

Cooperation and Conflict in Dispute Resolution in the Late Ottoman Empire

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Abstract

The decline of Ottoman sovereign authority in the Persian Gulf is often typified with the example of Kuwait, where Mubarak b. Sabah, Shaykh of Kuwait, had been able to deftly use association with Great Britain to preserve his independence from the Ottomans. This period of the Ottoman authority in Kuwait is not, however, entirely defined by retreat. Kuwait generally and the Sabah in particular continued to derive a great share of their wealth from the date trade in southern Iraq and investments in agricultural lands there. After Mubarak had taken power, the sons of his slain brother disputed his ownership of the Sabah lands in Iraq as part of their general campaign against his reign. This study examines how the Ottomans took advantage of this dispute to assert their juridical authority over the Sabah in novel ways. At the same time it analyzes the role that the British had played in resolving the dispute and how it was defined more by cooperation with the Ottoman officials rather than zealous advocacy for Mubarak.

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INTRODUCTION

The date harvest came to the Fao peninsula in 1902 mostly as it had in the many years before. As cultivators were busy collecting the harvest, one typical set of figures was absent. Mubarak b. Sabah, Kaymakam and Shaykh of Kuwait, had not this year stationed his 'watchmen' on the site. Mubarak, and his predecessors in title before him, made use of these watchmen so to get all that they claimed as their landlord's share. Without these men on the land as the cultivators went about their work, the cultivators were less than willing to surrender to Mubarak from the fruits of their labors what he claimed to be his. Some amount of the landlord's share of the harvest was established at the Ottoman laws. Some amount in excess of that was established by the custom of the landlords, the previous course of business that they had got on with the cultivators for generations, in the area along the Şaṭ al-'arab. Mubarak could not, however, easily avail himself of his rights in an Ottoman court because his claim to the land was the subject of a very sensitive dispute.

Mubarak's claim to the land was disputed by the sons of his slain brother. Mubarak had murdered his brother Muhammad b. Sabah and Muhammad's sons, Saud and Sabah, had fled and beseeched the Ottoman authorities for justice. As the dispute continued the Ottoman authorities had reservations about Mubarak sending watchmen to the disputed property. Neither Saud nor Sabah could afford to hire watchmen so the property was left 'unguarded' in that sense. As a result the cultivators kept a much greater share of the fruits of their labor that year.

But the matter of the watchmen was a temporary issue. The matter of the disputed ownership of the gardens themselves was something that required a lasting decision that both parties, Mubarak on the one side and Saud and Sabah on the other, could accept. The Ottoman effort to put a dispute over property between members of the same shaykhly family before a nizamiye court was an unusually ambitious effort to erode the jurisdictional powers of the shaykh that the Porte had recognized as a tribal chief. To resist this encroachment upon what the Ottoman authorities had in years past left up to him and his predecessors as the shaykhs of Kuwait, Mubarak appealed for help from the British.

This study examines how the Ottomans and the British, the two powers most invested in the Šaṭ al-‘arab and Kuwait, worked together and at odds to bring the dispute to a resolution. Though the relationship between the British and the Ottomans had grown increasingly hostile over the course of the late nineteenth and early twentieth centuries, the relationship between the relevant British and Ottoman officials in this matter was quite cooperative. Informally, Mubarak had come under the effective undeclared protection of the British, but the British did not zealously champion his cause at every turn. It is well established by other authors that the British had, on the occasion of many other disputes, worked to undermine the efforts of Ottoman nizamiye courts to exercise jurisdiction over defendants that came under British protection.²

In the period under review the Ottoman Empire had become especially sensitive of its diminished juridical sovereignty over affairs within its own territory and had made a series of reforms in order to reestablish that authority. At the same time the Ottoman Empire had also

² E.g. Avi Rubin *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 38-44. Rubin provides a good overview of the typical approach taken by the British towards the nizamiye courts.

worked to bring the Arab tribes within its borders into its administration of justice in various ways. This was difficult to achieve as the tribes had acted with a great degree of autonomy for many generations. This dispute between Mubarak and his nephews provides a vivid glimpse into the resolution of an intra-familial dispute within a prominent Arab dynasty that had, up to that point, managed to keep its disputes beyond the bounds of Ottoman justice.

The dispute between Mubarak and his nephews is at the intersection of two trends, the first being the intervention of the British in Ottoman legal processes. Mubarak was under a form of undeclared British protection. As long as the Ottomans could press their jurisdictional claims over Mubarak without violating the vaguely defined status quo on Kuwait that had been agreed to by the Ottoman Empire and the British Empire, the British would not act to frustrate the Ottoman administration of justice. In fact, the record shows it was just common for British and Ottoman officials to cooperate in their attempts to bring a reluctant Mubarak to the table to negotiate a settlement to the dispute with his nephews.

The second trend, the formation of a reorganized and empowered Ottoman court system, affected Mubarak's case as the Ottoman state permitted experimentation with the scope of the jurisdictional authority of the courts. Likely motivated by the discovery of Mubarak's association with the British, the nizamiye court at Basra asserted jurisdiction over the dispute after receiving a complaint against Mubarak from Mubarak's nephews. This assertion was a bold departure from prior practice and the latest in a series of efforts by the Ottoman state to bring the tribal shaykhs under the regular jurisdictional authority of the state. Though the dispute would ultimately be settled by the more typical method of settling disputes between shaykhs and their families within the Ottoman Empire, arbitration, this was not before the court was able to issue a judgement

resolving at least some of the outstanding issues. The terms of that judgement were ultimately incorporated into the final negotiated settlement of the dispute and all its issues.

Between both of these trends a common theme of cooperation between Ottoman and British officials is drawn out. This study concludes that this cooperation was possible for two reasons: a fair decision in favor of either of the parties of the underlying issues of inheritance and jurisdiction did not stand to jeopardize British interests and because the resolution of the dispute was necessary to preserve a peace in the Gulf that both the British and the Ottomans valued greatly.

The study begins with a brief overview of the acquisition of land by the Sabah family, the Shaykhs of Kuwait, in southern Iraq and the practice of agriculture therein. From there it moves on to a summary of the political situation in Kuwait during the reign of Mubarak. The close involvement of the British Empire in the attempts to resolve the dispute makes the political status quo between the British and the Ottomans essential background for the analysis of the dispute and its resolution. Finally the bulk of the study is devoted to an analysis of the evolution of the dispute between Mubarak and his nephews as the format of dispute resolution shifts from hearing the case in the nizamiye courts of the Ottoman empire to a negotiated settlement under the auspices of the an ad-hoc arbitral tribunal.

HISTORIOGRAPHY

The study of the late Ottoman Empire's relationship to the Arabs of the Syrian and Arabian deserts, marginal places of the Ottoman empire, has been a very active area of research since the late 1990s and early 2000s. Eugene Rogan in *Frontiers of the State in the Late Ottoman Empire: Transjordan 1850-1921* argued against the then predominant narrative in the study of

the late Ottoman Empire of uninterrupted decline and instead argued that the Ottoman Empire encountered a great deal of success in its attempts to integrate these Arabs into the Ottoman state.³ Since then there have been several more studies that have explored the relationships of the Ottoman Empire to its Arab tribal subjects and the varying degrees of success the Empire had at reforming these relationships.

Keiko Kiyotaki, in *Ottoman Land Reform in the Province of Baghdad*, argues that as part of its land reform agenda the Ottoman State in the provinces of Baghdad and Basra endeavored to weaken the authority that tribal shaykhs had over their peasant-cultivator tribesmen, with the goal being for the state to impose its new system of land laws on agrarian relations. Her study demonstrates that Ottoman administrators had a great deal of success in improving the agricultural productivity of the provinces of Baghdad and Basra. Kiyotaki attributes this success to the ability of Ottoman authorities to establish public order and to some extent reform of the land laws in Baghdad and Basra.⁴

Gökhan Çetinsaya, in *Ottoman administration of Iraq, 1890-1908*, takes a close look at the policies of Abdulhamid II in Iraq and demonstrates how peace was typically preserved but almost always through direct negotiations with significant tribal shaykhs instead of the assertion of military force. This was a stark difference from the much more assertive policies of the Ottoman Empire in Iraq from the time of the governorship of Necip Pasha in 1842 to the end of the governorship of Midhat Pasha in 1872. Çetinsaya also takes notice of the decision by Abdulhamid II to prohibit sales of land in the provinces of Baghdad and Basra to individuals. He

³ Maurus Reinkowski, review of *Frontiers of the State in the Late Ottoman Empire: Transjordan, 1850–1921*, by Eugene Rogan. *Die Welt des Islams*, July, 2001.

⁴ Keiko Kiyotaki *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 170-77.

attributes this to Abdulhamid II's growing concern that foreigners were coming to the Ottoman empire and acquiring land.

Like Kiyotaki and Çetinsaya, Nora Barakat has also written about the expansion of Ottoman authority in the regulation and safeguarding of private property rights among the Arab tribes. In *Bedouin Bureaucrats*, Barakat has argued how this runs contrary to the once dominant narrative of the late nineteenth century being a time of contraction and defense for the Ottoman state. Barakat has observed that not only was the Ottoman state vigorously pushing new boundaries in more than a few areas of state administration, it was building off of preexisting and premodern relationships between the state and the Arab tribes to do so.⁵

Similar to M. Talha Çiçek (discussed further below), Barakat defines the relationship between the Ottoman State and the Arab tribes as being chiefly characterized by negotiations. In that context, she describes Ottoman attempts to reorder the property regime of the Syrian interior as being a “renegotiation” of the pre-existing relationships between the tribes and the state, rather than as a “penetration of an uncharted frontier.”⁶ These terms appear to stand somewhat in contrast to Rogan's description of the Syrian interior as being a “frontier” defined by “interpenetration between two previously distinct societies”. Where Rogan identifies a trend toward the total integration of frontier society within the Empire, Barakat identifies a new negotiation of existing relationships between two societies. Barakat focuses chiefly in her study on how this renegotiation is mediated by Bedouin who take on certain tasks of state administration for the Ottoman Empire.

⁵ Nora Barakat, *Bedouin Bureaucrats: Mobility and Property in the Ottoman Empire* (Stanford: Stanford University Press, 2023), 35-6.

⁶ Nora Barakat, *Bedouin Bureaucrats: Mobility and Property in the Ottoman Empire* (Stanford: Stanford University Press, 2023), 7.

The legal landscape of southern Iraq at the turn of the nineteenth century supported the establishment of two systems of social ordering that often stood at odds: the customs of the Arab tribes and the landlords (with members of the latter almost always being members of the former) and the laws of the Ottoman Empire. This study examines to what extent the Ottoman Empire was able to maintain its place as the guarantor of the social order among and within the a prominent Arab shaykhly family with landholdings in southern Iraq, even as the British expanded their influence in the region. The analysis of this question will be informed by the theory of legal pluralism.

John Griffiths, an influential author in the field of legal pluralism, has described the concept of legal pluralism as consisting of two distinct strands: a weak and a strong variety.⁷ ‘Strong’ legal pluralism has been described as not placing different legal systems covering the same persons or areas in a hierarchy. ‘Weak’ legal pluralism, similar to the ‘strong’ variant, takes the view that persons may live in areas governed by multiple legal systems but the studies focus on the incorporation of non-state legal systems into the state legal system. As this study is concerned with the ability of the Ottoman state to exert its jurisdictional authority over a dispute, and to what extent the British helped or hindered that exertion, hierarchy is to a degree inherent in the analysis. The study will, therefore, hew closer to Griffith’s description of ‘weak’ legal pluralism than the ‘strong’ variant he championed.

There are, however, situations in the history under study here where there is no clear hierarchy between systems of social organization. The laws of the Ottoman State and the

⁷ Brian Tamanaha, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism” *Journal of Law and Society* 20, no. 2 (Summer 1993): 202 (citing Griffiths, John. “What Is Legal Pluralism?” *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55).

customs of the Şaṭ al-‘arab landlords, for example, were in many ways totally incompatible. Though the reign of Sultan Abdulhamid II was marked by a much stronger presence of the Ottoman police power in the countryside than had been in years past,⁸ the study will show that it was never able to consistently impose its legal order on the relations between the landlords and the cultivators in the Şaṭ al-‘arab region, even when it could impose its authority by force of arms. In a situation such as that, there is no clear reason to compose a hierarchy, at least not one with the law of the state at the top, because there does not appear to have been an organized project by the Ottoman state to displace or integrate local custom in a legal way. Instead, as Griffiths describes, actions by persons take on a pair of meanings in a pair of different ordering regimes.

For example, the study will examine where the Ottoman State had successfully asserted its jurisdictional authority over disputed land and refused to allow the entry in 1902 of the watchmen of Mubarak, the alleged owner. In this event the cultivators on the land in dispute between rival landlords refused to pay to either landlord his full landlord dues at custom, instead only paying a fraction of the landlord dues at custom to one of the disputants, Mubarak. This act was not illegal at Ottoman law. The landlord dues owed at custom were much higher than the maximum permitted under the applicable Ottoman land laws. At custom, however, this was a grievous wrong which Mubarak recognized and of which he complained to both the Ottomans and the British.

In 1903 the Ottoman authorities allowed Mubarak to send his watchmen to the disputed property during the autumn season and Mubarak sent no more complaints about his ability to

⁸ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 248.

collect what he believed he was owed, presumably because he was able to do so. Though the Ottoman authorities demonstrated control over the use of force over the property in dispute, it cannot be said that their land code sat in a hierarchy over the local custom because the Ottomans made no apparent effort in this case to enforce their own laws despite that level of control. The state tolerated the persistence of the local custom in the region.

M. Talha Çiçek's *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* explores the relationship between the Ottoman Empire and the Arab tribes within its borders. Çiçek argues that even as the capacity for the Ottoman authorities to administer justice among the Arab tribes, the state administration of justice among the Arab tribes was still defined by a peculiar institutionalized negotiatory character that was absent in the state administration of justice elsewhere. The assertion of state authority in the deserts of the empire was prompted, among other issues, by a desire to restrict the growing influence of the British in Arabia. Çiçek observed in the case of the desert province of Dayr az-Zūr that the project of administering the tribes was at first characterized by an “idealist modernism” but, when faced with stern resistance, the Ottoman authorities took a more pragmatic approach.⁹ The extent to which the exercise of Ottoman judicial sovereignty over the Arab tribes was subject to negotiation even as the reach of the Ottoman State into tribal lands went farther and grew more skilled was of a level that Çiçek argues would be unimaginable for a modern state.¹⁰

Çiçek's work focused on the criminal aspect of law as between the Ottoman State and the Arab tribes. The present study, though the events under analysis had been triggered by the

⁹ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 99.

¹⁰ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 248-50.

commission of a murder, focuses on the resolution of a civil law dispute. Nonetheless, there is here a similarity between the shift in the Ottoman approach that Çiçek identifies and an intra-Ottoman contest over jurisdiction that occurs early on in the case. There had been different organs of the Ottoman state working to take responsibility for the Mubarak case. On the one hand there had been an assertion of jurisdiction by the nizamiye courts over the case and on the other had been the offices of the executive arm of the Ottoman working to establish an ad hoc arbitral tribunal to negotiate a settlement to the dispute with the consent of the parties. The action by the courts, fits neatly in the modernizing effort that Çiçek and Avi Rubin identified and it conflicts with the arbitration effort, which fits within the scheme of tribal-state reconciliation that Çiçek has also identified.

This study will demonstrate that these approaches by the Ottoman state cannot, however, be so neatly divided into distinct eras, one defined entirely by an idealist modernism or the other identified entirely by a pragmatic approach to the tribes, as Çiçek had identified had been the case in the evolution of the administration of the Dayr az-Zūr province. Instead the approach by the Ottoman state here appears to be experimentation with a few different approaches. The attempt to assert the jurisdiction of the Ottoman nizamiye court in Basra over the case was the most bold but the state ultimately elected to resolve the case with the more conservative negotiatory approach characterized very well by Çiçek's work.

A NOTE ON THE PRIMARY SOURCES USED HEREIN

This study makes use of records from the Indian Office Records which have been conveniently made available online by the Qatari Digital Library in its partnership with the British Library. These records are chiefly composed of letters and telegrams and occasionally

memoranda. Within the records specifically analyzed for this study, the communications are typically either between British officials, or they are between British officials and the incumbent Shaykh of Kuwait or one of his agents. Original letters to and from the Shaykh have been archived alongside English translations.

In addition, these archival records occasionally include Arabic language copies of letters which Shaykh Mubarak has purported to have received either from Basrawi notables or from the Vali of Basra. This study does cautiously make use of these copies to provide insight into the views of the Ottoman authorities with respect to the events under analysis. It must be recognized that these are not originals but are instead copies which have been produced by an interested party in the litigation. The chance that Mubarak would manipulate these copies to misrepresent the position of the Vali of Basra to the British is diminished by the fact that the British had open channels of communication with the Vali of Basra throughout the course of these events.

JABIR ACQUIRES FAO AND ŞŪFĪYAH

The Sabah family acquired its first interest in real property along the Şaṭ al-‘arab as a pair of gifted estates. The gifts were made in 1834. One estate came from Shaykh Rashid al-Sa‘adūn. This estate was referred to simply by the name of Fao, the same name as the peninsula in which it was located. The other estate came from Shaykh Sulayman al-Zuhayr. This estate was referred to by the name Şūfīyah. Both gifts were made under similar circumstances. Rashid and Sulayman each were prominent members of powerful Tribes of Southern Iraq. Both men had sought refuge with the Shaykh of Kuwait of their day, Shaykh Jabir as-Sabah (r. 1814 - 1859),

after they had been driven from the city of Zubayr by their rival, another prominent shaykh in Southern Iraq named Muhammad al-Thaqib.¹¹

The Fao estate was never registered with the Ottoman authorities.¹² The gifts had been made years before Ottoman state had enacted the Tapu Law of 1847 that established the Ottoman system of title registration and they were made decades before the Ottoman authorities had made a concerted effort to register landholdings in Iraq under the Tapu Law of 1847 and the Land Code of 1858. This study has not come across any direct documentary evidence that would unambiguously reveal why neither Jabir nor his direct successor Abdallah al-Sabah registered these properties with the Ottoman authorities but the decision was not an uncommon one. Consideration of the same decisions made by similarly situated shaykh-landlords will shed some light on what the decision may say about Jabir's relationship to the Ottoman state.

Many tribesmen in the province of Baghdad with cognizable property rights that could be registered under the new laws made the same decision not to register their own lands, even after land registration became commonplace in the province. These tribesmen were often concerned that registered property rights might easily be taken away by the state or that registration would help facilitate conscription.¹³ It was not common, however for tribal shaykhs such as Jabir to make this decision. Tribal shaykhs, along with city merchants and tax farmers, made up the bulk of registrants under the new law. Marion Farouk-Sluglett and Peter Sluglett endorse Albertine

¹¹ Husayn Khalaf al-Shaykh Khaza'al, *Tārīkh al-Kuwayt al-Siyāsī* (Kuwait: Dār wa Maktabah al-Hilāl, 1962) 1:105.

¹² Letter Joseph Gabriel to Harold R. P. Dickson 'File 2/4 IV TAXATION of SHAIKH'S DATE GARDENS.' [82r] (168/546) IOR/R/15/5/138 http://www.qdl.qa/en/archive/81055/vdc_100044708623.0x0000a9

¹³ Marion Farouk-Sluglett and Peter Sluglett, "The Transformation of Land Tenure and Rural Social Structure in Central and Southern Iraq, c. 1870–1958," *International Journal of Middle East Studies* 15, no. 4 (November 1984): 494.

Jwaideh's view that property owners of these backgrounds understood the advantage that legal title registered with the Ottoman authorities would bring. With registered title, for example, credit could be accessed more easily and disputes arising over the ownership of the land could be settled more quickly.¹⁴

It is more likely than not that Jabir was as aware of all these advantages as his peers but he was differently situated than many of his peers in a few ways. The Sabah had a firm grasp on the city of Kuwait and through it a strong link to the Persian Gulf trade. As part of this trade the Sabah dealt commercially with a wide range of merchants, not all of whom were Ottoman subjects. The Ottoman land laws restricted the transfer of tapu title exclusively between Ottoman subjects. If Jabir had registered his land with the tapu office and then mortgaged his tapu right to a foreign merchant, the merchant would have had a very hard time collecting against Jabir in an Ottoman court because the transfer of tapu to a foreigner would not be recognized. In the mid nineteenth century, the Ottoman state frequently took action to seize land that had been transferred to British subjects and transfer the land instead to Ottoman subjects.¹⁵

Even without state action, transfers of any kind to foreigners could be undermined by registration. If the land were registered, any counterparty that bought the land from Jabir would have to worry that Jabir might attempt to effectively void the sale by asserting his tapu rights in Ottoman courts. If Jabir did want to sell or mortgage the property to an Ottoman subject he could have done so in the same fashion that the Fao property had first been transferred to him, by function of the established customary law between the tribes of that area. By registering his land

¹⁴ E. Attila Aytekin, "Agrarian Relations, Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," *Middle Eastern Studies* 45, no. 6 (November 2009): 938-39.

¹⁵ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 143

in tapu he would be diminishing the commercial value of the land because the registration would frustrate his own ability to transfer the land to foreigners down the line.

Landlords in Southern Iraq

With these gifts, the Sabah became owners of cultivated land in southern Iraq for the first time. They joined the ranks of many other Arab shaykhs in the vilayet of Basra who owned large agricultural landholdings. These shaykhs were heads of usually heterogenous tribes or confederations of tribes composed of both groups of cultivators and groups of nomadic populations. The tribes were socially stratified and nomadic tribesmen occupied a social stratum above that of the cultivators.¹⁶ In the case of the shaykhs of Kuwait, they were governors of an active Gulf port city, the Ottoman official representative in that city, and the “tribal chief” or “chief of the tribes”.¹⁷ The Shaykh of Kuwait as a rule was not habitually nomadic during his tenure in office. He typically resided in the city of Kuwait and held his majlis there. Nonetheless both the Ottomans and Mubarak as shaykh of Kuwait recognized the essential role that the shaykh of Kuwait performed in both governing and protecting the various different tribes of Kuwait.

¹⁶ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 72-73.

¹⁷ Frederick Anscombe, *The Ottoman Gulf: the creation of Kuwait, Saudi Arabia, and Qatar* (New York: Columbia University Press, 1997) 97; Letter Mubarak b. Sabah to Hussein Jelal Bey 'File II. IRAQ (3) Vol. 1 Shaikh of Kuwait's Date Gardens on the Shatt-al Arab. (Kuwait's relations with Turkish Govt. and Turkish demand that Kuwaitis should take out Turkish Nationality Certificates)' [234r] (485/636), British Library: India Office Records and Private Papers, IOR/R/15/5/5, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100050944618.0x000056> In 1910, when writing to the Vali of Basra to reject his offer of an Ottoman salary paid in Turkish lira, Mubarak distanced himself from the Ottomans by dropping the kaymakam title that he generally included in his signature, instead signing as “ḥākīm al-kuwayt wazīr qabā’iliha” and the last two words are likely to be the Arabic rendering of the “tribal chief” title to which Anscombe refers. Both as an agent of the Ottomans and as a Shaykh asserting his independence from the Ottomans, his role as the governor of the tribes of Kuwait was an important office for Mubarak.

The Ottomans relied on many men like the shaykhs of Kuwait to be agents of their regime in places where the Ottoman state had not theretofore established with their professional civil servants or their professional army. Functionally a comparison can be drawn between this role of the shaykh of Kuwait, the kaymakam governor of the tribes within his kaza, and the role of the Sa‘adūn shaykhs of the neighboring Muntafiq tribal confederation and identically named sanjak. The mutaşarrif of Muntafiq was appointed by the Ottomans from among the Sa‘adūn similar to how the kaymakam of Kuwait was appointed from among the Sabah. Unlike the Sa‘adūn shaykhs, the Sabah were not shaykhs of a tribe or a tribal confederation per se but the office of Shaykh of Kuwait involved governing populations referred to by Mubarak as *qaba’il*. Even though the shaykhs of Kuwait were not shaykhs of a tribe or a tribal confederation, the office of Shaykh of Kuwait carried with it certain responsibilities involving the government and management of the tribes of Kuwait.

A shaykh-cum-landlord could continue to live a nomadic lifestyle or be otherwise removed from his investments in land and still extract rents.¹⁸ It was not uncommon along the Şaṭ al-‘arab for cultivators to work on land owned by a landlord with whom the cultivators had no direct preexisting affiliation before the encountering one another as landlord and cultivator. This was for two reasons. The first was that date gardens that had been abandoned by their owners, such that no one was collecting taxes for the state, would be sold by the Ottoman state at auction and frequently purchased by tribal shaykhs. This change in ownership could match up unrelated cultivators and landlords. The second was that tribal shaykhs tended to be exploitative

¹⁸ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 89. In the 1880s, members of the politically prominent Sa‘adūn family of the Muntafiq began to live in the desert but continued to exercise their property rights to cultivated through lease agreements with minor shaykhs that continued to manage the land in their absence.

which encouraged cultivators to flee the land and relocate elsewhere, hoping for better luck somewhere else.¹⁹ The relation between landlord and cultivator could be further attenuated by the employment of a minor tribal shaykh to serve as an intermediary. Major landlords would frequently employ minor tribal shaykhs to organize labor, not just for cultivation but also for irrigation and land reclamation projects.²⁰

The State of Agriculture along the Šaṭ al-‘arab

The Šaṭ al-‘arab is formed by the confluence of the Tigris, Euphrates, Karkheh and Karun rivers. It discharges its waters into the Persian Gulf. The Karun river carries a great deal of silt into the Šaṭ al-‘arab. Many hands are employed dredging the river so that it remains navigable for fishing and merchant vessels.²¹ Agriculture along the Šaṭ al-‘arab also makes demands on the river in the form of irrigating devices which require the the constant work of operation, maintenance and repair. Agriculture in the region is maintained by a network of irrigation canals and water lifts and water hoists, all of which needed to be maintained by the labor of the cultivators who worked on the land.²²

Ottoman administrators of Iraq were as eager to encourage the growth of agriculture there as they were in many other parts of the empire.²³ In Iraq, Ottoman governors aimed to achieve an

¹⁹ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 139.

²⁰ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 196.

²¹ Ali Dinar Abdullah, *Modelling Approaches to Understand Salinity Variations in a Highly Dynamic Tidal River: The Case of the Shatt al-Arab River* (London: CRC Press, 2017) 11.

²² Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 61.

²³ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 186. Citing the example of Midhat Pasha calling for agricultural reform in Iraq in order to restore the glory of the Ottoman Empire; Nora Barakat, *Bedouin Bureaucrats: Mobility and Property in the Ottoman Empire* (Stanford: Stanford University Press, 2023), 3, 15. Discussing how Ottoman administrators in Syria placed a heavy emphasis on increasing agricultural productivity.

increase in agricultural product by expanding the quantity of cultivated land through the use of irrigation. Land in Iraq was divided by the Ottoman administration according to its source of water. Lands watered directly by a river, such as the land that belonged to Jabir now, was the most valuable.²⁴ The Ottoman administration of Iraq made many successful efforts to transfer ownership of uncultivated land to individuals that the officials expected would make use of it, typically through auctions.²⁵

Where land was already cultivated, the Ottoman administration made policy interventions to support its productivity. Officials were very concerned about the low figures of land use in Iraq. Mazhar Pasha, the Mutasarrif of Basra, reported to the Porte in 1880 that only ten per cent of the cultivable land in Iraq was being put to agricultural use.²⁶ Where possible Ottoman officials typically supported existing productive agricultural uses of land. These policies worked to great effect. From 1868 to 1913 the value of date exports from Basra rose from £67,000 to £582,000.²⁷ To support the productivity of date gardens along the banks of the Šaṭ al-‘arab, Namik Pasha, during his second tenure of Viceroy of Baghdad, Mosul and Basra from 1861 to 1867, had instituted a flat tax on the date gardens along the Šaṭ al-‘arab.²⁸ This tax policy favored both landlords of productive date gardens as well as those who could profit off the international trade in dates. For Jabir, as well as his successors to the title of Shaykh, it was a double boon as he was both a landlord of date gardens along the Šaṭ al-‘arab as well as the governor of Kuwait, a

²⁴ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 9.

²⁵ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 9.

²⁶ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 26.

²⁷ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 218.

²⁸ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 165.

major Persian Gulf port. The Sabah family in particular and Kuwait as an economy in general profited from the international trade in dates.

The Customs of the Landlords

Mubarak did not need to have the dispute settled because he had any fear that the Ottomans would, as the suit was pending, prevent him from extracting rents. As the dispute was dragged out the Ottomans made no effort to prevent Mubarak from sending unarmed agents to collect rents in kind. But the Ottomans did act to frustrate Mubarak's harvest by refusing to allow him to send his watchmen at various points, using the dispute as cause for the refusal. According to Mubarak this had a disastrous effect on his profits. To understand why that was it is necessary to understand the conflict between the custom of the landlords and the Ottoman land laws. Because the Ottomans did have an established military and police presence in Fao, Mubarak could not employ force there of his own. Without employing force he could not enforce the customary rent rates. This aspect of the dispute, the Ottoman interference in the annual, not only explains what might have encouraged Mubarak to stop dragging his feet at various points, it also demonstrates that the Ottomans were willing to protect cultivators from extortionate rents that were common practice despite being outlawed decades before Mubarak's tenure as shaykh, but they were only willing to grant this protection in order to punish Mubarak. For the sake of cooperation with the British to resolve the dispute, the Ottomans would eventually back down and allow Mubarak to send his watchmen.

Cultivated land in southern Iraq was governed by both the laws of the Ottoman Empire and by the customs of the landlords and cultivators. The Ottoman Empire, as part of its modernizing reforms, had enacted the comprehensive Land Code of 1858. The code was based

on the Hanafi jurisprudence that predominated in the Ottoman Empire.²⁹ The customs of the landlords on the other hand were unwritten but they were regularly enforced in agricultural agreements, by force of arms if necessary. For example, Mubarak b. Sabah reported that the employment of watchmen by the landlord to ensure the satisfaction of his customary rights to the produce was essential.³⁰

There was occasionally irreconcilable conflict between the Land Code and local custom. The Land Code was to be put into force over the whole of the Ottoman Empire but it had been designed, chiefly by Midhat Pasha, with the lands he had once governed in Rumelia in mind. In Rumelia there had been a class of peasant proprietors that did not exist in Iraq. This was the class of people which Midhat Pasha had had in mind when drafting the protections for individual property rights in the Land Code.³¹ In Iraq, cultivation of land up to that point had been arranged by tribes and was done according to tribal custom. Custom and code disagreed regarding the share to which the landlord was entitled.

Custom was not uniform across the geography of Iraq. Among other factors, it varied additionally according to what crops cultivators grew. Namik Pasha, Viceroy of Baghdad, set a commission to work to study and describe the customs of crop sharing throughout Iraq. Kiyotaki provides an analysis of this study but observes that its breakdown of crop sharing in Basra is unclear and therefore that portion is left unexamined in her work. Nonetheless, some information

²⁹ Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 54.

³⁰ Letter Mubarak b. Sabah to Arnold B. Kemball 'File 53/11 I (D 10) Kuwait [Kuwait] Shaikh's Fao Properties 1903 and 1904' [138v] (281/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x000052>

³¹ Marion Farouk-Sluglett and Peter Sluglett, "The Transformation of Land Tenure and Rural Social Structure in Central and Southern Iraq, c. 1870–1958," *International Journal of Middle East Studies* 15, no. 4 (November 1984): 494.

is provided about the practice of crop sharing in the harvest of dates in other regions of Iraq, for example Diyala.³² There it was reported that cultivators received half the harvest, whether working on state owned lands or privately held lands, and the other half went to either the tax farmer, in the case of government owned lands, or the landlord, in the case of privately held lands.³³ Anecdotally, the Sa‘adūn landlords of Basra, from the family that dominated the Muntafiq tribal confederation in this era, extracted rents of half of the dates harvested on their lands.³⁴ This share is close to what Shaykh Ahmad b. Jabir (r. 1921-1950), a later Sabah owner of land in the Šaṭ al-‘arab region, attested, in the 1930s, was the share to which landlords had, in the past, been entitled by custom.

Ahmad claimed that, during the time of Ottoman rule, the landlord was entitled to six tenths of the harvest and the cultivators entitled to the remainder. Taxes were entirely paid from the landlord’s share.³⁵ The middle nineteenth century report commissioned by Namik Pasha, though it does not give us clear information about crop sharing around Basra, reinforces the likelihood that Ahmad’s claim was a close but perhaps exaggerated representation of established custom in the region because it matches the custom in other date growing regions of Iraq. The sources together would suggest that the custom in the Šaṭ al-‘arab at the turn of the nineteenth century was for landlords and cultivators to settle somewhere between a sixty-forty or an even fifty-fifty basis.

³² Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 74, 82-83.

³³ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 83.

³⁴ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 216; Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 88-92.

³⁵ Letter Ahmad b. Jaber to Harold R. P. Dickson 'File 2/4 IV TAXATION of SHAIKH'S DATE GARDENS.' [77r] (158/546), British Library: India Office Records and Private Papers, IOR/R/15/5/138, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100044708623.0x00009f>

Though the difference between those two figures is certainly large enough to provoke disputes,³⁶ whichever one is a more accurate description of the custom of crop sharing in date gardens along the Šaṭ al-‘arab at the turn of the nineteenth century will make little difference for demonstrating that a large gulf existed between crop sharing at custom and crop sharing at code. In 1866, the Sultan issued a decree, largely based off the existing 1858 Land Code, declaring, among many other things, that a landlord’s share of the harvest would not exceed one-twentieth of the produce.³⁷

SHAYKH MUBARAK COMES TO RULE KUWAIT

Shaykh Mubarak b. Sabah (r. 1896 - 1915) seized power over the Shaykhdom of Kuwait in a bloody coup. On May 8, 1896, Mubarak and his men murdered Mubarak’s half brother, Shaykh Muhammad b. Sabah (r. 1892 - 1896). In the wake of the coup, the sons of the murdered Shaykh Muhammad, Saud and Sabah, fled to Basra. There they came under the protection of Yusuf al-Ibrahim, a brother-in-law of their late father and a potential rival for the position of Shaykh of Kuwait.³⁸ From Basra Mubarak’s nephews petitioned the Porte to depose Mubarak and to grant them ownership of the Sabah properties along the river which Mubarak had already managed to seize.³⁹ These properties were: one at Fao, one at Šūfiyah, one at Kūt az-Zayn, one at

³⁶ And throughout the 1930s and 1940s they frequently did provoke disputes between the Sabah and the cultivators who worked on the date gardens.

³⁷ Keiko Kiyotaki *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019), 170-72.

³⁸ Letter Albert C. Wratislaw to Nicholas R. O’Conor ‘File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [40v] (85/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in *Qatar Digital Library* <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000056>; Frederick F. Anscombe, *The Ottoman Gulf: the creation of Kuwait, Saudi Arabia, and Qatar* (New York: Columbia University Press, 1997), 94.

³⁹ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 138.

Qadilan, and one at Ajerawieh.⁴⁰ At the same time, Mubarak petitioned the Porte that they recognize him as the new kaymakam of Kuwait and as the tribal chief of Kuwait.⁴¹ Frederick Anscombe argues that Mubarak sought these titles to give legitimacy to his reign and to secure entitlement to the salary his predecessor had received from the Ottoman government as well as to his properties along the river.⁴² The issues of who would rule Kuwait and who would own the date gardens in Fao had to be considered together.

Coups such as this were not uncommon in Arab shaykhdoms, within or without the Ottoman Empire. James Onley and Sulayman Khalaf report that there were 35 coups in the various Gulf shaykhdoms between 1793 and 1965.⁴³ To cite one example from within the Ottoman province of Badghad, Shaykh Farhan, of the Šammar Jarba, succeeded his father as the paramount shaykh of the tribe after the murder of his father. Farhan was staunchly pro-Ottoman and facilitated the settlement of his tribe at the direction of the Ottoman government. Some portion of the tribe resisted these policies and broke away. The leader of the rebelling faction, Faris, eventually entered into negotiations with the Ottomans to end the hostilities. The Ottomans agreed to make Faris a Pasha and afford him a monthly salary in return for Faris agreeing to aid the Ottoman government in its management of tribal affairs.⁴⁴ The Ottoman Sultan typically, and

⁴⁰ Letter Mubarak b. Sabah to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [67r] (138/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x00008b>

⁴¹ Frederick Anscombe, *The Ottoman Gulf: the creation of Kuwait, Saudi Arabia, and Qatar* (New York: Columbia University Press, 1997) 97.

⁴² Frederick F. Anscombe, *The Ottoman Gulf: the creation of Kuwait, Saudi Arabia, and Qatar* (New York: Columbia University Press, 1997), 95.

⁴³ James Onley and Sulayman Khalaf. "Shaikhly Authority in the Pre-oil Gulf: An Historical–Anthropological Study" *History and Anthropology* 17, no. 3 (October 2006): 194.

⁴⁴ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2011), 87.

Sultan Abdulhamid II in particular, played an active role in mediating these disputes. It was expected by both Mubarak and his nephews that the Porte would have some role to play in settling the political situation in Kuwait.

In other cases of tribal unrest, the Ottomans had demonstrated an ability to react to the rapidly changing realities of tribal politics with an attitude for compromise.⁴⁵ The Ottoman response to Mubarak's coup, however, proceeded very slowly. Ottoman officials in Basra seriously disagreed on how to proceed and gave conflicting reports and recommendations to the Porte. Hamdi Pasha, the Vali of Basra at the time, recommended that Mubarak be deposed by the Ottoman Sixth Army. He reckoned that only 300 soldiers would be necessary to get the job done. This would have been a significant departure from Ottoman policy towards the Sabah thus far. Before the coup, the Ottomans had relied upon the Shaykhs of Kuwait as allies in its efforts to extend its influence into Arabia.⁴⁶ Hamdi's proposal was met with a cool reception at the Porte. In an effort to get a better grasp on the events on the ground, the Porte sent Receb Pasha, Mushir of the Sixth Army, to Basra. This was in October 1897, more than a year after Mubarak's coup.⁴⁷ Receb Pasha favored that the government recognize Mubarak. Though he recognized that this would be a grave injustice to the victims of the coup, many of whom had fled to Basra while Mubarak kept their mothers and wives hostage, events like this were too common for the Ottoman state to police. Arif Pasha, the recently appointed Vali of Basra, endorsed Receb's plan

⁴⁵ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 239.

⁴⁶ Salwa Alghanim, *The Reign of Mubarak al-Sabah* (London: I.B.Tauris Publishers, 1998), 6; Memorandum Colin George Campbell, December 31, 1900, 'Koweit' [1r] (1/12), British Library: India Office Records and Private Papers, IOR/L/PS/18/B127, in *Qatar Digital Library* <https://www.qdl.qa/archive/81055/vdc_100023488788.0x000002>

⁴⁷ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908*, (London: Routledge, 2011), 68.

to recognize Mubarak as kaymakam of Kuwait. In December 1897 Mubarak was recognized by the Ottoman government as the legitimate kaymakam of Kuwait.⁴⁸

The matter of the ownership of the Sabah properties along the *Şaṭ al-‘arab* remained unsettled. The Ottomans potentially could have taken a compromise position and allowed Mubarak to remain as the ruler of Kuwait and to keep his salary as the Ottoman kaymakam, but could have placed the Sabah properties at Fao in the hands of the heirs of the slain Muhammad b. Sabah. It is not surprising that the Ottomans did not take this course of action for two reasons. The first is that the Porte ultimately decided to leave Mubarak in place because they believed he could administer Kuwait more effectively on their behalf than they could easily establish a new regular Ottoman administration over Kuwait from the ground up. If the Porte desired that Mubarak be at least as good an administrator as his predecessors had been, it wouldn't serve that purpose to deprive the new Shaykh of Kuwait of a valuable property of his family. The second is that the Fao properties were much more firmly within the Ottoman domain than lands under the rule of Mubarak. If Mubarak wanted to enforce his property rights in his lands at Fao, he would need to rely on the Ottoman authorities at Basra to facilitate the collection of rents during the harvest. This gave the Ottomans some important leverage over a deputy that they did not trust.

Mubarak Binds to the British

In the period of time that it had taken the Porte to come to a decision on the status of Mubarak, Mubarak had already begun to search for other allies. Mubarak made overtures to British officials in the Gulf about the prospect of entering into a protection agreement with Great Britain. At this point in history the British had established a hegemonic position in the Persian

⁴⁸ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908*, (London: Routledge, 2011), 138.

Gulf, partly by contracting protectorate agreements with other shaykhs of the Gulf. Elsewhere in the Gulf, the British had established a protectorate agreement with the ruler of Bahrain and they had successfully defeated Ottoman attempts to reestablish control over the island. The many offices of the British Empire concerned with policy in the Persian Gulf, however, were not of one mind with respect to answering Mubarak's intimations. The Foreign Office in London and the Embassy at Constantinople both leaned in favor of ignoring Mubarak, but the Government of India was strongly in favor of agreeing to a protectorate deal with Mubarak.

The Government of India had enormous influence over British policy in the Persian Gulf because of the administrative apparatus it had established in the Gulf to represent British interests at most of the important port towns. In these towns the Government of India was represented by a Political Agent and each of these agents answered to the Political Resident, with his office was in Bushire.⁴⁹ This administrative apparatus served to maintain enforcement of the various treaties that Great Britain had contracted with the shaykhs of the Gulf. Great Britain had managed to use these treaties and its navy to secure a hegemonic position in the Persian Gulf, which was of great value to the Government of India specifically because of the large volume of trade done between the Persian Gulf and India. In 1899, Lord Curzon became Viceroy of India and he succeeded at convincing the Foreign Office to agree to form a protectorate in Kuwait, over the reservations of Ambassador at Constantinople Nicholas O'Connor.⁵⁰

On January 23, 1899 Lt. Col. Meade, the Political Resident at Bushire, signed the Anglo-Kuwaiti Agreement with Mubarak. The promises of the bond were entirely one sided. Mubarak

⁴⁹ James Onley, *The Arabian Frontier of the British Raj: Merchants, Rulers, and the British in the Nineteenth-Century Gulf*, (Oxford: Oxford University Press, 2008), 2.

⁵⁰ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2011), 139.

promised to not allow the representatives of foreign governments within his territory. He further promised to neither cede, sell, lease, mortgage nor give for occupation nor any other purpose any portion of his territory to the government or subjects of any other power. In return Meade, representing Great Britain, made no promises.⁵¹ Nonetheless, this achieved Mubarak's desired effect as it established an understanding between Mubarak and the British that foreign powers, including the Ottomans, were to be kept out of Kuwait. The agreement remained a secret; the British never declared its full content diplomatically until the First World War when Great Britain declared Kuwait to be its protectorate.⁵² The Ottoman government soon became aware of the agreement and responded by reappointing Hamdi Pasha as Vali of Basra, the man who had proposed military action against Mubarak in the wake of the coup.⁵³

The Ottomans amassed military assets at Basra in April 1901. Before sending forces to Kuwait, the Ottomans encouraged Mubarak to return peaceably to the fold with visits from the Vali of Basra and the Naqīb of Basra, Sayyid Rajab Pasha, a friend of Mubarak. Mubarak received them with hospitality and the two encouraged Mubarak to accept a small Ottoman garrison, which Mubarak refused to do. In August 1901 the Ottomans tried a sterner approach with Mubarak. The Ottoman warship *Zuhaf* sailed with troops to Kuwait. The troops were unable, however, to land. The landing was prevented by the British warship anchored in the

⁵¹ English Translation of the Anglo-Kuwaiti Agreement 'File 53/6 (D 2) Koweit [Kuwait] Affairs, 1898-1899' [43r] (85/554), British Library: India Office Records and Private Papers, IOR/R/15/1/472, in *Qatar Digital Library* <https://www.qdl.qa/archive/81055/vdc_100023520802.0x000056>

⁵² James Onley, *The Arabian Frontier of the British Raj: Merchants, Rulers, and the British in the Nineteenth-Century Gulf*, (Oxford: Oxford University Press, 2008), 24.

⁵³ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2011), 139.

harbor of Kuwait. The British commander declared to the Ottoman naval officer in command of the *Zuhaf* that Kuwait was under British protection.⁵⁴

This incident forced the British Ambassador at Constantinople, Nicholas O'Connor, to evasively admit that Mubarak had negotiated an understanding with the British to preserve his interests. The Ottomans disputed the validity that any such understanding could have, on the basis that Mubarak was the kaymakam of the Ottoman Kaza of Kuwait and that such an officer had no authority to negotiate understandings of any kind with foreign powers. In order to preserve peace between the two powers, O'Connor proposed a compromise. He offered that the British would neither declare a protectorate over Kuwait nor occupy it with British soldiers. In return, the Ottomans would also refrain from sending soldiers to Kuwait and furthermore the Ottomans agreed not to press the issue of the political nature of Kuwait. The offer was accepted by the Porte and it was committed to writing in a formal note from the British Foreign Secretary at the request of the Porte.⁵⁵

Mubarak now had two protectors: the Ottomans on the one hand, who continued to recognize him as the legitimate kaymakam of Kuwait, and the British on the other hand, who had proven that they would act to preserve his independence from Ottoman intervention. Mubarak endeavored to leverage both relationships to preserve his property rights in Southern Iraq. Meanwhile both of his protectors would attempt to manage him and his disputes with his rivals to maintain the peace in southern Iraq.

⁵⁴ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908*, (London: Routledge), 141.

⁵⁵ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908*, (London: Routledge), 141.

MUBARAK RECEIVES A SUMMONS

The sons of Muhammad b. Sabah continued to make claims to the Sabah properties at Fao. Mubarak first attempted to resolve these claims by working with the Turkish authorities. As a result of Mubarak's pleas, Abdulhamid II had become directly involved in the dispute over the property. He issued a decree that the matter be settled by a panel of arbitrators in order to restore peace among the Sabah.⁵⁶ These attempts failed, according to Mubarak's report to Colonel Arnold Kemball, Political Resident in the Persian Gulf, because the other party refused every offer of arbitration that the Ottomans had proposed and to which Mubarak had agreed.

The British Consul at Basra Albert Wratislaw had a different assessment. He wrote later to Kemball that Mubarak had never formally expressed his consent to the arbitration proceedings; he, in Wratislaw's assessment, merely relied on the decree in order to attempt to stay the court proceedings. The occasion for Mubarak writing Kemball, he explained, was that the president of the civil court of Basra had written Mubarak that the matter of the disputed ownership of the Fao estate would be tried before the Court and that Mubarak would be represented by a default agent if he failed to appear in person. Mubarak wrote emphatically to Kemball that he had never been treated by the vali or the judge in this manner and that this change in attitude no doubt came because he had placed himself under British protection.

⁵⁶ Letter Mehmed Enis to Mubarak b. Sabah 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [95r] (194/624), *British Library: India Office Records and Private Papers*, IOR/R/15/1/483, in *Qatar Digital Library* <https://www.qdl.qa/archive/81055/vdc_100023577214.0x0000c3>

Beyond informing Kemball about the present state of the case, Mubarak only asked that the British keep an eye on his property in Basra and protect it from spoliation and arbitrary action.⁵⁷

The Contested Jurisdiction of the Nizamiye Court

The letter from the judge, a copy of which Mubarak had sent Kemball, does not look extraordinary. In it, the judge gives Mubarak notice that he will soon be served, by hand of an agent of the court, the complaint that Mubarak's nephews have filed against Mubarak. The judge then summons Mubarak to appear before the court, either in person or through counsel.⁵⁸ Nonetheless, this letter did mark a major departure from typical Ottoman jurisdictional policy towards Arab shaykhs. It had been a controversial decision that the Sultan and his ministers had hesitated to make. The Sultan, on the advice of his foreign minister, had reluctantly delayed authorizing the sending of the summons to Mubarak, because of the risk it created of a confrontation with the British.⁵⁹ Mubarak, in his reply to the judge, wrote that the Sultan had already issued a decree for the matter to be resolved by an arbitral committee specifically assigned to resolve the matter of the ownership of the date gardens at Fao. This committee was to be composed of some Basrawi notables and observed by Mubarak and his nephews. One half of the committee would be chosen by each of the parties, with a final member then selected by the arbitrators to serve as the umpire of the committee. This was the plan which Mubarak reports he

⁵⁷ Letter Mubarak b. Sabah to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [5r] (14/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x00000f>

⁵⁸ In the copy of the judge's letter that Mubarak had given Kemball, no mention is actually made of a default agent being assigned. Mubarak probably was familiar enough with the procedures of the court to know that that would be the case if he failed to appear and then asserted this to the British in his own letter.

⁵⁹ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2011), 141.

accepted but which his nephews refused. The decree had been issued in 1898, before Mubarak had contracted with the British. Muṣṭafā Nūrī Pasha, Vali of Basra, justified the jurisdiction of the court in a letter to Mubarak. He explained that to his understanding the suit that Mubarak's nephews had filed concerned only one piece of the Sabah lands at Fao, namely that at Kūt az-Zayn. The Sultan's decree was to resolve the issues regarding all the properties belonging to the Sabah at Fao.⁶⁰

It is possible that Muṣṭafa believed that while the ultimate arbitration was pending, the court at Basra had jurisdiction to alter the status quo between the parties. Some minimal categorical, if not legal, distinction between the Kūt az-Zayn property and the Fao property can be found in the fact that Kūt az-Zayn, along with the other financially minor Sabah properties, had been registered with the Ottoman land registry office in Basra, whereas the other, significantly more productive, lands were not. The lands were registered to Muhammad b. Sabah, the slain father Mubarak's nephews.⁶¹ Muṣṭafā and the president of the court may have judged that the matter of title to those registered parties was sufficiently clear that it would be unreasonable for those properties to have been subject to the Sultan's decree that the outstanding disputes between Mubarak and his nephews over real property be decided by arbitration. Alternatively, it is possible that Muṣṭafa was doing his best to give some legal cover to the reality

⁶⁰ Letter Muṣṭafā Nūrī to Mubarak b. Sabah 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [33r] (70/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000047>. In an Arabic copy of Muṣṭafā Nūrī's letter to Mubarak, the exact phrase he used is rendered as: “*ḥaḍīhi āl-`irādah al-malūkīyah yanbaḡī ānḥu takūn šamilah lil-ḡamī*”.

⁶¹ Letter Albert C. Wratislaw to Nicholas R. O'Conor 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [40r] (84/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000055>

that the Ottomans were moving more aggressively against Mubarak's property rights because of the treaty he had signed with the British.

Mubarak may have disputed the courts jurisdiction only because of the existence of this decree from the Sultan, just as he had written was the case. It is difficult to assess how serious that objection is because no record of the decree exists in the British files. Mubarak apparently never furnished the British with a copy. It is possible that the Sultan's command was conditioned on receipt of the consent of both parties to take effect, something which was never received. Beyond Mubarak's objection that the Sultan's proposal should be the exclusive course to resolve the dispute may be a further objection to the idea of an Ottoman court asserting jurisdiction over Mubarak's property and over an intra-familial dispute of the Sabah.

Arab shaykhs, such as Mubarak, had continued to hold broad jurisdictional authority over their own tribesmen until the final years of the Ottoman Empire.⁶² But since the middle of the nineteenth century, the Ottoman Empire had set itself on a path of juridical reform that organized the courts as a branch of the government independent of the executive.⁶³ Given the heavy hand the Sublime Porte had already played in the decision to draw the dispute into the civil courts, and then to settle the dispute instead by arbitration, this organizational principle had clearly been subjugated to political interests in this case. Among many other things, this had begun a process that gradually eroded the jurisdictional authority of the tribal shaykhs.

The Ottoman state had set a high priority on creating a new class of criminal, civil and commercial law courts, the nizamiye courts. These were to mete out justice in the name of the

⁶² Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad*, (Boston: Brill, 2019), 165; M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 231.

⁶³ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge), 18.

state, ideally in a consistent way across the empire.⁶⁴ In the midst of these changes, Tribal shaykhs who continued to exercise their jurisdictional authority over their tribesmen had to be circumspect of the new urgency with which many Ottoman officials addressed the issue of jurisdiction. For example, Nūrī al-Sha’lan, shaykh of the Ruwalla, would seal his judgements with reference to his office of shaykh and to his office of Kaymakam, a title which the Sultan had bestowed upon him. The office of Kaymakam did not carry with it any judicial authority, but the gesture was still appreciated by Ottoman officials. They understood it to be an effort by Nūrī to fit his regime within the hierarchy of the Ottoman state; and they tolerated his activities.⁶⁵ Mubarak, similarly both a shaykh and a kaymakam, could not use such a strategy here, however, because his nephews had specifically repudiated his claim to both titles and appealed directly to the Ottoman nizamiye court at Basra for relief.

In the provinces of Baghdad and Basra, the Ottoman state had begun to chip away at the authority of the shaykhs under the leadership of Namik Pasha, serving at the time as Viceroy of Baghdad, in the 1860s. Namik used the Ottoman military to collect taxes and administer justice where formerly the Ottomans had left tax collection and the administration of justice in the hands of the tribal shaykhs. By 1864, with the enactment of the Vilayet Law, the Ottoman state explicitly rejected the claims of juridical authority of the tribal shaykh over his tribesmen and gave that jurisdiction to civil and criminal courts operated by the Ottoman state. These judicial reforms coincided with a period of increased activity by Ottoman authorities in the countryside

⁶⁴ Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 27-8.

⁶⁵ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 235.

of Iraq. For example, these reforms had been effectively carried out in the lands of the Muntafiq tribal confederation (which bordered Kuwait).⁶⁶

These judicial reforms had not yet reached Kuwait. Mubarak was probably still directly responsible for administering justice in his territory, as many shaykhs in other parts of the Ottoman empire had been before these reforms. When Mubarak had been asked to appear before the civil court of first instance, the *Bidayet Mahkemesi* of Basra, in order to have his dispute with his own tribesmen adjudicated it may have truly been the first time that Ottoman civil courts had asserted jurisdiction over a dispute between Mubarak and his own tribesmen. The theory that the Ottomans had not, before Mubarak's dispute with his nephews, entered into the administration of property rights between the Sabah is further supported by another letter that Mubarak sent Kemball months later. Therein, Mubarak described the history of the date gardens going back to his grandfather Jabir as-Sabah. He wrote that throughout the years going back to Jabir's time, the Ottoman authorities had not interfered with the administration of property rights to Sabah land within the Sabah.⁶⁷ This would fit with Mubarak's letter to Kemball wherein he had said that he had never before received a letter like the one that he had received from the judge. It is likely he had meant that he had never received such a letter in connection to any dispute, at least with his tribesmen, not just in connection with that particular dispute with his nephews.

Imagining for a moment that there had been more to the jurisdictional claim of the *Bidayet Mahkemesi* over the dispute between Mubarak and his nephews than just realpolitik, the dispute between Mubarak and the *Bidayet Mahkemesi* becomes less particular. The Ottoman state

⁶⁶ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad*, (Boston: Brill, 2019) 180-81.

⁶⁷ Letter Mubarak b. Sabah to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [30v] (65/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000042>

had been encroaching on the jurisdiction of the Arab tribal shaykhs in Iraq for decades by the time of Mubarak's coup, but Ottoman influence was especially weak in Kuwait and so, up to this point, no efforts had been made to reduce the authority of the Shaykhs of Kuwait the way that had been done to the Shaykhs of the Muntafiq, for example. Now presented with an opportune intra-Sabah dispute over property, the Ottoman state had an auspicious occasion to assert its jurisdictional claim over the Sabah.

That the claim was among members of the same family made it the very sort of dispute that the Ottoman state had managed to wrest out of the jurisdictional authority of other Arab shaykhs, but thus far the state had only done this with respect to Arab tribes that had settled in areas of strong Ottoman authority or over intra-tribal disputes where at least one party was a tribesman living in a village or farmstead.⁶⁸ That the claim was over property along the Şaṭ al-ʿarab and not within the territory of Kuwait meant that the court actually stood a good chance of enforcing its judgement. Finally, that the Porte and the Vali were suspicious of Mubarak because of his dealings with the British meant that it was unlikely the state would seize the court's hand but rather more likely that the state would support the initiative. The greater part of the dispute, the title to the very valuable lands at Fao and at Şūfīyah, was still to be left in the hands of the Sultan's office to work out. What was done to those properties would no doubt carry enormous political repercussions for the relationship between Mubarak and the Porte. The local authorities in Basra made no effort to assume jurisdiction over that. The resolution of that dispute they had

⁶⁸ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad*, (Boston: Brill, 2019) 181. Kiyotaki describes how, after the passage of the Provincial Administration Law, the Ottoman authorities took over jurisdiction of intra-tribal disputes involving peasant tribesmen living in places (villages and farmsteads) where a strong Ottoman police presence had been established; M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 235. Çiçek reports that sedentary tribes would bring disputes to the Ottoman courts of their own accord.

left in the hands of the Sultan; his reign had been marked by an expansion of state authority into tribal society by using the office of Caliph to negotiate inter-tribal disputes and issues of political upheaval.⁶⁹ The court struck out a much more modest jurisdictional claim. The result of the proceeding mattered much less than the principle that it had sought to have established, that being that the courts of the Ottoman Empire had jurisdiction over disputes among the Sabah.

Clearly Mubarak had not removed himself entirely from the reach of the Ottoman authority. The Ottoman officials in Basra had enough authority over the dispute between Mubarak and his nephews regarding the properties in Basra that Mubarak was willing to engage with them. Mubarak was not willing, however, to submit to this new encroachment of Ottoman jurisdictional sovereignty without appealing the issue to his new protector, the British.

The Ambivalent British Reaction to the Summons

Kemball in his reply advised Mubarak that he ought to send a representative to the court in Basra to “defend [his] rights”. Kemball also assured Mubarak, nonetheless, that his government would do all it could to secure Mubarak’s properties against spoliation and arbitrary action.⁷⁰ At this point the British were unwilling to advise Mubarak to disregard the jurisdictional claims of the Ottoman authorities over his properties in Basra. The best that Kemball was willing to promise Mubarak was that the British would apply pressure on the Ottomans to not abuse Mubarak or his property throughout the proceedings. Consul at Basra Wratismaw, a member of the British Levant Consular Service which answered to the Foreign office and not to the

⁶⁹ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840-1914* (Cambridge: Cambridge University Press, 2021), 235.

⁷⁰ Letter Arnold B. Kemball to Mubarak b. Sabah 'File 53/11 I (D 10) Kuwait [Kuwait] Shaikh's Fao Properties 1903 and 1904' [8r] (20/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000015>

Government of India, took an even more direct approach. He advised the British Ambassador at Constantinople Nicholas R. O’Conor that the “Turkish courts are undoubtedly competent” and that Shaykh Mubarak should certainly appear in some capacity in order to avoid a default judgement in favor of his nephews. Wratlaw did not foreclose the possibility of intervening at a later point in the process, however, if that would be necessary to oppose an “illegal judgement.”⁷¹

Wratlaw’s view on the competency of the nizamiye court in this instance runs counter to the well evidenced trend of consular officials undermining the nizamiye courts identified by Rubin.⁷² Rubin has specifically identified how many consular officials collaborated with local governors to undermine the judiciary.⁷³ Wratlaw displays the same close relationship with the vali of his region of concern as those consular officials displayed. Despite, as noted above, Wratlaw defending the competence of the court to his colleagues, he also reported on steps taken by the Vali, perhaps with his encouragement though this is never explicitly stated in the correspondence, to convince the plaintiffs to abandon their court case and pursue arbitration instead. This would indicate that the British interaction with the Nizamiye courts at the consular level was more varied than previously imagined. Even where the property interests of a British protégé was at stake, Wratlaw was willing to allow the nizamiye court of Basra to carry out its work and even endorsed its competency when asked about it by his colleagues. Some policy

⁷¹ Telegram Albert C. Wratlaw to Nicholas R. O’Conor 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [11v] (27/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x00001c>

⁷² Avi Rubin *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 38-44.

⁷³ Avi Rubin *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 40.

concerns, such as the preservation of peace through satisfactory settlements to outstanding disputes, superseded narrow concerns for protégés. Here the issue of the public order of Basra was at stake and Wratislaw was willing to step out of the way of any authority that he thought stood a reasonable chance of resolving the issue.

But it may never have been very likely that the nizamiye courts would have been able to issue a satisfactory resolution to the whole dispute. The first course of action that the Porte had decided on had been arbitration not a trial. That endorsement should count for something though we must bear in mind how unprecedented a court proceeding was. Mubarak's evidenced refusal to participate in the proceedings of the nizamiye court at Basra in this matter no doubt encouraged the Porte to Vali to endorse that the Porte reconsider arbitration as an option. Wratislaw and Muştafa worked closely together as Muştafa did attempt to pull the case out of the courts. All else being equal both the British and the local executive authorities would appear to have preferred to settle tribal affairs through negotiation, but the method of dispute resolution was less important than that it be solved.

Kemball was well aware of the importance of the date gardens to Mubarak; in his own estimation they constituted the greatest source of income for the Shaykhs of Kuwait. At the same time, Kemball advised Mubarak not to neglect the outstanding issues with his nephews and expressed privately that his nephews no doubt had title to some share of the date gardens at Fao. Mubarak wrote to Kemball, however, that his rival Yusuf al-Ibrahim had turned his nephews implacably against him and so his nephews had refused every effort that he and the Ottoman authorities had made to resolve the dispute.

Evidently Kemball's advice was not what Mubarak was hoping to hear and he refused to heed it. Wratishlaw reported that a default agent had been assigned to Mubarak's case, just as Mubarak had expected would happen if he chose not to appear. The case was decided against Mubarak, as Wratishlaw had predicted would happen. The court ordered Mubarak to hand the Kūt az-Zayn estate over to his nephews, the remainder of Mubarak's lands along the Šaṭ al-'arab were not yet the subject of the lawsuit. Wratishlaw advised Kemball that Mubarak be told to file for a rehearing of the case. Kemball followed Wratishlaw's suggestion and wrote to Mubarak, advising that he file an appeal against the judgement. Kemball and Wratishlaw had taken it upon themselves to manage Mubarak's stall tactics and cajole him to participate in the attempts to resolve the dispute, even where that meant participating in an Ottoman court proceeding the jurisdiction of which Mubarak wished to refuse entirely.

The Utility of Ottoman Courts for Kuwaitis

In his reply to Kemball, Mubarak contested the basis for the judgement, explaining that he had two attorneys registered with the court in Basra since 1897.⁷⁴ Though Mubarak does not state this clearly, based on Wratishlaw's telegrams to Kemball it appears that these attorneys did not represent Mubarak's defense against his nephew's complaint at trial.⁷⁵ Why would Mubarak have these attorneys at all if he was so shocked to have come under the jurisdictional authority of the court? It has already been mentioned that the case that Saud and Sabah had brought against

⁷⁴ Letter Mubarak b. Sabah to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [30v] (65/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000042>

⁷⁵ Telegram Albert C. Wratishlaw to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [13r] (30/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x00001f>

their uncle was unique because it was an intra-familial dispute between a recognized tribal chief and his tribesmen and generally speaking the Ottoman authorities did not intervene in these. This does not mean that Mubarak had no use for the Ottoman courts, however. Mubarak was, like many of his Kuwaiti subjects, very involved in commerce. Kuwaiti merchants would make recourse to Ottoman courts at Basra in order to receive relief from alleged commercial wrongs.

Access to courts for Kuwaiti became complicated, however, by the ambiguous position of the polity with respect to the Ottoman Empire. Take for example an event that occurred in late 1908 and threatened to trigger a diplomatic rift between Great Britain and the Ottoman Empire. Hammad al-Khalid, a prominent Kuwaiti pearl trader, made an appearance before the Ottoman court at Basra in order to collect a 1,000 Turkish lira debt. An ordinary aspect of procedure before Ottoman commercial courts was that plaintiffs first declare their nationality when filing a complaint. This presented a difficulty for Hammad as he did not want to declare one way or another whether he was an Ottoman subject, supposedly he was on orders from Mubarak to make no such declaration in the affirmative. He tried to evade the issue by declaring himself a Kuwaiti but Vali Muharram Effendi rejected this compromise and forced the issue. Hammad ultimately relented and took out a certificate of Ottoman nationality, thereby declaring himself to be an Ottoman national. Thereafter his matter was allowed to proceed in the Ottoman courts.⁷⁶

Commercial ties between Kuwaitis and Basrawis were maintained throughout Mubarak's tenure as Shaykh of Kuwait. It is likely that Mubarak had registered lawyers at the Civil Court at

⁷⁶ Letter Stuart G. Knox to Percy Z. Cox 'File II. IRAQ (3) Vol. 1 Shaikh of Kuwait's Date Gardens on the Shatt-al Arab. (Kuwait's relations with Turkish Govt. and Turkish demand that Kuwaitis should take out Turkish Nationality Certificates)' [38r] (76/636), British Library: India Office Records and Private Papers, IOR/R/15/5/5, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100050944616.0x00004d>

Basra because he expected to have need of recourse to the Ottoman courts over the course of his business dealings in Basra. Mubarak did not have a generalized opposition to Ottoman authority. Just as he sought the Ottoman title of kaymakam while pursuing policies to limit Ottoman authority in his domain as much as possible, he clearly saw a use in working with Ottoman courts when it might suit him, but he did not want them to be able to exercise authority over him as the defendant.

Beyond his mention of the registration of his attorneys at the court at Basra, Mubarak also wrote to Kemball that the scope of Yusuf's intrigues against him had broadened. Yusuf, Mubarak declared, had been the force behind the court's decision against him. Moreover, Yusuf was working with the son of the Naqīb of Basra Taleb to incite the cultivators on the Fao properties against Mubarak. Mubarak vaguely accused Taleb and Yusuf of having invited the cultivators to Basra and then extending promises to them which Mubarak did not describe.

Despairing of the ability or willingness of the Ottoman authorities at Basra to bring about a resolution in his favor, Mubarak sent a letter to the Vali of Basra, Muṣṭafa Nūrī Pasha, declaring that if he could not secure Mubarak's property rights against Yusuf, Taleb, and his own nephews, Mubarak would protect his rights by his own force.⁷⁷ Mubarak forwarded a copy to Kemball who was cautioned against using threats in his correspondence with the Vali. Instead of

⁷⁷ Letter Mubarak b. Sabah to Muṣṭafa Nūrī 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [25v] (55/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000038> [accessed 23 March 2024]

making threats of taking the law into his own hands, Kemball advised, Mubarak should direct his agents to look after his legal affairs in the Ottoman courts.⁷⁸

THE DISPUTE IS REFERRED TO ARBITRATION

On March 12, 1903, notice of the court's judgement in the Kūt az-Zayn case was served on Mubarak's attorney in Basra.⁷⁹ Service had been delayed by the Vali of Basra, who had attempted to reserve the issue for settlement by the commission contemplated by the decree of the Sultan. Mubarak's attorney made a formal opposition to the judgement, as Wratislaw and Kemball had advised Mubarak to do, and the case was scheduled to be reheard on April 8, 1903.⁸⁰ Shortly after the rehearing the case was adjourned in order to allow the Court to communicate with the Ministry of Justice concerning the Sultan's decree ordering that the case be resolved by arbitration. From there the matter fell out of the hands of the court and the prospect of arbitration was reinvigorated with the enthusiasm of Wratislaw, Kemball, and Muṣṭafa Nūrī. Both the British and the Ottomans were eager to see a resolution to the dispute as soon as possible.

⁷⁸ Letter Arnold B. Kemball to Mubarak b. Sabah 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [26r] (56/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000039>

⁷⁹ Telegram Albert C. Wratislaw to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [49r] (102/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000067>

⁸⁰ Letter Albert C. Wratislaw to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [51r] (106/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x00006b>

The British and the Ottomans Cooperate to Manage Mubarak's Stalling

Negotiations over the selection of the arbitral tribunal resumed but progress was made very slowly. It was agreed by Mubarak and his nephews that the arbitral panel would consist of seven men, with three selected by Mubarak and three selected by his nephews. The seventh, typically referred to as the umpire in British letters, would be selected by the unanimous consent of the other six arbitrators. Mubarak persistently raised objections to his nephews choice of arbitrators. Mubarak objected that the men they had selected were too partial to them and too much in the pocket of his rival Yusuf. Kemball and Wratislaw were dismayed that Mubarak was delaying the proceedings. Kemball wrote to Mubarak urging him to accept that, just as Mubarak had selected men in whom he could place his trust as his arbitrators, so too had his nephews. His nephews would only have as many arbitrators as he had and it would be up to the umpire, Sayyid Ahmad Pasha, to smooth over the difficulties the arbitrators would inevitably have and guide them to a fair decision.

Muṣṭafa Nūrī eventually did manage to convince Mubarak's nephews to choose new arbitrators to replace the two to whom Mubarak had objected. Mubarak accepted the two new arbitrators. At this point both Wratislaw and Kemball became confident that, at least in this matter, the Muṣṭafa Nūrī was a man with whom they could work. Kemball frequently cited the Vali's evidenced goodwill in his letters to Mubarak. Mubarak had also rejected the suggestion of Ahmad as umpire. whatever the reason for his distrust of Ahmad, the British could not move Mubarak to accept Ahmad as umpire, though they did try. After accepting that Ahmad could not be selected to do the job, Wratislaw worked with the Muṣṭafa to find another suitable umpire. The Mufti of Basra was ultimately chosen and Mubarak was willing to accept this choice.

At the same time, Mubarak received regular reports about the miserable financial state of his nephews. He summarized these reports to Kemball, who was already hearing the same from Wratlaw, and insisted that he desired nothing more than to relieve them of their suffering and to find a fair settlement of their differences. The hard attitude that his nephews had taken toward him after murdering their father, however, made this very difficult, Mubarak continuously explained to Kemball.

But their financial situation had become more dire after Yusuf al-Ibrahim disappeared after a failed attempt to bring Mubarak down from his seat of power by military force. Without Yusuf to serve as their patron, Saud and Sabah were more eager to settle the case and made an offer to their uncle to do so. Under their terms, Mubarak would pay to them an annual salary of 2,000 Turkish Lira less whatever revenues they would receive from the lands that had been registered with the Tapu office to their father, which they would keep. Under this settlement Saud and Sabah would give up their right to claim their share of the inheritance of the Sabah lands that had remained unregistered, the two most lucrative estates at Fao and at Şūfiyah. The proposed settlement was received by the British Consul at Basra, who considered the nephews to be proposing to accept less than their legal share,⁸¹ and communicated to Mubarak through Kemball, who recommended that he take the deal.⁸² Mubarak neither rejected nor accepted the proposed settlement and the British did not press the issue any further.

⁸¹ Telegram Francis E. Crow to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [115r] (234/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x000023>

⁸² Letter Arnold B. Kemball to Mubarak b. Sabah 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [57r] (118/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x000077>

It is possible that Mubarak gave the settlement a lukewarm reception because he feared that the Ottomans would be unwilling to recognize it. If that were to have happened Saud and Sabah could theoretically have strengthened their position among the cultivators on the three properties that Mubarak would cede to them and then, once their position was secure, attack Mubarak's claim to the Fao and Şūfiyah estates in the Ottoman courts. It seems unlikely, however, that Mubarak could have had so little confidence in the prospect of the Ottomans enforcing a settlement agreement between Mubarak and his nephews but at the same time have confidence that the Ottoman authorities would enforce whatever judgement was issued by the ad hoc arbitral tribunal. It seems more likely that Mubarak either expected that the proposed settlement was an opening offer and that his nephews could go still lower or that he was likely to get a better deal out of the arbitral tribunal.

Mubarak continued to delay the proceedings after the arbitrators had all been selected. Prior to the onset of the arbitral proceedings, one of Mubarak's commercial agents, 'Abd al-'Aziz b. Salem, had been arrested and imprisoned on the charge of distributing seditious literature. On June 1, 1903, Mubarak revealed to the British that he could trust only 'Abd al-'Aziz, and neither of his two attorneys registered with the courts at Basra, with the documents necessary to prove his case.⁸³ Consul at Basra Francis Crow, successor to Wratislaw, was disappointed that Mubarak was continuing to hold up the proceedings. Crow requested the Kemball urge Mubarak to cease with the delay and instead assure Mubarak that the British would

⁸³ Letter Mubarak b. Sabah to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [119v] (243/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x00002c>

do what they could to secure the release of ‘Abd al-‘Aziz through talks between the British Ambassador at Constantinople and the Porte.⁸⁴

The impasse that Mubarak had created offered an opportunity for Crow to gain leverage over him. Crow offered to the Foreign Office and the Government of India that he be the one to hold onto the documents for safekeeping. He explained that this would both move things along and “strengthen his hand in matters of supervision.” This plan mirrors to some extent the Ottoman policy towards Mubarak. The Porte had recognized him as kaymakam but did not trust him. To gain leverage over their wayward deputy, they sought to hold his property rights to lands more firmly under Ottoman control over his head. Now, the British had offered Mubarak protection. This was done with the expectation that this would grant them influence. That it did but they wanted to have a tighter grip on the reins. The British intended to pursue a policy similar to the Ottomans by keeping hold of Mubarak’s legal papers to the same land upon which the Ottomans continued to collect taxes and maintain order. Crow’s plan was approved by both Kemball and the British Ambassador at Constantinople. Kemball meanwhile wrote a letter to Mubarak assuring him that the British were doing all that they could to secure the release of ‘Abd al-‘Aziz and, importantly, the Grand Vizier appeared to be sympathetic to the request. In the same letter, Kemball suggested Mubarak ought to entrust his documents with the British Consul at Basra.

On July 5, Mubarak rejected the proposal. He promised, however, that if he were commanded by Kemball to part with the documents and entrust them to the Consul he would do

⁸⁴ Letter Francis E. Crow to Arnold B. Kemball 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [121r] (246/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x00002f>

so. Furthermore, he informed Kemball that his arbitrators had informed him that Muṣṭafa was intractably opposed to him and that they had advised Mubarak to delay the proceedings until a new vali would be sent to Basra. It was not uncommon under the reign of Abdulhamid II for the Sublime Porte to withdraw provincial governors after they had lost the confidence of the Arab tribes in their province. In fact, Mubarak had effected such a withdrawal of Hamdi Pasha, former Vali of Basra, after he had first assumed power in Kuwait.⁸⁵

A New Agrarian Labor Dispute

Mubarak had repeatedly complained to the British about the Vali for a number of reasons, the most grave of all having been the Vali turning out Mubarak's "watchmen" from the Sabah estates. The watchmen, to use the term the British officials dealing with the case had tended to use, were armed guards that were commonly placed on properties by landlords to ensure that the landlord was paid his customary due, generally well in excess of what he was entitled to under Ottoman land laws.⁸⁶ Mubarak had accused the cultivators on the estate of having seized upon the opportunity presented by the absence of the watchmen to play tricks with the dates.⁸⁷ This had cost Mubarak a great deal. The Vali turning the watchmen out in the harvest of 1902 had cost Mubarak a great deal of revenue from the estates. Mubarak was determined that this year he would send and keep his watchmen on the estates. Crow had negotiated an agreement with Muṣṭafa to allow for this, but had further advised Kemball to advise Mubarak to send the men,

⁸⁵ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2011), 69.

⁸⁶ Keiko Kiyotaki, *Ottoman Land Reform in the Province of Baghdad* (Boston: Brill, 2019) 170-73.

⁸⁷ Letter Mubarak b. Sabah to Frederick A. Wilson 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [158v] (323/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x00007c>

who were to be armed, in a few different groups spaced out over time as not to arouse any suspicion that the men were being sent for military reasons.

Despite receiving assurances from the British and from Muṣṭafa himself that Mubarak would be permitted to keep some number of men on the estates (Crow had reported the Vali agreed to the hundred and twenty that Mubarak had first proposed while Mubarak reported that the Vali had promised him in person only up to seventy men)⁸⁸ Mubarak accused Muṣṭafa Nūrī of conspiring with the cultivators on the estates. Mubarak did not give Kemball much in the way of details as to what the conspiracy might entail, but he wrote to Kemball that he feared that the cultivators, at the urging of the Vali, would create trouble upon the arrival of the watchmen. Mubarak suggested to Kemball that the only immediate remedy to the problem of the insubordinate cultivators would be for himself to appear in person on the disputed estates during the date harvest. This appearance would prove to the cultivators, Mubarak explained, that Mubarak still had a grip on things on the estate. Impressed by this, the cultivators would not play tricks on him again with the date harvest. Mubarak wrote to Kemball he would not go unless Kemball recommended it and that he awaited his instructions.⁸⁹ Kemball was confused by Mubarak's request to leave Kuwait, as he was not aware of Mubarak ever having been in the habit of requesting permission to leave Kuwait or to visit the properties in dispute. Kemball

⁸⁸ Letter Mubarak b. Sabah to Frederick A. Wilson 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [159v] (325/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x00007e> A letter from Mubarak wherein he reports that Vali told him he could put a maximum of seventy men on the property.

⁸⁹ Letter Mubarak b. Sabah to Frederick A. Wilson 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [160r] (326/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577215.0x00007f>

consulted with Crow via telegram asking what he thought of the matter. Crow responded that he saw no issue with the planned trip.

Kemball communicated to Mubarak that there would be no problem with his planned visit. Whether or not Mubarak appeared in person is not clear from his communications with Kemball. Given that Mubarak did not complain again of being cheated out of his share of the harvest in 1903, it would appear that Mubarak did not encounter the same trouble with the cultivators that he had encountered in the harvest of 1902. The deal that Crow had brokered with Muṣṭafa Nūrī appears to have worked. No doubt that had once more impressed upon Mubarak the value of having British protection. While the Ottomans had enough authority over his properties that he could not do as he pleased there, the Ottomans could be brought to terms with him if the British would champion his cause, as had been the case with Crow's discussions with Muṣṭafa Nūrī.

The Arbitration Concludes

In August 1903 the arbitral proceedings finally bore fruit even without the release of 'Abd al-'Aziz and without Mubarak handing over his documents to the British consul.⁹⁰ Mubarak agreed to accept a proposed settlement. Under the settlement Saud and Sabah would continue to enjoy the same ownership of the properties registered in their fathers name of which they had continued to be in possession up to that point. In addition, Saud and Sabah would get their share of the Şūfīyah estate plus an additional portion of the Şūfīyah estate equal in value to

⁹⁰ Letter Mubarak b. Sabah to Acting Vali of Basra 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [286r] (578/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577216.0x0000b3> 'Abd al-'Aziz remained imprisoned months after the end of the arbitration.

what they otherwise would have inherited of the Fao estate. Effectively, Mubarak exchanged his interest in the Şūfīyah estate for his nephew's interest in the Fao estate. Under this settlement Saud and Sabah would no longer have any business at Fao and Mubarak could more easily prohibit their communication with the cultivators that lived there.⁹¹ Saud and Sabah accepted the proposed settlement as well. In addition they, at the urging of their uncle, agreed to exchange all their properties in Kuwait in exchange for a cash payment equal to their value.⁹² Crow, after discovering that Mubarak had valued the Kuwaiti properties at 700 Turkish Lira, believed that Mubarak had short-changed his nephews. Crow recognized, nonetheless, that Saud and Sabah were not disposed to dispute the valuation, however, so he let it pass.⁹³

CONCLUSION

When first confronted with the British interest in the case, Sultan Abdulhamid II was incredulous. Though he was aware at this point that the British and Mubarak had concluded some sort of understanding resembling a protection agreement, he could not understand why the British were interested at all in such an “internal and personal matter.”⁹⁴ The British interest certainly had very little to do with the outcome of the case. Wratishaw had been willing to leaving

⁹¹ Letter Francis E. Crow to Nicholas R. O’Conor *Koweit Shaikh’s Fao Properties 1903 and 1904* p. 418 <https://www.qdl.qa/archive/81055/vdc_100023577216.0x00001d>; Letter Francis E. Crow to Arnold B. Kemball *Koweit Shaikh’s Fao Properties 1903 and 1904* p. 456 <https://www.qdl.qa/archive/81055/vdc_100023577216.0x000039>

⁹² Letter Francis E. Crow to Mubarak b. Sabah 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [203r] (412/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577216.0x00000d>

⁹³ Letter Francis E. Crow to Nicholas R. O’Conor 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [210v] (427/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577216.0x00001c>

⁹⁴ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge, 2006), 141.

the matter in the hands of the nizamiye court in Basra. On February 23, 1903, his successor Crow wrote to the British Embassy at Constantinople stating that he supposed that the British “don’t care about the details of the arbitration as long as they come to a fair and unequivocal arrangement.”⁹⁵ Regardless of how much of the property ultimately ended up in the hands of Mubarak or in the hands of his nephews, the British interest in a good share of the dates being exported to destinations within the British Empire, formal and informal, would no doubt be preserved so long as peace were preserved.⁹⁶ The particular British interest in resolving the case would then appear to be the same as the Ottoman interest: maintaining the peace in Basra and among and within the Arab tribes in order to encourage agricultural development.

Disputes between tribes, or within one shaykhly dynasty, would not stay out in the desert. They tended to come into the settled areas of the Caliph’s well protected domains, and threatened there to disturb the established public order. To protect that, the empire had an interest in resolving the disputes of Arab tribes to the satisfaction of the disputants before they transformed into armed conflict between the tribes.⁹⁷ This was no less true in southern Iraq than it was anywhere else in the Arab provinces of the empire. That role had been fulfilled, though not always successfully, by the Ottomans for decades before the dispute between with the Sabah had broken out. Because Mubarak had contracted with the British, the dispute couldn’t be addressed without broaching the odd position of Kuwait within the Ottoman Empire. In effect it was much

⁹⁵ Telegram Francis E. Crow to Nicholas R. O’Conor 'File 53/11 I (D 10) Koweit [Kuwait] Shaikh's Fao Properties 1903 and 1904' [81r] (166/624), British Library: India Office Records and Private Papers, IOR/R/15/1/483, in Qatar Digital Library <https://www.qdl.qa/archive/81055/vdc_100023577214.0x0000a7>

⁹⁶ Gökhan Çetinsaya, *Ottoman administration of Iraq, 1890 - 1908* (London: Routledge), 14; Hala Fattah *Politics of Regional Trade in Iraq, Arabia, and the Gulf 1750-1900* (Albany, State University of New York Press), 69-71.

⁹⁷ M. Talha Çiçek, *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press University Press, 2021), 252.

more independent of the Ottomans than tribes further inland because of its agreement with Great Britain. This agreement, however, meant that the Ottomans were willing to try to undermine Mubarak's authority in ways that normally Arab shaykhs, including Mubarak in the past, had been immune. Up to a point, when the Ottomans had agreed to treat Mubarak as any other Arab shaykh, dealing with him on the basis of negotiation, and Mubarak had been willing to work with the Ottoman authorities on that basis to settle the dispute between himself and his nephews. When the Ottomans attempted to assert the jurisdiction of their courts over him, this was a breach in the status quo he could not accept and so he turned to his protectors the British to restore the status quo ante.

The British gave advice to Mubarak and lent him their offices in order to try to grant him a number of advantages, such as to try to secure the release of his agent at Basra. Nonetheless, the British almost appear to be a-partisan with respect to the dispute between Mubarak and his nephews in their internal communications. Keeping Mubarak and the Sabah properties out of the Ottoman courts was not a policy priority for the British officials. Much more important to them was the preservation of peace through the achievement of a settlement with which all parties could be satisfied. To achieve that result the British took a cooperative stance and encouraged Mubarak, rather vigorously at points, to comply with Ottoman procedure rather than stall.

In this case the British had worked to manage Mubarak and keep him committed to the arbitration that proceeded under the eyes of the Ottoman Vali of Basra. Superficially it would have appeared at the time that the Ottoman role in delivering justice to the members of the tribes had been maintained (or even possibly expanded given that this dispute had entered the nizamiye

courts for a time, an oddity for an intra-familial tribal dispute).⁹⁸ There is truth to that but looking at the extensive correspondence between the British and Mubarak reveals the indispensable role that the British had played in resolving the conflict as well. In a moment of resurgent authority over the Sabah, the Ottoman state had succeeded in maintaining and even intensifying its juridical authority over their disputes, but, indicative of its weakening position in Kuwait generally, it had only been able to do so with the cooperation of Mubarak's protectors the British.

⁹⁸ M. Talha Çiçek *Negotiating Empire in the Middle East: Ottomans and Arab Nomads in the Modern Era, 1840–1914* (Cambridge: Cambridge University Press, 2021), 233-34