Press 1988).

2 Tamara Lynn Loos, *Subject Siam: Family, Law, and Colonial Modernity in Thailand* (Ithaca: Cornell University Press 2006), 54–56. For another version of an argument for Egypt’s central rather than peripheral position in nineteenth-century legal transformations, see Leonard G.H. Wood, ‘Reception of European Law, Origins of Islamic Legal Revivalism, and Foundations of Transformations in Islamic Legal Thought in Egypt, 1875–1960’ (PhD dissertation, Harvard University 2011), 1–2.

form[ed] on the nonmetropolitan side yet between and betwixt the West and the East', who dominated the literary and political output of Egypt before the First World War.<sup>3</sup> These lawyers were educated by foreigners, often abroad (typically in France, but also in England, Italy and elsewhere). To date, there has been little study of what most of these lawyers did in their day jobs.<sup>4</sup> A preliminary estimate would suggest, however, that few of these Egyptian lawyers worked in what we might recognise as international law. That field was largely reserved for foreign experts.

Public international law was the boundary limiting most Egyptian legal work in the half century between the 1870s, when the Mixed Courts were established through treaties with a dozen foreign nations, and the 1920s, when Egypt promulgated law codes that superseded its inherited Ottoman codes. During this period, Egypt shared its sovereignty with the Ottomans, the British and a dozen capitulatory powers. This boundary was the principal determinant of Egypt's laws and legal institutions, and it meant that public international law questions remained beyond the reach of Egyptian lawyers. Instead, these lawyers directed their energies towards private work to such an extent that in late Ottoman Egypt, private international law – including questions of nationality, personal status and other questions that situated individuals as subjects of international law – stood in for the field of international law as a whole. In much recent scholarship, on the other hand, state-centred public international law often stands in for international law as a whole.<sup>5</sup> Based on this contrast, I suggest that historians of global law in practice might profitably reconsider the primal place that public international law is typically assigned in conventional accounts.

In order to do so, the first two sections of this article look at a number of prominent lawyers in late Ottoman Egypt: first Ottoman and Egyptian lawyers, then foreign international lawyers working in Egypt. My aim in this cursory discussion is to describe the nature and content of their work, rather than

3 Wilson Jacob, *Working Out Egypt: Effendi Masculinity and Subject Formation in Colonial Modernity, 1870–1940* (Durham: Duke University Press 2011), 5.

4 Anyone browsing the used book markets of Egypt will quickly detect that the written output of Egyptian lawyers was massive (especially after the First World War), but the technical nature of their dissertations and treatises has thus far resisted scholarly curiosity. A study of everyday Egyptian middle-brow intellectuals in the first half of the twentieth century would certainly have to take account of these thinkers, however.

5 This is the case, for instance, in major surveys such as Stephen C. Neff, *Justice among Nations: A History of International Law* (Cambridge, MA: Harvard University Press 2014); Wilhelm G. Grewe, *The Epochs of International Law*, trans. Michael Byers (Berlin: Walter de Gruyter 2000).

their legal thought. The article's third section is a discussion of the work of 'Abd al-Hamid Abu Haif, a leading Egyptian lawyer who wrote the first lengthy Arabic-language study of international law. Abu Haif argued that study of the *practice* of international law reveals that it is owned by Europe but intended for use outside of Europe. If, following David Kennedy, we seek the places where nineteenth-century international law lies hidden, we ought to look at the education, work and careers of lawyers in this key extra-European site of turn-of-the-century law.<sup>6</sup> Abu Haif's practical study was situated in this sphere and it emphasised private rather than public international law. This emphasis, derived from the historical structure of the Egyptian legal profession and its scholarship, suggests that private law deserves greater weight in the global history of international law itself.

## 2 Egyptian Lawyers without International Law

According to the conventional narrative, the Ottoman Empire caught up with the international system in the 1856 Treaty of Paris, when it joined the community of nations.<sup>7</sup> The barbarian stain still lingered, however: Ottoman sovereignty was restricted by extraterritorial Capitulations, which showed that Ottoman law fell short of the 'standard of civilisation'.<sup>8</sup> Not until the collapse of the empire and the extinguishing of the Capitulations did the Ottomans (now Turkey) join the mainstream of international law on equal terms.<sup>9</sup> But a growing literature now acknowledges the crucial place of the Ottoman Empire (along with other 'semi-peripheral' states, such as China) in the emergence of a global order of public international law even before this point.<sup>10</sup> Whether through formal inclusion on terms of equality in 1856 (or perhaps the 1878 Congress of

6 The problem is posed in Kennedy's classic essay 'International Law and the Nineteenth Century: History of an Illusion', *Nordic Journal of International Law* 65 (1996), 385–420.

7 Jacob Hurewitz, 'Ottoman Diplomacy and the European State System', *Middle East Journal* 15 (1961), 141–152.

8 Eliana Augusti, 'From Capitulations to Unequal Treaties: The Matter of an Extraterritorial Jurisdiction in the Ottoman Empire', *Journal of Civil Law Studies* 4 (2011), 285–307.

9 This is the account of Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: CUP 2010).

10 Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: CUP 2005); Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History, 1850–1950* (Cambridge: CUP 2015). The late nineteenth century is also the terminus of the world legal-historical process described by Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: CUP 2010).

Berlin), or through the trammelling of equal sovereignties through European imperial interventions in Tunisia (1881), Egypt (1882) and the Balkans, it seems clear that the Ottoman Empire was a key testing ground for the establishment of a comprehensive international legal society.<sup>11</sup> After the Congress of Berlin, the Ottoman Empire worked on several fronts to establish its membership in the community of European powers. Ottoman law resembled other marks of sovereignty brandished by the Hamidian empire: it was a performance meant to convince an external audience and forestall internal opposition.<sup>12</sup> A cadre of experts in international law was one of the accoutrements of legitimacy required to meet the international 'standard of civilisation'. Like other non-European powers, the Ottomans recruited European-trained lawyers to consult on their international legal work. European lawyers headed the Bureau of Legal Council (*İstişare Odası*) at the Ottoman foreign ministry for two decades following its establishment in the early 1860s.<sup>13</sup>

Gabriel Noradounghian (1852–1936) was the first non-foreigner to work at the Bureau.<sup>14</sup> Noradounghian published a monumental four-volume French-language collection of Ottoman international legal instruments between 1897 and 1903.<sup>15</sup> This collection shows that because Ottoman international law was performed in negotiation and in writing for a foreign rather than a domestic audience, the empire's lawyers did not seek in the first instance to legitimise their activity in terms of Ottoman or Islamic law. Those seeking an 'indigenous' international legal tradition will find little benefit in searching for formal resemblance between this work and the early modern Ottoman legal

11 On jurisdictional experimentation, Mary Dewhurst Lewis, *Divided Rule: Sovereignty and Empire in French Tunisia, 1881–1938* (Berkeley: University of California Press 2013).

12 The classic account of such performances is Selim Deringil, *The Well-Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire, 1876–1909* (London: I.B. Tauris 1998).

13 A brief sketch of these five men appears in Sinan Kunalalp/Emre Öktem (eds), *Chambre des conseillers légistes de la Sublime Porte: rapports, avis et consultations sur la condition juridique des ressortissants étrangers, le statut des communautés non musulmanes et les relations internationales de l'Empire ottoman (1864–1912)* (Istanbul: Les éditions Isis, 2012), 10. See also Aimee M. Genell, *Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882–1923* (PhD dissertation, Columbia University 2013).

14 Kunalalp/Öktem, *Chambre des conseillers légistes* 2012 (n. 13), 9. Noradounghian would rise to become minister of foreign affairs in 1912.

15 Gabriel Noradounghian (ed), *Recueil d'actes internationaux de l'Empire ottoman: traités, conventions, arrangements, déclarations, protocoles, procès verbaux, firmans, berats, lettres patentes et autres documents relatifs au droit public extérieur de la Turquie*, 4 vols. (Paris: F. Pichon 1897–1903).

tradition, or in seeking to detect echoes of Islamic law in this collection of treaties and legislation.<sup>16</sup> There is no parallel in Ottoman international legislation to Cevdet Paşa's *Mecelle* (a *Shari'a*-inflected civil code published in 1869–1876), no adaptation of *siyar* (Islamic law governing war and the treatment of aliens) to modern treaty formats.<sup>17</sup> The Ottoman-Islamic format *ahidnames* that promulgated the early Capitulations were replaced by treaties in the European mould during the eighteenth century. Ottoman international law was not a nativist campaign, but a site of easy adaptation to the international system. Noradounghian's *Recueil* certainly advertises Ottoman international law in the European form. Its four volumes are dominated by treaties with the great powers, mostly of a clear public nature. Even the periodisation of volumes marks this sense: volume 2 begins in 1789, volume 3 with the 1856 Treaty of Paris and volume 4 with the 1878 Treaty of Berlin. But amidst the declarations of war and peace, the delimitations of boundaries and the commercial accords, there is a sign of a different path. A solid share of the volumes concerns unusual partners in public international law – neighbouring states such as Persia but especially the range of former Ottoman territories and irregular provinces such as Egypt and Lebanon. This is law in a European mode, under European supervision, performed for a European audience, but it is also a domestic product.

In this sense, the Ottoman variety of international law can be discovered not in treaties and government legislation, but in the steady generation of concrete opinions issued by Ottoman lawyers in the face of policy puzzles. The Bureau of Legal Council was a busy place. By 1910, ten lawyers worked in

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16 Attempts to define the laws of the past in terms of present-day international law suffer from anachronism. Majid Khadduri responded to the exigencies of the Statute of the International Court of Justice by framing *siyar* as international law: Muḥammad ibn al-Ḥasan al-Shaybânî, *The Islamic Law of Nations: Shaybânî's Siyar*, ed. Majid Khadduri (Baltimore: Johns Hopkins Press 1966), xii–xiii. More recently, Fatiha Sahli and Abdelmalek El Ouazzani's essay on 'Africa North of the Sahara and Arab Countries', in Bardo Fassbender/Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford: OUP 2013), 385–406, also asserts the formal similarity between *siyar* and international law without addressing the problems of coverage and non-correspondence that this substitution entails for those wishing to understand international law in the Middle East.

17 On the *Mecelle* and its institutionalisation, see Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse: Syracuse University Press 2006); Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan 2011). On *siyar*, see sources in the previous note.

the office.<sup>18</sup> Already in the 1890s, it issued two opinions in an average week.<sup>19</sup> The makeup of this considerable case load is of particular interest: the Bureau of Legal Council was mainly concerned with questions of private international law, especially those concerning nationality and religious communities. As they looked beyond treaties and government legislation and explored the resources available to them for implementation, the lawyers began to generate advisory opinions that less obviously endorsed received models.

When legal scholars in the present day refer to international law, they mean public international law. This elision of the general field with its public aspect extends to legal history as well. For example, the massive *Oxford Handbook of the History of International Law*, published in 2013, contains little discussion of private law. In this context, a close examination of the practice of Ottoman international lawyers is disorienting, for their memos, briefs and opinions were largely concerned with private law questions, especially questions of the nationality of individuals. It is difficult to situate this work in the broader field of international law as described and endorsed in the historiography. If we reconsider the field of international law in light of Ottoman lawyers' practice and look to the contents of treaties, we see that here too the question of personal protection is as important as territorial determinations. The scholarly literature tends to treat the private law content of these treaties as exceptional and their territorial provisions as normal. When scholars treating Ottoman legal history feel compelled to provide special justifications for their focus on extraterritoriality, it reflects a sense that this private question is a marginal topic outside the mainstream concerns of international law.<sup>20</sup> We might instead argue that the Ottoman example suggests that the private law legal problem of individual status and affiliation remained at the heart of international law until the end of the Ottoman Empire (and indeed for decades thereafter).<sup>21</sup> The case law reported in international law journals of the period

18 Kunalalp/Öktem, *Chambre des conseillers légistes* 2012 (n. 13), 9.

19 For example, the Prime Ministerial Ottoman Archives (Başbakanlık Osmanlı Arşivi) Hariciye Nezareti, Hukuk Müşavirliği, İstişâre Odası 156/5 contains a register of fifty-six cases treated in the period between January 2 and May 28, 1890.

20 Kayaoğlu, *Legal Imperialism* 2010 (n. 9); Umut Özsü, 'Ottoman Empire', in Fassbender/Peters (eds), *Oxford Handbook* 2013 (n. 16), 429–448.

21 According to this perspective, statelessness is not a new problem that emerges in the interwar years, but rather a new expression of the existing dominant private law facet of international law's practice. See Will Hanley, 'Statelessness: An Invisible Theme in the History of International Law', *European Journal of International Law* 25 (2014), 321–327. A normalisation of questions of affiliation along these lines would help to situate histories

shows that the status of the Ottoman Empire under public international law became a regular ingredient in jurisprudence of the later nineteenth century.

In pursuing a more inclusive agenda, the recent literature on global international law has paid special attention to lawyers. Scholars have discovered many individual practitioners of international law whose attention was focused outside the metropole, and have presented these men in a way that reveals a significant, previously unrecognised colonial aspect of international law. That work is now sufficiently advanced to permit some revision. Evidence from Ottoman Egypt, a key site of experiment in turn-of-the-century international law, sounds a note of caution in the emergent narrative trumpeting the presence of non-European lawyers. One of the aims of this paper is to point out the absence of international law in the work of many semi-peripheral lawyers and the absence of semi-peripheral lawyers in international law. For every European-versed native Ottoman son like Gabriel Noradounghian, there were many other Ottoman lawyers never called or impelled to address international law.<sup>22</sup> European carpetbaggers were brought in to do most of this work, to the exclusion of Ottoman lawyers. The continued significance of this exclusion qualifies narratives of the expansion of global regimes of rule of law. As public international law has become the prestige field of international law, the list of semi-peripheral lawyers who count has been largely restricted to those dealing with questions of state. In the Ottoman Empire, however, the effects of international legal inequality were experienced most strongly in the field of private international law, and lawyerly activity in this field deserves special attention.

International law plays little part in the work of the two most cited Egyptian lawyers of the period. The most celebrated Egyptian legal scholar of the first half of the twentieth century was 'Abd al-Razzaq al-Sanhuri (1895–1971), author of Egypt's Civil Code of 1949. Sanhuri's work is the most prominent twentieth-century example of a thoroughgoing, practical effort to reconcile the Islamic legal tradition with the codified state law format of the modern period.<sup>23</sup> There is a large literature on his legal thought, which was broadly influential

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of post-Ottoman 'identity', such as Sarah D. Shields, *Fezzes in the River: Identity Politics and European Diplomacy in the Middle East on the Eve of World War II* (Oxford: OUP 2011).

22 I discuss Gabriel Noradounghian in Will Hanley, 'The Prosecution and Extradition of Edouard Joris', in Henk de Smaele/Houssine Alloul/Edhem Eldem (eds), *The Assassination Attempt on Abdülhamid II (1905): Rethinking Ottoman-European Entanglements* (New York: Palgrave Macmillan, forthcoming).

23 Study of the place of the Islamic tradition in Sanhuri's work is a more fruitful endeavour than the efforts to discover the Islamic roots of international law that I describe earlier.

in the Arab world.<sup>24</sup> It is remarkable that Sanhuri's work engages very little with international law. International affairs was the elephant in the room, in political terms, but it was an unproductive avenue for an Egyptian scholar. The same is true of the celebrated Egyptian legal scholar of the previous generation, Ahmad Fathi Zaghlul (1863–1914). Zaghlul produced the central reference work on nineteenth-century Egyptian law, *al-Muhamah* (1900), a compendium of nineteenth-century statutes and a narrative commentary on their development.<sup>25</sup> Here too the domestic focus is striking and this emphasis has been transmitted into subsequent studies of Egyptian law, all of which (reasonably enough) lean heavily on Zaghlul.<sup>26</sup>

In fact, the most noteworthy Egyptian intervention in the domain of international law in the early twentieth century was political and pertained to questions of public international law. And it was Ahmad Fathi's brother Sa'd Zaghlul who was the figurehead of this intervention. In the aftermath of the First World War, Egypt experienced an unprecedented popular mobilisation seeking to make good on wartime promises of decolonisation. Widespread uprisings in 1919 sought to dislodge the British occupation that had been in effect since 1882. A delegation of Egyptian politicians travelled to Versailles in an unsuccessful attempt to join peace negotiations on equal terms with other member states of the international community. This undertaking was a critical test of Egypt's standing under public international law and the results of that test showed that the legal structures that excluded colonies and their avatars from international law had survived the war. The Mandates established in former Ottoman territories under the League of Nations further confirmed

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24 Enid Hill, 'Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life and Work of 'Abd Al-Razzaq Ahmad Al-Sanhuri, Egyptian Jurist and Scholar, 1895–1971', *Arab Law Quarterly* 3 (1988), 33–64, 182–218; Amr Shalakany, 'Sanhuri and the Historical Origins of Comparative Law in the Arab World (or How Sometimes Losing Your Asalah Can Be Good for You)', in Annelise Riles (ed), *Rethinking the Masters of Comparative Law* (Oxford: Hart 2001), 152–188; Isabelle Lendrevie, *Les transferts juridiques et juridictionnels en Egypte, l'héritage des années 1875–1949* (PhD dissertation, University of Paris 1 – Panthéon Sorbonne Faculty of Law 2008); Wood, 'Reception' 2011 (n. 2).

25 Ahmad Fathi Zaghlul, *Al-Muhamah* (Cairo: Matba'at al-Ma'arif 1900).

26 A notable example is Farhat Jacob Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* (Stanford: Hoover Institution on War Revolution and Peace Stanford University 1968). On the place of Zaghlul in Egyptian legal history, see Samera Esmeir, *Judicial Humanity: A Colonial History* (Stanford: Stanford University Press 2012), 32–34.



the tenuousness of the new states' claims to membership in the community of nations.<sup>27</sup>

In the aftermath of Versailles, Egyptian nationalists continued to favour the political track toward sovereignty over the juridical track. Successive treaties with Britain, as well as the development of a quasi-representative parliament and government, were the focus of decolonising energies. This domestic program, in which British power was the sole foreign interlocutor, only dissolved in the mid-1930s, when Egypt turned its attention to the abolition of the Capitulations. This system of extraterritorial rights for subjects of foreign nationalities was a remnant of Ottoman power.<sup>28</sup> The treaty-based exceptions had been conveyed to Egypt as Ottoman sovereignty dwindled during the nineteenth century, and they remained in place following the disappearance of the Ottoman Empire. As Egypt's efforts to achieve full sovereignty vis-à-vis Britain in the domain of public international law were frustrated, it sought to achieve full sovereignty over its residents in the domestic sphere through a repeal of the Capitulations. There is no recent study dedicated to the Montreux negotiations that were concluded in 1937 and that set a timetable for the abolition of the Capitulations and the winding down of the Mixed Tribunals (in 1949).<sup>29</sup> It seems that the Egyptian delegation acted with skill equal to that of Nubar when he established the Mixed Tribunals treaties in the 1860s and 1870s. Of course, the Montreux delegation worked with considerable tailwinds: extraterritorial rights had been eliminated almost everywhere, and the very powers with which Egypt negotiated (notably France and Britain) were bound to a certain sympathy, having themselves experienced the encumbrance of Capitulations

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27 Only three Ottoman successor states managed to join the League: Iraq and Turkey in 1932, and Egypt (the final member of the League) in 1937. On the Mandates, see Shields, *Fezzes in the River* 2011 (n. 21); Anghie, *Imperialism, Sovereignty* 2005 (n. 10), ch. 3; Elizabeth Thompson, *Colonial Citizens: Republican Rights, Paternal Privilege, and Gender in French Syria and Lebanon* (New York: Columbia University Press 2000); Benjamin Thomas White, *The Emergence of Minorities in the Middle East: The Politics of Community in French Mandate Syria* (Edinburgh: Edinburgh University Press 2011).

28 For the Capitulations and their abolition from the Ottoman perspective, see Özsü, 'Ottoman Empire' 2013 (n. 20); Kayaoğlu, *Legal Imperialism* 2010 (n. 9).

29 The classic account of the Mixed is Brinton, *The Mixed Courts of Egypt* 1968 (n. 1). On Montreux, see Mark S.W. Hoyle, *Mixed Courts of Egypt*, Arab and Islamic Laws Series (London: Graham & Trotman 1991); Nathan J. Brown, 'The Precarious Life and Slow Death of the Mixed Courts of Egypt', *International Journal of Middle East Studies* 25 (1993), 33–52.

while administering their empires.<sup>30</sup> By the time of the Montreux negotiations, the Capitulations had become a uniquely Egyptian problem, however, and it is no great surprise that they attracted considerable attention in the outpouring of legal scholarship produced by young men earning doctorates at Cairo University and in Europe.<sup>31</sup> Intellectually, this unusual private international law phenomenon was the most interesting problem at hand. Certainly, the private quandaries of mixed jurisdiction offered ambitious lawyers more fruitful professional possibilities than the public law question of Egyptian sovereignty in the community of nations, a matter that was politically inaccessible and also tediously replicated the experience of many other not-yet-decolonised territories. Thus, it is no surprise that private international law was their site of scholarly production.

### 3 Foreign International Lawyers in Egypt

The leading international law journal of the late nineteenth and early twentieth centuries was Edouard Clunet's *Journal du droit international*, founded in 1874. Its rich bulletin of jurisprudence, which paid particular attention to private law, was a key site of international law precedent-building.<sup>32</sup> The place of Egypt in its pages offers a quantitative index of the role of that state in international law: it appears on roughly equal terms with the United States and Brazil, and it is certainly more prominent than China, Japan, Siam, the Ottoman Empire and all other non-European countries. Between 1905 and 1925, one of every twelve reports published on the most general questions of private international law – competence, bankruptcy, nationality and succession – concerned Egypt.<sup>33</sup> Clunet had a strong French orientation in

30 For French efforts to limit extraterritoriality in Tunisia, see Lewis, *Divided Rule* 2013 (n. 11). For British griping about the Capitulations in Egypt, see Evelyn Baring Cromer, *Modern Egypt*, 2 vols. (New York: Macmillan 1916).

31 On this generation, see Shalakany, 'Sanhuri and the Historical Origins' 2001 (n. 24).

32 This was a distinction from other international law journals, which published narrower sets of jurisprudence bulletins and events chronicles alongside their articles and book reviews.

33 This rough count comes from the two-volume *Tables Générales 1905–1925* published in 1926: for instance, nineteen of 242 on competence (vol. 1, 144–164), eight of 104 on bankruptcy (vol. 1, 367–374), thirty of 444 on nationality (vol. 2, 77–115), eighteen of 197 articles on succession (vol. 2, 384–400). Of course, questions such as the Mixed Tribunals, which received considerable attention (twenty-three cases listed), were also Egyptian in focus (vol. 2, 474).

its case selection, of course; Switzerland and Belgium are relatively prominent and the French orientation of many of the continental lawyers practising in Egypt helps to explain its prominence in the pages of *Clunet*. But lines of national chauvinism mattered in the emergence of the field of law. In this regard, it is clear that Egypt's place as a maker of jurisprudence was as important as its place as a maker of careers.

Pierre Arminjon (1869–1960) was a shining example of the sort of foreign jurist who made a career in Egypt. From a prominent French family of jurists, he was born and educated in Europe. He spent the first decades of his career in Egypt, where he rose through the ranks of the Mixed Tribunals judiciary to become its president. He also taught law in Egypt during this time and his early publications focused on Egypt. After the First World War, their scope broadened considerably and Arminjon began to publish at the highest order of generality in the field of public international law. His work no longer drew in any notable way on the Egyptian example and without his listed professional affiliation (*'juge au tribunal mixte du Caire'*) readers would have been hard pressed to situate him in space.<sup>34</sup> Arminjon was a member of the leading international associations – the *Institut de droit international* and the *Société de législation comparée* – and he became a leading metropolitan jurist from his Cairo location. Late in his career, he was able to transition back to Europe quite seamlessly on the basis of the wealth and experience that he accrued in Egypt. Alongside other luminaries attending the International Law Association meeting in New York in 1930, he received an honorary LL.D. from Columbia University. He taught in Lausanne from 1934 and subsequently in Geneva and elsewhere.<sup>35</sup> At mid-century, he had published major works in comparative and private international law.<sup>36</sup>

34 Pierre Arminjon, 'Le domaine du droit international privé', *Journal du droit international privé (Clunet)* 49 (1922), 905–930; Pierre Arminjon, 'Les qualifications légales en droit international privé', *Revue de droit international et de législation comparée* 50 (1923), 272–290.

35 He received the doctorate as part of a group comprising Viscount Dunedin, Lord Tomlin, and Lord Macmillan, Lords of Appeal in Ordinary; Maître Henri Decugis, Avocat à la Cour d'Appel de Paris; Sir Roger Burrow Gregory, President of the Law Society; Sir William Allen Jowitt, Attorney General of England; Sir Frederick Pollock, sometime Corpus Professor of Jurisprudence at Oxford University; and Walter Simons, acting President of the German Reich and formerly President of the Supreme Court of the German Reich. *Proceedings of the American Branch of the International Law Association* 23 (1930), 24.

36 Biographical details from Université de Lausanne, *Rapport annuel 1959–1960* (Lausanne 1961), 1.

If Egypt was a path towards a global career for Europeans like Arminjon or Edouard Lambert (director of the Khedevial Law School in 1906), non-Egyptian Ottoman jurists formed a second coterie of foreign lawyers that played a prominent role in Egypt.<sup>37</sup> What is remarkable about these men is their exclusion from the extra-Ottoman professional world of international law. Here, the most prominent example may be Filib b. Yusuf Jallad, styled Philippe Gélat (1857–1914). Born in Jaffa, Jallad studied at the Jesuit school at Ghazir in Lebanon and came to Egypt during the time of the Khedive Isma'il.<sup>38</sup> He studied French and English law there and worked at the government court in Alexandria. He began work on his masterful dictionary of Egyptian law in 1884 and its five volumes appeared between 1890 and 1894.<sup>39</sup> He revised it several times before his death.<sup>40</sup>

The dictionary aims to be encyclopaedic, but from the perspective of international law it appears to be a remarkably insular collection. Jallad was a good witness, well placed to reproduce the entirety of pertinent Egyptian law. He had been editor of the Official Journal (*Majalla Rasmiya*) of the Native Courts, then director of the Official Journal (*Majmu'a Rasmiya*) of the Egyptian Justice Ministry. Jallad himself was far from insular: in composing the dictionary, he worked his way through all genres of law, starting with religious judgments (*ahkam shar'iyah*), both Christian and Muslim. His dictionary is therefore a useful confirmation that international law was far from the agenda of workaday

37 On Lambert, see Shalakany, 'Sanhuri and the Historical Origins' 2001 (n. 24), 163–170 et passim.

38 On the school in Ghazir, see Chantal Verdeil, 'Un établissement catholique dans la société pluriconfessionnelle de la fin de l'Empire ottoman', *Cahiers de la Méditerranée* 75 (2007), 28–38.

39 Jallad wrote the dictionary in French, and had it translated into Arabic. A French version is available via the Hathi Trust: Philippe Gélat, *Répertoire général annoté de la législation et de l'administration égyptiennes*, 5 vols. (Alexandrie: Impr. J.C. Lagoudakis 1906). The most recent Arabic edition is Filib Jallad, *Qamus al-idarah wa-al-qada'*, 3 vols. (Cairo: Matba'at Dar al-Kutub wa-al-Watha'iq al-Qawmiyah 3rd ed. 2003).

40 The revised set runs to seven volumes, including indexes (volume 6) and a commentated selection of Egyptian court law (*al-ta'liqat al-qada'iya 'ala qawanin al-mahakim al-misriya*) (volume 7). This sketch draws on the opening pages of Jallad, *Qamus al-idarah wa-al-qada'* 2003 (n. 39). Jallad's memory has been domesticated in a recent article, which places him in the Coptic community. This incorrect and unsupported attribution, a product of the increasingly entrenched Christian/Muslim identity politics of contemporary Egypt, also points to the function in retrospective memory of Jallad's foreignness. Dr. Magid 'Izzat Isra'il, 'Min 'uzama' al-aqbat, Filib Gallad, ra'id madrasat al-qawanin al-qada'iya', <http://www.copts-united.com/Article.php?l=1053&A=50763>. The article is largely lifted from the introduction to the 2003 edition of Jallad.

law in Egypt. There is certainly plenty of non-domestic law in the collection: international treaties, Ottoman law and constitutions of other provinces. But international law does not appear as a coherent organising principle in the central handbook for those working in this diverse legal setting.

International law was not considered an important field for young Egyptians training to be lawyers, either. The study plan at the Khedivial Law School, approved in 1899, included private international law as a minor topic in the fourth and final year of study. Although the curriculum covered various fields of law, Islamic law was given more hours than any other field.<sup>41</sup> A revised curriculum of 1907 doubled the hours given to international law – to three per week in the fourth year of study.<sup>42</sup> Islamic law, in comparison, was given an average of three and a half hours per week in each year of study. As far as judicial practice was concerned, this grounding in Islamic law was probably sensible: much of the work of the graduates of the college concerned application of existing instruments, drafted in an earlier era, which drew on the Islamic legal tradition. Many of the students of the law school had gained fluency in foreign languages at the expense of Islamic education, and needed more solid grounding in Islamic law. As we will see, however, the post-war dean of the law school expanded its emphasis on private international law considerably. In doing so, he attributed Egypt's extraordinary conflict of laws to the persistence of religious jurisdiction, suggesting dissatisfaction with an Islam-focused pedagogy for lawyers.

Scholars have not easily identified the place of international law in Islamic legal tradition. While there are certain forms of Islamic law that appear to correspond to modern ideas of international law – the laws of war, of safe passage, of trade and so on – the translation is anything but obvious. Scholarship on Egyptian and Ottoman law, meanwhile, has given a great deal of attention to the place of Islamic law in the state law that emerged in the modern period, and recent scholarship on modern Islamic law has likewise insisted on the influence of state law.<sup>43</sup> Nowhere in this debate is there room for international law, which seems to confirm its ill fit in Islamic law and Ottoman-Egyptian law

41 Gélât, *Répertoire general* 1906 (n. 39), vol. 2, 382.

42 Gélât, *Répertoire general* 1906 (n. 39), vol. 5, 310. Civil law was given rather equal time to Islamic law in this version, at the expense of hours devoted to language training and to Roman law.

43 The outstanding polemic in the latter case is an argument that modern colonialism has eliminated the conditions necessary for the practice of Islamic law. Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press 2013).

alike. As recent debates over the history of human rights have shown, the ill fit of international law as conventionally understood is manifest in other jurisdictions as well.<sup>44</sup> If international law were defined such that its subjects included not only states but also people, its place in the current of global history might not appear so rarefied.

The gap between foreign lawyers and local lawyers was vast. The Mixed Bar Association, founded in 1876, was the prestige group in the legal profession in Egypt. It had no Egyptian members at first, and as late as 1930 Egyptians constituted only half the membership.<sup>45</sup> The Egyptian National Bar Association was formed only in 1912, and was considered inferior. The gap was also pedagogical: foreigners were the teachers, natives their students. And, of course, the gulf was financial. While foreign judges, in particular, were paid astronomical salaries, Egyptians received moderate salaries – Fathi Zaghlul, for instance, made only forty pounds per month as head of the parquet early in his career; even when chief of the Cairo Native Court of First Instance, his annual salary never exceeded 666 pounds.<sup>46</sup> This gap translated into a lack of voice for Egyptian lawyers in the work of international law as it was practised in Egypt, at least until the 1920s.

One might reread the historiography of lawyering in the colonial Middle East and find that the ‘standard of civilisation’ applied not just to states but to lawyers themselves.<sup>47</sup> The personalities described in this paper seem already to trace the outlines of this finding: European lawyers working in Egypt were better paid and held more prestige than Ottoman, Syrian or Egyptian lawyers, and they were the only voices heard in international legal journals and associations.<sup>48</sup> They were true compradors. ‘Native’ lawyers, meanwhile, no matter how completely European their training and despite reference to a range of legal theory that was entirely European and absent any mention of Islamic law, made no headway in international law. Their contribution was at the level of the casebook, and even here their work was classified as an

44 The key protagonist here is Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass.: Belknap Press of Harvard University Press 2010).

45 Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* 1968 (n. 26), 29.

46 Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* 1968 (n. 26), 35; Ahmad Zakariya Shalaq, *Ahmad Fathi Zaghlul wa-qadiyat al-taghrib* (Cairo: al-Hay’ah al-Misriyah al-‘Ammah lil-Kitab 1987), 74–75.

47 The question of lawyerly identity formation is a key theme in Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press 2006).

48 This may help to explain ‘why an up-and-coming French comparativist like Lambert would agree to teach law at a colonial outpost’. Shalakany, ‘Sanhuri and the Historical Origins’ 2001 (n. 24), 165–166.

interesting exception. This ‘standard of civilisation’, obvious in the past, is (not surprisingly) conveyed into the present. To overcome the ‘standard of civilisation’ in writing the history of international lawyers, it may be necessary to change our idea of the contents of the field, in such a way as to make room for lawyers like Abu Haif, to whom we now turn.

#### 4 An Egyptian International Lawyer

‘Abd al-Hamid b. Ibrahim b. Khalil Abu Haif was born in Alexandria in 1888. He studied in Alexandria, then at Toulouse, where he graduated in 1912 with a thesis entitled ‘Le droit d’affectation sur les immeubles en Égypte’.<sup>49</sup> He taught civil and commercial procedure (*murafi’at*), then public and private international law, at the Royal Law School. Abu Haif was a key translator, teacher and conveyor of legal concepts into Arabic. For instance, Leonard Wood has recently suggested that Abu Haif may have introduced the term *nazariyya*, which became the standard term for ‘theory’, into the Arabic legal lexicon in 1915.<sup>50</sup> In 1922, he became dean (*amid*) of the Law College. At this time, he took the decisive step of changing its language of instruction from French to Arabic.<sup>51</sup> He left this position and was briefly director of Egypt’s National Library (*dar al-kutub*) before his death in 1926.

Although Abu Haif published on other legal topics, this discussion will focus on his major study *al-Qanun al-duwali al-khass fi Uruba wa fi Misr* (‘Private International Law in Europe and Egypt’), which appeared in two volumes in 1924 and 1925.<sup>52</sup> The text derived from his teaching work at the Royal Law

49 Cited in *Journal du droit international privé (Clunet)* 40 (1913), 1580.

50 Wood, ‘Reception’ 2011 (n. 2), 480.

51 This was a key component in a broader policy of Egyptianisation in modern legal education. ‘Amr Shalakany, *Izdihar wa-inhyar al-nukhbah al-qanuniyah al-Misriyah, 1805–2005* (Madinat Nasr, al-Qahirah: Dar al-Shuruq 2013), 158–165.

52 Abu Haif’s other books include *Turuq al-tanfidh wa’l-tahaffuz fi al-mawadd al-madaniya wa’l-tijariya fi Misr* (‘Means of execution and prevention in civil and commercial cases in Egypt’) (1923), *al-Murafi’at al-madaniya wa’l-tijariya wa’l-nizam al-qada’i fi Misr* (‘Civil and commercial procedure and the judicial system in Egypt’) (1915). He may also have published an English-language *Concise Treatise on Private International Law* (Cairo 1922), cited in Bion Smyrniadis, ‘Les conflits de lois en Égypte’, *Revue de droit international privé* 26 (1931), 259–291, 473–503, 259.

School.<sup>53</sup> Its structure generally follows the 1920s private international law curriculum at the law school, which consisted of the following topics:<sup>54</sup>

- generalities; first principles; topics; definitions; historical development;
- domicile and nationality; Ottoman nationality (acquisition, change, loss, re-acquisition); protection (local subjecthood); treatment of foreigners in Egypt; the Capitulations (the customs followed in Egypt);
- conflict of laws; personal status for individuals, groups and other legal persons;
- inheritance;
- organisation of material rights; real property; movable property;
- obligations; contracts (general rules – various opinions); other sources of obligations and their termination; forms of voluntary action;
- jurisdiction and enforcement; the effect of judicial and administrative decisions issued by foreign countries; and
- bankruptcy.

In each case, Abu Haif illustrates the topic with examples from Egypt; some topics are treated at far greater length than others. He grounds his study thoroughly in the broad legal literature, comparing theoretical (*nazari*) and practical (*'amali*) approaches to the law.<sup>55</sup> Abu Haif charts a practical approach, setting out to demonstrate how Egypt differs from the (European) norm through deep engagement with case law.<sup>56</sup>

A history of international law using Abu Haif's practical approach would shift conventional notions of the content and frame of the field as a whole. Unlike a history of international law 'from below', as experienced by the weaker powers or as practised by comprador lawyers (which is in some ways the project of Anghie and Becker Lorca), this practical approach would emphasise the everyday business of the ordinary workers in the international legal edifice that included the West but – critically – extended far beyond it.<sup>57</sup> Lawyers in the Legal Bureau of the Ottoman foreign ministry, for example, worked with treaty texts but rarely composed them. Instead, they applied them to specific situations that arose. In this way, they built the jurisprudence of international

53 'Abd al-Hamid Abu Haif, *al-Qanun al-Duwali al-Khass fi Awrupa wa Masr* (Cairo: Matba'at al-I'timad 1924), 12.

54 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 12.

55 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 38–44.

56 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 45.

57 Anghie, *Imperialism, Sovereignty* 2005 (n. 10); Lorca, *Mestizo International Law* 2015 (n. 10).



law, case by case, largely through administrative opinions. Similar work happened all over the world, of course, but the Ottoman Empire is a particularly good place to observe it. As defective suppliants to the 'standard of civilisation', the Ottoman lawyers' work in international law was obligatory work. They worked according to rules they did not create, but as their work accumulated it changed the meaning of those rules. Close examination of the history of international legal practice can change our understanding of the field in various ways; the Ottoman evidence suggests that private law and not public law might deserve pride of place in the history of international law. Abu Haif's work suggests the same.<sup>58</sup>

On the theoretical side, certainly, Abu Haif writes from within the European tradition. The opening pages of the book list the important reference works in the field.<sup>59</sup> Abu Haif cites a few general works on international law,<sup>60</sup> as well as the great classics of private international law, each under the heading of its own national tradition: Von Bar, Mancini, Savigny, Valéry.<sup>61</sup> He does not distinguish between national scholarly and national legal traditions. The list is a snapshot of the bookshelf of a teaching professor. In many cases, he lists an edition that is neither the first nor the most recent. He cites works in many languages – French, English, German and Italian – but also seems to prefer French and English translations of German and Italian works. The influence of the English and French languages and traditions is obvious in other ways as well. On the French side, Abu Haif lists Albéric Rolin's study of private international law in the context of the French Civil Code.<sup>62</sup> Dicey and Westlake represent Britain in very recent editions, and clearly formed part of his everyday teaching

58 Abu Haif also observed the normative understanding of public law as the location of general international law. Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 30.

59 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 7–10.

60 François Laurent, *Droit civil international*, 8 vols. (Bruxelles: Bruylant-Christophe & cie 1880–1881); William Beach Lawrence, *Commentaire sur les Éléments du droit international*, vol. 3 (Leipzig: F.A. Brockhaus 1873); Robert Phillimore, *Commentaries upon International Law*, vol. 4: *Private International Law, or Comity* (London: Butterworths 3rd ed. 1880).

61 Ludwig von Bar, *The Theory and Practice of Private International Law*, trans. G.R. Gillespie (Edinburgh: William Green & Sons 2nd ed. 1892); Pasquale Stanislao Mancini, *Della nazionalità come fondamento del diritto delle genti, prelezione al corso di diritto internazionale e maritime* (Turin: Tipografia Eredi Botta 1851); Friedrich Karl von Savigny, *A Treatise on the Conflict of Laws, and the Limits of Their Operation in Respect of Place and Time*, trans. William Guthrie (Edinburgh: T. & T. Clark 2nd ed. 1880); Jules Valéry, *Manuel de droit international privé* (Paris: Fontemoing & cie 1914).

62 Albéric Rolin, *Principes du droit international privé et applications aux diverses matières du Code civil (Code Napoléon)*, 3 vols. (Paris: Chevalier-Marescq 1897).

battery.<sup>63</sup> Wharton and Story represent America in relatively older editions.<sup>64</sup> Two treasuries of Anglo-American court decisions also reveal his pedagogical inclination.<sup>65</sup>

Offerings from the Egyptian and Ottoman legal tradition, meanwhile, are rather more sparse. Abu Haif does not cite Noradounghian, but he lists the other major French-language collections of Ottoman treaties and legislation: Gregorius Aristarchi Bey and George Young, as well as Pélissié du Rausas' collection on the Capitulations.<sup>66</sup> The jurisprudence that he cites that focuses on the Ottoman/Egyptian realm is dominated by Pierre Arminjon, whose idea of internal private international law had a great influence on Abu Haif.<sup>67</sup> He cites five pieces by Arminjon, representing two decades of scholarship.<sup>68</sup> He lists only one other study on Egyptian law, however, and states that this dearth

63 Albert Venn Dicey, *A Digest of the Law of England with Reference to the Conflict of Laws*, ed. Arthur Berriedale Keith (London: Stevens 3rd ed. 1922); John Westlake, *A Treatise on Private International Law*, ed. Norman Bentwich (London: Sweet & Maxwell 5th ed. 1922).

64 Francis Wharton, *A Treatise on the Conflict of Laws; Or, Private International Law*, ed. George Hiram Parmele (Rochester: The Lawyers' Co-operative Publishing Co. 3rd ed. 1905); Joseph Story, *Commentaries on the Conflict of Laws, Foreign and Domestic: In Regard to Contracts, Rights, and Remedies, and Especially in Regard to Marriages, Divorces, Wills, Successions, and Judgments*, ed. Melville Madison Bigelow (Boston: Little, Brown, and Company 8th ed. 1883).

65 Ernest G. Lorenzen, *Cases on the Conflict of Laws: Selected from Decisions of English and American Courts*, American Casebook Series (St. Paul: West Pub. Co. 1909); John Alderson Foote, *Foreign and Domestic Law. A Concise Treatise on Private International Jurisprudence, Based on the Decisions in the English Courts* (London: Stevens and Haynes 4th ed. 1914).

66 Gregorius Aristarchi Bey, *Législation ottomane, ou Recueil des lois, réglemens, ordonnances, traités, capitulations et autres documents officiels de l'Empire ottoman*, 6 vols. (Constantinople: Frères Nicolaïdes, 1873–1888); George Young, *Corps de droit ottoman; recueil des codes, lois, réglemens, ordonnances et actes les plus importants du droit intérieur, et d'études sur le droit coutumier de l'Empire ottoman*, 7 vols. (Oxford: Clarendon Press 1905–1906); G. Pélissié du Rausas, *Le régime des capitulations dans l'Empire ottoman*, 2 vols. (Paris: A. Rousseau 2nd ed. 1910–1911).

67 Arminjon explained this concept in 'Le droit international privé interne, principalement dans les pays de l'Islam', *Journal du droit international privé (Clunet)* 38 (1912), 698–716, 1025–46; 39 (1913), 34–43, 435–443, 812–823.

68 *Étrangers et protégés dans l'Empire ottoman* (A. Chevalier-Maresq & cie 1903); 'Le droit international privé interne' 1912 (n. 67); *Nature, objet et portée des règles de droit international privé, leur place dans la législation* (Paris: L. Tenin 1920); 'Le domaine du droit international privé' 1922 (n. 34); 'Les qualifications légales en droit international privé' 1923 (n. 34).

of literature in Arabic makes his summary work very difficult.<sup>69</sup> The main sources of Egyptian private international law are scattered thinly throughout Egyptian law, mainly in judgments of the Mixed Tribunals, as well as a few Native Courts judgments and a few directives from the ministry of justice to the *Shari'a* courts.<sup>70</sup> Abu Haif lists no sources from the Islamic legal tradition, though he does refer to a specialised work on the position of the patriarchate in the Ottoman Empire and Egypt.<sup>71</sup>

For Abu Haif, legal theory belongs to the West, even if practical private international law belongs to Egypt. He even states, at the broadest level of generalisation, that private international law is a topic that only slightly concerns Europe, but this is not in order to claim the field for the rest of the world.<sup>72</sup> His position clearly illustrates this paradox of international law: it is owned by the West, but not intended for use in Western contexts. Abu Haif was working at a time of tremendous nativism in Egyptian political, economic and cultural life, and there is something clearly nativist about his legal scholarship.<sup>73</sup> He was the dean who changed the language of instruction at the national law school to Arabic. His book itself is a call for legal sovereignty. And yet the purview of the claim for Egyptian uniqueness is restricted to Egypt itself. Unlike his European counterparts, Abu Haif did not aim to publish in the journals of the international law establishment or attend its congresses. The portrait of international law that he created was for domestic consumption.

It is striking that this nationalist pedagogical project would describe Egyptian private international law as a derivative discourse. The book is structured around an ideal Euro-American type, presented first, before turning to the Egyptian exception (which Abu Haif finds defective). The book is premised on this fundamental distinction between Egypt on the one hand and Europe and the United States on the other: whereas Egypt's rules and government – and law's authority over Egypt's residents – are limited by subjecthood (*taba'iyā*), the authority and laws of Europe and the United States have total authority (*sultan shamil*) over their inhabitants. Citing Valéry, he says that

69 Muhammad Bahi al-Din Barakat, *Des privilèges et immunités dont jouissent les étrangers en Égypte vis-à-vis des autorités locales* (Paris: A. Rousseau 1912).

70 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 45.

71 Sesostri Sidarouss, *Des patriarcats: les patriarcats dans l'Empire ottoman et spécialement en Égypte* (Paris: A. Rousseau 1907). Elsewhere, he lists the sources of religious law in Egypt. Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 50.

72 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 48.

73 Eric Davis, *Challenging Colonialism: Bank Misr and Egyptian Industrialization, 1920–1941* (Princeton: Princeton University Press 1983); Robert L. Tignor, *State, Private Enterprise, and Economic Change in Egypt, 1918–1952* (Princeton: Princeton University Press 1984).

there is no internal conflict of law in France, and presents an idealised view of uniform jurisdiction in which the same law is applied equally to everyone resident in the territory.<sup>74</sup> In Egypt, this is not the case. Abu Haif attributes the distinction to the Capitulations and the absence of a national personal status law (*qanun watani lil-ahwal al-shakhsiya*). First, the personal status of Egyptians is divided according to religion rather than unified according to nationality; this is the great stumbling block that prevents Egypt from establishing the complete sovereignty found in the West. But the Capitulations constitute the major obstacle to such a reform. Abu Haif consistently distinguishes between courts (*mahakim* or *qada'*) and law (*qanun*), arguing that each requires unification. Plural law and courts means that Egyptian law and Egyptian courts have a qualitatively different meaning than French law and French courts.<sup>75</sup> And it is here that Abu Haif makes his special claim: conflict of laws and conflict of jurisdiction exist to a greater extent in Egypt than anywhere else.<sup>76</sup> Some of this conflict is of the usual international type, but the rest is Egypt's special internal conflict of laws, between 'purely' (*baht*) Egyptian laws courts and those foreign courts allowed by the Egyptian lawmaker (*al-mushri' al-misri*).<sup>77</sup> These internal differences are rarely reconciled through law; instead, every court uses its own precedents, piecemeal. The literature on divided sovereignties in modern settings, which has found Egypt a useful grounds of analysis, finds confirmation in Abu Haif's concept of 'internal private international law', which domesticates and generalises the experiences of Egyptian legal workers.<sup>78</sup>

## 5 Conclusion

In the recently published *Oxford Handbook of the History of International Law*, Umut Özsu argues that '[i]nternational lawyers have long regarded the Ottoman Empire as having been central to the development of many of the most crucial rules, principles, and traditions of their discipline'.<sup>79</sup> If this is true, that regard is typically an imperial gaze that does not see the Ottoman

74 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 46–47.

75 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 49.

76 Abu Haif, *al-Qanun al-Duwali* 1924 (n. 53), 51.

77 The identity of the *mushri'* goes unspecified.

78 Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press 2005); Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley: University of California Press 2002); Esmeir, *Juridical Humanity* 2012 (n. 26).

79 Özsu, 'Ottoman Empire' 2013 (n. 20), 429.

Empire itself as a generator of international law. The empire was, rather, the proving ground on which public international law was tested by other, greater powers. From the early nineteenth century onwards, the Ottoman Empire formed an extra-civilisational 'excess' that permitted Europe to realise its own civilisational projects.<sup>80</sup> The list of incidents that served this purpose is long, and includes Greek independence, interventions in Syria in the 1830s and the 1860s, the Crimean War, the Bulgarian atrocities, the Armenian genocide and the First World War and its ultimate settlement.<sup>81</sup> Each instance was legally productive, at least as far as European lawyers were concerned. The productivity of these episodes for Ottoman law is less obvious.

Although now discredited, the idea that Ottomans had no international law – the *kadijustiz* idea – still lingers, and must continue to be opposed. But two typical reactions against that idea offer little progress. The first, a quest to find 'indigenous' international law in Islamic or Ottoman law, is futile. The second, to show the Ottoman derivative discourse, falls short of its creative potential. The emerging global history of international law wrestles mightily with the question of international law's Eurocentrism.<sup>82</sup> The key move of recent global history has been to show that Western movements and concepts changed in the hands of those in the rest of the world who took them up.<sup>83</sup> Scholars have demonstrated the creative activity of international lawyers outside the metropole, and the next step (already taken by scholars of liberalism and empire) may be to show the impact of that work on Europe itself.<sup>84</sup> Did Ottoman lawyers make and not just mimic international law? Did their work change international law as a whole? How to shed light on European legal practices at Egypt's Mixed Courts, beyond endorsing the well-known fact that European law supported colonialism?

80 For the idea of excess, expressed in the context of legal concepts of the human, see Esmeir, *Juridical Humanity* 2012 (n. 26).

81 Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815–1914; The Emergence of a European Concept and International Practice* (Princeton: Princeton University Press 2012); Umut Özsu, *Formalizing Displacement: International Law and Population Transfers* (Oxford: OUP 2014).

82 Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: CUP 2002); Anghie, *Imperialism, Sovereignty* 2005 (n. 10); Benton, *A Search for Sovereignty* 2010 (n. 10); Fassbender/Peters, *Oxford Handbook* 2013 (n. 16); Lorca, *Mestizo International Law* 2015 (n. 10).

83 See, for instance, Sebastian Conrad, 'Enlightenment in Global History: A Historiographical Critique on Enlightenment', *American Historical Review* 117 (2012), 999–1027.

84 A good introduction is 'Forum: Liberal Empire and International Law', *American Historical Review* 117 (2012), 67–148.

Egyptian engagement with the formal field of international law during the last decades of the Ottoman Empire and the years that followed showed signs of production and not just reception. As inhabitants of the grounds of legal experiment, Egyptians were also producers of that law. As Abu Haif argued, the non-West was the place where the law was realised. In the late nineteenth century, international law was an experimental discipline. Ottoman legal work, undertaken to manage and bolster its membership of the community of nations, tracked a moving target. The models of international law that the Ottomans had to imitate in order to establish their legitimacy were being formed – in part – by Ottoman practice itself. Attending to this Ottoman international legal practice could offer avenues of revision of international legal practice in general. The particular insight that I have tried to reveal in this article, drawing especially on lawyers in the Egyptian successor state to the Ottoman Empire, is the private nature of so much of their international legal work. For these producers of law, the private individual, rather than the state, was the key subject of international law.