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

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ABSTRACT: Court records are used extensively in historical research. Preserved as summaries of daily legal proceedings, they give historians a unique opportunity of access to the information about the names, personal characteristics, and socio-economic status of individuals and about the laws, local customs, and legal institutions that were used in resolving disputes. Although researchers have thoroughly discussed the limitations of these records in accurately reflecting court proceedings, the problem of selection bias has not been systematically studied. Since litigants would likely settle disputes in which one side is likely to be a clear winner, the cases that go to trial would likely be the difficult and uncertain ones for which there is greater disagreement, altogether comprising a non-random and unrepresentative subset of all disputes. We study the selection bias in Ottoman courts in the town of Kastamonu in northern Anatolia, from the late seventeenth and the eighteenth centuries. We separate disputes by type and study the distribution of court participants according to size, gender, and religious and socioeconomic status. We run regression analysis to determine the factors affecting the likelihood of cases being tried in court. Our results indicate that the cases that wound up in court were selected systematically. If the selection bias is ignored, research based on Ottoman court records may be seriously flawed in its ability to yield general conclusions.

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1. INTRODUCTION

Court records have been extensively used in historical research. Vast bodies of original records exist for numerous court systems in history, including the civil and criminal courts of England and Wales, imperial courts of China, and colonial courts of India, Africa, and America.\(^1\) Preserved as summaries of legal proceedings, these records often provide extraordinary detail about the names, personal characteristics, and socio-economic status of individuals and about the laws, local customs, and legal institutions that were used in resolving disputes. As Flaherty has argued for the court records of colonial America, these documents typically ‘constitute the single most important source for the social, economic, and legal history’ of their era because of their rich content and broad coverage.\(^2\)

Despite the obvious importance of court records in historical research, the vulnerability of these documents to selection bias has received little attention.\(^3\) The problem exists because the litigations found in court records are typically selected systematically from the disputes that were settled prior to trial. Since litigants would likely settle disputes in which one side is expected to be a clear winner, we would expect the litigations that wind up in court to be only a small fraction of all disputes. Those that reach trial are likely to be the difficult and uncertain cases for which there is greater disagreement, comprising a non-random and unrepresentative subset of all disputes.

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disputes.\(^4\) If the selection bias is unknown or ignored, researchers using court records would likely arrive at incomplete and even seriously flawed conclusions about overall disputes in a society. To ensure the robustness and proper interpretation of results, we need to identify the factors that affected the selection of cases for trial and account for those that never reached trial.

Previous research has had limited success in identifying the selection bias in historical court records because archival sources typically include the records of only the litigated cases. Since the courts usually keep limited or no record of cases that settled, researchers have no choice but use litigated cases as primary sources and often proceed based on the (implicit) assumption that no bias exists in their selection into records. Even when researchers may suspect that the sample is biased, they have no way of testing or correcting for the bias unless they have direct external evidence on the underlying distribution of all cases. Although there have been numerous empirical tests of the selection bias in modern courts (thanks in large part to greater availability of external evidence and comprehensive data), progress has been slow in studying the bias in historical records. To our knowledge, the only previous study to evaluate the selection effect using data from the period before 1870 is Klerman’s empirical analysis of private prosecutions of crime in England in the thirteenth century.\(^5\)

This paper will study the selection bias in cases tried in an Ottoman court by using data from the court records (\textit{sicillât}; sing. \textit{sicil}) of the town of Kastamonu in northern Anatolia, from the late seventeenth and the eighteenth centuries. Ottoman court records typically give detailed information about each case that was filed in court, including the identities of disputants and how they resolved their conflicts. Although we obviously know nothing about those disputes that were never brought to court, the records nevertheless allow us to identify the cases that were

\(^4\) Priest and Klein, ‘Selection of disputes’.
\(^5\) Klerman, ‘13\textsuperscript{th}-century disputes’.
filed in court but settled prior to or during the trial. Comparing settled cases with those that were decided by the judge, we examine the question of whether the cases that were tried in Ottoman courts were a random sample of filed cases or selected through a systematic process. More specifically, we separate cases by type and examine quantitatively the distribution of court participants according to size, gender, and religious and socioeconomic status. We run regression analysis to determine the individual effects of factors that contributed to the likelihood of the case being tried in court.

Our results are directly related to the literature that uses litigations in Ottoman court records for analysis of dispute resolution or as sources of information about gender roles, social relationships, or other questions of historical interest. Underlying these studies is the implicit assumption that the disputes tried in court are in some sense a random sample of all disputes. Although Ottoman historians have discussed the limitations of these records in accurately reflecting court proceedings, the problem of selection bias has not been systematically studied. Our results pose a significant challenge to the current practice of drawing on Ottoman court records as unbiased sources of information. Some cases were systematically more likely than others to settle before trial, indicating a selection process that prevented certain disputes from inclusion in trial records.

Our analysis of settlement behavior in Ottoman courts also contributes to the broader literature on dispute resolution, specifically the empirical analysis of selection effect in the law and economics literature and the historical analysis of dispute resolution in other legal systems and time periods. Since Priest and Klein’s pioneering analysis of the selection effect in

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settlement-trial decisions, an enormous empirical literature has developed to identify the factors affecting the likelihood of trial. Using data from modern courts, researchers have shown how the selection of cases for trial has depended on the characteristics of the parties and the nature of case types. Identifying systematic relationships between litigant characteristics and settlement-trial decisions, we provide the first empirical analysis of selection effect in civil disputes before the nineteenth century. We use arguments from the law and economics literature to explain the selection of cases for trial.

2. SELECTION BIAS AND COURT RECORDS

The selection bias is a common problem in various fields of historical research in which inclusion in data sources is conditional on someone’s decision. To see how the selection bias can distort analysis, consider the recent historical heights literature in which researchers use sampled data from sub-populations, such as slaves and volunteer soldiers, which are themselves selected because their inclusion was based on their own or someone else’s decision. It would be misleading to use the heights of these individuals as indicators of living standards because changes in heights over time and between societies may simply be a reflection of the selection bias. More specifically, observed changes in heights in the sample may be an outcome of not just changes in actual heights of the population but in the probability of being selected into the sample. Exploring the consequences of the sample selection bias in the historical heights literature, Bodenhorn et al argue that ‘most of these sources are selected in some way, and the

7 Priest and Klein, ‘Selection of disputes’.
biases that arise because of the selection are pernicious and quite possibly account for many of the interesting ‘facts’ the heights literature claims to have identified.9

The selection bias may similarly be a common problem in the voluminous literature that uses Ottoman court records for data. Used extensively in various fields of Ottoman history, these documents give researchers a unique opportunity of access to the information about the inhabitants, government officials, local customs, and legal institutions of numerous court districts throughout the Empire. They have been used as primary sources for descriptions of Ottoman legal procedures, microhistories of women and gender, discourse analysis of social relationships, quantitative studies of court outcomes, and various other types of historical research.10 Many of the original registers have survived to this day, some dating back to the fifteenth century, currently available to researchers in the National Library in Ankara, the Center for Islamic Studies in Istanbul, and various other archives in successor states of the Ottoman Empire in the Middle East and East Europe.11

Since litigants observed in Ottoman court records made a decision to take their dispute to trial, their inclusion in records was not a random event. Islamic jurisprudential traditions recognize settlement (sulh) as a preferable form of dispute resolution and instruct legal functionaries, including the judge, to seek reconciliation among disputants through negotiated

9 Bodenhorn et al, ‘‘Sample-selection bias’, p. 41. For examples of various forms of selection bias in historical research and potential consequences, see Goff, ‘Supreme court consensus’; Huybens et al, , ‘Financial market discipline’; Lustick, ‘History, historiography’; and Thompson, ‘Selection and firm survival’.

10 For example, Agmon, Family and court; Coşgel and Ergene, ‘Dispute resolution’, Ergene, Local court; Gerber, State, society and law; Jennings, ‘Kadi, court’; Kuran and Lustig, ‘Judicial biases’; Peirce, Morality tales; and Tucker, In the house of the law.

11 See Faroqhi, Approaching Ottoman history for the administrative usage, organization, and availability of Ottoman court registers. See also Uğur, ‘Mahkeme kayıtları’ for a list and review of the works based on these sources.
agreements before pursuing other methods. For example, Article 1826 of the nineteenth-century Ottoman code of laws known as the *Mecelle* stated: ‘In the case of actions brought by relatives or in cases where there is a possibility of the parties coming to a settlement, the judge shall advise the parties once or twice to come to a settlement. If they agree, a settlement shall be drawn up in accordance with the terms of the Book on Settlements. If they do not so agree, the case shall be tried out’. A litigation would thus wind up in court registers only if disputants made a decision to forego the settlement option.

To see how the selection bias could distort analysis, consider the recently growing literature on class and gender issues in Islamic history. In an attempt to examine the differential participation of groups in Ottoman courts, Haim Gerber studies a sample of Ottoman court records collected by Debbağzade Numan (d. 1702 or 1703), an Ottoman legal scholar. Within this sample that includes 140 litigation entries, Gerber reports, women won seventeen of twenty-two cases against men, non-Muslims won seven of eight cases against Muslims, and “commoners” won six of eight cases against members of “the official class.” Based on these findings, he views the court “as a means for people of the lower classes to defend themselves against possible encroachments by the elite”. While this might be true, it does not necessarily follow solely from analyzing the cases included in this sample. If the court was indeed inclined to defend the underprivileged parties against the privileged, one would expect this information to be incorporated into the trial-settlement decisions of the parties. Since the parties likely settled

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13 Gerber, *State, society and law*, p. 57. Debbağzade’s compilation includes several hundred court registries presented to instruct readers in the legal and scribal standards that courts were expected to observe in producing documentation.
some of their disputes without trial, those that made it into this sample are not a random selection of all cases or indicative of how courts would have resolved them. Without trying to understand which disputes came to court for litigation (and, thus, which ones did not) it would be difficult to make generalizations about how the legal system worked and who benefitted from it. To ensure the robustness of our conclusions to selection bias, we need to develop a method to identify the nature of the bias in court records.

3. OTTOMAN COURT RECORDS

Our analysis of selection bias in Ottoman court records uses data from the town of Kastamonu, the administrative center of the eponymous sub-province (sancak), during the period between 1095 H. /1684 and 1221 H. /1806. Kastamonu is a good choice for this study because of its representative size and fairly complete court records for much of this period. According to tax records from the period, the population of the town and adjacent seventy-five or so villages was around 3,500 to 4,000 households, indicating that Kastamonu was a small- to medium-sized town in contemporary standards. The vast majority of inhabitants were Muslim and Turkish-speaking; the share of the non-Muslim population (primarily Christians) being less than fifteen percent of the total. The main economic activities were agricultural production and animal husbandry. Commercial and manufacturing activities, with the exception of copper-ware production, were not particularly noteworthy. The town had only one court.

14 Based on an urban history of the town, Eyüpgiller does not regard the eighteenth century as a major era of construction; see idem, Bir kent tarihi. Since there is no indication of major demographic fluctuations during the eighteenth century, these figures are consistent with John Kinneir’s suggestion that town’s population was around 12,000 in 1814; see idem, Journey.

15 Heywood, ‘Kastamonu’.

16 Ergene, ‘Local court’, ch. 2.
The court enforced the Hanafi interpretation of the Islamic law, the official legal school in the Ottoman Empire, as well as the sultanic law-codes (sing. kanunname).\textsuperscript{17} Usually non-natives to the region, judges were appointed for twelve- to sixteen-month terms. Other court functionaries, such as deputy judges (sing. naib), scribes (sing. katib), or summon-servers (sing. muhzir), were often recruited from the local community. A select group of individuals appear in the court records as ‘witnesses to proceedings’ (şuhudülhal), though they do not seem to be the only ones to serve in that capacity.

Litigations were directed by the judge, whose primary responsibility was to resolve disputes by facilitating settlements or by presiding formal trials. When a dispute was brought to court, he could initiate a settlement personally or by assigning intermediaries to hear the case and find a mutually agreed resolution, possibly resulting in the case being dropped without further action or in one disputant making a transfer payment to his/her opponent. It is likely that settlements were also arranged outside of the court. If settlement could not be reached, the judge would hear the case formally in court and issue a verdict. Rather than investigate a dispute through court personnel, he would usually decide based on the testimony and evidence provided by the litigants and witnesses.

The following is an example of a case that was settled out of court.

Esseyid Ali bin (son of) Esseyid Ahmed, the husband and legal representative of Zeliha bint (daughter of) Ahmed made the following statement in the presence of Zeliha’s former husband, Mehmed Beşe, and his father, Hatib Ahmed Halife: ‘When Mehmed Beşe divorced

\textsuperscript{17} The official legal school of the Ottoman Empire was the Hanafi school. But many big cities in Arab lands where non-Hanafi populations lived, also contained Shafi’i and Maliki courts. Furthermore, non-Muslim communities in the empire had their own denominational tribunals; see Hacker, ‘Jewish autonomy’; Ginio, ‘Criminal justice’, p. 188; Kuran, “Economic ascent”.
Zeliha, he prevented her from demanding her 60 gurus deferred dowry (mehr-i müeccel) claiming that he was intending to marry her again. Also, Hatib Ahmed Halife refused to return to Zeliha her belongings in his possession, including a silver belt worth 30 gurus, a red kaftan worth 25 gurus, and a green kaftan worth 6 gurus. When we later sued them, Mehmed Beşe submitted to court a document ( Hüccet) indicating Zeliha’s forfeiture of her deferred dowry. Ahmed Halife acknowledged his possession of some of Zeliha’s belongings but he too submitted a document indicating that she had abandoned her right to demand anything from him. At this point a major quarrel ensued among us. Subsequently, believers and peace-makers ( Müslimun ve muslihun) intervened and we reached a settlement. In accordance with this settlement, Zeliha agreed to receive a sum of 60.5 gurus from Mehmed Beşe and Ahmed Halife and, in return, she agreed to relieve them from any future claims regarding her deferred dowry and belongings that remained in Ahmed Halife’s possession.’

Mehmed Beşe and the aforementioned Ahmed Halife agreed with Esseyyid Ali’s statement and the settlement was recorded in the court register.

18 Muḥarram 1153 / 15 April 1740
Witnesses…

18 According to Islamic law, wives are entitled to two types of dowry at their marriages. The first type, ‘immediate’ or ‘prompt’ dowry ( mehr-i mu’accel), is the amount that is supposed to be transferred to wife at the time of the marriage, before or during the wedding ceremony. The second type, ‘deferred’ dowry (mehr-i müeccel), is also determined at the time of marriage, but transferred to the wife at the end of the marriage. This could be at the time of a divorce, or husband’s death, in which case, it would be paid by the husband’s heirs from his estate, or at the time of the wife’s death, in which case, it would be paid to the wife’s heirs. Disputes over the transfer of deferred dowry following real or alleged divorces were very common in eighteenth-century Kastamonu.
The document above reports a settlement and its conditions between Zeliha bint Ahmed, represented by her current husband, Esseyyid Ali bin Esseyyid Ahmed, and Zeliha’s former husband, Mehmed Beşe, as well as Mehmed Beşe’s father Hatib Ahmed Halife, involving Zeliha’s deferred dowry and personal property. As is usually the case, it is not clear why the parties decided to present their settlement to court and have it registered in the court’s ledger. The statement that ‘believers and peace-makers (Müslimun ve muslihun) intervened and we reached a settlement’ is common in sulh registries, though the records do not further specify the identities of these individuals, presumably respected members of the community as well as court functionaries, including the judge. The registry is also vague about the phases and other details of the settlement process, typical for settlement-related documents in court records. Interestingly, the settlement amount was about half the value of the dowry and properties that Zeliha’s side originally claimed, an indication of what was considered to be fair or acceptable in such arrangements.

No settlement was reached in the following property ownership dispute, and parties went to trial for resolution.

[…] 

The legal representative of Mehmed bin Ahmed Dede, Mütevellizade Hafız Mehmed Ağa bin Elhac Mehmed, sued Ebu Bekir bin Abdullah, stating the following: ‘Ebu Bekir refuses

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19 Having legal documentation from court (hüccet) might have made the agreement more secure from future challenges but the fact that Mehmed Beşe and Ahmed Halife’s presumably court-produced documentation alleging Zeliha’s forfeiture of her dowry and possessions had not discouraged the woman to challenge them raises suspicions about this possibility. It is also not clear why Mehmed Beşe and Ahmed Halife agreed to a settlement given the hüccets in their possession.
to transfer to Mehmed the shares that he inherited from his father and sisters in the goods and equipment in a tannery workshop located in Yukarı Debağlar quarter. […] We want him to be questioned and Mehmed’s shares be transferred to him’.

Upon questioning, Ebu Bekir denied Hafız Mehmed Ağa’s allegation, claiming the following: ‘I purchased the materials in question from Mestçioglu Üstad Mustafa for a certain amount of money. I do not know that Mehmed owns any share of these goods and equipment.’ Afterwards, the representative was asked to prove his claim. He presented as witnesses Mustafa bin Ismail of Kibbeli quarter and Hüseyin bin Mustafa of Ibn Sancar quarter, who both testified as follows: ‘The late Ahmed Dede [Mehmed’s father] owned a fourth of the goods and material in the workshop located in Yukarı Debağlar. After his death, these assets were transferred to his heirs and were ultimately inherited by his son. We are witnesses to the fact that a fourth of this material was owned by Mehmed and we testify as such.’

After the testimonies of witnesses were accepted, the court invited Mehmed to take an oath that neither he nor other heirs of the late Ahmed Dede had sold their shares in the materials that they had inherited to anyone. When Mehmed took this oath, the court ordered Ebu Bekir to hand over or pay the value of the materials that belong to Mehmed.

26 Cemaziyelevvel 1155 / 29 July 1742
Witnesses…
As seen in these examples, court registers typically provide the same type of information about settled and tried disputes. This information includes the identities of litigants, the evidence presented in court, and the resolution. Consisting of abbreviated descriptions of the disputes filed in court, the records typically begin by identifying the parties through their full names, honorary titles and other distinguishing markers attached to their names, religious identities, and their places of origin. If the litigants were related to each other, this information is also provided. The records then describe the nature of the dispute, typically in the form of direct quotes by the individuals who approached the court, followed by their opponents’ responses to the accusations directed at them. Next, the entries disclose the evidence submitted to court by the litigants, such as the full names and testimonies of the witnesses. If the case was tried in court, the records show how the judge decided on the dispute.

The fact that Ottoman court records contain settlement entries as well as litigations makes them a suitable medium to study the selection principle. Unlike litigations, however, settlements did not have to be registered in court for them to be legally binding. This raises the question of whether the settlements that we find in court records were representative of those that were never filed in court, a question that we obviously cannot answer without external evidence. The analysis presented in this study, therefore, captures only one aspect of the selection bias in court records. We can only surmise that our results that are based on the differences between litigations and settlements found in court records are indicative of those that likely existed between litigations and unrecorded settlements.

\[20\] Note that some criminal disputes might have been decided by military-administrative officials (such as governors) out of court; see Heyd, *Studies*, p. 250; Ginio, ‘Criminal justice’, p. 207.
4. CASE TYPES AND DISPUTANTS IN KASTAMONU COURT

We use all available information about the disputes recorded in court registers to categorize the case types and litigant characteristics observed in the Kastamonu court during this period. The data-set consists of 1,293 disputes filed in court. For a systematic categorization of these cases, we classify them into three groups according to the nature of the dispute and the relationship among the litigants. More specifically, we differentiate between criminal and civil cases, and further divide civil cases into two groups based on whether the parties were related to each other by family ties. The reason for the latter distinction is to examine whether settlement behavior changed when parties had a pre-existing relationship. Although the disputants could also know each other through social networks, we are unable to identify such relationships in our records consistently. So the three categories are: 1) criminal cases (all involving unrelated parties), 2) civil cases among related parties, and 3) civil case among unrelated parties.\(^{21}\)

The types of civil disputes appear to be relatively limited and mainly involved disagreements on property ownership, usufruct lands over land, contractual obligations, and debt. There does not appear to be much variation between disputes involving related and unrelated parties in this regard. Contentions over estate divisions dominated civil disputes among related parties but these types of disputes were also contentions over property ownership in essence. Criminal disputes, on the other hand, included primarily allegations of murder, assault, (sexual and otherwise), crimes against property (theft, robbery), and usurpation. In many civil and criminal cases multiple types of allegations were made, which makes it even more difficult to subject our data to a more detailed case-type-based analysis.

\(^{21}\) Our sample includes only three criminal litigations involving related parties.
Entries in Table 1 show the distribution of disputes in the three case categories according to the size of parties on each side. Whereas most of these disputes were filed by individuals against other individuals, about a third of all cases involved multiple individuals, such as when a group of defendants was accused of rape, or when a whole neighborhood or village claimed that a government official violated a certain public right. Only a small proportion of cases (about 5%) involved multiple individuals on both sides. The proportions were similar across case categories.

Table 1 about here

Focusing on disputes involving single individuals, we use the information recorded about their identities to determine the distribution of personal characteristics. The names of litigants make it easy to distinguish males from females. As Table 2 shows, parties were both male in about two-thirds of criminal cases and in civil disputes among unrelated parties. In civil disputes among related parties, by contrast, about two-thirds of all cases involved parties of opposite gender. The proportion of cases in which the parties were both female was generally small across the three categories.

Table 2 about here

Although court records do not include systematic information on the incomes, occupations, or educational backgrounds of individuals, we can use their honorary titles and family affiliation as indicators of socioeconomic status. Honorary titles, such as Ağa, Efendi, and Çelebi, appear in court records as parts of men’s names, helping to distinguish among them
based on affiliation with the provincial administrative structure and relative positions within the community.\textsuperscript{22} Honorary titles signify individuals who possessed specific types of professional training or education, performed various sorts of military/administrative or judicial/religious functions, and enjoyed the associated socioeconomic privileges. In addition to exemption from taxation, these benefits included social influence and economic compensation. As Table 3 shows, about half of all disputes in each category were between an individual with an honorary title against someone with no title.

Table 3 also shows the distribution of cases according to family affiliation, more specifically whether an individual was related to an established and prominent family. The names of these families appear frequently in court records, and litigants affiliated with them are identified with the suffix ‘zade’. For example, Kıbrisi-zade Ahmed Efendi, was a member of the prominent Kıbrisi extended-family, who played important roles in the judicial and administrative affairs of the region. Only a small proportion (about 5\%) of all disputes filed in court involved members of prominent families.

Table 3 about here

Based on the names of the litigants, we can easily distinguish in court records between Muslims and non-Muslims. Furthermore, we can differentiate among Muslims according to their religious markers. These markers, also parts of individuals’ names, demonstrate if he or she claimed descent from Muhammad (sing. Seyyid for men, Şerife for women) or made the

\textsuperscript{22} Using honorary titles, Ergene and Berker further differentiate between men who belonged to the military/administrative establishment (seyfiyye), the judicial/religious establishment (ilmiyye), and those who belonged to the elite group within each category; see ibidem, ‘Wealth and inequality’.
pilgrimage to Mecca (sing. elhac or hact for men, hace or haciye for women). These markers indicate elevated socio-religious status but should not be confused with honorary titles. Indeed, men with military/administrative and religious/judicial titles, as well as the tile-less men, are often identified in the court records as pilgrims and descendants of Muhammad. Previous research also demonstrated that the epithet pilgrim was associated with wealth in eighteenth century Kastamonu.23

Table 4 about here

Table 4 shows the distribution of litigants according to religion and religious markers. The proportion of disputes involving non-Muslims was small (3%), particularly noteworthy given that non-Muslims constituted possibly up to 15 percent of the population. This was likely the result of the fact that non-Muslims could choose to settle their disputes with other non-Muslims in their own courts. In cases involving Muslims, less than a third of all cases involved an individual with a religious marker, and a high proportion of those were against litigants who did not carry such a title. It is also worth noting that the proportion of cases involving individuals with a religious marker was the lowest for criminal cases, followed by civil cases among related parties.

5. WHICH CASES WENT TO TRIAL

23 See Ergene and Berker, ‘Wealth and inequality’. The probate estate inventories of Kastamonu indicate that the average wealth levels of the pilgrims were twice as much as average wealth levels in eighteenth century. The descendants of Muhammad, however, were not wealthier than the rest of the population. Unfortunately we have no wealth information on non-Muslims.
Returning to the question of selection bias, we now use the information from court records to examine the factors affecting the likelihood of a dispute winding up at trial. Of the 1,293 disputes that were filed in court, 434 (34%) were settled and 859 were resolved through formal litigation. The proportion of disputes that were tried in court varied by case type. Whereas 80 percent of civil disputes among unrelated parties went to trial, the proportion was significantly lower for criminal disputes (55%) and civil disputes among related parties (51%).

To determine whether the selection of cases for trial went through a systematic process, we use insights from the law and economics literature on dispute resolution. In this literature the settlement-trial decision is typically formulated as a simple bargaining problem. Once a lawsuit is filed, parties engage in bargaining in an effort to reach a settlement prior to trial, which involves a payment or concession that the defendant makes to the plaintiff to resolve the dispute. An agreement is reached if the defendant’s offer exceeds the plaintiff’s settlement demand. It is easy to see in this framework why most disputes are settled before trial. Since trial is costly and uncertain, settlement would clearly be the preferred choice if parties share the same assessment of the expected outcome of trial (such as when both parties know that the evidence is overwhelmingly in favor of the plaintiff) and face the same cost and expected payoffs of going to trial, because in that case they can implement the same outcome in a settlement without incurring the cost and uncertainty of trial. When their assessments differ significantly, however, they may fail to agree on the terms of settlement and may have to go to formal trial for resolution. Economic models of dispute resolution generally recognize that disputes would likely wind up at

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24 For the pioneering paper in this literature, see Priest and Klein, ‘Selection of disputes’. See also Cooter and Rubinfeld, ‘Economic analysis’; Miceli, Economic approach to law, ch. 8. for reviews of the literature.
trial if parties differ significantly in their predictions about the plaintiff’s chances of winning at trial or in their evaluations of net benefits from trial.

Siegelman and Waldfogel have identified three characteristics of the litigation environment that can explain the selection of cases for trial, namely the parties’ ability to estimate the quality of their cases, the degree of stake asymmetry across parties, and the decision standard. To see how these characteristics feature in the litigation environment of Ottoman courts in the eighteenth century, consider first the difference in the parties’ ability to estimate the quality of their cases. In general, parties may differ in their abilities to estimate their chances at trial if they have asymmetric information about the law governing a case or about the facts of a dispute. This could be the case if, for example, one of the parties was more experienced or better prepared than the other, such as in disputes involving educated vs. uneducated individuals. These disputes would be more likely to wind up at trial than those between individuals with similar abilities because the differential would likely cause disagreements about case quality and raise the cost of negotiating a settlement. In the Ottoman context, such differences might have existed between individuals with honorary titles and others and between those with religious markers and others, because the individuals in the former categories were more likely than others to have secular or religious training and consequently greater abilities to estimate the quality of their cases. Since in such situations parties would likely have different assessments of trial outcome,

25 See Siegelman and Waldfogel, ‘Toward a taxonomy’. The literature on Ottoman history suggests that some groups had the incentives, organizational capacity, and leadership structures to settle disputes among their members, without the involvement of external judicial or administrative officials. Scholars identify the guilds, descendants of Muhammad, and non-Muslims among these groups. See, Jennings, ‘Zimmis’; Zarinebaf, Crime and punishment; Canbakal, ‘Provincial notables’ and ‘The Ottoman state’. Although we cannot distinguish guild members in court records, the descendants of Muhammad and non-Muslims are easily identifiable.
we would expect disputes with significant differential abilities to be more likely than others to go to formal trial.

The second characteristic of the litigation environment identified by Siegelman and Waldfogel as affecting the selection process is the degree of stake asymmetry across parties. Asymmetric stakes arise when one or both of the parties to a case derive some cost or benefit from the outcome that is not captured entirely by the amount of the damages to be paid by the defendant to the plaintiff. This may happen if one of the parties had higher reputational concerns about the trial outcome than the other, such as when a prominent member of a society faced a relatively unknown individual. In the Ottoman context, reputational stakes could also be different between men and women, individuals with honorary titles and others, individuals with religious markers and others, and members of prominent families and others. Since the party with greater stakes would have more to lose from litigation, he or she would be more likely to settle the dispute by making an acceptable offer to the party with lesser stake than to risk a larger loss at trial. As a result, we would expect disputes between parties with asymmetric stakes to be less likely to than those with equal stakes to go to trial.

Siegelman and Waldfogel argue that the decision standard of the case type can also affect the selection of disputes for trial. Modern courts generally make a clear distinction between criminal and civil cases. Whereas the decision in the former category concerns determining whether the accused has committed a crime, the decision in civil cases is to determine whether

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26 Siegelman and Waldfogel, ‘Toward a taxonomy’.
27 Empirical studies of settlement behavior have shown various ways in which differential stakes or external benefits can affect the proportion of tried cases. See Kessler and Rubinfeld, ‘Empirical study’, pp. 381-383).
28 Siegelman and Waldfogel, ‘Toward a taxonomy’.
the defendant is liable for the plaintiff’s alleged injuries. Typically the latter category further consists of a variety of subcategories, such as contracts, real property, worker injury, and product liability. If the trial cost varies systematically among case types, one would expect the differential to reflect in the likelihood of trial because it would affect the range of acceptable settlement offers. This expectation is generally confirmed by empirical studies of adjudication. Using data from suits initiated in the Southern District of New York after 1979 and resolved by 1989, Siegelman and Waldfogel have studied differences in trial rates across six case types. Their results show systematic differences in trial rates, ranging from being generally low for tort cases (varying between 9-25%) to significantly higher for prisoner cases (67-79%) and in mid-range within contract (29%), civil rights (37-49%), labor (33%), and intellectual property (32-44%) cases.

In Ottoman legal practice as well, the procedures and standards that applied to criminal and civil cases were different. Ottoman and Middle Eastern historians have noted that in criminal litigations the standards of proof against individuals of poor reputation were generally low. This finding reflects the fact that with respect to crime and issues of security, the court’s legitimacy was not based on its neutrality, as is the case in civil litigations, but on its ability to protect communal interests and earn communal approval. Since medieval times, according to Mohammed Fadel, this quest for communal approval has led the courts to relax the evidentiary standard in cases pertaining to violations of public rights, general security, rights of state, felonies, and assaults. In many such cases, circumstantial evidence and confessions were

29 Ibid.
30 See Heyd, Studies, pp. 130, 318, passim; Ginio, “Criminal justice”; Peters, Crime and punishment, pp. 16, 82, 133, passim; Ergene, Local court, ch. 8.
extracted through torture.\textsuperscript{31} One might thus expect the settlement process to be systematically
different between civil and criminal cases in Ottoman courts.

For a quantitative analysis of these arguments in late-seventeenth- and eighteenth-century
Kastamonu, we use data from the court registers and construct variables that represent various
sources of differences between parties in their abilities to estimate the quality of their cases or the
degree of stake asymmetry between them. Although court records do not include direct
information on their abilities or stakes, we can infer this information indirectly from their
observable characteristics. To determine factors affecting the likelihood of trial, we include in
the analysis various explanatory variables derived from the characteristics of parties shown in
Tables 1-4, namely differences in size, gender, honorary titles, family status, religion, and
religious markers. Since the distribution of some of these characteristics varied significantly
across the three case types, we ran separate regressions for each type to see if the effect of
explanatory variables on the likelihood of trial also varied significantly. This also follows from
Siegelman and Waldfogel’s argument about the way differences between the litigation
environments of case types can effect the selection of cases for trial.\textsuperscript{32}

Each explanatory variable listed in Table 5 is a dummy variable that takes on the value of
1 if the parties differ along the specified characteristic, 0 otherwise. For example, the variable
‘individual vs. group’ takes the value of 1 if one of the parties is a single individual and the other
a collection of individuals, and the value becomes 0 if the parties are both individuals or both
groups. Using the observable characteristics of parties listed in tables 1-4, we constructed seven

\textsuperscript{32} Siegelman and Waldfogel, ‘Toward a taxonomy’.
explanatory variables to explore the effects of possible differences between the parties in their ability to estimate the quality of their cases and the degree of stake asymmetry between them.

In addition, we included two temporal variables to control for the effect of possible unobserved changes in the decision standard over time. We divided our period into three roughly equal sub-periods as follows:

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

The first period is slightly longer than the other two because of missing documentation for some years. The number of litigations heard in court is 277 in the first period, 390 in the second period, and 626 in the third period.

Since temporal variables and litigant characteristics likely influenced the likelihood of trial simultaneously, we use multiple regression analysis to isolate individual effects. Specifying the dependent variable as a dummy variable that takes the value of 1 if the case went to trial, we use the Probit model for estimation. Differences among periods suggest the possibility of correlation of the observations within each period. To correct for this possibility, we divided observations into three clusters based on the three time-periods that were defined above and used clustered robust standard errors in regression analysis.

Table 5 about here

The results of Probit analysis, displayed in Table 5, show how various differences in parties’ characteristics (compared to those sharing the same specified characteristic) affected the
likelihood of a dispute winding up at trial in the Kastamonu court during this period. Ideally, this analysis would include variables that control for the relative strength of the evidence presented by the parties, presumably the primary factor in determining why parties chose trial over settlement. However, our records do not include this information consistently for reliable quantification. Absent such core variables in analysis, our results are clearly noisy and our model overall a poor fit, as one would expect. Nevertheless, to put these results in context, note that the main purpose of this empirical analysis is to establish whether there was a systematic bias in the selection of cases for trial in this court. If there was no such bias, the entire process would be random and none of our variables on the differential characteristics of parties would be able to explain why disputes went to trial. We thus proceed based on the argument that any significant coefficient whose direction is consistent with the preceding discussion would be indicative of systematic selection.

The variation of results between the three case types is consistent with our argument about selection bias. Although the signs of coefficients are mostly consistent between case types, the significance varies for some variables. In particular, whereas some coefficients are significant for criminal cases or civil disputes between unrelated parties, they become insignificant for civil disputes between individuals related through family ties. The coefficients of ‘Individual vs. Group’ and ‘Male vs. Female’, for example, become insignificant for disputes between related parties. This is entirely consistent with our argument because we would expect such disputes to be ‘pre-selected’ even more than others through a screening and negotiation process that involved other family members. Any dispute between related parties that was filed in court must have been a difficult case that could not be resolved through informal channels and

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33 The possibility that some criminal disputes were decided by military-administrative officials out of court might be limiting the numbers of criminal litigations in court registers.
family mediation or pressure towards settlement. Other characteristics of the case would be less likely to affect the likelihood of trial for such disputes than others.

To interpret the coefficients of explanatory variables representing various differences between parties, note that there is no a-priori reason to expect the effect of these variables on the likelihood of trial to be generally negative or positive, because these differences could generate a positive effect due to differential abilities, negative effect due to asymmetric stakes, or both. The net effect could thus be negative or positive if one effect dominates the other, or it could be negligible if they offset each other. So the question in interpreting a specific coefficient is whether its sign and significance makes sense based on theoretical insights discussed above and known facts about these characteristics in late-seventeenth- and eighteenth-century Kastamonu.

The signs of significant coefficients are generally consistent with our argument about the way we would expect differential abilities and asymmetric stakes to affect the likelihood of trial. The coefficient of ‘Individual vs. Group’ is generally negative and significant for criminal cases and for civil disputes between unrelated parties, indicating that such disputes were more likely than others to settle owing to dominating importance of asymmetric stakes over differential abilities. This is reasonable because we would expect stakes to be very different between parties in disputes involving a whole village against a single individual. Although initially parties could also differ significantly in their abilities to estimate case quality, the involvement of multiple individuals would facilitate parties to share the information and eventually narrow their differences in predicting case quality. Although our records provide no direct evidence to substantiate these claims about the relative significance of differential abilities and asymmetric stakes in these disputes, we believe that the results are consistent with general observations about human interaction.
The coefficient of ‘Male vs. Female’ is negative and significant for civil disputes between unrelated parties, indicating that stakes differed between men and women when they faced each other in a dispute and that the influence of this differential on the settlement decision dominated that of any difference in their abilities to estimate case quality. It is particularly noteworthy that this outcome was observed in civil disputes when men and women were not related through family ties, which indicates that either the stake differential was significance in such cases compared to those between related parties, or the ability difference was more negligible, or both.

Whereas differences in family status generally did not influence the likelihood of trial, differences in honorary titles and religious status were significant in some cases. More specifically, trial was more likely in civil disputes when disputants differed in honorary titles and in criminal cases between pilgrims and individuals with no religious markers and between Muslims and non-Muslims. The differential abilities of parties in such cases must have had a greater effect than asymmetric stakes on the likelihood of trial. The latter result could also be due to limited settlement mechanisms between Muslim and non-Muslim communities in serious (criminal) disputes. Confessional boundaries and difference might have limited the chances of settlement in such cases.

Once again, our records provide no direct information on how abilities and stakes differed between Muslims and Non-Muslims and among individuals with honorary titles, religious markers, and others. Ottoman specialists may thus question the validity of some of our results, or they may offer different interpretations of them than ours. Leaving it to future research to explore in more detail the sources of specific results, we simply note here that the selection of cases for trial in Kastamonu court generally went through a systematic process.
6. CONCLUSION

We use information from the court records of the late seventeenth- and eighteenth-century Ottoman Kastamonu to determine whether the cases that wound up at trial were a random selection of all disputes as commonly presumed in the literature or filtered systematically through a selection process. We categorize disputes according to case type and identify the characteristics of parties according to their size composition, gender, honorary titles, family prominence, religion, and religious markers. According to the law and economics literature on dispute resolution, three characteristics of the litigation environment affect the selection of cases for trial, namely the parties’ ability to estimate the quality of their cases, the degree of stake asymmetry across parties, and the decision standard. To operationalize these concepts in the litigation environment of Ottoman courts in the eighteenth century, we focus on differences between parties and use regression analysis to determine how these differences affected the likelihood of trial.

Our results show the presence of a systematic process in the selection of cases for trial in Kastamonu court. The results varied by case type such that the selection effect was more prominent in criminal cases and civil disputes among unrelated individuals than in civil cases among related individuals. Differences between parties in size and gender were important such that trial was generally less likely in disputes between individuals and groups (compared to those between individuals and individuals or groups and groups) and between men and women (compared to those between female and female or male and male). Differences in honorary titles and religious status were also significant such that civil disputes between individuals with
honorary titles and others were more likely than other disputes to wind up in trial, as were the criminal cases between pilgrims and individuals with no religious markers and those between Muslims and non-Muslims. In general, consistent with the selection principle, our results show that the cases that went to trial were not a random sample of all disputes but went through a systematic selection process.
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### Table 1

**Distribution of Disputes by Case Type and Party Size**

*(Number of Cases)*

<table>
<thead>
<tr>
<th></th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual vs. Individual</td>
<td>104</td>
<td>317</td>
<td>427</td>
</tr>
<tr>
<td>Individual vs. Group</td>
<td>59</td>
<td>135</td>
<td>190</td>
</tr>
<tr>
<td>Group vs. Group</td>
<td>13</td>
<td>15</td>
<td>33</td>
</tr>
</tbody>
</table>

*Source:* Court records *(sicils)* of Kastamonu.

### Table 2

**Distribution of Individual Disputes by Case Type and Gender**

*(Number of Cases)*

<table>
<thead>
<tr>
<th></th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male vs. Male</td>
<td>70</td>
<td>75</td>
<td>300</td>
</tr>
<tr>
<td>Male vs. Female</td>
<td>30</td>
<td>201</td>
<td>116</td>
</tr>
<tr>
<td>Female vs. Female</td>
<td>4</td>
<td>41</td>
<td>11</td>
</tr>
</tbody>
</table>

*Source:* Court records *(sicils)* of Kastamonu.

*Note:* Disputes involving communities and small groups are excluded, so the sample includes only individual vs. individual disputes.
Table 3
Distribution of Individual Disputes by Case Type, Honorary Titles, and Family Status

(Number of Cases)

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Honorary Title vs. Honorary Title</td>
<td>15</td>
<td>12</td>
<td>112</td>
</tr>
<tr>
<td>Honorary Title vs. No Title</td>
<td>59</td>
<td>231</td>
<td>240</td>
</tr>
<tr>
<td>No Title vs. No Title</td>
<td>41</td>
<td>151</td>
<td>116</td>
</tr>
</tbody>
</table>

FAMILY MEMBERSHIP

<table>
<thead>
<tr>
<th></th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prominent Family vs. Prominent Family</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Prominent vs. Non-Prominent</td>
<td>4</td>
<td>5</td>
<td>29</td>
</tr>
<tr>
<td>Non-Prominent vs. Non-Prominent</td>
<td>99</td>
<td>310</td>
<td>394</td>
</tr>
</tbody>
</table>

Source: Court records (sicils) of Kastamonu.

Note: Disputes involving communities and small groups are excluded, so the sample includes only individual vs. individual disputes.
### Table 4

**Distribution of Individual Disputes by Case Type, Religion, and Religious Markers**

*(Number of Cases)*

<table>
<thead>
<tr>
<th>RELIGION</th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muslim vs. Muslim</td>
<td>98</td>
<td>313</td>
<td>412</td>
</tr>
<tr>
<td>Muslim vs. Non-Muslim</td>
<td>2</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Non-Muslim vs. Non-Muslim</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RELIGIOUS MARKER</th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pilgrim vs. Pilgrim</td>
<td>0</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Pilgrim vs. Descendant of Prophet Mohammad</td>
<td>2</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Pilgrim vs. No Religious Marker</td>
<td>9</td>
<td>26</td>
<td>62</td>
</tr>
<tr>
<td>Descendant of Mohammad vs. D. of Mohammad</td>
<td>0</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>D. of Mohammad vs. No Religious Marker</td>
<td>9</td>
<td>34</td>
<td>71</td>
</tr>
<tr>
<td>No Religious Marker vs. No Religious Marker</td>
<td>84</td>
<td>244</td>
<td>280</td>
</tr>
</tbody>
</table>

*Source:* Court records (sicils) of Kastamonu.

*Note:* Disputes involving communities and small groups are excluded, so the sample includes only individual vs. individual disputes.
Table 5
Probit Analysis of Influences on the Likelihood of Trial

<table>
<thead>
<tr>
<th></th>
<th>Criminal Cases</th>
<th>Civil Cases Among Related Parties</th>
<th>Civil Cases Among Unrelated Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual vs. Group</td>
<td>-0.477***</td>
<td>-0.174 (1.51)</td>
<td>-0.150 (1.73)*</td>
</tr>
<tr>
<td>Male vs. Female</td>
<td>-0.178 (0.44)</td>
<td>0.103 (0.97)</td>
<td>-0.148 (2.41)**</td>
</tr>
<tr>
<td>Honorary Title vs. No Title</td>
<td>0.179 (0.48)</td>
<td>0.082 (1.66)*</td>
<td>0.227 (38.35)**</td>
</tr>
<tr>
<td>Prominent vs. Non-Prominent</td>
<td>0.007 (0.01)</td>
<td>-0.030 (0.19)</td>
<td>-0.066 (0.52)</td>
</tr>
<tr>
<td>Muslim vs. Non-Muslim</td>
<td>0.587 (4.77)**</td>
<td>0.196 (0.36)</td>
<td></td>
</tr>
<tr>
<td>Pilgrim vs. No Religious Marker</td>
<td>0.905 (4.95)**</td>
<td>0.069 (0.37)</td>
<td>-0.170 (1.52)</td>
</tr>
<tr>
<td>Descendant of Mohammad vs. No Religious Marker</td>
<td>0.030 (0.23)</td>
<td>0.227 (1.30)</td>
<td>-0.009 (0.22)</td>
</tr>
<tr>
<td>Case Filed Between 1735 -1743</td>
<td>-0.303 (7.19)**</td>
<td>-0.425 (23.92)**</td>
<td>-0.424 (86.42)**</td>
</tr>
<tr>
<td>Case Filed Between 1781-1790</td>
<td>-1.594 (24.72)**</td>
<td>-0.523 (38.72)**</td>
<td>-0.715 (80.62)**</td>
</tr>
<tr>
<td>Constant</td>
<td>1.011 (6.12)**</td>
<td>0.365 (3.59)**</td>
<td>1.376 (16.38)**</td>
</tr>
<tr>
<td>Pseudo R2</td>
<td>0.25</td>
<td>0.02</td>
<td>0.05</td>
</tr>
<tr>
<td>Log pseudolikelihood</td>
<td>-89.66</td>
<td>-316.97</td>
<td>-303.63</td>
</tr>
<tr>
<td>N</td>
<td>173</td>
<td>467</td>
<td>650</td>
</tr>
</tbody>
</table>

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

Notes: The dependent variable takes on the value of 1 if the dispute went to trial. The omitted category for disputant characteristics is for disputants to have the same characteristic. For example, the omitted category corresponding to “Male vs. Female” is “Male vs. Male or Female vs. Female”. The omitted category for time period is “Case Filed Between 1684-1698”. The standard errors have been adjusted for clustering on time-period. *** indicates significance at 1%, ** at 5%, and * at 10% for a two-tailed test.