Honor As Social Contract

Leslie Peirce, New York University

Honor in its usage today, in English at least, is typically defined by its constituent attributes: Dicitonary.com defines it as "honesty, fairness, or integrity in one's beliefs and actions". Reputation on the other hand is a relational concept: "the estimation in which a person or thing is held, especially by the community or the public generally". It takes the community to bestow or deny good reputation.

Explicit terms for honor seldom occur in sources from the 16th and first half of the 17th century, the period I am interested in. (When they do occur, the familiar terms *`ırz* and *namus* tend to be used.)[1] It seems somewhat risky, therefore, to use the word "honor" in talking about sensibilities and motivations in this period, at least without working from the ground up to observe how honor was conceived and deployed. On the other hand, reputation was palpably present in the talk and action of Ottoman subjects—as was the effort to maintain it, or to damage that of another person. To put this another way, looking at reputation and how one gained a good or bad one is plausibly the most productive avenue for understanding how people in early modern Ottoman times understood honor.

I *do* use the term "honor" in this paper, but please be thinking of it as a relational process, where one person's gain may spell another's loss, or where there may be an attempt to maintain equilibrium among individuals, that is, to recoup damaged reputations for all parties involved in a troubled situation. Studying honor as a relational phenomenon—the process of censuring or validating a person or group's actions or inactions—allows us to appreciate the capacity of Ottoman subjects to talk to each other about honor and also, importantly, of Ottoman authorities and subjects to do so.

[1]On terminology for honor and related phenomena, see my "Abduction with (dis)honor: Sovereigns, bandits, and heroes in the Ottoman world", *Journal of Early Modern History* 15 (2011): 311-329.

The vocabulary of honor

Before discussing reputation and the relevance of social contract, I have chosen a few cases and incidents to illustrate some ways in which people thought and spoke about honor. They invoked honor in a variety of verbal registers. When the little daughter of Muhsin threw stones at the house of Haci Mansur, the latter attacked Muhsin both physically and verbally. He grabbed Muhsin's beard and yelled, "Aren't you a man? Why do you bother wearing a turban? Discipline your daughter!"[2] Mansur had invaded two bodily zones of honor, the beard and the head covering. Muhsin found the insults unacceptable, it seems, since he took the trouble of having Mansur's words and deed recorded at court. Both men apparently made their point in a public manner.

Because what people said to and of one another could be actionable, court registers of this period are full of verbatim statements. Almost always statements were recorded in the Turkish past tense that implied eye or ear witness (*dedi,* "he said {and I know because I was there}") rather than in the past tense that implied second-hand knowledge (*demiş,* "he said {or that is what I am given to understand}"). Rather than fill this paper with multiple examples of statements that have survived through court records, let one more suffice—the words of the most assertive young woman my research has turned up. But Fatma, a resident of Harput, appears loud-mouthed only because the authorities presumably found her statements and their tenor worthy of recording.

The crux of the story is Fatma's engagement to Mevlut. He has given her the required dower, or part of it at least. But six years have passed and no marriage has happened; moreover Mevlut has married someone else. What brings it all to a head in 1631 is unclear, although what *is* clear is the discord between Fatma and her father. Apparently he confines her to the house, so representatives from the court come to her and listen as she speaks from its threshold. Here is what she yelled out to them, or at least that part of her statement that the judge considered necessary to record:

> My father doesn't let me out of the house. I am my own agent [*başıma vekilim*], and I will not marry Mevlut. I take comfort from my clan and my relatives, and I appoint

[2] Gaziantep Şeriyye Sicili (1540-1541) 2: 132b,c. The Gaziantep and Harput court records (şeriyye sicilleri) are housed in the Milli Kütüphane (National Library) in Ankara.

> Mehmed my agent in this matter [of marriage]. Whoever I consent to marry, let that person make a contract of marriage for me. This Mevlut gave me a linen cap and a box, and not much more.[3]

Fatma's is an audacious break with a father's authority. It is hard to know how old Fatma is, but given the long engagement, she could be into her twenties, an unmarried yet adult female, at risk of not being able to find another suitor, especially one she would find satisfactory. In other words, if (dis)honor is at stake in this incident, it is the socially isolating status of the spinster. Out of anger, worry, desperation or all of these, Fatma takes the daring step of asserting her legal autonomy. She also makes it clear what she thinks of the Mevlut's gifts.

The next example is the testimony of a man who has come to court to nullify the inadvertent divorce of his wife when he was delirious with illness. It suggests the manner in which judges and court scribes might transform words spoken into compact written record. Derviş Ali must now speak as a man of sobriety, distancing himself from the aberrant condition, but his words to the judge appear to echo, perhaps deliberately, the incoherence experienced during the sickness. Men simply did not "speak" like this at court.

> Some time ago, when I was ill and confined to bed, I apparently made Mehmed b. Hizir my proxy to divorce the woman Nigâr bt. Yusuf, who is my wife, with a triple divorce. Now I don't have any knowledge or any memory of this, I don't know what I said when I was ill, and I wasn't thinking about getting divorced, and [I didn't mean to turn us into divorced people].[4]

Or perhaps it was the judge who thought the record should reflect Derviş Ali's state when he spoke his ill-fated words to the proxy Mehmed. This incident draws our attention to the reality that the court record, which I have just described as reporting speech verbatim, may actually be the judge and scribe's approximation of an individual's vernacular, slightly tailored to suit the rules of acceptable and effective testimony.

How was honor and dishonor described in narrative mediums? The next two examples, one from the history of Ibrahim Peçevi and one from the Register of Important Affairs (*Mühimme Defterleri*) kept by the sultan's Imperial Council, are both indirect critiques of the

[3] Harput Şeriyye Sicili 181: 4a (1630-1631).
[4] Gaziantep Şeriyye Sicili 161: 350b.

weak or incompetent government that prevailed during the 1620s and the first years of the 1630s (Fatma's Harput was also experiencing disorder at the time). Both employ stories of the dishonoring of women to make the point about the sultanate's inability to protect the honor of its subjects.

Peçevi related a story that took place in Tokat, winter headquarters of the Ottoman army during its eastern campaigns The story, which he heard first hand, concerned the daughter of a poor peasant. The father had been forced to sell her to the village grandee in order to pay off debts incurred by the financial burdens imposed by the latter. The grandee then proceeded to auction the girl off in the streets of Tokat. Peçevi deplored the fact that this could happen at a time when the grand vezir, the Janissary commander, and the commanders of the imperial cavalry troops were all resident in Tokat. "Things had come to such a pass," he wrote, "that even with so many great men in the city supposedly keeping order, not a one prevented this or was capable even of speaking out against it."[5]

The incident recorded in the Imperial Council's Register echoed Peçevi's implication that delegates of the sultan's authority were powerless because he was powerless. In 1630, a judge who lived in Göynük, Mevlana Mustafa, called in a loan of 50,000 silver coins from a certain Hüseyin, whereupon Hüseyin used his action as a pretext to carry off the judge's wife Emine. He then handed her over to one of his followers "to use" (for sex). The incident was relayed to Istanbul in a petition authored by the city's principal judge. His purpose was to appeal to the government to send forces against the man he described as a bandit captain of a gang of forty. Implicitly chiding the government for the disorder then rampant in parts of Anatolia, the judge pointedly noted that "not one of the leading men of the province was capable of rescuing her".[6] The dishonor of Emine, her husband Mevlana Mustafa, and the hapless dignitaries of the province, like the dishonor of the Tokat protagonists, was the dishonor of the state.

---

[5] Ibrahim Peçevi, *Tarih-i Peçevi,* (Istanbul, 1281-1284/1864-67) 2:402.

[6] *85 Numaralı Mühimme Defteri (1040-1041/1630-1631)* [Register of Important Affairs No. 85, 1630-1631] (Ankara, 2002), Order #381c (3 June 1631), 232-233.

Honor as social contract

I have proposed to think of honor as a social contract in this paper. This was not my own idea; rather, a graduate student in one of my classes last fall used the term in a response paper to an issue of the *Journal of Early Modern History* devoted to the theme "honor and the state", and I found it an idea intriguing to think with.[7] The term "social contract" of course has a long history in European thought; it is not my purpose to impose the term on Ottoman dynamics but rather to use it as an entrée into thinking about the contractual habits of early modern Ottoman communities.

Ottoman intellectuals interested in law and government would have found much to recognize in Hugo Grotius' *De Jure Belli ac Pacis, On the law/rights of war and peace,* or at least in its prolegomena, in which Grotius lays out the foundation of his case for international law. I cite from this particular work because it appeared in the period considered here (1625), in advance of Enlightenment thinking, and because Grotius recognizes the power of "custom and tacit compact", so integral to the mentality of the subjects of the Ottoman empire. "The mother of right—that is of natural law [*jus*]—is human nature;" he says, "for this would lead us to desire mutual society, even if it were not required for the supply of other wants. And the mother of civil laws is obligation by mutual compact." Like the Ottomans, Grotius does not leave all up to humankind, he is concerned to reconcile natural law with "sacred history": it is God who authors *jus* in humans.[8]

Contractual practices were embedded in the socio-legal culture of the early modern Ottoman world. In addition to the expected (property sale, purchase, rental and loan contracts) were engagement and marriage, and one might add divorce, with its entailment of financial support and custody agreements. The widespread practice of *sulh*—settling disputes by the arbitration of neutral individuals—could involve up to four parties to achieve the agreement of reconciliation: the two disputant parties, the arbiters, and the judge, who oversaw and sanctioned the final agreement. In the court records I have studied, *sulh* cases are the sole locus of overt religious reference: they were sometimes recorded along with the hadith "*el-sulh*

[7] Thanks to Laura Garland for permitting me to adopt her use of social contract.

[8] Hugo Grotius, "The Rights of War and Peace", *Old South Leaflets #101* (Boston, 1902), V:1-24 (available through Hathi Trust, www.hathitrust.com).

hayırdır" ("peacemaking is a benefaction"). Perhaps the hadith enshrined the Prophet Muhammad's original communal function as an arbiter (*hakim*). Respect for *sulh* was further enshrined in the custom of calling arbiters *musalihun,* "peace-makers", or "Muslims", meaning morally upright men.[9]

"Contractualism" may not fit all habits that bound people together, willingly or not, in this period. "Mutualities" may be a better way to think about some. The term *hak*—one's share, right, or due justice—was not uncommon, suggesting that individuals expected, ideally, to be treated fairly, by others, by the law, and by the state. Another common practice that drew people into a bonded relationship was *kefalet*, mutual guarantorship—that is, the act of appointing or acting as guarantor or surety for another's whereabouts, debts, or crimes. If *hak* could be an adversarial reciprocity, *kefalet* was a consolidating reciprocity, although one often forged in circumstances of adversity.

Here is the record of the *kefalet* formed by six Armenian men of Aintab before the judge. They acted on behalf of the whole Armenian population of the city as well as Armenians in other areas of the province:

> If any harm or damage is done by any Armenian from our district, we collectively assume responsibility for it. And we assume responsibility for those [Armenians] who come among us, those from outside. Henceforth if anything contrary is done by any of our community, hold [the six of] us accountable.[10]

The specific impetus for this oath of unity was probably an investigation one week earlier by the local governor's men into a crime allegedly committed within the Armenian community five years earlier (the murder of a convert to Islam). It was time to unite defensively.

Almost all agreements were null without personal witness, both to the veracity of constituent elements in the agreement and the process of its negotiation. It is clear that the presence of the Ottoman regime, whose administrative apparatus had only recently arrived in its newest conquests, encouraged paper documentation of contracts and attestations to the

---

[9] Sulh is discussed further in Chapter Five of my *Morality Tales: Law and gender in the Ottoman court of Aintab* (University of California Press, 2003); *kefalet,* below, is discussed in Chapter 7.

[10] Gaziantep Şeriyye Sicili 161: 173a ("*bizim mahallemizden Arameniyâ taifesinden zarar ve ziyan olursa külliyen kefil olduk diyüb ve bizim aramız[a] gelüb hâriçden gelenlere dahi kefil olduk. Ba`d el-yevm aramızdan bir muhalef iş olursa, bizden bilin....").*

validity of claims. But the bedrock of community deliberations continued to be witnessing. Being there, observing, noting, and remembering was apparently an ingrained way of life. As we will see, personal witness was crucially important to the manner in which reputation was negotiated in local communities.

All this is not to imply that the Ottoman empire was a self-regulating society and that the solutions to all problems were negotiated. Force and the sword of justice were liberally applied by the authorities (including self-appointed authorities such as tribal lords and the rebel pashas of the 17th century). But the *pax Ottomanica* was a recent experience for many communities whose history had more often been one of political decentralization and contested sovereignty than of sustained rule by a competent sovereign power. Roy Mottahedeh has eloquently pointed out that such communities yearned not to be free but to be ruled, especially the nobles and elders among them.[11] In the sometimes long interstices between imperial overlordship, communities were left to their own devices, requiring them to devise mechanisms for self-regulation.

Mottahedeh gives the example of Damascus in the late 10th century as a city in search of a ruler. The Fatimid governor had fled in the face of Buyid advance, and the *ahdath*, gangs of young men, had taken control of the city. The episode is eerily reminiscent of militias who have recently done the same in Syrian cities that have fallen bereft of any rational administration.[12] My point here is that it did not take the Ottoman sultanate to introduce the mechanisms for regulating reputation that I will discuss in the next section. The *pax Ottomanica*, with its power to enforce decisions and look out for those especially at risk, could of course enable such mechanisms to work more effectively. But in places like Tokat and Göynük in moments like the "time of troubles" of the 1620s and 30s, even the state's officials could prove powerless.

Finding equilibrium

The last case I want to talk about is from the court record of Aintab of 1540-1541.[13] It is a situation in which two parties suffer personal dishonor. I go into some detail here, because the

[11] Roy Mottahedeh, *Loyalty and leadership in an early Islamic society* (Princeton, 1980), 175-6.
[12] New York Times, "Syria Military Shows Strain in a War It Wasn't Built to Fight", 3/12/2013.
[13] This episode is discussed at greater length in my *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (U. California Press, 2003).

case illustrates several dynamics relating to reputation and how it is constituted—among individuals, between the individual and the community, between the community and the authorities (here, the government-appointed judge and his court). To our eyes, one party—the father-in-law, Mehmed, who has allegedly raped his young son's young bride—looks suspiciously guilty; the other party—the child bride Ineh—appears to be an innocent victim. But the court, or rather the mechanisms of the local socio-legal culture, approach the case as one of double reputations at risk—his because Ineh publicly accuses him of rape, hers because it is now public knowledge that she has been sexually defiled, by her own admission. The outcome of this case is an example of reputational equilibrium—in other words, the community and the court and intervene to salvage some semblance of honor for all involved, or, put another way, to limit the damage to both parties' standing in the community. Neither Mehmed nor Ineh is the clear winner or loser in this affair.

How does equilibrium come about? There is no proof, no eye witness to the rape; Ineh's accusation is all that there is. To test the validity of her allegation, that is, the likelihood that Mehmed, who denies the rape before the judge, could have done such a thing, the court holds an official investigation into his reputation among the community. Their consensus is entered into the court record: "When the people of the village were questioned [about Mehmed], they said: `Mehmed has been together with us from the time we were all children. We have never observed or heard of any wrongdoing on his part. We consider his people as friends.'" They know him well, he is not a bad man, and his whole family are worthy of friendship.

It seems Ineh has lost. But reputation is a tricky business in Aintab. It appears to have been a basic assumption that reputation was vital social insurance even for the most obscure person in the community, a little peasant girl like Ineh. Ineh of course has family, presumably at court with her, who are also vulnerable to dishonoring; they may actually have propelled their daughter to court. Why the judge has allowed Ineh's case to be heard—he could have refused it or helped to settle it out of court— is presumably the recognition that damaged reputations in conflict are not good for the future tranquility of the community. [Note, for the record, that the shame of Ineh's husband, Mehmed's son, is ignored in the adjudication of the incident.]

Now for the tricky business. Ineh's accusation may not get Mehmed judged guilty, but at the same time it does not bode well for Mehmed in the long run. As we have seen, people of

the time were charged with archiving memory of an individual's personal conduct. Mehmed has now acquired a *töhmet,* a latent blot on his reputation. If he is accused or suspected again, the community will cite this incident and testify that "once he was accused of rape". Going into the court hearing, Mehmed was presumably *töhmetsiz,* unblemished in reputation, but now he is *töhmetli*, a man whose morals may be suspect.

Testimony like that of the villagers regarding Mehmed's good reputation is not infrequent in the court records. At least in this region, there appears to be regular reliance on the character record of an individual kept by neighbors and acquaintances. It is more like a pre-criminal record than the criminal record we are familiar with today. Communal surveillance is not merely a universal small-town habit, it seems, but a quasi-legal responsibility in AIntab. Here are two examples of "töhmet-ing" at work:

- When Canpaşa, a married peasant woman, accuses Hamza of entering her house at night, climbing into her bed, and assaulting her, Hamza denies. Investigation among the people of the village shows that he has been similarly accused with regard to another woman in the village and therefore has a *töhmet*. Hamza is sentenced to punishment by the judge.[14]

- Mezid brings a case against Hüsniye, wife of Şeyhi, saying that when he was staying at their house, Hüsniye came to him in bed after Şeyhi had fallen asleep. Hüsniye's character is investigated, and three men of the neighborhood testify that "we have never known any ill conduct on her part, and we cannot say she is prone to bad behavior."[15] (Note that a woman could be guilty of sexual aggression, not only compromising her male target but also her husband.)

The töhmet system, if we can call it that, was most likely a popular response to the strict evidentiary rules of Sharia. As scholars commonly recognize, sexual irregularity—adultery, fornication, rape, and sodomy—was hard to prosecute because of the Sharia requirement of four witnesses who had been close-up observers of the deed. Governments and communities, however, found ways to compensate for the strictness of Sharia. Ottoman practice allowed hearsay evidence of adultery and rape, at least in this period. And people used slander as a compensatory weapon of censure, for we find them hauled into court for making accusations

[14] Gaziantep Şeriyye Sicili 161: 28a.
[15] Gaziantep Şeriyye Sicili 161: 164a.

that they clearly could not substantiate. When they slandered intentionally, it was apparently because they could alter their target's reputational standing. Presumably, they paid the heavy penalty for slander in order to do so.

Losers could also win, in other words. One might have to break the law, but one might successfully assert one's own moral innocence and rectitude by maligning one's antagonist. Here is an example, also from the Aintab court records. The woman Hadice travelled from Aleppo to Aintab to accuse Abdulkadir, scion of an Aintab merchant family, of entering her house in Aleppo at night and raping her. She was unable to provided witnesses, or at least she brought none with her on the journey to the Aintab court. Hadice lost her suit when Abdulkadir took an oath of innocence.[16]

Why make the trek only to lose the case and presumably pay a hefty fine for sexual slander? This appears to be another case of double reputations at risk. Hadice followed the same strategy as Ineh did: create a töhmet against the alleged rapist and repair one's own honor by announcing to one's audience—kin, neighbors, community—that one had resisted the illicit sexual act. Perhaps predictably, women had to work harder to protect their honor, exposing sordid events to keep their reputations as intact as possible. (Abdulkadir, as it turns out, came from a quarrelsome family. His chronically litigious sister Esma took him to court for slander (he allegedly called her a whore), but once again his oath of innocence stood; as the court minutes noted, Esma "was unable to produce the requisite number of witnesses" to his cursing.[17])

At least in the region I have studied, popular practice made reputation a measurable phenomenon. The töhmet system allowed local individuals to insert themselves into the process of adjudicating morals. It allowed females, more often victims than perpetrators of humiliating acts, to find a way to tell their side of the story, although recouping even a shred of their tarnished honor might come at a literal cost. For chronic abusers, it had the advantage of gradual criminalization: töhmet was an admonitory as well as a punitive pressure, somewhat akin to the "three strikes and you are seriously guilty" laws that began to proliferate in the U.S. in the 1990s. Without much more work in the Ottoman court records and cognate sources, it is

[16] Gaziantep Şeriyye Sicili 2: 231b.
[17] Gaziantep Şeriyye Sicili 2:47b.

hard to say how many töhmets it took to get one convicted, or whether this mechanism was actually practiced across the empire.

Afterthought

In writing about Hadice and Ineh, I cannot help but be reminded of the allegation of rape in 1991 against William Kennedy Smith, nephew of John, Robert and Edward Kennedy. Smith was tried and acquitted on a charge of rape in a trial that was national news. Here are the facts, as relayed by Wikipedia:

> The incident began on the evening of Good Friday, March 29, 1991, when Smith, 30 years old, was in a bar in Palm Beach, Florida, with his uncle, Senator Ted Kennedy, and his cousin Patrick Kennedy. Smith met a 29-year-old woman, Patricia Bowman, and another young woman at the bar. The four then went to a nearby house owned by the Kennedy family. Smith and the 29-year-old Bowman walked along the beach. Bowman alleged that Smith raped her; Smith testified that the sex was consensual. Although three women were willing to testify that Smith had sexually assaulted them in incidents in the 1980s not reported to the police, their testimony was excluded. Smith was acquitted of all charges.[18]

A friend of mine, who was then editor on the national desk at the Washington Post, points out that "this was a time when the media and the country were just starting to talk about political leaders' private lives." Before the Bill Clinton-Monica Lewinsky affair, she notes, the media generally ignored or repressed reporting that would damage the reputations of the powerful—except for when misconduct was "flaunted--Wilbur Mills driving into the Tidal Basin, Gary Hart being photographed with [Donna Rice] in his lap aboard a boat named Monkey Business. Then it was the men whose honor was stained: the women were presumed to be prostitutes."[19]

Thinking about Ineh, Hadice, and the three women who had not spoken publicly about their alleged rape before the famous trial prompts some questions. How many females in 16th-century Aleppo and Aintab kept silent about their violation, or were forced to keep silent? And

---

[18] http://en.wikipedia.org/wiki/William_Kennedy_Smith I have made minor edits in the Wikipedia text.

[19] Personal communication from J. Omang, March 14, 2013.

how many females in Greater Syria and elsewhere were punished by vigilante justice for their sullied state? The Imperial Statute book (*Kanunnameh-i Osmanî)* issued by Suleyman around 1540 admitted that government authorities were not able to suppress the custom of honor killing; the statute book could only attempt to curtail the number of scenarios that the sultanate would tolerate. On the other side of the balance, something like the töhmet system might have enabled the three U.S. women to get their testimony admitted at the 1991 trial.

The William Kennedy Smith trial offers another lesson, namely, that a töhmet may stick as a result of the publicity potential of trials. You might now remember the Smith trial, not just because I remember and have mentioned it here, but also because websites like Wikipedia rake up detritus from the past, enabling it to become fresh fodder for moralizing commentary. On other hand, the recent career of Bill Clinton has been noteworthy for its exculpatory public service and appears to have largely rehabilitated his reputation. We can only speculate whether their blemished reputations dogged Ineh, Mehmed, and others after their court appearances or whether scrupulous post-trial conduct helped to restore their honor.