G.R.H. WRIGHT

THE LEGALITY OF THE CONSULAR EXCAVATIONS IN OTTOMAN CYPRUS

To the memory of C.R. Tyser,
D.G. Demetriades, Ismail Haqqi,
three Kyrenia residents a century ago.

Latterly the propriety of archaeological activities has become a matter of everyday interest, particularly as concerning activities during the nineteenth century in the Eastern Mediterranean and the Middle East (where discussion is largely motivated by contemporary prejudices about imperialism). Here be it noted virtually all areas of archaeological concern were then under Ottoman rule. In this way much has been and now is said taking seriously to task severally European archaeologists or Ottoman officials. In this debate it is not made explicit that the plane of discussion is a social one, or an ethical one, or an administrative one. Very rarely indeed are the matters discussed questions of law or questions which were referred to the law. No one wishes to say that legality is the be-all and end-all of every (or any) matter. However it is manifestly unsatisfactory to discuss social matters entirely without reference to the law governing them - i.e. whether or not the proceedings under discussion were legal. Accordingly in this preliminary notice some attempt will be made to suggest what legal provisions might have been applicable to archaeological activities carried out in Cyprus during the nineteenth century when it was part of Ottoman domains. *NB* The administrative status of Cyprus under Ottoman rule was changed continually back and forth. From being at first an independent province *(vilayet)* it passed and repassed variously into a private *(khass)* domain (fief, we might say) first of the Lord High Admiral *(Kapudan Pasha)* and then of the Chief Minister *(Vizier)*. In 1849 Cyprus was made a subsidiary division *(Sanjak)* of the Aegaean Islands *(Jezair - i - bahr - i - sefid)* governorate but there were further changes, so that at times its true status was not clear. However these administrative vicissitudes did not, in principle, affect the law applicable in the Island.

Cyprus was a late acquisition to the Islamic world, being conquered by the Ottomans in 1571 AD (= 979 AH). However it was immediately thoroughly Islamised, which meant in law and religion since the latter two aspects of social life are closely connected — Islam being in considerable measure theocratic. This process conditioned completely attitudes towards the ancient past of the region. Islam did not comprehend a concern for pre-islamic society as expressed in the material remains of its art and architecture. Absolutely to the contrary. Such a contrary attitude is implicit in other religions (e.g. a similar tendency was manifest in Early Christianity and has regularly resurfaced in fundamentalist revivals), however in Islam it is stated explicitly and emphatically.

Muhammad (like many visionaries) was a shrewd, practical man. He realised that his revealed faith (standing as it did on a marginal, provincial origin) was liable to censure on grounds of cultural limitation. It was thus very wise of him to characterise as essentially ignorant (hence boorish, barbaric) all cultures and civilisations (with a certain narrow exception) prior to his religious revelation. This particular revelation has the force of all Koranic scripture, and thus in any discriminating judgement it is always possible to characterise the history of pre-Islamic times as of no consequence because it is essentially ignorant/foolish; (except, that is, for the history of the "people of the book" *(ahl al kitab)*, i.e. biblical history.

The concept evolved by Muhammad is the *Jāhilīya,* the verbal root of which, *Jahila,* means to be ignorant (not to know something), thus to be irrational, foolish, to behave foolishly. The noun jahl is ignorance; and the adjective *jāhil* is ignorant, uneducated, illiterate, foolish (which used as a substantive = a fool). From this root Muhammed evolved *Jāhili* as indicating all things pre-islamic and *Jāhiliyā* to signify the institutional state of ignorance — i.e. pre-islamic religion and equally pre-islamic society and its age and day. The concept resembles the Early Christian pejorative, heathen (rustics, dwellers in the heath) or pagan (peasants, workers of the fields); and cf Acts 17.30.

This incisive concept had to be continually tempered (or dismissed) in practical dealings, however it is dogma and its basic influence on Islamic attitude has been great — although not often specifically acknowledged. In the first instance Islam did not receive Graeco-Roman history and remains into what we now call its "cultural heritage"). On the contrary it regarded the material remains as spoils and was struck with wonder at their fantastic wealth; originally to be seen above ground and forever afterwards to be found below the ground. This was so different from the sands of the Arabian desert. This sense of the imminence of treasure out of the *Jāhilīya* remains a striking feature of Islamic literature (cf in the Thousand and One Nights). The consequence of this is that Islamic governments never concerned themselves in practice with pre-islamic antiquities. Even more significant and directly relevant to present concerns is the fact that as Islamic Law came to be formulated out of religious principles, in principle, it did not address itself to questions concerning what we call antiquities. And the latter question must now be considered in more detail.

An outline of the origin, principles and working of Islamic Law evokes some incredulity in the first instance. To a modern European "The Conflict of Laws" is something real enough but it refers to the legal systems of different nations when (and as to when) they may be applicable in a given instance. It is in fact an alternative name for what is known as Private International Law. It is somewhat untoward to realise that this situation is endemic in Islamic Law within the one jurisdiction. Half a dozen sources *(usul)* of law may well be available in any one jurisdiction comprising customary law, secular (state) law, religious law (in four parallel recensions). Only the legal fiction is maintained that there is no conflict (or that apparent conflicts are always reconcilable).

Essentially the legal system obtaining in any Islamic land is based on the religious precepts of Islam — or such is the traditional position. However this has been qualified during the last century or so by the adoption in many jurisdictions of European legal provisions in a codified form, going back to the Code Napoléon. Nonetheless the traditional position is still revered in principle and was operative in Cyprus during the period under discussion. The effect of this religious basis is that Islamic law often does not define impersonal categories and concepts as a Western trained jurist would expect, but expresses itself rather in provisions regulating the conduct of persons so that they remain in a state of grace with God.

This religious Islamic Law *(Sharia, Sherī)* was developed during the second and third centuries of the Hegra (ca 780 AD - 850 AD) at the flourishing period of Islamic scholarship, and thereafter, like much other Islamic thought, has tended to remain static. Several religious scholars during the period in question concerned themselves with studies *(fiqh* = intelligence, knowledge, specifically jurisprudence) to provide a legal system for the community. Eventually four such systems became accepted as orthodox religious law. The several systems have acquired preference or preeminence in various different geographical regions of the Islamic world — but in theory all are mutually acceptable and binding, on the legal fiction that they are all reconcilable by *ijtihad* = exertion (to form an opinion on a case). In practice what happened was that while the Judge *(Qādi)* would listen to any rule, he gave his decision in terms of the system to which he

adhered. These systems *(madhhab)* are called rites (because of their religious origins) but perhaps schools seems a more appropriate term. The essential difference between them is the sources of law *(usul* = roots) they admitted, or the emphasis placed on these various sources. These sources were first and obviously the Koran (Quran) itself the direct word of God *(nass);* next the words of Muhammad accepted by tradition *(Hadith/Sunna);* then the statements of the companions *(ijmā* = agreement of those qualified) i.e. contemporaries of the prophet, later extended to cover men of the succeeding two generations; and finally, applied human reason *(ray* = intelligence), i.e. legal interpretation *(qiyās* = analogy).

While all schools of course accepted the Koranic material, the most rigid school (the *Hanbali* or *Hanabila,* that of Ahmad ibn Hanbal) sought to avoid virtually everything else. The school which was received by the Ottoman rulers and became the official doctrine of the Ottoman Empire (the *Hanafi* school or the *Hunafiya,* that of Abu Hanifa and his followers) was prepared to make use of rational, legal interpretation *(qiyās)* and accorded it more weight than some other schools. Fortunately Cyprus had no previous tradition of Islamic law when it was brought under Ottoman rule, therefore the *Hanafi* system did not encounter in Cyprus a previously established rival school of law (as, e.g. in Syria and Egypt).

So much for what has always been held to be the essential body of Islamic law. However such law could not totally exclude, and thus was supplemented by, two other types of law: customary law *(ʿurf, ʿāda)* and secular, state law *(qānūn).* Custom has a very strong force and Islamic law had to take cognisance of this willy nilly. Thus early Islamic jurists were much concerned with the question of whether customary law survived islamisation or was rendered invalid and needed to be confirmed by Islamic law. Equally, on occasion, secular rulers must be empowered to issue regulations and decrees. Often there was a connection. Such a law or ordonance might embody a custom or confirm a custom. In principle at first this process was reserved for circumstances where the *Sharia* was little relevent, e.g. fiscal administration and criminal law. The Ottoman regime considerably developed Qānūn law, especially in a particular instance. This was the *firman farman:* a decree issued in the name of the Sultan bearing his official cypher *(tughra),* sometimes endorsed or annotated by the sultan himself in his own hand to render it more august (*cf Khatt - i - Humayan, Khatt - i - Sherif).* It was thus a *qānūn* but its characteristic was that it concerned itself with an individual affair rather than a public issue. In terms it was directed to specified officials or bodies ordering them *sub poena* to facilitate a certain specific activity or operation. In all this again the theory was that conflicts did not arise since customary and *Qānūn* law dealt with matters outside the *Sharia* law. However as the needs of Ottoman administration became more complex there was an increasing recourse to state law and conflicts inevitably ensued with religious law.

It now remains to attempt some rationalisation of the legal position of acts concerned with antiquities in nineteenth century Cyprus under Ottoman rule (i.e. 1800 AD - 1878 AD). And initially it must be re-emphasized that the concern is to assess the position at law (i.e. *de jure)* not what might have ensued in practice on the ground (i.e. *de facto).*

To begin with a simple issue. If the activities were carried out under the provisions of the Sultan's *firman* then *de jure* no complications arise. The *firman* was in effect a *qānūn* and was thus part of the organic law of the land. And from the moment of its issue it superseded (repealed, suspended, amended = *raskh)* all law relating to this particular instance. *Firmans* were as a rule very well draughted and they enjoined all those concerned to see that the holder was able to carry out the activities desired without let or hindrance. So far as antiquities were concerned this, in general, meant not only to acquire them by excavation or other means, but also to take them out of the country — i.e. it granted exemption from whatever customs

regulations may have been in force concerning such object. Very frequently antiquities operations in Ottoman lands were carried out under the terms of a *firman*, e.g. Lord Elgin's removal of the Parthenon sculptures at the beginning of the century. However for one reason or another some of the Antiquities work in Cyprus during the middle of the 19th century was done without a *firman*. What was the position here according to the law of the land? That is the question.

In view of what has been said about the complex nature of Islamic law, it might be thought impossible to offer a brief résumé of this issue on an elementary approach. However for the present purposes certain assumptions can be made fairly reasonably. First of all it is possible to limit somewhat the body of law applicable. There is nothing to indicate the existence in Cyprus of any custom referring to antiquities. Equally nothing is known of any Ottoman *qānūn* specifically regulating antiquities. If such existed, logically, it might be mentioned in *firmans* issued to cover antiquities work — and so far as is evident it never was. In particular there is no evidence for any *qānūn* specifying that it was forbidden *(yasak)* to carry out activities connected with antiquities in Ottoman lands unless in possession of the Sultan's firman authorising such activities. This in itself would have constituted an Antiquities Law *sui generis*, of which there is no record. Therefore it is Sharia law which comes into question.

Cypriote antiquity has always remained of interest because of the Aphrodite connection in mythology. And in this way Western Europeans who visited the Island in Turkish times were interested in its ancient remains. They looked out for them and copied inscriptions etc. However it was only after the middle of the 19th century that Western Europeans began to seek for antiquities in Cyprus by way of excavation. This work was in great measure carried out as a side line by consular representatives, notably the British Consul Hamilton Lang and Cesnola, the American consul. In fact this phase was of short duration — continuing only for a decade or so ca 1865 - 1875 before it was ruled out by the British occupation of the Island in 1878. Nonetheless during this period intensive work was undertaken at many sites in the Island and great quantities of antiquities were recovered. It has now become general to deprecate this work and represent it as spoliation and destruction, in which event odium also attaches to the Turkish authorities. Here the archaeological merit or propriety of this work is not in question, there is only the question was it legal according to Ottoman *Sharia* law.

There are analytical digests published in European languages (French, English and Italian) of Ottoman *Sharia* law — and this law was also partly codified by the Ottoman authorities themselves. The code *(Mejelle Mecelle)* has been translated several times into both French and English. From these various instruments it is possible to gain some initial idea of the contents and concerns of *Sharia* law. As suggested initially when considering the concept of *Jāhilīya*, no concern is evident in the *Sharia* for antiquities as such. Therefore any judicial consideration of acts concerning them could only have proceeded by way of analogy *(qiyās)*. In the present instance this could only arise out of land law, the law of real property *(aqar)*; its ownership *(milk, mulk)*, possession *(yad)*, and its usufruct *(manfaa)*. In turn the various legal incidents attached to real property vary according to the legal category of the land — and this in Cyprus was clearly defined and differentiated.

A question precedent is the capacity / incapacity of non-moslems to own and dispose of land. It appears that the post conquest settlement of Cyprus did involve some concession to the Christian populace on this score. There was a capitulation in their favour enabling them to continue in the ownership, possession and enjoyment of their land and to deal freely with it by way of alienation etc. On occasions, in practice infringements to this occured, but these were incidental. Allied with this is the question of land

ownership by foreigners (i.e. European residents). This in Ottoman lands at large was a contentious matter, with the underlying understanding that foreign nationals (i.e. Europeans) were debarred from enjoying such a privilege and the general right was specifically accorded only in the Tanzimaat legislation, and not promulgated until 1867. However, in Cyprus, at least for members of the consular corps, it appears there was little of concern here. Both Cesnola and Lang possessed real property in Cyprus which they owned or leased. Lang, indeed, made a success of agriculture on a fairly large scale, being the proprietor of a chiftlik in the hinterland of Larnaka. It may therefore be taken that during the period under consideration European residents in Cyprus stood on the same footing as others with respect to the enjoyment of landed property.

It is now necessary to indicate the several legal categories of land obtaining in Cyprus since these materially condition rights of user. For practical purposes at the period under discussion these are (together with their Turkish designations):

(1) Private Land *(Arazi Memluké)*

(2) Crown Land *(Arazi Mirié)*

(3) Common Land *(Arazi Metrouké)*

(4) Waste Land *(Arazi Mevat)*

(5) "Chantry" Land *(Arazi Mevkufi* = land in mortmain)

In principle significant antiquities might be found on any of the above categories of land. Indeed, in some regions, e.g. Syria, Iraq, it is very possible that important ancient remains stand in the desert", i.e. occured in the remote wilderness far from human habitation and thus were on *Arazi Mevat* (= Dead Land).

However the local circumstances in Cyprus are such that the great bulk of ancient remains brought to light were on privately owned land *(Milk/Mulki land)* with a residue on Crown Land *(Miri* land). Cyprus comprises, in the main, closely settled agricultural terrain; or at least the areas inhabited in antiquity were of this order. And in general during the period under discussion the activities of European investigators were not concerned with visible standing remains but with remains buried under the earth, located during cultivation, well digging etc on private property (generally in fields). Thus either by purchase of these parcels or by leasing them or simply by operating under the license of the owner the European Excavator was legally entitled to exercise the property rights of ownership *(mulk)* or possession *(yad)* of the land. What then were these rights according to Sharia law?

In the absence of any specific recognition of antiquities the relevent provision of Sharia law are probably to this effect. In principle the land owner owns what lies beneath his property (i.e. *cujus est solum* etc), thus he is entitled to dig up the ground for whatever purpose — e.g. to sink wells. Therefore there is nothing forbidden *(yasak)* in excavating for antiquities on private land. However all rights are subject to the legitimate interest of others and control by the state. Were there conditions or limitations to the excavator's enjoyment *(tasarruf)* of any antiquities he finds when digging up his land? Here since the *Sharia*ᶜ does not know antiquities, analogy *(qiyās)* must be applied. The closest analogy to excavated antiquities considered by Sharia law are:

(1) Mines *(maᶜdin)*

(2) Treasure *(rikaz)*

With respect to mines, according to the Hunafiya, the owner of the ground owns the mine and enjoys its produce, but he must remit one fifth of this to the public treasure *(bait al mal).* If the ground has no owner, the mine belongs to the finder, with a similar condition as to the fisc. But other schools differ. The second instance, that of treasure, is obviously very close to that of antiquities, indeed well nigh congruent. The treasure belongs to the finder but *(de jure)* this belonging is heavily charged with conditions.

A treasure comprises precious materials (precious metals, precious stones, etc) hidden away under the earth. Here Sharia law makes a sharp distinction according to the origin of the treasure, *viz* Islamic or non Islamic. If the treasure belongs or belonged to Moslems then an *animus revertendi* is presumed and the rights of the original owner are given priority. The finder has only possession and he must "cry" the treasure for a reasonable time. He then may use it, but is always liable to the original owner for its value when ownership can be proved (all very unrealistic if e.g. the treasure consists of Abbasid coins!). On the other hand if the treasure is non-Islamic in origin (i.e. from the jāhilīya, which was the case with antiquities unearthed in Cyprus at the time) then the finder acquires ownership of the treasure. If the treasure was found on public land then the finder must remit 1/5th of the value to the State. However if found on private land, he takes all and the state has no claim — but the authorities differ on details. In any event if excavated antiquities in Cyprus were assimilated in law to treasure trove, then clearly the excavator was in a good position.

The gist of this rapid survey is to indicate that the archaeological activites carried out by e.g. Lang and Cesnola on mulki land in the possession of the excavator were not illegal according to Ottoman law in force at the time. There remained the question as to the liability of the excavator to render up to the public treasury a share of his finds depending on the legal interpretation by analogy of his activities; but in any event, this was not an onerous one. As a matter of law Lang was probably quite correct when he told his friend the governor that the latter would need a firman to stop him (legally) from continuing his excavation.

This, however, is certainly not the end of the story (from the excavator's point of view, that is). Both Lang and Cesnola make it clear that a significant motivation for their work was the benefit accruing to both art and history from transferring their finds to centres of Western European civilisation so that they could be properly studied and appreciated. They did not disdain financial reward to cover their expenses incurred in excavations, but they maintained that their basic aim and contribution was to keep the material intact and together, properly provenanced and made readily available for enlightened research by scholars. All this standing in contradiction to what would otherwise be the case looting and chance finds smashed and abandoned with the items of commercial value dispersed into private hands without record of provenance. The merits of Cesnola in this connection are only now being made properly manifest after a lapse of more than a century, as the material is being exhaustively restudied in the research galleries of the Metropolitan Museum.

Now to achieve this aim it was necessary to export the material from Cyprus, and for this it had to be cleared through customs. In this question the preceeding analysis is entirely irrelevent. The customs everywhere are and always have been a law unto themselves. Thus, saving possession of the Sultan's firman specifically authorising export, excavators of antiquities were in bad case, being subject to the regulations (and whims) of the Cypriote customs. This situation they circumvented by various (illegal) devices. For smaller items they could manage fairly readily but large items (i.e. valuable statuary) taxed their ingenuity. And they report, with a measure of professional pride, their success in these undertakings. Outwitting customs (in a good cause) always appears to have been reckoned fair game.

It is now advisable to close this account of a decade's activity in Cyprus, and to put it in perspective by referring to its immediate sequel. Precisely at the period (1865-1875) the European inspired reformist movement (the Tanzimat, the Destur) was struggling to gain expression in Ottoman governmental policy. Enlightened legislation on the broadest scale was expertly prepared. However there was frequently a considerable lapse of time before it was actually promulgated. So it was with legislation concerning antiquities covering both excavations and museums. The Ottoman Antiquities Law (Asar i-Atika) was promulgated in 1874 when Lang had ceased his connection with antiquities and Cesnola was about to leave the Island to return to America and install both his collection and himself in the Metropolitan Museum.

The Turkish Antiquities law with its subsequent amendments and revisions incorporated all the provision which have subsequently become canonical in regulating antiquities: vesting of all antiquities in the state; establishment of a responsible Department; no excavation without a permit issued by the Department and under the supervision of an appointed commissar (departmental representative); proper recording and handling of finds; no export of antiquities except with special permission of government etc. Under the terms of this act the work of Lang and Cesnola during the preceeding decade would have been illegal. Subsequently excavators in other parts of the Ottoman Empire, e.g. Iraq, publicly complained that it was vexatious and sighed for the good old days (of the Sultan's firman).

Was this act duly administered without delay by the Ottoman authorities in Cyprus? There are some items of evidence on this score. When Cesnola was arranging for the dispatch of his second collection to America in 1876, he records that he made a donation of a representative selection of this to the Imperial Museum in Istanbul. This material certainly made its way to Istanbul, where some of it is still on exhibition. However was it a gift or was it a squaring off under the terms of the New Antiquities law? Recently it has been reported by Turkish publicists as a "confiscation". On the other hand when Cesnola left Cyprus in 1876 his younger brother Alexander took on his mantle and continued with the same style of operations in and about Salamis. There is nothing to suggest that this work was carried out under the terms of the new law. Accordingly in 1878 when the British occupied the Island and administered it for the Sultan (according to Ottoman law) they immediately stopped Alexander di Cesnola's work on the grounds of its contravention of the 1874 act. Legal proceedings were taken against him and a part of his finds was confiscated. Since then Antiquities work in Cyprus has always been subject to proper legislation — originally to the Ottoman Act and then subsequently to new Cypriote legislation.

Now after more than a century has passed the activities of 1865-75 are difficult to assess in an utterly changed world without technical knowledge and experience coupled with an extensive understanding of (local) history. Whatever view may be held of them now depends on personal historical bias. Concerning what is, perhaps, a minor issue, the present study indicates that these activities were not illegal according to the law then prevailing.

APPENDIX: Judicial practice and proceedure

It is very reasonable to question why the preceeding enquiry into the legality of archaeological excavations according to Ottoman law is cast in a theoretical form. Why should it not be conclusively established through reference to actual adjudication of the issue by the courts? This introduces the subject of judicial practice and procedure in the Ottoman legal system — a subject so extensive and diversified that brief remarks are derisory. Nonetheless the circumstances bear materially on the previous discussion and something should be said of them here:

Two European attitudes towards the process of Ottoman law which have been often repeated are:

(1) admiration of its functioning during the 16th, 17th and early 18th century on account of its simplicity and swiftness.

(2) denigration of the corruption which beset it in later, e.g. 19th century, times.

It is possible that both these appraisals are warranted — however general ignorance prevails as to their basis. For example in Cyprus at the period under discussion when the first branches of codified law were promulgated, European observers were quick to note that the *Qadi* had no knowledge of their contents but that, e.g., Greek merchants knew their provisions exactly (they were published bilingually). This of course *per se* was regrettable; and it was taken as corroborating the second of the above mentioned attitudes. However it is also not unconnected (historically) with the first, which may sound surprising. The basic fact here is that Ottoman legal process was founded on and motivated by considerations very different from European proceedure.

On several occasions it has been remarked that affinities appear between the process of law in the Ottoman Empire and that in the Chinese Empire — and there may be some reality behind this appearance going back to Turkish origins in Central Asia. In fact the principle issue here is the bent to discourage and limit litigation. A social stigma was attached to any involvement in litigation, and the Chinese courts treated all parties who came before them as suspect in a certain measure. Thus observers of Ottoman society in its floruit (16th-18th centuries) noted that it was non-litigious compared with Europe. From this they went on to observe (accurately or not) that it was very law abiding.

To cut a long story short the essential difference is probably that Ottoman courts of law were designed in the first instance to serve the interests of the community by securing and maintaining good public order. They were not set up to be the bulwark of individual freedom; to maintain and secure every man his rights. Ideally if people came to an Ottoman court they got swift and simple justice — most hearings were concluded in one sitting. It was unlikely that the parties had it made clear to them what were the grounds of the decision or what rule of law had been applied in their case. However, generally the verdict was seen to be in the public interest. Indeed the public interest could be laid directly before the court and was at times the principle issue in disposing of the case — e.g. malefactors (murderers, robbers, etc.) were sentenced to death not on the facts of the case before the court, but on representations by delegates of the community that their habitual misdeeds constituted a threat to public security and welfare.

In deciding the issues before it Ottoman courts made *ad hoc* use of whatever rule or principle of the law reckoned most apposite (e.g. *Sharia, Qānūn, ʿUrf*). There were no barristers and solicitors in Ottoman legal practice. The parties presented their own case and the court made use of witnesses (cf expert witnesses) to establish the law, just as much as the facts. In this process judicial precedent had small place — very little was readily available and even less was made use of *(exit* "freedom broadening slowly down

from precedent to precedent"). Put broadly in this fashion it would seem that the rule of law was not strongly developed in the Ottoman Empire. This appraisal, however, neglects entirely a crucial factor — one for which there is little parallel in modern European legal system. This is the institution of the jurisconsult, who authoritatively lays down the law in advance of and, so far as is possible, to avoid legal proceedings before the court.

Devolving from the original identity between law and religion in Islam, a class of learned men *(ulema)* were recognised as capable of laying down the law on application *(iftâ')*, i.e. of giving a response to a legal question *(fatwa, fetva).* Such a person was a *Mufti,* and he played a rôle at least the equal of a judge *(Qadi)* in Islamic law. It was the concern of the Ottoman government (inevitably a centralising regime) to institutionalise this practice. Where originally the status of the mufti was an entirely personal affair, dependent only on public recognition of the individuals' character and learning, the Ottoman government appointed official muftis (moreover for all the relevent schools of law) in all major centres culminating in the Hanafi Grand Mufti of Istanbul who was given the title of *Sheikh ul Islam* and who wielded the only potency in any way independent of that of the *Satlan* Caliph.

Recourse was had to the *mufti* by both public and private interests to validate proposed policies or activities, and also to support legal proceedings before the courts. If a party to an action obtained a *fatwa* in his favour, the proceedings could be little more than rubber stamping this decision by the Qadi. Equally the Qadi might call in the Mufti to provide a ruling in a case before the court. On the other hand a *fatwa* was not legally binding on the Qadi if he chose to go against it.

European "archaeologists" active in Ottoman lands before the promulgation of the antiquities law record turn and turn about friendly assistance from authorities and vexatious interference or molestation. These circumstances arose out of dealings with government officials and also with those possessed of no governmental authority — e.g. religious leaders, tribal leaders, etc. There are no commonly recorded instances of court summonses or involvement in legal proceedings on account of archaeological activities. Ottoman courts would not have adjudicated readily on the legality of archaeological excavations and would not have provided the basis for any decision in this connection. Moreover in the unlikely event of such litigation involving a European, the matter would not have rested with the court decision but inevitably would have been taken up at diplomatic level in Istanbul.

The legality of the consular excavations in Cyprus (and by extension contemporary archaeological excavations in other parts of the Ottoman Empire) was not tested in the Ottoman courts for the good reason that Ottoman courts did not function well in this concern. Such a case would have involved considering a notable innovation *(bid'a* - a strong perjorative in religious contexts) where the Qadi would not have been comfortable. If the legality of (European) archaeological activity in Ottoman dominions had been of significant public concern it would have been decided by applying for a *fatwa* from the Grand Mufti. Since this was not done it was evident that the question was not regarded as an important public issue and was left to be dealt with by administrative processes supplemented by the issue of *firmans,* as was convenient or politic.

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