AGRARIAN CHANGE IN BOSNIA UNDER HABSBURG RULE: 1878 – 1914

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DECLARATION OF ORIGINALITY

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ABSTRACT

Agrarian Change in Bosnia Under Habsburg Rule: 1878 – 1914

This study aims to examine the changing nature of the agrarian relations in Habsburg-occupied Bosnia. To this end, it analyses the administrative and legal practices of the Austro-Hungarian administration regarding landed property, land tenure and taxation of agricultural production. This study mainly focuses on the legislation which was drawn up by the Austrian lawmakers especially for Bosnia and is available on the official web site of the Austrian National Library. In addition to these digitised sources, this study makes use of the reports which were produced by the Common Ministry of Finance, in whose jurisdiction Bosnia laid, and which are now preserved in the Austrian State Archive in Vienna. The widely held view in the historiography is that the Austro-Hungarian administration adopted and implemented late-Ottoman land legislation and thus avoided any profound change in the existing agrarian structure. By contrast, this study argues that by reinterpreting and applying late-Ottoman land law in particular ways and by supplementing them with new laws the Habsburg administration indeed achieved a fundamental transformation in the agrarian relations. Furthermore, this study argues that the main aspect of the Habsburg administrative and legal practices regarding property and rights in land was the restitution of state ownership in “land and soil” in Bosnia.

ÖZET

Habsburg Yönetimi Döneminde Bosna'da Kırsal Değişim: 1878 – 1914

Bu tez Habsburg işgali döneminde Bosna'da tarımsal üretim ilişkilerindeki değişimi incelemektedir. Bu amaçla Avusturya-Macaristan yönetiminin toprak üzerindeki mülkiyet ve üretim ilişkileri ile tarımsal üretimin vergilendirilmesine yönelik idari ve hukuki uygulamaları analiz edilmiştir. Bu tezde, Avusturya Milli Kütüphanesinin dijital ortamındaki dönemin Avusturyalı hukukçuları tarafından Bosna için düzenlenmiş olan mevzuat incelenmektedir. Bu kaynaklara ilave olarak Bosna'nın idaresinden sorumlu olan Avusturya- Macaristan Müşterek Maliye Bakanlığınca hazırlanan Avusturya Devlet Arşivindeki idari raporlardan da geniş ölçüde faydalanılmıştır. Literatürdeki genel kanı, Avusturya-Macaristan yönetiminin Osmanlı arazi hukukunu benimseyip uyguladığı ve bu yüzden tarımsal yapıda önemli bir değişime yol açmadığı yönündedir. Ancak bu çalışma, Habsburg yönetiminin Osmanlı arazi kanunlarını farklı yorumlayıp uyguladığını ve bunlara yeni kanun ve düzenlemeler ilave ederek toprak mülkiyeti ve tarımsal üretim ilişkilerinde köklü bir dönüşüme yol açtığını savunur. Bu çalışmada ayrıca Habsburg yönetiminin toprak rejimi ve mülkiyet haklarına yönelik idari ve hukuki uygulamalarının en önemli yapıtaşının toprak üzerinde devlet mülkiyetinin inşası olduğu gösterilmiştir.

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CHAPTER 1

INTRODUCTION

The aim of this study is to examine the agrarian change in Habsburg-occupied Bosnia between the years 1878 and 1914. In the days preceding the occupation, to alleviate the peasants' burden and to improve the living conditions of the population was claimed to be a part of the civilizing mission of the Habsburg government. While the attitude of the government was entirely different following the occupation of the Ottoman province by the Austro-Hungarian troops, the policies and practices of the Habsburg rulers had a profound impact on its agrarian structure. This study aims to examine the regulations and practices regarding landed property, land tenure and taxation of agricultural production and attempts to understand the resulting change in the agrarian structure of Bosnia when it was under Austro-Hungarian rule.

Long before the occupation, the Austrian statesmen were interested in the agrarian relations in the province and they regarded the plight of the Christian cultivators as the real cause of perpetual uprisings and almost chronic state of civil war in Bosnia. There, most of the arable land was held by Muslim landowners and the cultivators, who were mostly of Orthodox origin, tilled these lands in return for a bundle of obligations which they had to render as ground rent. After the outbreak of a large-scale rebellion in 1875 in Herzegovina, Count Julius Andrassy, the Habsburg foreign minister, called for a comprehensive agrarian reform which would secure the land to its cultivators free of produce-levies and labour services. In 1878, at the Congress of Berlin, Andrassy expressed the opinion that the Ottoman government was incapable of carrying out such a reform and providing a solution to the *question agraire* (agrarian question) as he called it. His opinion was respected by the other

powers and the mandate of occupation was accorded to Austria-Hungary. However, following the occupation, the proposal for an immediate enfranchisement of the land was no longer approved in Vienna.[1] In a decree issued by the Common Ministry of Finance in whose jurisdiction Bosnia lay, the authorities were ordered to set themselves against any radical interference with the agrarian relations. It was deemed that the property rights of the landowners should be respected and former agrarian relations should be maintained. Therefore, part of the aim of this study is to examine the change in the attitude of the Austrian statesmen towards the so-called agrarian question in order to understand the concomitant transformation in its context and nature.

In the works produced by contemporary Austrian statesmen and observers about the government policies regarding the agrarian relations, the predominant view is that the Austro-Hungarian administration maintained the Ottoman agrarian institutions and avoided any profound change in the traditional agrarian structure. In accordance, the legislative changes regarding land tenure were of a formal nature and did not affect the actual conditions on the ground. This view presented in the works of Austrian statesmen is dominant in the historiography of the region as well. According to Michael Palairet, since Bosnia's agrarian arrangements were "a matter of extreme political sensitivity" and since the Habsburg government was not "in the business of expropriating landed property", the authorities continued to administer the Ottoman agrarian institutions. The agrarian relations continued to be based on the Bosnia Regulation of 1859 which basically legalized the existing practice in land tenure relations at the time. The administration left the landowners in theoretical possession of their lands but fixed the amount of the dues to be surrendered by the cultivators. On the other hand, the government promoted the gradual dissolution of

[1] Grünberg, *Die Agrarverfassung*, 51-54.

the *çiftlik*s (landed estates) by encouraging the cultivators to buy the land they cultivated and offered credit to the cultivators to speed up land redemptions.[2] John Lampe argued that maximizing tax revenue to defray the costs of military occupation was always the major Habsburg motive in Bosnia. Thus, the government did not intend to reform the system of land tenure and the landowners continued to collect sharecropping rents from cultivators on their land.[3] Similarly, Edin Radusic claimed that the Habsburg government did not lean towards a radical change in the agrarian relations, but rather towards their continuation through the application of Ottoman agrarian legislation, namely the Ottoman Land Code of 1858 and the Bosnia Regulation of 1859. Echoing the official view that the underlying problem in agrarian relations at the end of Ottoman rule was the lack of respect for the legal basis that regulated them, Radusic maintained that the innovations brought by the Austro-Hungarian government consisted chiefly in actually applying and enforcing the Ottoman regulations in order to resolve agrarian disputes impartially. Austria-Hungary, as a legal state, "could not or did not wish to violate the right of the Muslim landowners" and to dispossess them.[4] Furthermore, the administration sought to gain the political loyalty of the Muslim part of the population on maintaining the existing patterns of land ownership. On the other hand, the government enforced the Bosnia Regulation of 1859 and protected the cultivators from previous abuses on the part of the landowners. The government attempted to improve the economic conditions for the cultivators with a range of measures as

[2] Palairet, *Balkan Economies*, 203-208.
[3] Lampe and Jackson, *Balkan Economic History,* 284-285.
[4] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 140.

well.[5] From the beginning until the end of the Austro-Hungarian rule, as claimed by Radusic, the administration "respected and somewhat modified" existing Ottoman agrarian laws while "the essence of agrarian land tenure relations remained unchanged."[6]

By contrast, this study argues that the Austro-Hungarian administration made and implemented important regulations regarding agrarian relations and taxation of the agricultural production which had a profound impact on the distribution of land ownership, forms of land tenure, and the legal, social and economic relationship of the peasantry to the land. Indeed, Eric Hobsbawm argued that the 19th century witnessed a radical transformation regarding landed property, land tenure, and agriculture in Europe and in different parts of the world. This involved various regulations introduced by governments aiming the transformation of the traditional agrarian systems and rural social relations which were regarded as an impediment to economic development and rational utilisation of land. The legal revolution, as conceptualized by Hobsbawm, entailed the abolition of the institutions and arrangements commonly and generically known as feudalism primary among which were different forms of compulsory labour. Its major objective was to install markets in land and labour through turning land into a commodity freely purchasable and sellable and through creating a class of landless wage-labourers from the traditional agrarian peasantries.[7] The impact of the administrative practices and legal reforms of the Habsburg administration in Bosnia can be analysed in the framework of the legal revolution as conceptualized by Hobsbawm. In contrast to the argument that there

[5] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 158.
[6] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 177.
[7] Hobsbawm, *Age of Revolution*, 183-203.

was a continuity in the nature of the agrarian relations due to the continuity in land legislation between the Ottoman period and under the Austro-Hungarian rule, an understanding of the government policies and legal reforms regarding landed property and land tenure in terms of the politico-legal revolution makes it possible to identify the major transformation in the agrarian relations. Furthermore, seeing this transformation in the framework of the legal revolution enables to conceptualize and comprehend the particular aspects of the Habsburg policies in this sphere and to identify and understand the processes that were initiated and benefited by them. In other words, Hobsbawm's notion of politico-legal revolution provides a better understanding of the fundamental change in the nature of the agrarian question in Bosnia when it was under Habsburg rule.

Yet, at the same time, the late-Ottoman land legislation laid the groundwork for the government policies and legal reforms of the Austro-Hungarian Monarchy in Bosnia. Indeed, Yücel Terzibaşoğlu argued that the Tanzimat reforms in the Ottoman Empire can be conceptualized within the "more general and universal comparative framework" of Hobsbawm's notion of legal revolution. With the declaration of the Gülhane Edict (1839) which heralded the reform process, "different forms of forced labour prevalent until then in different parts of the empire were abolished and a standard agricultural tax was introduced instead." The ensuing legislation regarding landed property, crime and administration, among others, Terzibaşoğlu argued, led to a profound change in "the agrarian relations in the empire by institutionalizing individual ownership of land, criminalizing a variety of communal practices in agriculture and in rural areas and installing a new administrative grid."[8] In Bosnia, the policies and practices of the Habsburg administration regarding agrarian relations

[8] Terzibaşoğlu, "Ottoman >Legal Revolution< in the Nineteenth Century Balkans: The Role of Local Councils and Courts in the Making of Property and Criminal Law,"105.

were based on the existing body of Ottoman law that was promulgated during the Tanzimat period, namely the Land Code of 1858, the Bosnia Regulation of 1859, the Forest Regulation of 1870 and subsequent rulings extending up to 1878. The "virtual nationalization of the land"[9] was the most important aspect of the legal revolution as happened under Habsburg rule. State ownership in land which was reformulated in the Ottoman Land Code of 1858,[10] and which was restored in the Land Register Law which was drawn up especially for Bosnia by the Austrian legislators in 1884 enabled the Habsburg government to establish its control over land and to increase its revenues through lease or sale of state lands to private entrepreneurs, mainly forest industry. In other words, it was through reassertion of state ownership in land, including large areas of arable, pasture and woodland which were held by Muslim landowners and religious endowments on the one hand, and vast blocks of land which were used collectively on the other, that the Habsburg government indeed achieved a profound change in the agrarian structure of Bosnia.

The Tanzimat reform programme was intended to change various aspects of the Ottoman state and society.[11] In the legal sphere, as Sami Zubeida argued, the overall direction of the reforms was the "etatization of law", namely, "to make law into standard codified state law, taking what remained of legal authority away from the religious establishments and ending the legal pluralism of historical *shari'a* tradition." The legislative process involved **"**the adaptation and adoption of elements of European legal codes and procedures on the one hand", and the "codification of elements of the shari'a into state law", on the other.[12] Among most important of the

[9] Hobsbawm, *Age of Revolution*, 198.
[10] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 19.
[11] Aytekin, "Peasant Protest in the Late Ottoman Empire: Moral Economy, Revolt, and the Tanzimat Reforms," 196.
[12] Zubeida, *Law and Power in the Islamic World*, 121-122.

laws which were enacted in this period were the Imperial Penal Code (1840, 1851 and 1858), the Imperial Land Code (1858), the Civil Code (1860s-1870s) and the Law on Provincial Administration (1864).[13]

The legal revolution involved the "systematic transfer of the land to simple alienable private property."[14] Huri İslamoğlu argued that in the 19th century "the formation of private property in land was part of the process of the formation of centralised states."[15] It signalled the establishment of the control of the central bureaucracy over land and "the establishment of the singular taxation claim of the central state over the income or property of the individual owner."[16] This required the "elimination of revenue claims of former ruling groups" on the one hand and "simplification of multiple claims to land use" in order to "facilitate central administration's access to revenues", on the other. Furthermore, beginning in the 18th century, central administrations came to constitute economic activity in order "to increase productive capacity which would result in an expansion of taxable incomes" which emerged in the mental climate of physiocratic convictions regarding land as the sole source of wealth.[17]

In the Ottoman Empire, the Land Code of 1858 marked the change of the tendency in the legislation regarding land which preferred "individual property rights over common use property rights."[18] Attila Aytekin argued that the foundational clause of the Code was articulated in Article 8 which prescribed that the land of a

[13] Aytekin, "Peasant Protest in the Late Ottoman Empire: Moral Economy, Revolt, and the Tanzimat Reforms," 196-197.
[14] Hobsbawm, *Age of Revolution*, 196.
[15] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 11.
[16] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property,"16.
[17] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 11-13.
[18] Terzibaşoğlu, "The Ottoman Agrarian Question and the Making of Property and Crime in the Nineteenth Century," 317.

village could not be granted in its entirety to its inhabitants collectively, or to one or two persons chosen amongst them and that separate pieces of land should be granted to each inhabitant and a title-deed should be given to each showing the right of possession. The article constituted "the individual as the sole subject of land law". This notion upon which the rest of the Code was based on, as claimed by Aytekin, regarded land as commodity which "could have been held only by the individual" while marginalizing and eliminating collective forms of land use. [19]

The Land Code dealt only with state lands, *miri*, *metruke* and *mevat*, the categories *mülk* and *vakıf* were not included. The major controversy in the literature concerned whether the Code represented a break from the pre-modern land law which was based on a fundamental distinction between public (miri) and privately owned (mülk) land. Public land, which included the great majority of arable land, could only be held in possession while the absolute ownership (*rakabe*) rested with the state. By pointing out to the limitations that it imposed upon the holders of public land, some historians argued that the Code restituted state ownership in land and thus represented a continuation of the pre-modern Ottoman land system. However, the analysis of the nature of these restrictions, as stated by Aytekin, revealed that the new legislation represented a clear rupture from pre-modern land law. The Code mandated official leave about the ways the landholders use land like the cultivation of grazing land (Art. 10), planting trees (Art. 25), or erecting buildings (Art. 31). Aytekin maintained that one could not argue that the Land Code did not allow private property on arable land by pointing at the constraints on the use of land in particular ways. More important was "the degree of liberty with respect to free circulation of land" because "it was the circulation of land that defined its character

[19] Aytekin, "Agrarian Relations Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," 936-937.

as commodity". Indeed, the provisions of the Code extended the rights of the landholder to dispose of land and thus facilitated transactions involving land.[20]

As important, İslamoğlu argued that the reassertion of state ownership in land in the 19th century was "a precondition for the administrative and legal constitution of individual ownership" in order to monopolise all taxes from the land.[21] Starting with the same premise, Mark LeVine claimed that the Ottoman and British governments in Palestine engaged in a similar effort in order to establish their control over land. State ownership in land which was reformulated in the Ottoman Land Code of 1858 enabled both the Ottoman and British governments to increase their revenues through the sale of state lands to individual owners and to establish a more convenient and effective method of land taxation with the elimination of multiple claims to revenues.[22] In so doing, LeVine challenged the liberal assumption that state ownership impeded the development of individual property as well as security of tenure. LeVine also argued that the Mandate government expanded the scope of state ownership in land and established tighter control over unclaimed or communal lands by opening them to state allocation.[23] This study argues that the Habsburg regulations regarding land tenure in Bosnia were based upon similar foundations. On the other hand, while emphasizing the continuity in land legislation between the Ottoman period and under the British Mandate in Palestine, LeVine underlined that "shared vocabularies and technologies of rule did not lead to continuity in the trajectory of Palestine's socio-economic development from the late-Ottoman to the

[20] Aytekin, "Agrarian Relations Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," 937-939.
[21] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property,12
[22] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 100-108.
[23] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 102.

Mandate period."[24] In Bosnia, as well, while the terms of the government policy were established through the categories of late-Ottoman land legislation, the policies and practices of the Habsburg administration indeed resulted in a profound transformation in its agrarian structure.

In order to analyse the nature of the politico-legal revolution and the resulting transformation in the agrarian structure of the province as had happened under Habsburg rule, this study mainly focuses on the legislation in regard to landed property, land tenure and taxation which was drawn up by the Austrian legislators especially for Bosnia extending from the year 1878 to 1914 and which is available on the web site "ALEX Historische Rechts- und Gesetzestexte online". This project by the Austrian National Library digitises Austrian laws and other legal source materials from 1849 to 1940. The decrees, ordinances and laws which were enacted by the K. u. K. Gemeinsames Finanzministerium[25] in whose jurisdiction Bosnia laid and which were promulgated by the Provincial Administration in Sarajevo are collected under the name "Landesgesetzblatt für Bosnien und die Herzegovina". The very large and detailed legislation is annually divided and each section begins with an alphabetical and chronological index of the subjects under consideration. Besides clearly revealing the policies of the Habsburg administration regarding the agrarian structure of Bosnia, the legislation also depicts the ways in which late-Ottoman land legislation was adopted, interpreted and applied by the Habsburg lawmakers. The section on the legislation relating to the period between 1878 and 1880, the immediate years following the occupation, are particularly noteworthy as they include lengthy descriptions of the agrarian relations and the main issues under

[24] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 102.102.
[25] The Common Ministry of Finance of the Dual Monarchy operated between the years 1868 and 1918.

dispute. The decrees and ordinances relating to these years also include lengthy argumentations which clearly discussed the reasons why such regulation was required for the economic development of the province, and particularly for the solution of the agrarian question.

In addition to the digitised sources, this study makes use of the Administrative Reports of the Habsburg government (Bericht über die Verwaltung von Bosnien und der Hercegovina) which were published between the years 1906 and 1916 by the K. u. K. Gemeinsames Finanzministerium and which are now preserved in the Administrative Bibliothek of the Österreichisches Staatsarchiv in Vienna. Furthermore, the treatises of Austrian jurists and scholars about the agrarian relations in the province are comprehensively used in this study. Some of these sources are available in the Nationalbibliothek in Vienna and some of them are digitised by various university libraries.

The thesis has been organized in the following way: The first part of Chapter 2 devotes a discussion to the main aspects of the legal revolution in the territories of the Austro-Hungarian Empire and its major socio-economic consequences during the course of the nineteenth century. The second part of Chapter 2 draws a picture of Ottoman Bosnia. It first gives a brief overview of the Ottoman landholding system and then discusses the formation of çiftliks in some parts of the Ottoman Empire in general and in Bosnia in particular. It then gives an account of the various regulations made by the Ottoman government, comparable to those of the Habsburg rulers, in order to restrict the claims of the landowners to the revenues from the land and to the labour of the peasantry throughout the years following the promulgation of the Gülhane Edict.

Chapter 3 discusses the regulations and practices of the Habsburg government in Bosnia regarding landed property and land tenure following the occupation up to 1914. This involves, first, an attempt towards an understanding of the ways in which the late Ottoman land law was adopted, reinterpreted and applied by the new administration. Secondly, the legislation drawn up by the Habsburg legislators regarding landed property and land tenure is discussed and analysed at length. This study mainly concentrates on the aspects of the legal revolution as claimed by Hobsbawm and argues that the regulations regarding the free alienation and subdivision of peasant holdings and those regarding pledging of land against debt contributed to the erosion of the cultivators' right to land and to the formation of unhindered markets in land. As important, the legal revolution involved, as explained by Hobsbawm, the division of vast areas of collectively-owned land. In Bosnia, as well, large areas of pasture, including mountain pastures, and woodland were divided up and enclosed while the cultivators were deprived of their rights to the commons and wastelands.

The first three sections of Chapter 4, which analyse the legislation and practices of the government regarding taxation of the agricultural production and the institution of mortgage credit which was introduced in Bosnia by the Habsburg government, are followed by a section which discusses the legal measures regarding peasant indebtedness. There is a particular reason for doing this. This study argues that the burden of taxation imposed upon the cultivators, the conditions under which the cultivators could take a mortgage credit for redeeming their land, and the regulations regarding peasant indebtedness are parts of a coherent whole paving the way to the increase in the burden of debt upon them which eventually led to bankruptcy and sale of the peasant holdings.

The following section of Chapter 4 devotes a discussion to the regulations and practices of the Habsburg government regarding agrarian arrangements. This study argues that the "impartial" policies of the Habsburg administration supporting the landowners in claiming their "legal share" of the harvest while upholding the policy of voluntary land redemption were rather in order to counterbalance and mask its harsh policies of reclaiming privately appropriated lands. The next section examines the ways in which the regulations and practices of the Habsburg government regarding agrarian relations were evaluated by contemporary scholars and statesmen. This section also includes a discussion of the various reform proposals made by them. The last section of Chapter 4 includes an analysis of land use under Habsburg rule. Chapter 4 aims to provide insight into the main aspects of the transformation in the Bosnian countryside which evolved as a result of Habsburg policies regarding landed property and land tenure.

CHAPTER 2

THE "LEGAL REVOLUTION" IN HABSBURG AND OTTOMAN TERRITORIES

2.1 Introduction

This chapter discusses the "legal revolution" and the nature of the resulting change in the agrarian relations in Habsburg and Ottoman territories during the course of the 19th century. The first part of the chapter discusses the reforms made by the Habsburg rulers in order to limit the landlords' rights to exact dues and services from the peasantry in order to raise state revenues. It then discusses the nature of the "legal revolution" as reflected in the works of contemporary commentators. As revealed in their accounts, after the Land Emancipation Act of 1848, which abolished the feudal burdens upon land and radically altered the conditions of both landlords and traditional peasantries, the greatest legislative enactment was that of 1868 which introduced the free alienation and subdivision of land. Together with the burden of taxation imposed upon the peasantry this regulation was a major step toward the commodification of land which led to the fragmentation of peasant holdings and their inclusion into the "ever-widening territory of the capitalist landlord".[26]

The second part of Chapter 2 first examines the change in the agrarian relations in Ottoman countryside in general and in Bosnia in particular by focusing on the processes which led to the dispossession of the peasantry and the accumulation of arable land in private hands. The chapter then devotes a discussion to the resulting change in the agrarian relations as the Ottoman governors tried to introduce the principles of the Tanzimat in Bosnia. It is argued that the attempt by the Ottoman government at restricting the claims of the former *sipahi*s to the

[26] Drage, *Austria-Hungary*, 64.

revenues from the land and to the labour of the peasantry resulted in a feudal reaction characterized by the increase in the burden borne by the latter which further exacerbated social tensions and paved the way to the rebellion of 1875-76.

2.2 The "legal revolution" in the Habsburg territories

In the territories of the Austro-Hungarian Monarchy the feudal burdens upon land were abolished in 1848, but the reform movement had a longer history. Indeed, during the reign of Charles VI and Maria Theresa several laws were promulgated to regulate the rights and duties of the serfs by determining the size of the landholding which the serf was entitled to occupy and the money or produce-rent and labour services which he was obliged to render to the landlord. The Urbarium of Maria Theresa (1767) also deemed that peasant-occupied land might not be added by the landlord to his own holding.[27] The Habsburg ruler Joseph II was a pioneer in Europe for introducing a new land tax based on size of properties and nature of land use which was to be collected on the noble estates as well. Prompted by the wide-scale peasant revolt in Transylvania in 1784, Joseph II issued other decrees concerning personal freedom and the serf's right to move.[28] He also set up regulations to limit lord's rights to exact payments and services in order to prevent the nobility to offset their new state land tax liability by extracting more dues and services from the peasantry. In practice, however, the urbarial laws and the agrarian reform legislation of Maria Theresa and Joseph II were largely ineffectual since the lords possessed judicial powers over their serfs.[29] The nobility exceeded their legal rights and the

[27] Beales, *Joseph II*, 347.
[28] Warriner, *Contrasts in Emerging Societies*, 336.
[29] Warriner, *Contrasts in Emerging Societies*, 30.

measures offered little protection except in so far as it determined the area of land in serf holdings, as in Hungary, Croatia and Slavonia.[30]

In Hungary, the emancipation laws of 1848 were enforced by decree in 1853, at the height of the absolutistic régime imposed by Austria.[31] The law abolished the *robot* or forced labour[32] of the peasants for the landlords, and also the dues they had to pay, whether in money or in kind. The law abolished the payment of tithe to the Roman Catholic clergy as well. Another set of measures altered the conditions of land inheritance, freeing the nobles' land from feudal burdens and restrictions.[33] The peasants in Hungary consisted of both landed and landless serfs while the latter outnumbered the landed peasantry. The distinguishing feature of the emancipation laws of 1848 in Hungary was that it granted ownership rights to the urbarialists (some 550,000) whose rights of occupancy were laid down in urbarial laws, while leaving the remainder landless, like it was the case in Croatia. Even these received holdings so small that they were often compelled to go back to large estates to work as before. The small, ill-equipped peasant farms were further damaged by some years of disastrous harvests and the arrival of cheap corn from America.[34] The position of the great landowners was radically altered by the law of 1848 as well. They confronted financial difficulties as labour was no longer their right to exact but "a commodity to be paid for."[35] Yet in certain districts of the Habsburg Monarchy, especially in Galicia, the large landowner had a plentiful supply of labour at a cheap

[30] Warriner, *Contrasts in Emerging Societies*, 289.
[31] Warriner, *Contrasts in Emerging Societies*, 33.
[32] "Robot or forced labour that is so many days' labour without any specification of the quantity of work to be performed. In Hungary in 1818 the lord could legally claim one hundred and four days' labour from each peasant in the year, but he was not restrained to demand more." From Warriner, *Contrasts in Emerging Societies*, 48.
[33] Warriner, *Contrasts in Emerging Societies*, 79. The reforms of 1848 had abolished the institution of aviticitas. Before the reforms, the estates of Hungarian noblemen were imperfectly alienable. As they had been granted to a family for ever, they could be pledged only in perpetuity and that only to another nobleman. From Warriner, *Contrasts in Emerging Societies*, 82-83.
[34] Warriner, *Contrasts in Emerging Societies*, 31-34, 335.
[35] Drage, *Austria-Hungary*, 63.

rate. In the majority of districts, however, the owners complained their inability to procure labour and thus had been reduced in many instances to the less productive methods of extensive farming. While the transoceanic competition began to affect agricultural production in general and the grain market in particular the great landlords could not compete and were forced to mortgage their properties heavily. In the last half of the 19th century, the debts of the large landlords had largely increased.[36]

After the law of 1848 which abolished the feudal burdens upon land,[37] the next great legislative enactment was that of 1868 which introduced the free alienation and subdivision of land and "thereby [inaugurated] what has been termed the *Liberal* capitalist land system" as Drage commented in the Austro-Hungarian context.[38] As a result, fragmentation of land largely increased and the cultivators became unable to produce enough to sustain themselves and their families.[39] The pressure of competition and the burden of taxation which falls relatively heavily upon the small than upon the large landowners often led to indebtedness and eventually to bankruptcy and sale. In Bohemia between the years 1869 and 1880, no less than 41,537 new holdings were carved out of the already existing peasant properties while plots of land less than 2 *joch*[40] multiplied by 74 per cent between 1869 and 1888. Large numbers of peasant properties were bought up by large landowners and the small independent peasant was forced into the position of a

[36] Drage, *Austria-Hungary*, 63-4. Yet Drage concluded that despite of the abolition of forced labour and the consequent difficulties sustained by the great landlord, they had still extensive possessions "the state [was] still to-day the tool of the noble".
[37] Southern Dalmatia (more precisely the territory of the ancient republic of Dubrovnik (Ragusa) was exempted from the peasant liberation legislation of 1848. Here serfdom was abolished later, in 1878, the year when Bosnia was invaded by the Austrian troops.
[38] Drage, *Austria-Hungary*, 92.
[39] Fischer and Rozman,"Social Democracy and the Peasantry on Slovene Territory between 1870 and 1914," 396.
[40] 1 cadastral *joch* equals 1.42 acres.

tenant.[41] In Slovenia, too, the economic crisis which followed the collapse of the Vienna Stock Exchange in 1873 contributed to the rapid ruin of small and middle-size holdings while these holdings were swallowed up by large estates. In 1902, most Slovene landowners were smallholders while 35. 8 per cent of the farms measured 2 hectares or less.[42] As the peasantry became freely capable of disposing of its resources one of the major objectives of the legal revolution was achieved: the creation of a large "free" class of labourers.[43] Drage emphasized that the result of the two laws of 1848 and 1868 was the rise of a poverty-stricken indebted proletariat of small proprietors.[44] The cultivators with small properties were either forced into the position of a tenant or were becoming agricultural labourers. In an attempt to thwart this, the state enacted a law in 1884 which in principle only allowed the division of middle-size holdings among the heirs.[45] In 1903 another law was passed which prohibited the transfer of agricultural properties of middle size provided with a dwelling house which belonged to one person or to a married couple apart from expropriation and distress and if they were not feudal or entailed estates.[46] The objective of the government was, Drage argued, to prevent the subdivision of the peasant holdings and absorption of them by the "ever-widening territory of the capitalist landlord".[47]

The legal revolution involved the division and enclosure of vast blocks of collectively owned lands of village communities in order to make them accessible to

[41] Drage, *Austria-Hungary*, 63-66.
[42] Fischer and Rozman, "Social Democracy and the Peasantry on Slovene Territory between 1870 and 1914," 395-6.
[43] Hobsbawm, *Age of Revolution*, 187.
[44] Drage, *Austria-Hungary*, 92.
[45] Fischer and Rozman, "Social Democracy and the Peasantry on Slovene Territory between 1870 and 1914," 395.
[46] Drage, *Austria-Hungary*, 63-6.
[47] Drage, *Austria-Hungary*, 64.

individual enterprise.[48] In accordance, the Land Emancipation Act of 1848 "revolutionized"[49] the rural conditions in a further way. The old rights of woodcutting, pannage, the right of gathering reeds and especially the right of pasturage which were formerly enjoyed not only by the urbarial serfs, but also in a lesser degree by the hired workers were abolished with the institution of serfdom. In many cases, the peasants could not afford to raise cattle due to the cost of grazing. This contributed to the emergence of a class of peasant proprietors with insufficient holdings who were dependent on their earning as hired labourers.[50] In Slovenia, in the middle of the 19th century, the authorities argued that communally owned pastures represented dead capital and these could be made productive by conversion into arable or meadow. Thus, the dividing up and improvement of the common pastures was considered as the first necessity in winning more productive land.[51] In 1889 a law was passed which regulated rights of servitude by dividing forest and pasture areas which were used collectively. The criterion for the division was the size of the holding and the amount of tax paid. Thus, division of collective lands affected mainly owners of small and middle-size holdings and this proved to be an even greater encroachment upon the economic basis of the cultivators than the indemnities which they had to pay to the landlords for the next twenty years. [52]

The general effect of this transformation in land tenure which left many peasants landless or with insufficient holdings was a veritable *Landflucht* (land flight), namely the influx of the country people into industrial towns.[53] The industrial centres attracted the young and capable, leaving only lads, old men and incapables

[48] Hobsbawm, *Age of Revolution*, 187
[49] Drage, *Austria-Hungary*, 307.
[50] Drage, *Austria-Hungary*, 307-308.
[51] Warriner, *Contrasts in Emerging Societies*, 357.
[52] Fischer and Rozman, "Social Democracy and the Peasantry on Slovene Territory between 1870 and 1914," 395.
[53] Drage, *Austria-Hungary*, 77, 301.

for agriculture.[54] In the early nineties, the transoceanic emigration was on the increase. North America absorbed the larger proportion of the emigrants, for the most part young men from fifteen to forty years of age. Some of the most important causes of emigration were the deplorable conditions of the agricultural labourers. In some parts of Bohemia, in Galicia, and the Bukowina, the methods of management of the large estates formed the principal reason for the emigration of the very poor peasants "who tramped over the frontier to the nearest labour market whether it be Germany, Russia or Rumania."[55]

2.3 The former evolution of agrarian relations in Bosnia

The Ottoman legal revolution, as argued by Terzibaşoğlu, was comparable to the legal revolution in the Habsburg territories[56] for the "sheer economic argument in favour of a rational utilization of the land had greatly impressed the enlightened despots"[57] of these regions. As it was the case in the Habsburg territories and elsewhere, the Ottoman "legal revolution" entailed land "to be turned into a commodity, possessed by private owners and freely purchasable and saleable by them."[58] This involved institutionalization of individual ownership of land, namely a transformation from "indeterminate/collective property structures" to an "individual/ exclusive property regime."[59] This transformation occurred at the expense of those groups who had customary rights on land but "failed to articulate their interests" vis-à-vis those groups who "succeeded in . . . consolidating their ownership rights on land" and created a long period of unrest in Ottoman rural areas. The tension created

[54] Drage, *Austria-Hungary*, 69.
[55] Drage, *Austria-Hungary*, 73.
[56] Terzibaşoğlu, "Ottoman >Legal Revolution< in the Nineteenth Century Balkans: The Role of Local Councils and Courts in the Making of Property and Criminal Law,"105.
[57] Hobsbawm, *Age of Revolution*, 190.
[58] Hobsbawm, *Age of Revolution* 184.
[59] Kaya, "On the *Çiftlik* Regulation in Tırhala in the Mid Nineteenth Century: Economists, Pashas, Governors, *Çiftlik*-Holders, *Subaşı*s, and Sharecroppers," 333.

by "the legal and administrative constitutions of individual property"[60] was particularly intense, as Alp Yücel Kaya argued, "where agricultural production was mostly organized around çiftlik units and sharecropping regimes, varying from one locality to another, and, depending on particular customary regulations, dominated relations of production."[61] This was the case in Bosnia as well where most of the land was held by Muslim landowners and cultivators were to render a certain share of the produce and perform labour services as ground rent. Since the legal status of the cultivators in the çiftliks was "not typical of the classic Ottoman peasant household"[62] this transformation in the agrarian relations deserves a discussion in the Ottoman context in general and in the Bosnian context in particular.

The Ottoman classic system aimed at the maintenance of state control on agricultural land and labour. The agricultural land was state-owned land (miri). The cultivator who had the usufruct of the land on which he cultivated, held it in the form of a perpetual lease and had to fulfil his obligations toward the *sipahi* cavalryman. The sipahi was assigned a *timar* (fief) which consisted of collecting the fixed amount of state revenue from the peasants in a defined area of land in return of providing military service. In the classical system, timars were only conditional, non-hereditary possessions closely linked to the fulfilment of a fixed duty.[63] In addition, land and labour of the cultivator, *reaya* were protected by the state against third parties who might attempt to convert these lands into quasi-properties and reduce the peasants to sharecroppers or serfs on these lands.[64]

[60] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 3.
[61] Kaya, "On the *Çiftlik* Regulation in Tırhala in the Mid Nineteenth Century: Economists, Pashas, Governors, *Çiftlik*-Holders, *Subaşı*s, and Sharecroppers," 333-334.
[62] Terzibaşoğlu,"The Ottoman Agrarian Question and the Making of Property and Crime in the Nineteenth Century," 315.
[63] McGowan, *Economic Life in Ottoman Europe*, 49-50.
[64] İnalcık, "The Emergence of Big Farms, *Çiftlik*s: State, Landlords, and Tenants," 17-18.

Starting from the end of the 16th and the beginning of the 17th century the Ottoman land tenure system began to deteriorate. The classic system imposed a moderate level of taxation and rent upon the peasantry, with even a possibility of a slight surplus.[65] Aiming to appropriate this surplus, some powerful individuals increasingly tried to control the agricultural lands of miri status as privately owned farms.[66] Though the alienation of the peasant holdings was prohibited by the law and though it was transferrable only to the heirs of the legitimate owners in an *indivis* manner, the alienation of peasant land was tolerated if it was happening with the knowledge and permission of the actual timar holder, i.e., *marifet-i sipahi* or *sahib-i arz*.[67]Since they would allow the sipahi to get a transfer fee, such transfers would be in the sipahi's immediate pecuniary interest.[68] Suraiya Faroqhi contended that "this arrangement could lead to a fairly active land market, where debts not infrequently caused the sale of agricultural land."[69] Many indebted cultivators lost their fields to usurers, mostly town-based military or *ulema*, who took over the possession rights of the reaya on miri lands. As a result of administrative inefficiency, such lands turned into privately owned properties.[70]

The process of the dispossession of the cultivators and the transformation of fiefs into quasi-property in private hands occurred through various different ways. Ostensibly, the framework of timar and state ownership of land remained valid. The sipahi continued to collect his traditional tenth. But now an outside individual came between the sipahi and the peasant. Termed *sahib-i alâka,*[71] these people could be

[65] Palairet, *Balkan Economies*, 35.
[66] McGowan, *Economic Life in Ottoman Europe,* 70.
[67] Veinstein, "On the Çiftlik Debate," 39-40.
[68] McGowan, *Economic Life in Ottoman Europe,* 50, 54. McGowan stated that the authority of the Byzantine pronoia holder over transfers of the bashtina was comparable.
[69] Veinstein, "On the Çiftlik Debate," 39-40.
[70] İnalcık, "The Emergence of Big Farms, *Çiftlik*s: State, Landlords, and Tenants," 22.
[71] *Sahib-i alâka,* (pl. *Eshâb-ı alâka*) were individuals who had rights of ownership or possession on land. Referring to Kamus-ı Türkî, Güran and Uzun stated that *alâka* means the right of ownership,

merchants or powerful officials who seized the surplus product in return of the debts of the peasants[72] or janissaries giving "protection" in return for perhaps a third of the produce.[73] Especially at times of political instability, famine, or plague, the peasantry was obliged to collaborate with powerful and wealthy people who organized agricultural production.[74] McGowan described the process as "titular dispossession" which "leaves the cultivator in place but generally imposes new and harsher conditions upon him." In this form the reaya had to satisfy not only the demands of the state and the sipahi, but also those of the newcomer.[75] Stavrianos argued that the new çiftlik owner now held the land as his full heritable property which he could dispose of as he wished. Since he was free to evict the peasants if they refused to accept his tenancy terms, the rents on the çiftliks were much higher than on the timars.[76]

Ömer Lütfi Barkan argued that the widespread application of the farming-out (*iltizam*) system in the collection of state revenues was another mechanism which led to the concentration of the arable land in the hands of landowners.[77] After 1695, the system of life-term tax-farms (*malikane*) was introduced for a better management of the resources. The leaseholder had total freedom of management during his life. After his death, the state treasury gave preferential rights to his heirs in the bidding and this tended to confer a quasi-hereditary character to these malikanes.[78] The

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possession and involvement for a mine or for land. In Güran and Uzun "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 876.

[72] Filipovic, "Bosna-Hersekte Timar Sisteminin İnkişafında Bazı Hususiyetler," 171. Filipovic contended that by this mechanism, the surplus, the part of the produce which remained after the deduction of the part necessary for the subsistence of the peasant, had taken the form of trade or usury capital.

[73] Stavrianos, *The Balkans since 1453,* 140.

[74] Barkan, "Çiftlik," 396.

[75] McGowan, *Economic Life in Ottoman Europe*, 66.

[76] Stavrianos, *The Balkans since 1453,* 140.

[77] Barkan, "Çiftlik," 396.

[78] Veinstein, "On the Çiftlik Debate," 45.

transformation of the fiefs into farmed-out units (*muqataa*s) and especially into life-term tax farms was a major factor in the formation of the çiftliks.[79]

The formation of çiftliks and the parallel subversion in agricultural relations was particularly intense in Macedonia, Thessaly, Vidin and Bosnia.[80] In Bosnia, most of the arable land was held in fief by the sipahis and *kapetan*s, military administrators whose estates consisted of large properties.[81] At the end of the 16th century, the Bosnian sipahis were granted the right to inherit timars within the family on condition that they performed the mandatory military service. The institution of the so-called *ocaklık timarı*s was the reflection of the attempt by the state to consolidate its military power in an important borderland by promoting the timar institution.[82] Yet this weakened the control of the state over timar holders. In the 18th century, a considerable amount of timars were possessed by high-ranking state officials like *müteferrika*, *kethüda* who were members of the Bosnian *Paşa Divanı*, the governor's council in Bosnia. Skaric contended that by providing the inheritance of timar holdings the institution of ocaklık timarı promoted the acquisition of important administrative offices by the sipahis, allowing them to consolidate their political and economic power.[83]

Güran and Uzun emphasized the necessity of taking into consideration the peculiarities of each region by evaluating the formation of the *çiftlik*s. In Bosnia, transfer of title on land through the traditional deed-like transfer certificates (*tapu*) began in the years after the Ottoman conquest. In the process, the judiciary ignored

[79] Barkan "Çiftlik," 396.
[80] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 875.
[81] Palairet, *Balkan Economies*, 133. Fiefs were sometimes granted over entire districts. For instance, Dervish Beg Tshengitsb held a timar over the whole Bosnian Zagorje, in return for the undertaking to protect this district towards Montenegrins. In Asboth, *Bosnia*, 160.
[82] Filipovic, "Bosna-Hersekte Timar Sisteminin İnkişafında Bazı Hususiyetler," 180-181.
[83] Filipovic, "Bosna-Hersekte Timar Sisteminin İnkişafında Bazı Hususiyetler," 181.

the usurpation of peasant tenures and maintained "almost a conspiracy of silence"[84] about land transactions between individuals. The judiciary also ignored the economic and contractual arrangements between çiftlik holders and cultivators. In Bosnia, too, the state officials refrained from noticing the new conditions imposed upon the peasantry. These were regarded as private arrangements, seemingly beyond the concern of the government or its agents. [85]

As elsewhere in the empire, use and appropriation of peasants' lands abandoned in times of internal strife had become normal procedure in converting them into estates of landowners[86] in Bosnia as well.[87] In the 18th century, high taxes were the reason why large numbers of Christian cultivators living in the border region of the province in particular abandoned their holdings and the abandoned plots were turned into çiftliks.[88] The landowners also took the opportunity to appropriate the lands acquired by the cultivators by forest clearance in order to enlarge their estates.[89] In addition to the state tithe, the cultivators were imposed a ground rent of one-twelfth to one-ninth of the harvest, depending on local custom, as well as certain customary dues, and labour services like working on the home farm spared for sipahi's personal needs. [90] Until the 1830s, the share of the produce which the cultivator had to surrender after the deduction of tithe didn't exceed one-fifth of his crop.[91]

The period between the years 1826 and 1836 witnessed many rebellions in Bosnia, large and small, which were led by Muslim landowners and military classes,

[84] McGowan, *Economic Life in Ottoman Europe,* 71.
[85] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 877. McGowan, *Economic Life in Ottoman Europe*, 71.
[86] İnalcık, "The Emergence of Big Farms, *Çiftlik*s: State, Landlords, and Tenants," 22.
[87] Nikaschinovitsch, *Bosnien*, 25.
[88] Koller, "Introduction: An Approach to Bosnian History," 12.
[89] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 887.
[90] Palairet, *Balkan Economies*, 133.
[91] Schmid, *Bosnien*, 301. Palairet, *Balkan Economies*, 133.

the kapetans, sipahis and janissaries who were employed in Bosnia as a result of the territorial losses in the eighteenth century. This was the movement of the Muslim notables against the centralizing and later egalitarian policies of the Ottoman government. The one that took place after the abolition of the janissary corps spread all over the region.[92] The chaos could not be suppressed. In 1831, the rebels claimed to establish an independent government in Bosnia. In 1835, after the uprising was suppressed and the janissary and sipahi corps was dispersed, the sipahis were deprived of the right to collect timar revenue and the fiefs were replaced by military posts which would serve as a source of revenue equal to fiefs.[93] They also lost –in theory at least- their right to demand labour services. However, they remained powerful local bosses controlling arable land. The former sipahis began to demand a larger share of the produce and heavier labour services from the cultivators with the incentive to compensate for their losses. The subsequent years, especially the years 1840-3 and 1847-50 were associated in the literature with the intensive raising of the burdens on the cultivators in Bosnia.[94]

2.4 The "legal revolution" in the Ottoman territories: Bosnia in the reform era

A year after the promulgation of the Gülhane Edict, Hüsrev Paşa arrived in Bosnia in order to, amongst other things, regulate the agrarian relations generally in Bosnia, and specifically on the Bosnian frontier at Posavina and Podrinje.[95] In his report addressed to the central government in Istanbul Hüsrev Paşa stated that most of the

[92] Turhan, *Ottoman Empire*, 79.
[93] Kaya, "Les Enjeux du Cadastre Ottoman en Bosnie," 138. Palairet argued that since the sipahis treated the imperial tithes as their own revenues Bosnia remitted less revenue to the centre than any other province relative to its population and this gave the state a powerful incentive to absorb the fiefs into the state coffers. In Palairet, *Balkan Economies*, 36, 132.
[94] Palairet, *Balkan Economies*, 133-134.
[95] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 142.

cultivators were tilling the land owned by the eshâb-ı alâka and were paying one-ninth, one-fifth, one-fourth or one-third of the produce, in some districts, half of the produce as ground rent. In the regions where the cultivators were rendering one-ninth and one-fifth of the produce they had to perform labour services as much as they could tolerate. In some regions, according to Hüsrev Paşa, due to the labour services that they had to perform for the landowner, the cultivators could not provide their daily subsistence.[96]

After having visited certain parts of the country, Hüsrev Paşa established a commission composed of the representatives of the çiftlik-holders and sharecroppers in Travnik.[97] At the end of the negotiations a bylaw was issued which included the following provisions: At the time of the harvest the cultivator was to inform the landowner or the *subaşı*, the landowner's agent and one-ninth of the crop was to be ceded to the landowner. If the cultivator could not pay in kind the due could be converted in money. The cultivators were to continue to give over butter to the landowner because this was in return for the grass that they reaped in the meadows belonging to the landowner. The amount of labour services was to be determined according to the sharing proportion of the crops. The cultivators had to perform two days or one day of labour per week when one-ninth or one-fifth of the produce was payable to the landowner, respectively. If the cultivators rendered one-fourth of the crops or more, no labour services were to be imposed upon them. An important provision was indicated as "*meza ma meza*" which meant that the landowners were not to demand labour services or a payment claiming that the cultivators had fallen

[96] Hüsrev Paşa stated that the cultivators were "settled" on these lands. ("dokuzlu ve beşli mahallerde tahammülüne göre angarya işlettirerek reaya taifesi ikamet ve iskan olunmuş"). In Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 875-876.

[97] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 142. Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 878.

into arrears on services. If the cultivator had several sons and none of them was married, only one of them would perform labour services. If they were married, they would be considered as an individual household and they had to perform labour services.[98]

The bylaw prohibited the cultivators to abandon the land. Accordingly, the landowners were not to claim a payment more than the amount fixed by the bylaw and therefore evict the cultivators. If the cultivators would not cultivate the land properly or would not pay the taxes and dues the case was to be conveyed to the authorities. The cultivators were to be warned and if they would still neglect cultivation or did not pay the dues, the landowners could evict them. The objective of the negotiations was not to alter the existing conditions on land rather provide the continuation of the existing status quo. Yet at the same time the bylaw intended to reduce the burden borne by the cultivators in order to prevent the dispersion of the cultivators.[99]

Just a few years after the bylaw was passed, the cultivators again raised objections that the obligation to carry out labour as a form of ground rent to landowners was too great a burden. These complaints and the demand for reductions in dues and obligations were taken up by the Ottoman government and Tahir Paşa was sent to Bosnia in order to execute the principles of the Tanzimat.[100] In 1848, he established a commission in order to outline the principal systems of agrarian relations which then pertained and to codify the existing practice.

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[98] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875),"878-880.
[99] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875),"880-881.
[100] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 142.

According to Tahir Paşa, approximately half of the cultivators, nearly all Muslims, were freeholders – peasants who owned their land. Their lands most often consisted of scattered small holdings that would together provide the subsistence of an extended family. As elsewhere in the Ottoman Empire, the peasants did not normally own consolidated plots in which all their holdings were together.[101] Perhaps 6-7 per cent of the Muslim families owned large estates and had their lands sharecropped. Their tenants had to surrender to the landowners between the one-quarter and one-third of the gross crop after the deduction of the tithe. These were relatively well-off peasants since they owned their draft animals and seed and comprised probably 40 per cent of all cultivators. These farms predominated in the fertile Posavina. There were also *kmet*s, cultivators who sharecropped with the landowner's equipment and seed and who had to surrender half of the produce after the deduction of tithe grain and seed. In Tahir Paşa's views the least satisfactorily placed were the cultivators whose landowners were farming substantial complexes of their lands directly. These kmets had to perform labour services for their rights to land and "this unremunerated labour amounted to the full-time services of one adult male per household, which on a household size of about ten constituted half its able-bodied male labour force."[102]

The commission headed by Tahir Paşa ordered that the direct farming of landowner's estates with labour given in lieu of rent should cease, and be substituted by sharecropping. The cultivators were to surrender a third or quarter share of the produce to the landowner after deduction of the tithe. The reform meant a considerable loss of revenue for the landowners.[103] Angered by their continued loss

[101] McCarthy, "Ottoman Bosnia, 1800 to 1878," 64.
[102] Palairet, *Balkan Economies*, 134.
[103] İnalcık, "Bosna'da Tanzimat'ın Tatbikına Ait Vesikalar," 380-383. Palairet, *Balkan Economies*, 134-135.

of economic power, the Bosnian notables rose successfully against the government in 1849 and again in 1850.[104] The pertaining anarchy was suppressed by the Ottoman military under the leadership of Ömer Paşa.[105]

After the territory had been subjugated by Ömer Paşa, the authorities began a programme of administrative change in order to extract more revenues from the province. Yet the regulations made by Tahir Paşa which were supposed to appease the cultivators did not have a significant effect in practice and the burdens on tenant cultivators continued to rise. At the same time, the state alienated both the landowners and the cultivators as it raised the revenue demands on the province as a whole. Repeated unrest and revolts broke out in the Herzegovina and interventions were ordered to deal with both Muslim and Christian dissidence.[106]

At the end of the year 1858, a commission was established in Istanbul consisting of the representatives of different agrarian interest groups, namely the representatives of the landowners, sharecroppers and those who were engaged of the cultivation of their own land. At the meeting, the cultivators from Izvornik argued that the problems in the province stemmed from the arbitrary and excessive demands of the tax collectors and the dues payable to the landowners. Because the landowners wanted to appropriate the lands cleared and cultivated by them, they formerly had rendered one-ninth of the produce as *hakk-ı arazi*. Now they had to render one-third of the grain, fruit, and vegetables and labour services the amount of which was determined by negotiation. The landowners from İzvornik argued that if a cultivator would leave his holding, the land was given to another cultivator instead of hiring wage labourers. The landowners also rejected the claim that they were seizing the

[104] McCarthy, "Ottoman Bosnia, 1800 to 1878," 75.
[105] Palairet, *Balkan Economies*, 135.
[106] Palairet, *Balkan Economies*, 135.

houses built by the cultivators without paying for it. They added that they were not forcing the cultivators to leave the land on which they were cultivating.[107]

After the discussion with the participants, the Ottoman administration passed a special regulation on çiftliks in Bosnia on 12 September 1859 (14 Safer 1276 HA) which is known as the Bosnia Regulation. In the first part, the regulation summarized the terms of the existing agrarian arrangements and then prescribed the new rules which were to apply to the hakk-ı arazi of the landowner in the seven *sancak*s of the Bosnian *vilayet*. The regulation stipulated that the landowners were responsible for repairs to the house and buildings on the çiftlik. The labour rent was strictly outlawed. But the cultivators had to transport the share of the landowner to the market place and work in the landowner's garden and vineyard if it was laid out in the contract.[108]

The second part of the regulation was about general rules. The regulation stipulated that the cultivators had to make written contracts as to the terms on which they were to hold the land. The forms which were to be used as contract sheets were to be sent from Istanbul and the contract was to be approved by the state authorities. The landowners were not allowed to evict the peasant family unless they would neglect cultivating on the land. Even then, the landowner had to appeal to state authorities and prove the situation (Art. 8).The regulation also prohibited the landowner to expel the peasant family and live in the house while forcing the peasants to support him (Art. 10).[109]

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[107] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 885-889.
[108] Güran and Uzun, "Bosna-Hersek'teToprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 891.
[109] Güran and Uzun, "Bosna-Hersek'teToprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 900. Nikaschinovitsch argued that under the Ottoman rule the landowner could not expel the peasant family if they would till only one-third of the land. If the cultivator would die and his widow would have young children who were unable to till the land, the landowner could not

In the regions where agricultural production was mostly organized around sharecropping regimes, as Kaya argued, "the local customs and customary regulations dominating these regions . . . came to constitute challenging dynamics during the codification of general laws and regulations of the Tanzimat period."[110] İslamoğlu explained that the Ottoman government sought to cope with the particularities of the agrarian relations by establishing special regulatory commissions in these provinces, consisting of different agrarian interest groups like sharecroppers, peasants, çiftlik-holders etc. under the supervision of an imperial official. Such commissions were established by Hüsrev Paşa and Tahir Paşa in Bosnia, and later, at the end of 1858, in the Ottoman capital. The immediate objective was, as İslamoğlu suggested, to appease the social tensions based on sharecropping relations which were being aggravated by the Tanzimat transformations. In the Bosnian case, the government particularly tried to reduce the labour oppression in the çiftliks. While the regulations made by Hüsrev Paşa were an attempt at restricting the amount of labour services, the regulations made by Tahir Paşa strictly outlawed corvée. Nevertheless, they did not have a significant effect in practice as reflected in the provisions of the Bosnia Regulation of 1859. While the Regulation prohibited labour services, the cultivators were still obliged to work in the garden and vineyard of the landowner and to transport his produce-share to the market.

Another major objective of these commissions was, as İslamoğlu stated, to mediate between the different interest groups in order to recast the particular property regimes of these localities into the mould of the universal and general ones.

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remove them if the widow would till the land with wage labour or with the help of the villagers. In Nikaschinovitsch, *Bosnien*, 30-31.

[110] Kaya, "On the *Çiftlik* Regulation in Tırhala in the Mid Nineteenth Century: Economists, Pashas, Governors, *Çiftlik*-Holders, *Subaşı*s, and Sharecroppers," 334.

Terzibaşoğlu explained that in the reports of the Niş provincial administrative council, the peasants were referred to as "the tenants (*müstecir*) of landlords who resided in villages within the boundaries of the landed estates owned by the latter." The correspondence referred to the landowners "as both those with use rights proved by title deeds (*mutasarrıf*) and at the same time as owners of the çiftliks (*eshâb-ı çiftlikat*)."[111] The Bosnia Regulation of 1859 as well consistently referred to the cultivators as müstecir, while the landowners were referred to as *eshâb-ı alâka* (owners of the landed estates). Thus, the language of the Regulation re-established the status of the Bosnian cultivators as tenants on the estates owned by landowners while the agrarian arrangement was described as a lease contract (*icâr ve istîcâr mukavelesi*).

In relation to similar regulatory commissions which were established in Tırhala in the mid-nineteenth century, Kaya argued that "there was also an economic objective embedded in the administrative one"[112] which aimed to increase stagnating or decreasing production levels. This can be argued in the Bosnian context as well. In 1852, almost 16,000 cultivators abandoned their lands and immigrated to Austria because of their poverty and economic destruction.[113] The regulations reveal the attempt of the government at diminishing the burden borne by the peasantry in order to prevent the dispersion of the peasantry and to increase the level of agricultural production.

In 1863, Ahmet Cevdet Paşa was appointed as the inspector of Bosnia. Cevdet Paşa observed that the Bosnia Regulation of 1859 was neither executed nor

[111] Terzibaşoğlu, "The Ottoman Agrarian Question and the Making of Property and Crime in the Nineteenth Century," 315-316.
[112] Kaya, "On the *Çiftlik* Regulation in Tırhala in the Mid Nineteenth Century: Economists, Pashas, Governors, *Çiftlik*-Holders, *Subaşı*s, and Sharecroppers," 334.
[113] Kaya, "Les Enjeux du Cadastre Ottoman en Bosnie," 140-141.

published in Bosnia.[114] The contract sheets sent from Istanbul were found secluded in the basement of the government office.[115] Cevdet Paşa tried to execute the Bosnia Regulation. More importantly, he promulgated a law which prescribed that the cultivators would be granted the wasteland that they reclaimed and cultivated.[116]

The resentment of the peasants caused by the subversion in the possession of arable land was exacerbated by the religious dimension of relations between them and their adversaries.[117] In April 1875, in some villages of Nevesinje in Herzegovina, the peasants attacked the tax farmers claiming that they had been demanding the full payment of the tithe and sheep taxes despite a bad harvest in 1874. The peasants were also complaining of the feudal attitudes of the great landowners, including labour services. The clashes between the peasants and the tax collectors led to intervention by the provincial garrisons. As the crisis escalated, the Ottoman government sent a group of negotiators to listen to the rebels' demands and to persuade them to lay down their arms. The rebels refused to give up and in July 1875, the revolt spread to all parts of Herzegovina.[118] Justin McCarthy argued that the 1875 rebellion in Bosnia was an overwhelming trauma on Bosnian Muslim populations. In the period 1875-1879 twenty per cent of the Muslims died of starvation, disease and murder. Some of them died as refugees who did not quite make it. Especially in the number of young adult males, there was a significant decrease. Probably, there was a deliberate selection that young males being killed. In Herzegovina, the proportion of Muslims in the total population declined by fifty per cent.[119]

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[114] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 892-893.
[115] Gölen, *Bosna-Hersek*, 116.
[116] Kaya, "Les Enjeux du Cadastre Ottoman en Bosnie," 144.
[117] Barkan, "Balkan Memleketlerinin Zirai Reform Tecrübeleri," 408.
[118] Shaw and Shaw, *History of the Ottoman Empire*, 158-159.
[119] McCarthy, "Archival Sources Concerning Serb Rebellions in Bosnia 1875-76," 141-145.

Though the Ottoman officials had to accept the will of a group of German, Italian, and Austrian consuls to negotiate with the rebels, they wanted to prevent a further foreign intervention. On 20 September 1875, the Porte issued a "Justice Decree". The decree prescribed the abolishment of the tax-farming system and the selection of the tax collectors by local people. Most importantly, the decree promised to end the exclusion of Christian cultivators from landowning. On 12 December 1875, the Porte issued another imperial order which prescribed adjustments in the amount of taxes and which outlawed the involvement of military forces in tax collection and gave rights to cultivators to purchase land from the state or from private individuals.[120]

2.5 Conclusion

In the territories of the Austro-Hungarian Empire, the Land Emancipation Act of 1848 revolutionized the conditions of the traditional peasantries as many of them lost their land and many received holdings so small that they came to be dependent on their earnings as agricultural wage labourers. The position of the large landowners was radically altered as well since labour was no longer their right to exact but a commodity to be paid for. The law of 1868, which introduced free alienation and subdivision of land, resulted in a large-scale fragmentation of peasant holdings. Its effects were further aggravated by the burden of taxation imposed upon the peasantry which often led to indebtedness and, eventually, to bankruptcy and sale. Another set of regulations concerned the use of pastures and woods which were held in common. The peasants were deprived of their old rights of pasture and woodcutting which they needed to support the farm and consequently, they were forced into the position of a tenant or wage labourer.

[120] Gölen, *Bosna-Hersek*, 122-126.

The attempt of the Ottoman government similar to that of the Habsburg rulers at restricting the claims of the landowners to the revenues from the land and to the labour of the peasantry resulted in a situation where the former came to offset their losses by extracting more dues and services from the latter. In Habsburg territories, the general effect of the transformation in land tenure was the dispossession and the dislocation of the rural people. In Bosnia as well, many cultivators abandoned their holdings and emigrated as the Ottoman government pressed the reform programme and the landowners tried to compensate for the loss of their privileges. The unrest which stemmed from the exclusion of Christian peasants from land ownership culminated in the 1875-76 rebellion which was an overwhelming trauma on the Muslim part of the population. Nevertheless, the land question in Bosnia dragged on for a long time, extending to the years when the province was first a de facto then a de jure part of the Austro-Hungarian Empire.

CHAPTER 3

LANDHOLDING IN BOSNIA UNDER HABSBURG RULE

3.1 Introduction

In Bosnia, too, the politico-legal revolution involved a transition from vestiges of feudal land tenure to the treatment of land as a marketable commodity. Indeed, the Austrian administration defined to stimulate markets in land as one of the major objectives of the government in Bosnia. This entailed defining the legal and economic relationship of the peasantry to the land anew. In contrast to the argument that there was a continuity in the nature of the agrarian relations due to the continuity in land legislation between the Ottoman period and under the Austro-Hungarian rule, this study argues that while the Austro-Hungarian administration followed the Ottoman legislation regarding landed property and land tenure, these laws were continuously reinvented and reinterpreted by selecting and applying particular laws or certain provisions of the law, while some were disregarded. It was in this way that the Austrian jurists achieved entirely new interpretations of the Ottoman Land Code of 1858 and the Bosnia Regulation of 1859 which led to the erosion of the cultivator's right to land.

This chapter has been organized in the following way: After devoting a discussion to the ways in which the Austrian rulers saw the conditions of land tenure in Bosnia, which, according to them, had evolved in relation to the Ottoman land legislation, the following section analyses the prior regulations of the new government regarding settlement of rights to land. The next section devotes a lengthy discussion to the cadastral survey which was commissioned by the Habsburg rulers in Bosnia. It is argued that surveying and mapping were two important tools in

establishing state ownership and control over land. The following sections examine the so-called Regulation for the Possession of Woodland of 1884 and the Land Register Law which was drawn up specifically for Bosnia. A lengthy discussion is devoted to the regulations regarding the cultivator's right to land. It is argued that by interpreting the provisions of the Bosnia Regulation of 1859 and the Ottoman Land Code in a particular way and supplementing them with new laws, the Habsburg lawmakers achieved a gradual erosion of the rights of the cultivators to their holdings. The next section discusses the regulations regarding commons and wastelands. The legal revolution involved, as claimed by Hobsbawm, the division of vast areas of collectively-owned land. This study argues that Habsburg Bosnia was no exception to this. Large areas of pasture, including mountain pastures, and woodland were divided up and enclosed while the cultivators were deprived of their rights to commons and waste. The resulting competition over land is discussed in the last section of Chapter 3.

3.2 The occupation

In 1878 Austria-Hungary acquired the right to occupy Bosnia at the Congress of Berlin. The actual occupation of the province was accomplished with great difficulty and high expenses in men and money due to violent opposition of Bosnian Muslim and Orthodox fractions of the population.[121] On 22 February 1880, an imperial order was issued which put the province under the control of the Common Minister of Finance. The executive, legislative, judicial and administrative powers for Bosnia were concentrated in the person of the Common Minister who virtually became the dictator of the province.[122] The supreme on-site authority was the commander-in-

[121] Jelavich, *History of the Balkans: Twentieth Century*, 59.
[122] Sugar, *Industrialization of Bosnia-Herzegovina*, 28.

chief of the Fifteenth Army Corps in Sarajevo.[123] Under him was the civil adlatus (aide-de-camp), who controlled the civil administration.[124] The new administration governed "with iron hand" as revealed in the words of Ferdinand Schmid, the chief statistician of the Austro-Hungarian administration in Sarajevo.[125]

In the days preceding the occupation, to ease the extortionate burden on the peasantry and to improve the living conditions of the population was claimed to be a part of the civilizing mission of the new government.[126] Thus, the cultivators hoped for an immediate change in land tenure and expected that they would become the sole owners of the land they cultivated.[127] They were aware of the change that happened in Serbia featuring expropriation and redistribution of land. They refused to give the landowners' share of the produce and neglected to cultivate the land. Furthermore, many had fled their lands during the uprising of 1875-76. Therefore, the government had to force the cultivators back to work. On 30 November 1878, approximately two months after the capture of Sarajevo by the Austro-Hungarian troops, the Second Army Corps issued a decree ordering that the cultivators should be returned to their former çiftliks and that they had to render the *tretina*, one-third share of the produce and other customary dues to the landlords to avoid the use of coercive measures. It was underlined that the cultivators should not be strengthened in such a way that the landlords would get the sense that the occupation had deprived them of their rights to property. The intention of the government was to promote the customary rights of the landlords whilst protecting the cultivators against overburdening on the part of the landlords. The support of the Catholic and Orthodox

[123] See Appendix A for a map of Sarajevo, 1905.
[124] Pinson, "The Muslims of Bosnia-Herzegovina under Austro-Hungarian Rule, 1878-1918," 92.
[125] Schmid, *Bosnien*, 324.
[126] Warriner, *Contrasts in Emerging Societies*, 380-381.
[127] Jelavich, "The Revolt in Bosnia-Hercegovina, 1881-2," 422.

clergy was also sought to this end. The decree deemed that the existing law, particularly the Bosnia Regulation of 1859 should be enforced.[128]

Two months later the Common Ministry of Finance issued a decree in response to the reports of General Theodorovic and General Jovanovic[129] who were the imperial representatives on the ground and who had emphasized the urgency of taking measures for the resolution of the *Agrarfrage* and the necessity of convincing the people about the "possibility of a land redemption within a short period of time". In the decree, it was stated that:

> Adhering to the principle that the existing rights of ownership have to be respected, we do not neglect the fact that in Bosnia and Herzegovina a change in land tenure is to be promoted in time, to the effect that the tenants are assigned the free possession of their houses and an appropriate part of the land they are now cultivating . . . [T]he landowners should be compensated for the part of the land that would be taken over from them.[130]

While the decree directly promised a solution to the agrarian question, it did not prejudice when or how it would be done. According to the decree, a complete survey and registration of landed property had to be carried out prior to taking any measures for land redemption. Furthermore, a thorough inquiry was needed in order to determine if the resources of the provinces would meet the financial burden of land redemption. Until then, the present legislation and particularly the Bosnia Regulation of 1859 were to be enforced. A subsequent ordinance again deemed that the authorities had to remind the people and particularly the tenants that the occupation

[128] "Erlass des k. k. II. Armee-Commandos vom 30. November 1878, " in Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 1. Bd. 512-514. On ALEX Historische Rechts- und Gesetzestexte Online, Austrian National Library's official web site, alex.onb.ac.at (henceforth Landesgesetzblatt BH).
[129] General Jovanovic was a Croat military commander from the Austrian Empire. He commanded the occupation of Herzegovina by Austro-Hungarian army.
[130] "Erlass des gemeinsamen Ministeriums vom 4. Februar 1879," in Landesgesetzblatt BH 1878-1880, 1. Bd., 514.

didn't free them from their obligations which had existed for hundreds of years.[131] Furthermore, the authorities repeatedly notified both the landowners and the cultivators of the necessity of drawing up written agreements as prescribed by the Bosnia Regulation.[132] However, expecting a change in the ownership of land, the cultivators objected to signing agreements which would be a confirmation of the rights of the landowners to the land.

Soon after order was restored in the country, the Austro-Hungarian government organized a conference in Sarajevo during December 1879. The conference was attended by 18 experts from the Monarchy while the landowners and cultivators were not invited to the conference. The aim of the conference was to create a clearer picture of the agrarian relations in Bosnia. The majority of the participants stated that the agrarian relations in the province were of a feudal nature, therefore of a public legal character and argued that the government was obliged to push through a compulsory resolution of agrarian relations using its own means. The remainder of the participants of the conference argued that agrarian relations in the province had a private legal character and that they should be resolved by a voluntary agreement between the landowners and cultivators. Despite the opinion of the majority present, the government adopted the policy of maintaining existing agrarian relations. [133] The authorities justified this policy by claiming that the government had no right to recast customary land law into the rigid mould of unalterable legality and so possibly obstruct future development.[134] They also claimed that Austria- Hungary

[131] "Verordnung der Landesregierung in Sarajevo vom 24. August 1880," in Landesgesetzblatt BH 1878-1880, 1. Bd. , 538-539.
[132] "Telegraphischer Erlass der Militärkanzlei seiner Majestät an FZM. Baron Phillipovich und FML. Baron Jovanovic vom 12. October 1878," in Landesgesetzblatt BH 1878-1880, 1. Bd. , 511-512.
[133] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 153.
[134] Grünberg, *Die Agrarverfassung,* 55-56.

as a legal state did not want to violate the rights of the landlords and to further exaggerate an already tense situation.[135]

In April 1880 an ordinance was published by the Provincial Administration which sought to regulate the process that was to be followed by the district authorities when the landlords claimed unpaid dues. According to this, the landlords could appeal to the district administrations with a document called *Rückstandsausweis* or document of outstanding dues, that described in detail the dues and labour services owed by the peasants (see Appendix Figure B1, B2, C1 and C2). The district authorities had to determine the amount of the due within fifteen days. The landlords could appeal to the Provincial Administration as the court of second instance if they would disagree with the decision of the district administrations.[136] This document which was to be compiled would serve to draw a clearer picture of the agrarian relations on the one hand and to obtain data about the nature and volume of agricultural production in the province, on the other.

3.3 The prior settlement of rights to land: The regulations of 1881 and 1883

After Bosnia had definitively been pacified, the Provincial Administration decreed that until the enactment of new laws the courts were to apply the "existing body of law".[137] In the summer of 1880, the Ottoman Land Code of 1858 was translated into German and Bosnian,[138] printed *pro foro interno* and sent to the administrative

[135] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 153.
[136] "Verordnung der Landesregierung in Sarajevo vom 18. April 1880," in Landesgesetzblatt BH 1. Bd., 516-521.
[137] Becic, "Das Privatrecht in Bosnien-Herzegowina (1878-1918)," 89.
[138] Karcic, "Survival of the Ottoman Islamic laws in post-Ottoman times in Bosnia and Herzegovina," 57.

authorities and courts.[139] In May 1881 a commission set up in the Provincial Administration in Sarajevo decided that it was to be unofficially reported that the term "existing body of law" should be considered only those laws which were published in the *Düstur*, the compendium of laws and regulations of the central Tanzimat period.[140]

The Austrian legislators adopted the categories of tenure of the Ottoman Land Code which mainly dealt with state lands, miri, mevat, and metruke.[141] They particularly underlined that miri land was land in which the rakaba (the title) rested with the state while occupiers had permanent usufruct rights as long as they cultivated it and paid the tithe. The arable land was conceived of as belonging to the category of miri, while the possession of miri land was defined as miri-ownership (*miri-Eigentum*) by the Austrian jurists. They claimed that the Ottoman Land Code recognized unrestricted ownership (mülk), only in regard to house and its garden and yard up to a half *dönüm*, which were mainly located in urban areas. All the remaining land, as conveyed by the Austrian jurists, was state-owned land. Thus, they viewed the Land Code as a continuation of the pre-modern Ottoman land law emphasizing the absolute ownership of the state. The sovereign rented out parcels of arable, pasture and woodland in return for a fee termed tapu and an annual payment, the tithe.[142] The Austrian jurists claimed that *dominium directum* of the state was manifest in the obligation to pay the tithe.[143] The sovereign could grant land to vakıfs to religious or charitable purposes. The land which was assigned to villages to be held in common was the metruke. The Austrian legislators underlined that metruke

[139] Gelez, "La Question Agraire en Bosnie 1800-1918," 255. The Ottoman legislation was to be provided in its "authentic version". This work was the *Legislation Ottomane* of Aristarchi Bey. In Becic, Das Privatrecht in Bosnien-Herzegowina (1878-1918)," 92.
[140] Becic, "Das Privatrecht in Bosnien-Herzegowina (1878-1918)," 92-93.
[141] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 104.
[142] Eichler, *Das Justizwesen*, 64.
[143] Eichler, *Das Justizwesen*, 68.

was situated within the boundaries of villages. Mevat lands were unoccupied lands which were situated far from inhabited areas.[144]

In the following years, according to the Austrian jurists, the Ottoman reform legislation intended to introduce further regulations regarding land tenure including the woodlands. The Ottoman Forest Regulation of 1870[145] was presented as a very significant law which was implemented only after the occupation of the province. The motive behind the enactment of the Forest Regulation was the protection of the forest and thus, according to the Austrian jurists, introduced a new category of tenure, the domain lands. The Forest Regulation recognized the state forests as domain lands in distinction to the miri forests which were rented out to individuals. While miri land corresponded to state ownership in a broad sense, domain lands corresponded to state ownership in a narrow sense, namely land which was exploited by the state.[146]

Yet, at the same time, the Austrian jurists claimed that the Ottoman reforms were insufficient to promote a settlement of rights to land, particularly with regard to the possession of the woodland. They argued that while the Ottoman Land Code allowed the possession of the woodland by individuals with a tapu, the Forest Regulation prescribed that individuals could possess parcels of the woodland only with an imperial rescript (*ferman*).[147] Furthermore, management of the forest by the state did not exist under Ottoman rule. Consequently, as argued by the Austrian authorities, people used to graze their herds and fell timber without any restriction in the state forests which were located within the village boundaries. After the Austro-

[144] Eichler, *Das Justizwesen*, 64.
[145] In the official sources the Ottoman Forest Regulation of 1870 was referred to as the Ottoman Forest Law of 1869.
[146] Eichler, *Das Justizwesen*, 76.
[147] "Verworren war sie rechtlich dadurch, dass das Forstgesetz zwar den Domanialbegriff theoretisch aufgestellt, privates Eigentumsrecht auf Wald aber an die Erwerbung spezieller Besitztitel auf Grund eines kaiserlichen Fermans gebunden hatte." In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 300.

Hungarian occupation, landowners came to claim ownership of large areas of woodland on the grounds of the legislation which recognized private ownership in woodland. They buttressed their claim by arguing that these lands had been used by their ancestors and the sharecroppers tilling the land for a long time. The Austrian legislators claimed that individuals could not have acquired tapus relating to these parcels of woodland because of the legal status of the land, namely these were woodlands which were lying within the boundaries of villages and which were reserved for the use of the village residents. The category metruke allowed them to argue that although these woodlands were used by the cultivators, it was impossible for individuals to acquire title deeds to these parcels.[148] They claimed that there were similar conditions in regard to areas of pasture as well. Areas of pasture were belonging to the state and they were rented out to private individuals with a tapu in return for a ground rent corresponding to the tithe. However, pastures were held by private individuals even if they did not have a tapu[149] to these lands. Thus, according to the Austrian jurists, the possession of areas of pasture and woodland was illegal, for they were either state land in a narrow sense, or the individuals held these parcels without a proper deed and this uncertainty regarding land tenure was an obstacle to the effective administration of the province and weakened the rule of law.[150]

[148] Eichler, *Das Justizwesen*, 277. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 300.

[149] The account of Eduard Eichler, who was a professor of administrative laws and a civil servant, gives hints on the idea in the minds of the Austrian authorities regarding the tapu. Eichler claimed that the nature of the tapu paved the way to the appropriation of state lands. At the outset the tapu had been a lease contract, but later tapus were issued relating to mülk properties and in this way tapu came to be considered as title deeds to land. Furthermore, according to Eichler, the tapus included the description of the plots including their location, boundaries, extent and type of land use as proven by the parties and the village headmen. When the land was transferred, a new tapu had been issued on the basis of the old deed, and, in many cases, the description of the boundaries of the plot had been recorded as if it included neighbouring areas of forest and pasture. In this way the individuals tried to acquire a tapu to areas of state forests in advance which they planned to reclaim and cultivate. Thus, the tapu which should have been a lease contract to a certain plot of land came to be the evidence of a right to a plot of which the nature and boundaries were determined as proven by individuals. In Eichler, *Das Justizwesen*, 272-275.

[150] Eichler, *Das Justizwesen*, 277-279.

There was a particular reason why the authorities emphasized that Ottoman measures were far from providing a settlement of rights to land, particularly with regard to areas of pasture and woodland. The government saw the vast forests of the province as untapped wealth and encouraged forest industries. Immediately in the years following the occupation the government tried to introduce regulations in regard to areas of woodland and pasture, which, according to the official view, consisted of wooded pastures to a great extent. First, a commission was set up for examining the Ottoman title deeds. In September 1880, the Finanzlandesdirection (Financial Directorate) in Sarajevo issued a decree addressing the Katastralvermessungsdirection (Directorate of Cadastral Survey) in Dervent. The decree was also sent as a guideline to the Forstamts (Forestry Boards) in the districts who were charged with "protecting the interests of the Forstärar by any available means":

> Decree to the Katastralvermessungsdirection in Dervent:
> The Finanzlandesdirection is proud to declare that according to the report of the Waldtapien-Ueberprüfungscommission[151] of 6 August of this year . . . among 11,604 deeds to woodland and pasture . . . only about 100 pieces were identified as authentic. Since neither the number of the forest guards and foresters appointed was adequate to demarcate the boundaries of the state forests nor they could intervene by all claims to woodlands, prompted by the need for separation of the state forests of Bosnia-Herzegovina, the Finanzlandesdirection is to decree to the thankworthy Katastralvermessungsdirection to try to register all woodland as state land and to register only that parcels of woodlands as undisputed possession of individual landholders sooner or later, to which they could submit the German translation of a tapu relating to this parcel that had been formerly examined by the Waldtapiencommission.[152]

The Financial Directorate proposed for a short cut solution in order to reclaim privately appropriated lands for the state. Yet when the Common Ministry of Finance was informed about the issue, it published a decree stating that the orders of the

[151] Commission for the Examination of *Tapu*s to Woodland.
[152] "Circularerlass der Finanzlandesdirection in Sarajevo vom 2. September 1880," in Landesgesetzblatt BH, 3. Bd. 1. Abt. 502-503.

Financial Directorate were not in accordance with the instructions issued by the Common Ministry. The aim of the cadastre was, as declared by the Common Ministry, the determination of the factual state with regard to the possession of land. In cases of overlapping claims to land, it was to be emphasized that the registration of the de facto holder of the plot had no function of substantiating claims to land. These rules were valid by the survey and registration of woodlands as well. Therefore, it was prescribed that only those parcels of woodland should be registered as state-owned land to which a claim of another party did not exist. [153]

It is not clear who were the members of the commission or how did they proceed to examine the authenticity of the deeds submitted.[154] In December 1881 the government issued an ordinance which regulated the procedure according to which claims to particular plots of woodland were to be examined. The regulation was to be implemented in individual cases when the administration planned to make use of these plots of woodland.[155] Immediately the first article of the ordinance deemed that areas of arable land or meadow which had been reclaimed and cultivated and which were situated at the borders of or in the woodland belonging to the state treasury (Landesärar) were within the scope of the ordinance as well. In each county, a commission (Kreiscommission) was to be established which was to be membered by a senior official, a jurist, a forester, a scribe, and two locals who were appointed by the administration (Art. 2).[156] The state treasury was to authorize the commission in whose boundaries the parcel of land was situated by publishing notices

[153] "Auszug aus einem Erlasse des gemeinsamen Ministeriums vom 24. October 1880," in Landesgesetzblatt BH 1878-1880, 3. Bd. 1. Abt. 505-506.
[154] Yet the commission managed to examine very fast thousands of deeds which were submitted and which were of course in Turkish and concluded that almost all were falsifications. In "Circularerlass der Finanzlandesdirection in Sarajevo vom 2. September 1880," in Landesgesetzblatt BH, 3. Bd. 1. Abt. 502-503.
[155] Eichler, *Das Justizwesen*, 277.
[156] In the Ordinance of 27 May1882 it was stated that the commissions were membered by two locals who had to examine the authenticity of the deeds submitted. "Ordinance of the Provincial Administration of 27 May 1882," in Landesgesetzblatt BH 1882, 281-282.

(*Edictalaufforderungen*) in the official gazette in order to determine the rights of ownership or rights to use on a particular plot of land (Art. 4).[157] This notice had to contain the name of the village in which the parcel of woodland was situated and the possible exact description of the boundaries of the plot (Art. 5). The village headmen (*muhtar* or *knez*) were responsible for conveying the notice to the village residents (Art. 6). The individuals had to appeal to the commissions which were determined as courts of first instance (Art. 1).[158] The Landescommission within the Provincial Administration was determined as the court of second instance which was membered by a senior official, a superior judge, a senior forester of the Financial Directorate and two locals who were named to this purpose (Art. 3). The claimants had to submit tapus and hüccets, and their validity was to be examined by people who were well-acquainted with the subject (Art. 16).[159] Five months later another ordinance was issued which stated that there were many falsifications of the tapus and the commissions in the counties were membered only by two local people who could examine their authenticity. Therefore, the ordinance prescribed that the commissions which were to deem about rights of ownership and other rights to land were first to send the tapus to the Provincial Administration where skilled dragomen would translate them and establish their authenticity. [160]

Rather than to promote a settlement of rights to land, the objective of these regulations was to eliminate any possible compensation claim of individuals in individual cases when the administration would lease out or sell particular plots of

[157] The Edict was to be published in the official gazette three times with an interval of eight days.
[158] The individuals should appeal to the Kreiscommission in thirty days including the holidays from the day the announcement was published for the last time (Art. 5).
[159] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 31. December 1881," in Landesgesetzblatt BH 1881, 734-740.
[160] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 27. Mai 1882," in Landesgesetzblatt BH 1882, 281-282.

woodland.[161] However, as declared by the authorities, the ordinance was not successful in promoting this zeal because subsequent to the publication of official notice for a particular plot of land, many individuals appealed to the commissions to prove title to land. Since the authorities lacked any measures according to which the claims to land were to be determined, "the question of the possession of woodland" aggravated, as admitted by Eichler.[162]

The authorities argued that another major objective of the government was to provide the province with cheap agricultural credit to the security of land. Thus, it was necessary to establish an institution which would secure the repayment of the debt to the third parties.[163] In 1882, at the time when the work for the cadastral survey continued, considering the urgency of the issue, the Provincial Administration proposed for the settlement of rights to land by compiling tapu-registers (*Tapienbücher*) rather than by issuing lease contracts (tapus) to these parcels. At the same time, the provisions of the Austrian Civil Law relating to mortgage credit were to be adopted besides eliminating contradicting provisions of the Ottoman land legislation. The proposal of the Provincial Administration was rejected by the Common Ministry of Finance on the grounds that such a reform of the tapu institution in order to promote mortgage credit would harm the work for cadastral survey. The Common Ministry ordered for the introduction of a new institution that

[161] Posilovic, *Das Immobilar-Recht*, 96.
[162] Eichler, *Das Justizwesen*, 277-278. As admitted by Eichler, at the end of 1881 there was any legislation according to which claims to woodland were to be evaluated.
[163] Below the interest rate of the provinces which was 12 % at the time. "Das gemeinsame Ministerium auch bereits die Heranziehung von Capital weit unter dem gesetzlichen Zinsfuss des Landes, welcher noch 12 % beträgt in Aussicht hatte, dieses jedoch nur zu erlangen war, wenn dessen Sicherstellung auf Grund einer gegen jeden Dritten wirksamen Verpfändung des Grundbesitzes erfolgen konnte, so sollte die Einführung des Institutes der Hypothek, jedoch ganz unabhänging von der Tapieninstitution, erfolgen." In Eichler, *Das Justizwesen*, 280-281.

should be independent of the tapu institution that would enable third parties to provide funds to the security of land.[164]

On 3 June 1883, the Common Ministry of Finance issued an ordinance which stipulated for the appointment of a tapu commission in each district. The commission was membered by the district administrator or his representative (in general a jurist) as the head of the commission, the tax assessor, the shari'a judge (*kadı*), and a member of the district meclis.[165] The tapu commission was expected to meet every week on a day which was to be announced to the public. The sales or acquisition of property should be made under the supervision of these commissions who were responsible for the issuing of certificates of property (tapus) in the presence of the parties involved. The commission was also responsible for the compiling of certificates about pledging of property against a debt or its release which should be an official confirmation of these transactions. The ordinance prescribed that "only for future reference" these transactions were to be recorded on particular registers (*Tapien- und Verpfändungsregister)* which should be compiled together or separately according to the need. The documents which were to be submitted by the parties were to be examined according to the Ottoman land law and the appeals to the commission were to be dealt with on the same day or on the following day if necessary. The commission had to ask for the decision of the courts when needed.[166]

The second part of the ordinance regulated the procedure for mortgage credit. The persons who wanted to get loans by pledging their land against debt could apply to the district administrations and their petitions would be conveyed to the Provincial Administration via county administrations. The Provincial Administration would

[164] Eichler, *Das Justizwesen*, 280-281.
[165] Since the commission was membered by officials who were well acquainted with the conditions of land tenure and the inhabitants of the district it was possible to provide correct data about the transfer of *tapu*. Eichler, *Das Justizwesen*, 282.
[166] Eichler, *Das Justizwesen*, 282-283.

approve the individual to get a loan if it would be officially determined that the loan would serve for the improvement of agricultural production and that the person who wanted to acquire the loan was skilled and reliable so that he would use the loan for the declared economic purpose and that he would pay back the loan. The district administrations were to issue individual title certificates (*Grundbuchsprotokoll*) using the cadastral registers and by making an inquiry about ownership of or rights to the plot of land in question. They were also responsible for estimating the value of the land. The boundaries of the property were to be exactly defined. On the basis of these data the draft of a Grundbuchsprotokoll which consisted of a *Besitzstandsblatt* which included the name of the landholder, the location and the description of the boundaries of the plot and the surface area of the plot in local measures and in square meters and a *Lastenblatt* which included the amount of the loan was compiled by the district administration. Subsequently, a notice was to be published in the official gazette and the persons who would claim the land or the mülk objects on it like buildings and trees or who were money lenders to whom the land was pledged against debt had to apply to the district administration in the following six weeks. If anybody would claim the land, on the basis of the local inquiry including the description of the boundaries and the official notice, the Grundbuchsprotokoll came to be valid and the loan was provided to the security of land. It was prescribed that the individuals could acquire loans from the banks in order to "buy land for extending middle and large size landholdings, redeem the loans owed to private moneylenders, pay the tax arrears and prevent executions". The sharecroppers could acquire loans to buy the land they cultivated.[167] The authorities claimed that this

[167] Eichler, *Das Justizwesen*, 284-285. Eichler talked not about the acquisition of land by the sharecropper but the redemption of the kmet.

regulation was of profound significance because individuals could get a loan from the banks by submitting these individual title certificates.[168]

The provisions of the ordinance are a unique example of the ways in which the government sought to make regulations regarding land tenure without a settlement of title to land. On the one hand, land transactions were controlled and tapus were produced at a lower level of administration namely by the tapu-commissions in the districts. The commissions had to issue certificates of property with regard to the transfer of land among individuals, but the tapus were not considered as documents which prove title to land. This practice rather reveals the attempt of the government "to attach every parcel of taxable land to an individual who was then responsible for paying the tax on it."[169] If the land was pledged against debt to a private money lender the arrangement was to be registered by the tapu commissions as well. On the other hand, the administration encouraged the cultivators to get mortgage credit and acted as agents of the institutions which provided loans. In these cases, the Provincial Administration intervened and the security for debt for the parties which would offer agricultural credit was provided by compiling individual Grundbuchsprotokolls. These documents, according to the Administrative Report, were like parts of land registers. Indeed, the government determined the procedure of compiling the land registers in the same way: first, before any property could be registered there was a *Reambulierung* of the boundaries,[170] second, the rights to land were to be determined by an inquiry and third, an official notice was to be published in the gazette in order to eliminate any

[168] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536.
[169] İslamoğlu, "Politics of Administering Property: Law and Statistics in the Nineteenth-century Ottoman Empire," 294.
[170] In England under Lord Westbury's Act, 1862, "the boundaries were very carefully defined . . . before any property could be registered there was always what was called at the time a perambulation of the boundaries, and the exact position of the property boundary was noted on the map in the presence, wherever possible, of the adjoining owner". In Pottage, "The Cadastral Metaphor: Intersections of Property and Topography," 208, n. 23.

possibility of a future claim to the property. The transfer of land for unpaid debt was guaranteed by these documents relating to particular plots. The authorities argued that the cultivator could get loans in order to escape from the forced sale of the land in cases of tax arrears. [171] Yet, at the same time, the government collected the payments due to the bank and sold the holdings of the cultivators who could not pay their debts for the account of the bank.[172]

3.4 The cadastre

The Habsburg administration commissioned a surveyed and mapped cadastre in Bosnia. In December 1879 a special commission was set up within the Common Ministry of Finance in Vienna and issued detailed instructions to define the survey technology and the form and the contents of the maps and registers which were to be produced during the survey. The objective of the cadastre was, as declared by the authorities, to introduce a land tax which would be collected on the basis of a surveyed and mapped cadastre.

The fieldworks commenced on 15 August 1880 under military leadership. An astronomically orientated triangulation net was constructed which joined up with that of Austria[173] and maps were drawn at a scale of 1:12,500. The survey of the boundaries of villages and large areas of pasture and woodland was carried out by the plane table method. Individual plots were represented on island maps of villages which were constructed at a scale of 1:6,250.[174] The area of fields was calculated using the plane table as well. According to the Administrative Report for 1906,

[171] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536.
[172] Sugar, *Industrialization of Bosnia-Herzegovina*, 93.
[173] Kain and Baigent, *Cadastral Map*, 203. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 487.
[174] Graser, *Agrarsysteme,* 24. This was the practice in the Franciscan cadastre which was constructed for the Austrian territories.

despite the difficult terrain and harsh climatic conditions, towards the end of May of 1885, the survey of 2,845,057 parcels of 5,115,689 hectares was completed.[175]

The cadastral survey in Bosnia was well-documented in the account of Victor Wessely who was a geometrician and the commander of a surveying group.[176] Wessely explained that at the time when the work for the cadastral survey began, order was not established in the provinces. The surveyor was the commander of a small detachment which consisted of two assistants, twenty-four officers, and seven helpers. In many cases, local people opposed the survey and the surveyors had to deal with "hostile remarks and actions of the ignorant, uncivilized, distrustful"[177] Bosnians who thought that their rights to possession of land would be violated. Sometimes they were punished to end the trouble but the surveyors tried to minimize the damage as well. In 1882 at the time of the beginning of the fieldwork the surveying group which reached to Bjelasnica Planina were ordered to withdraw because of lack of security. As the group came back in June, they found out that the posts in the field which were formerly erected were removed and burned. In August and September of the same year, 341 officers joined the surveying group and provided for military assistance because of uprisings in Konjic at the river Neretva.[178]

In May 1880 the Provincial Administration issued an instruction on the preparatory work that the district administrations had to carry out which reveals that the authorities were well aware of the controversial nature of the cadastral survey.[179]

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[175] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 487-488.
[176] Wessely, *Die Catastral-Vermessung*. Wessely's work which was published in 1896 was a guideline for "experts in geodesy, geometry, particularly the ingenieurs in land tax assessment commissions".
[177] Wessely, *Die Catastral-Vermessung*, 8.
[178] Wessely, *Die Catastral-Vermessung*, 8-9.
[179] According to the authorities, the people were suspicious whether "the surveyors were competent to obtain a right understanding of the complex relationship" of the province. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 488.

The most important duty of the district administrations was to convince the people about the purpose of the cadastre in order to prevent any opposition which could jeopardize its completion. Thus, before the beginning of the fieldwork, the surveyors and assistants were obliged to gather the muhtar or knez, the representatives of the vakıfs, prominent landowners and the villagers and inform them about the aim of the survey.[180] The surveyors had to explain that it was the paternal care of the Monarchy which made her commission an expensive project like this in order to enable equitable and impartial taxation of the land and soil so that liability was commensurate with ability to pay (Art. 8). They had to explain that the cadastral operation would not alter the ownership of or rights to land and that its only objective was to register the extent, use and net income of plots of land as the object of tax and the de facto holder of the plot as the person liable to tax. The surveyors had to emphasize that in the cadastral survey the person who actually cultivated the land and paid the tax of its income was to be regarded as the de facto holder of the plot. Thus, the sharecroppers (kmets) were to be registered as the de facto holder of land (Art. 10).[181]

The instruction included particular provisions about laying out and demarcating the boundaries of villages which were previously uncertain. The surveying of land on the basis of cadastral or tax parishes instead of *Grundherrschaften* (estates) was first introduced in the Josephine cadastre which was

[180] The surveyors had to explain the villagers that the whole aim of the cadastral survey was to set taxation on a more equitable footing "in a simple manner appropriate to their understanding" Article 14 of the "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 4. März 1881," in Landesgesetzblatt BH 1881, 23-31.

[181] "Instruction für die im Rayon der Katastralvermessung pro 1880 durch die politischen Bezirksbehörden zu veranlassenden Vorarbeiten," in Landesgesetzblatt BH 1878-1880, 3. Bd. 1. Abt., 495-499. The authorities were aware of the possibility that the survey could be terminated because of a popular revolt. Thus, it was declared by the Common Ministry that the surveyors could demand the compensation of the cost of their trip back to a place within the boundaries of the Dual Monarchy if the work would stop because of an uprising. In Landesgesetzblatt BH 1878-1880, 3. Bd. 1. Abt., 505, note.

carried out from 1785 to 1790 in the Habsburg lands. The boundaries of tax parishes were marked with stones on the ground and the descriptions of the boundaries were listed in the *Grenzbeschreibungsprotokolls* (boundary registers).[182] Later, in the Franciscan cadastre, the Josephine tax parishes, later known as *Katastergemeinde* (cadastral parishes) were adopted with few changes.[183] Similarly, in Bosnia, the villages were to form cadastral units and their boundaries were to be fixed before detailed surveying started. The village boundaries were to be laid out first by the surveyor assistant and were to be marked with numbered stakes on the ground. The heads of adjacent villages and the holders of adjacent plots had to help the assistant in the field and show where the village boundaries ran.[184] The boundaries were to be described in the Grenzbeschreibungsprotokolls which were to be kept in the district administration for future reference (Art. 13-15). It was added that since the demarcation of village boundaries was not undertaken until that time, it was preferable that by laying out the village boundaries the parts of a çiftlik, for instance, areas of pasture and vakıf properties were not to be divided. However, it was possible to demarcate these large areas of pasture and woodland separately (Art. 25).[185]

The demarcation of the boundaries of the villages was to be followed by the demarcation of the boundaries of individual plots whereby the assistant had to accompany the landholders, the head of the community and the agents of the vakıf properties at the beginning of the work and tell them exactly how they would mark the boundaries of their plots on the ground (Art. 31). The boundaries of individual

[182] Graser, *Agrarsysteme*, 20-21.
[183] Kain and Baigent, *Cadastral Map*, 193-196.
[184] In regions where there were lesser trees the boundaries were to be marked with stones.
[185] "Instruction für die im Rayon der Katastralvermessung pro 1880 durch die politischen Bezirksbehörden zu veranlassenden Vorarbeiten," in Landesgesetzblatt BH 1878-1880, 3. Bd. 1. Abt., 495-499.

parcels were to be demarcated according to the type of land use and the holder of the plot in order to display them subsequently on maps as well (Art. 10).[186] The overlapping claims to land were to be registered as such and the respective boundaries as claimed by the parties were to be drawn on cadastral maps (Art. 11).[187] In this context, it was again underlined that the assistant had to remind the people that the cadastral survey would have no function of substantiating claims to land in property disputes and the cadastral registers were not to be used in litigation over rights to land.[188]

In July 1880 the government issued an instruction which described in detail the basic principles for the valuation of landed property. When surveying in a region was finished a land assessment was to be carried out whereby the duty of the valuation officers was to determine the amount of the net income of all plots of land which were used for agricultural production. The valuation officers were to visit each village and divide the land according to its quality, land use (field, meadow, garden, pasture, woodlands and reeds) and cost of production.[189] The instruction contained detailed provisions about the determination of market prices of various crops which were to be used by the calculation of the net income of individual plots. The work for land assessment was to be carried out under the supervision of the Katastralschätzungsdirektion (cadastral and valuation directorate) situated in Sarajevo. [190]

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[186] The land plots were to be marked by the presence of the heads of the villages, the agents of *vakıf*s, and the holders of them. The surveyor assistant had to explain them the way in which the boundaries were to be demarcated on the ground.
[187] Wessely, *Die Catastral-Vermessung*, 173-174.
[188] "Instruction für die im Rayon der Katastralvermessung pro 1880 durch die politischen Bezirksbehörden zu veranlassenden Vorarbeiten," in Landesgesetzblatt BH 1878-1880, 3. Bd. 1. Abt., 495-499.
[189] This was the practice in the Franciscan cadastre as well. In Graser, *Agrarsysteme*, 25
[190] "Katastralschätzungsinstruction für Bosnien und die Hercegovina vom 7. Juli 1880," in Landesgesetzblatt BH 1878-1880 3. Bd. 1. Abt., 442-494.

In the instruction, it was again underlined that village boundaries were to be fixed before detailed surveying started. Furthermore, the surveyors were to determine the boundaries of individual *Prädien,*[191] namely "plots of land which [were] outside the boundaries of villages, for example, the state-owned woodlands which [were] not ascribed to village communities". The fieldwork which was to be carried out in the summer part of the year involved the surveying and mapping of each village individually (see Appendix Figure B3). The maps were drawn at a scale of 1:6,250. Like it had been the case in the Franciscan cadastre which was carried out in the Austrian part of the Empire between the years 1817 and 1861, each map was to be accompanied by a *Parcellen-Protokoll* (register of land plots, see Appendix Figure B4, B5, and B6) which contained all data necessary for land assessment. Using these maps and the register of land plots the surveyors would compile for each village or *Prädium*, i.e. areas of pasture and woodland owned by the state, an island map at a scale of 1:6,250 (see Appendix Figure B7) and a *Catastral-Lagerbuch* (cadastral register) in the winter part of the year. [192]

The sample map (see Appendix Figure B3) displays the village Gornya Jvanica on the river Jvanica in Donji Tuzla with its surrounding villages. The boundaries to Komarovac and Cerovac villages are indicated by different lines**.** The villages are divided into *Ried*s,[193] i.e., a unity of parcels around or in the vicinity of a settlement. The map shows property boundaries and boundaries of cultivation, as arable, meadow, pasture, woodland and vineyard;[194] and communications,

[191] *Prädium* (pl. *Prädien*) a Latin term meaning estate. In the text "ausserhalb des Rahmens einer Ortsgemeinde stehenden Grundcomplexe, z. B. in die Dzemaate nicht eingetheilte Staatswaldungen".
[192] "Katastralschätzungsinstruction für Bosnien und die Hercegovina vom 7. Juli 1880," in Landesgesetzblatt BH 1878-1880 3. Bd. 1. Abt., 442-494.
[193] A *Ried* (pl. *Riede*) is a unity of land plots around or in the vicinity of a settlement. Graser, *Agrarsysteme,* 21 n. 48. In the Josephine cadastre the tax registers were organized by the *Ried*s as well. Graser, *Agrarsysteme,* 21.
[194] An "A" was used for arable, "Ws." For meadow, "H" or "HW" for pasture, the vineyards and woods were shown with symbols. In Wessely, *Die Catastral-Vermessung,* 212-213.

settlements and some topographical features like rivers and marshes as well. In forest areas, deciduous and coniferous trees are differentiated. The individual plots were numbered, and the residence numbers of the landholders are given in brackets.[195] More importantly, the pasture and the coppice which were held in common by the villagers are designated as *Gemeinde Hutweide* and *Gemeinde Wald* respectively and are displayed as a single parcel within the boundaries of the village Gornya Jvanica. It was prescribed that if the inhabitants of a village would claim possession of a particular plot land but could not show the exact boundaries, the boundaries were to be distinguished as *strittig* (disputed) on the cadastral maps, as on the cadastral map of Gornya Jvanica. The disputed territory should be registered in the name of the state.[196]

The Parcellen-Protokoll (see Appendix Figure B4, B5, and B6) was compiled by the surveyor assistant based on the information as given by a commission membered by the muhtar or knez of the village and reliable local residents. Their names were to be recorded on the first page of the Parcellen-Protokoll and later of the Catastral-Lagerbuch. The Parcellen-Protokoll contained the name of the owner and/or the de facto holder of each plot, his place of residence, the area of the plot in dönüm and square meter, the area of the unproductive land and its description (for instance a lake), and the number and description of the houses on the plot if there were any.[197] There was also a section in which the name of the landowner and the number of kmets was recorded if there were "dependent peasants".[198] Overlapping

[195] "Katastralschätzungsinstruction für Bosnien und die Hercegovina vom 7. Juli 1880," in Landesgesetzblatt BH 1878-1880 3. Bd. 1. Abt., 468, note.
[196] Wessely, *Die Catastral-Vermessung*, 216-217.
[197] For the Austrian part of the Empire it was termed *Grundparzellenprotokoll* and it was supplemented by a *Bauparzellenprotokoll* (register of building plots) which was not compiled in Bosnia.
[198] In the text "in Falle eines Abhängigkeitsverhältnisses".

claims to land were to be noted in the remark column.[199] There were also aggregate statistics of the area of each type of land use and the buildings.[200]

It was underlined that the records in the Parcellen-Protokoll should be accurate and mistakes were to be prevented as the Catastral-Lagerbuch (cadastral register) of Bosnia-Herzegovina was to be compiled on the basis of these data. Particularly the names of the landholders were to be recorded exactly. The properties belonging to vakıfs or monasteries were to be registered in the name of the relating mosque or monastery, like "vakıf of Sultan Ahmed Mosque in Constantinople". The vakıf properties which were rented out to individuals were to be registered in the name of the landholder, the name of the vakıf was to be recorded in the remark column. The house communions were registered in their family name, like "Parosic, house communions**,** number 4". The land should be registered in the name of the state if it was not possible to identify the landholder.[201]

According to Wessely, it was important to determine whether the land was jointly-held or it was about rights of servitude if the use rights of land were enjoyed by several parties.[202] Therefore, the land was to be registered in particular ways in the Parcellen-Protokoll:

> If jointly-held land was not belonging to a village but to several parties[203] their names were to be registered in alphabetical order. If the produce of the land was shared, or the right to fell a certain amount of timber or to pasture a certain number of animals was enjoyed by different parties, this was to be registered in the name of the joint holders of land in a particular way as follows:
>
> | | |
> |---|---|
> | Merdan, Achmed Aga | 0. 50 share |
> | Anbelic Marko | 0. 15 share |
> | Dunic Mara | 0. 25 share |

[199] Wessely, *Die Catastral-Vermessung*, 213, 218. The cadastral register was compiled by the assistant.
[200] "Katastralschätzungsinstruction für Bosnien und die Hercegovina vom 7. Juli 1880," in Landesgesetzblatt BH 1878-1880 3. Bd. 1. Abt., 472.
[201] Wessely, *Die Catastral-Vermessung*, 214-216.
[202] In the text "bei dem Vorkommen gemeinschaftlicher Nutzniessung".
[203] In the text "Wenn nun ein solcher ungetheilter gemeinschaftlicher Besitz nicht einer Gemeinde, sondern mehreren physischen Personen gehörte."

Kovacevic, Mujo 0. 10 share (succeeded by right of inheritance)

If the joint holders were resident in different villages, this should be recorded in the remark column like it should be recorded by all disputed parcels of land.

In cases when an individual had a certain servitude right over a piece of land, for instance, if he is the owner of fruit trees on the land that is held by somebody else, he should not be registered as one of the joint holders but this was only noted in the remark column.[204]

These rules are of particular importance because they clearly reveal how the cultivator's right to land came to be interpreted and registered in the cadastral survey. It was prescribed that land should be registered in shares when the cultivator paid a certain share of the produce as ground rent to the landowner, which means that the sharecropper was to be registered as one of the joint holders. The land was to be registered in shares as well when the cultivator had the right to fell timber or the right to grazing in the woodland belonging to the landowner. Put differently, the cultivators were registered if they took responsibility for the revenue of a particular plot.[205] Furthermore, the provisions for registration of land in shares which were associated with specific tracts of land was the reflection of an important objective of the cadastral survey to set up a new system of exclusive rights to land and soil by the Austrian administration. It also paved the way to the subdivision of landholdings when every joint holder is accorded the power to force partition,[206] a provision of the Ottoman Land Code adopted by the Austrian legislature. Yet there was an important exception to the practice of registering land in shares. If the cultivator had planted fruit trees on the land of the landowner (particularly plum trees were planted by the cultivators), he was not registered as one of the joint holders, by implication the

[204] Wessely, *Die Catastral-Vermessung*, 216.
[205] Richard Saumerez Smith argued that in British India "sharecroppers were generally not registered unless they took responsibility for the revenue or rent of a particular plot." In Smith, "Mapping Landed Property: A Necessary Technology of Imperial Rule?," 176, n.22.
[206] Mundy, *Governing Property*, 46.

cultivator did not have any right to possession of land arising from investment of labour such as planting trees. Indeed, a couple of years later the Austrian jurists deemed that the buildings and trees were an integral part of the çiftlik rather than belonging to the cultivator and that the cultivator had only a right to compensation if he would leave the holding.

With regard to areas of pasture and woodland belonging to individuals, it was prescribed that the registration of the woodlands involved the registration of the claims to particular tracts of land and this would not mean a recognized right to possession of land. It was underlined that any practice should be avoided which would lead to the false assumption that the objective of the cadastral survey was the regulation of the rights to ownership of land. Still, it was ordered that "if a village community or an individual would claim possession of parts of state-owned woodlands but could not point to the exact boundaries" the land was to be registered as state land in the Parcellen-Protokoll and later in the Catastral-Lagerbuch.[207] Although the records in the cadastral registers were not admissible to prove a title to land, it was prescribed that all land which could not with certainty be ascribed to an individual or to a village as its common land should be registered as state land.

3.5 The Regulation for the Possession of Woodland

In 1884, at the time when the cadastral survey was completed and each parcel was surveyed and mapped, the Common Ministry proposed for the compilation of land registers in order to separate state land from land held by individuals and to establish order in the provinces.[208] The authorities argued that all particulars of landed property, namely its extent, boundaries and conditions of ownership should be visible

[207] Wessely, *Die Catastral-Vermessung*, 216-217.
[208] Eichler, *Das Justizwesen*, 286-287.

at a glance on the land registers in order to facilitate the transfer of land.[209] As important, the lack of land registers was considered as a drawback for mortgage credit and the compilation of land registers would promote providing loans to landholders to the security of land.[210] The Common Ministry first proceeded to the so-called Regulation for the Possession of Woodland. Subsequently, the Land Register Law for Bosnia-Herzegovina was promulgated.

In March 1884 the Ordinance on Renting out Parcels of Woodland with Tapu was issued specifying the procedure according to which the Regulation for the Possession of Woodland was to be carried out.[211] The ordinance and the accompanying instructions were, as claimed by Eichler, strictly adhering to the principles of the Ottoman Land Code. According to the ordinance, only the Landescommission within the Provincial Administration was authorized to examine the claims to plots of land which were considered as a part of the woodland.[212] The Landescommission was membered by a senior forester**,** a senior judge and three notable people of different confessions who were appointed by the Common Ministry of Finance. The commission was headed by the Civiladlatus (Art. 14). As it was prescribed by the Ordinance of 31 December 1881, the Provincial Administration would publish notices in the official gazette relating to particular parcels of land (Art. 4).[213] The individuals who would claim the land had to submit

[209] Eichler, *Das Justizwesen*, 298-299.
[210] Eichler, *Das Justizwesen*, 287-288. In addition, the determination of the legal nature of each plot was considered of particular importance as "there were different arrangements in the province beside the *kmet* relationship."
[211] "Verordnung über die Verleihung von Tapien auf Grundstücke , welche zum Waldlande gehören," in Landesgesetzblatt BH 1884, 82-86. It remained in force until 1901. In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1913," 53. According to Dimitz, the regulation was inspired by the decree of 5 July 1853 that regulated the rights of servitude on the woodlands in Austria. In Dimitz, *Die forstlichen Verhältnisse*, 99. First article of the ordinance described the woodland as areas covered with taller or smaller trees, land allocated or suitable to fell timber as well as larger areas covered with chestnut trees.
[212] Eichler, *Das Justizwesen*, 290-292.
[213] If there would be no appeals the parcel of woodland would be considered a part of state-owned land (Art. 4).

documents proving their title to land, but the ordinance did not distinguish these documents as tapu or hüccet as the former ordinance did. Presumably, this would make the landowners assume that the old title deeds would secure obtaining a title to the land and the administration wanted to prevent it. The decision was to be made by the Landescommission on the grounds of the documents submitted and by examining the location of the plot, its boundaries and extent and the type of land use (Art. 5 and 7).[214] The data needed by the Landescommission was to be provided by particular Regierungscommissäre who were accompanied by technical personnel who examined the situation on the ground (Art. 12).[215] If it would be determined that the individual had title to land the Provincial Administration was authorized to issue lease contracts, termed tapu (Art. 9). The tapus included the extent and the description of the boundaries of the plot and the amount of the ground rent which was payable instead of the tithe.[216] The plots of land which were a part of the woodland could be registered in the name of individuals on the land register only on the condition that they could submit tapus to these parcels issued by the Provincial Administration (Art. 1).[217]

Although the Regulation for the Possession of Woodland did not have any stipulations regarding the size of the plot, an ordinance on the application of its prescriptions which was enacted seven months later deemed that only parcels of woodland which were larger than 50 dönüms could be rented out to individuals by the state. The ordinance deemed that those parcels of woodland which were scattered among arable land and which would be cultivated with the development of

[214] Article 5 also prescribed that "in particular it was to be determined if third parties had the right to fell timber on the plot."
[215] In the districts the commissions which were composed of the district administrator, a forester, and two locals of different confessions had to inform the Regierungscommissiäre (Art. 13)
[216] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 300-301.
[217] "Verordnung über die Verleihung von Tapien auf Grundstücke , welche zum Waldlande gehören," in Landesgesetzblatt BH 1884, 82-86. The commissions in the counties were not authorized to deem about claims to parcels of woodland anymore.

agriculture could not be considered woodland which should be placed under protection and maintained as woodland according to the stipulations of the Forest Regulation of 1870 because of their locality and extent.[218] The settlement of the rights to parcels of woodlands which were smaller than 50 dönüms "even if these were not woodland" was to be carried out at the time of the compilation of the land registers. [219]

According to the authorities, a very important provision of the instruction which supplemented the ordinance was that parcels of woodland could be rented out to individuals due to economic concerns, namely in order "to cover the rights of servitude of the landowners and their kmets".[220] Yet these rights were to be considered only if the parcels of land were regarded as situated within the boundaries of the çiftlik. In the ordinance it was underlined that the decision was not to be based "on the former rights of servitude on land even if they could be proved" (Art. 7). On the other hand, referring to Article 5 of the Ottoman Forest Regulation of 1870 which stipulated that the residents of a village could fell timber for building purposes and fetch firewood in the state forests, the ordinance deemed that by renting out the woodland with tapu the rights of servitude on land on the basis of the Forest Regulation were not altered (Art. 10). An ordinance issued five years later stipulated that not only the sharecroppers who cultivated the land held by the same landowner but also the general public had right to grazing and fell timber on the land. It was deemed that individuals could use the state forests only if they could not provide their needs in the woodland held by individuals. [221] Not surprisingly, the Austrian

[218] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 18. October 1884," in Landesgesetzblatt BH 1884, 422-423.
[219] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 301.
[220] Feifalik, *Agrarfrage,* 59. Eichler, *Das Justizwesen*, 291.
[221] Karszniewicz, *Das bäuerliche Recht*, 6. Dimitz, *Die forstlichen Verhältnisse,* 99. "die bäuerliche Bevölkerung ihre Holz- und Weiderechte in den ihnen verliehenen Waldungen zu befriedigen haben." In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 301.

jurists remained silent about the stipulations of the Ottoman Land Code which provided protection to çiftliks for their grazing rights and lands.[222] This was an important regulation of the government in regard to areas of pasture and woodland held by individuals and it was much contested by the landowners who wanted to have exclusive rights to these lands.

The legislature had to make other regulations with regard to the rights to woodland. The cultivators used to hedge, care and use areas of woodland which they called the *suma*.[223] Sometimes these parcels were held by the landowners and the cultivators had to render certain dues to the landowners in return to the rights to use of them.[224] There were such parcels of land as well which were "owned by the cultivators from time immemorial".[225] Not surprisingly, these parcels of land came to be considered as state forests as well. However, as claimed by Karszniewicz, the rights of the cultivators to these parcels of woodland was recognized by the state and these parcels, in distinction to the parcels of woodland which were termed "servitude woodlands", and on which general public had rights of grazing and woodcutting, were protected from the intrusion of the outsiders. At least de jure, the Austrian administration had to put such a stipulation regarding these areas of pasture and woodland, the suma, for "the right to the possession to this category of land was deeply embedded in the legal consciousness of the people".[226]

The careful selection of the concepts is in parallel with the policies of the administration regarding land tenure. The settlement of ownership of or rights to land

[222] Aytekin, "Agrarian Relations Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," 943.
[223] Also termed *lug*, *dubrova*, *gaj*, *absca*, *gora*, *zabrana*. It was a widespread practice on Herzegovinian Karstland. In Karszniewicz, *Das bäuerliche Recht*, 62.
[224] Karszniewicz, *Das bäuerliche Recht*, 62.
[225] Posilovic, *Das Immobilar-Recht,* 103.
[226] Karszniewicz, *Das bäuerliche Recht*, 62-63. Yet an important change was introduced with an ordinance issued in 1889 which redefined these parcels of woodlands as "constituting a physically indivisible unit of agricultural production".

was represented as a "question of the possession of woodland".[227] Although the regulation concerned only the possession of parcels of woodland which were larger than 50 dönüms, Article 26 of the Land Register Law prescribed that areas of pasture held by individuals were falling within the scope of the Regulation for the Possession of Woodland as well.[228] As important, the land was not sold but rented out to individuals with a lease contract, the tapu,[229] symbolizing the state-owned status of land, in return for ground rent. The Austrian jurists claimed that the issue was not about the recognition or disregard of ownership of land which had been already acquired; rather it was a regulation with regard to the possession of land, fully in consistence with "the spirit of the [Ottoman] legislation about landed property". Furthermore, the legal questions between the "sovereign as the representative of the owner of the entire land and soil" on the one hand and individuals on the other were of public legal character relating to public interest. The individuals could not appeal to the courts against the decision of the Landescommission as the issue had a public law character, but they could have recourse to the Common Ministry in six weeks (Art. 15 and 16).[230] In addition, the lease contracts issued by the Provincial Administration were not to prove title to land vis-à-vis the third parties who would claim possession of the same plot of land.[231]

The motive behind the Regulation for the Possession of Woodland was, as claimed by the authorities, to separate state land from land held by individuals and to

[227] Eichler, *Das Justizwesen*, 278.
[228] Article 26 of the Land Register Law prescribed that in the districts where the Regulation for the Possession of the Woodland was implemented, parcels of woodland were to be registered as belonging to private individuals only if they could submit tapus that were issued by the Provincial Administration. In other districts, the person had to submit a written confirmation of the Provincial Administration stating that the parcel was held by the person without dispute.
[229] Eichler claimed that tapu was inadequate for registering legal rights on land and soil. Yet, at the same time, the administration preferred to grant tapus. Eichler, *Das Justizwesen*, 286-287.
[230] "Verordnung über die Verleihung von Tapien auf Grundstücke , welche zum Waldlande gehören," in Landesgesetzblatt BH 1884, 82-86.
[231] Posilovic, *Das Immobilar-Recht*, 99. "wird auch denselben gegenüber als Eigentum erwerbende Urkunde anzusehen sein nicht aber auch unbedingt dritten gegenüber welche auf dasselbe Grundstück ihr Eigentumsrecht geltend machen würden."

prevent encroachments on state land.[232] Thus the regulation was about "parcels of land that were part of the woodland", more clearly areas of forest were to be considered "the cleared land which are enclaves in or at the borders of the woodland that is belonging to the state treasury and which are used as arable or meadow without a proven title to land".[233] It is not clear to what extent the pasture and arable were deemed as a part of the woodland. Representing the regulations regarding possession of land as regulations regarding the possession of the woodland was one of many instances when the authorities had resort to a euphemism and provided a blurred view of the issue under discussion.[234]

It is not clear how the Landescommission did actually proceed to evaluate the claims to land either. In most of the cases the Muslim landowners could not prove title to land because the authorities regarded the documents they submitted as "nice historic relics"[235] or as falsifications. Feifalik argued that some landowners did not apply to the authorities considering that a recognized right to woodland would only bring liability to tax. Consequently, the registering of woodlands was performed with ease:

> Proving a title to land was so difficult but the settlement of rights to woodland was so easy and mechanical. Parcels of woodland which were not assessed could be easily divided since there were no disputes over single objects. The only party who was interested in the woodlands was the state and therefore the state forests today are 1,918,944 hectares while 607,004 hectares are held by individuals, including those held by religious endowments.[236]

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[232] Eichler, *Das Justizwesen*, 287.
[233] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 31. December 1881," in Landesgesetzblatt BH 1881, 734-740.
[234] In the words of Eichler "[The objective of the administration was] a general settlement of title to land by the separation of land held by individuals from state land, in the first place, with regard to parcels of pasture and woodland larger than 50 dönüms, in the second place, smaller parcels of pasture and woodland, and lastly numerous parcels of pasture and woodland which were reclaimed and cultivated through the consistent intervention of the Provincial Administration." In Eichler, *Das Justizwesen*, 297.
[235] Cupic-Amrein, *Die Opposition*, 238.
[236] Feifalik, *Agrarfrage*, 56.

In reality, however, the settlement of rights to land required "endless work, endless tact" as reported by a contemporary observer.[237] Considering the substantial costs of the work the government decided to conduct both procedures progressively in individual districts rather than in the entire province. Because of its economic importance, northern Bosnia was determined as the region where the work was to start. The work for the settlement of title to woodland was conducted in the districts Tesanj and Prnjavor in the summer of 1884. For these districts, land registers were compiled in 1885 and they were made publicly accessible in August 1886.[238] The work for the compilation of the land registers was entrusted to a special commission membered by jurists and surveyors who worked under the supervision of the Provincial Administration. [239] First a notice was published in the official gazette requiring the landowners to submit and hand over their old tapus.[240] The commission visited individual villages. For each village the work involved demarcation of the boundaries, examination and correction of their representations on the maps, including the division of the land parcels, the examination and recording the alterations in the possession of land which was recorded during the cadastral survey. The commission was assisted by local people and village headmen in the field. The first part, in other words, involved a revision of the cadastre. The second part involved the formal process of the compilation of the land register.[241] The disputes

[237] Drage, *Austria-Hungary*, 622.
[238] Eichler, *Das Justizwesen*, 302-304. In the districts Banjaluka, Gradiska, Dervent and Sarajevo, the work for the compilation of land registers started in 1885.The land registers were made publicly accessible in the summer of 1887. In 1887, land registers were compiled in Priedor, Kostajnica, Gradacac and Ljubuski which came to be an economically important district. The work was conducted in 1887 in the districts Fojnica, Rogatica, Visoko, Srebrenica, Vlasenica, Zvornik, Zenica, Konjica and Mostar. In 1889, 17 districts remained but the work was confined only to those districts in which it was needed because of the immediacy of the settlement of rights to woodland.
[239] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536.
[240] The authorities stated that the landowners hesitated to hand over their old tapus. In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 537.
[241] Eichler, *Das Justizwesen*, 296-297.

over land between the landowner and the sharecropper were to be settled by the district administrator *ex offo.*[242]

When the land register was compiled for a district, the tapu commissions were to be replaced with land register commissions (*Grundbuchskommission*). Like the former, the land register commission was membered by the district administrator or his representative, a scribe, a shari'a judge, a tax assessor and a member of the district council. In the districts, the land register commissions were authorized to compile the documents relating to the transfer or mortgaging of miri and mülk properties, to register them in the land register, and to abolish a mortgage on the land.[243] Thus, as claimed by the authorities, even after the compilation of the land registers, the commission provided the opportunity to transfer land without any costs in the district administrations and thereby stimulated market in land.[244]

3.6 The Land Register Law

During the cadastral survey, the Parcellen-Protokoll (register of land plots) had identified the agrarian relations in each village. Between 1881 and 1884 a legal text was written which should enable to bring the cadastral register into line with the land register.[245] The Land Register Law was promulgated on 13 September 1884. [246] The main drafter of the Land Register Law was Adalbert Shek. He was inspired by the Austrian land register law promulgated in 1871.[247] Besides referring to the Ottoman land law, the drafters of the law consulted renowned Muslim landowners who were well-acquainted with the agrarian relations of the province and customary law.

[242] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536-537.
[243] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536.
[244] Eichler, *Das Justizwesen*, 298-299.
[245] Gelez, "La Question Agraire en Bosnie 1800-1918," 256.
[246] "Grundbuchsgesetz für Bosnien und die Hercegovina," in Landesgesetzblatt BH 1886, 60-136.
[247] Gelez added that Shek was inspired by the land register law which the French drafted for Algeria.

According to the commentary to the law, the need for drafting a Land Register Law stemmed from the fact that the tapu didn't provide for more than a vague description of landed property and that this flawed system was carrying in itself the seeds of all the disorder. On the contrary, the land registers were to be exact records of the rights to land and would allow for mortgaging the land which was absent in practice in the Ottoman land law. This would contribute to agricultural development and rationalisation of livestock farming.[248]

The Land Register Law defined categories of tenure as mülk, the unrestricted ownership,[249] and miri in which the title (*Obereigenthum*) rested with the state. The vakıf lands were assimilated into the categories of mülk or miri.[250] The law added a new category, the domain lands (*Staatsdomänengut*), a concept which was not stipulated in the Land Code but was introduced by the Ottoman Forest Regulation of 1870 according to the Austrian jurists.[251] The restitution of state ownership in land was the main feature of the Land Register Law.

The land register consisted of the *Gutsbestandesblatt*, the *Lastenblatt*, and the *Grundbuchsblatt*. On the Gutsbestandesblatt the legal status of land was recorded as miri or mülk. If the land was pledged against debt this was to be recorded on the Lastenblatt.[252]

The Gutsbestandesblatt listed all plots of land which were a part of the *pod kmetom*, namely all plots held by the sharecropper family**,** including its cadastral

[248] Gelez, "La Question Agraire en Bosnie 1800-1918," 256-257.
[249] Gelez stated that this interpretation of the mülk was the most frequently seen in that epoch. It finds its classic formulation by François-Alphonse Belin who defined *mülk* as *dominium plenum in re potestatem*, namely as private property with all the rights implicated by *jus utendi, fruendi et abutendi*. In Gelez, "La Question Agraire en Bosnie 1800-1918," 257 n. 375.
[250] Gelez, "La Question Agraire en Bosnie 1800-1918," 257. Eichler, *Das Justizwesen*, 67.
[251] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 299. Gelez commented that the concept was rooted in a radical interpretation of the opposition between rakabe and tasarruf, like *dominium eminens* and *usufructus*. In the terminology of the Austrian Civil Law the miri was probably a notion between domain land and public land. The individuals who occupy the land have a usufructuary right and the *beyt-ü'l mal* (the treasury) had the responsibility of keeping the land cultivated. In Gelez, "La Question Agraire en Bosnie 1800-1918," 257-258.
[252] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906, " 536.

number, the type of land use (as field, meadow, orchard or as building plot) and its extent both in dönüm and square meters. When the land was occupied by sharecroppers the landowner was recorded as the owner on the Gutsbestandesblatt.[253]

In the Land Register Law stress was laid on the fact that in case of sharecropping arrangements the legal status of land would not change (Art. 10 and 50a).[254] The name of the head of the peasant household was not to be recorded on the Lastenblatt (land charges register) as a right of servitude[255] rather it was to be recorded only on the Grundbuchsblatt. Thus the Grundbuchsblatt was in fact a tax register which listed the name of the taxpayers with the house number and all parcels of land held by the peasant household with the parcel number. The sharecroppers were not registered unless they took the responsibility for the revenue of a particular plot. Where the holding of the sharecropper family was a united holding (*ograda*) and if it had a particular name, this was to be recorded.[256] The practice of the administration recording the name of the cultivator in the Grundbuchsblatt was represented as a right to land conferred to the cultivator.

In reality, however, the land was registered in the name of the landowner in the Gutsbestandesblatt. The Austrian jurists argued that miri land was to be registered in the name of the landholder while the state-owned status of land was maintained. In the interpretation of the Austrian jurists, since the holder of miri land enjoyed legal rights to land which surpassed that of a *possessio* and since these rights resembled rights of ownership they might be considered as "miri-ownership".[257] The

[253] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536. "Am Eigentumsblatte wird nur der Grundherr eingetragen."
[254] Gelez, "La Question Agraire en Bosnie 1800-1918," 257.
[255] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536. "Das Kmetenrecht ist nicht Gegenstand grundbücherlicher Eintragung."
[256] Karszniewicz, *Das bäuerliche Recht*, 30-31.
[257] Eichler, *Das Justizwesen*, 36.

landowners could alienate or pledge the land against debt[258] which could lead to the dispossession of the cultivator.

3.7 The cultivator's right to land

Immediately after the occupation, the Austro-Hungarian rulers encouraged the settlement of foreign colonizers, in the first place the subjects of the Habsburg Monarchy in the province. While the cultivator's right to land came to be redefined on the grounds of the late Ottoman land law, it was again on the grounds of these laws that the government measures regarding the settlement of the colonizers was constructed and justified.

In November 1880, the Provincial Administration sent a list of the land parcels which were considered as appropriate for settlement to the Common Ministry and asked for permission for allotting parcels of state land to settlers arriving from Germany. The list included parcels that were part of a çiftlik as well, and their owners, according to the authorities, were inclined to rent out these parcels in return for one-third of the produce as ground rent. In response the Common Minister deemed that:

> [T]he settlement of colonizers on state lands might influence the solution of the Agrarfrage because it would bring competition in acquiring state lands which the native people could acquire the possession of under certain conditions on the grounds of the Land Code of 7 Ramazan 1274.[259]

Thus, according to the decree, in order to promote the resolution of the agrarian question, the Provincial Administration should encourage the immigrant families to purchase land from landowners. When the Provincial Administration asked again for

[258] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 53.
[259] "Erlass des gemeinsamen Ministeriums vom 5. November 1880, " in Landesgesetzblatt BH 1878-1880 1. Bd. , 543-545. In the official sources, the Ottoman Land Code of 1858 was referred to as Land Code of 7 Ramazan 1274.

the permission of the Common Ministry for assigning "state lands" to colonizers it was deemed that:[260]

> The main purpose of settlement is the reclamation of vacant land and this cannot be achieved by assigning cultivated land to settlers. Besides, it should be considered that the inhabitants of the province would think that they are treated unfairly if the land they cultivated would be assigned to newcomers. If such cases would frequently happen, it would probably result in serious discontent among the inhabitants of the province.
>
> From this point of view, I can only make an exception and allow the Provincial Administration to assign plots of state-owned land that were formerly rented out to people of Livno to Johann Niethammer, to his son, and to Jacob Riede, on the condition that they would occupy the land for a long period, that the holding which would be assigned to each of them would not exceed 20 joch, and that they should cultivate land by their own means.
>
> The influx of poor farm labourers would complicate the solution of the Agrarfrage and therefore it is recommended to promote the colonizers to purchase land from individuals until a complete regulation of the Agrarfrage is achieved. We seek to improve the lot of the çiftçis, without violating the property rights of the landowners. This could only happen if the demand to rent plots would decrease in time and the landowners would not be able to rent out land under the same conditions. Therefore, the attraction of poor colonizers is not appropriate for a satisfactory regulation of the Agrarfrage. I can only approve the efforts of the Provincial Administration to promote purchase of land from landlords since only in this way it would be possible to promote the arrival of intelligent yeomen who have financial means for cultivation.[261]

Ostensibly, the government wanted to promote the resolution of the agrarian question. In reality, however, the government policies led to the dispossession of the Bosnian cultivators.

The correspondence between various layers of government reflects the disputes over land on the one hand, and the endeavour in implementing the existing legislation in a suitable way that would conform to government policies, on the other.

[260] These were parcels held by native cultivators with title deeds. Chapter 4.3 includes a broader discussion of the issue.

[261] "Erlass des gemeinsamen Ministeriums vom 12 Dezember 1880," in Landesgesetzblatt BH 1878-1880 1. Bd., 548-549. In the decree, these farmers were designated as the *Landwirte* who are the middle class between the subsistence-oriented small farmers and the large landowners. In Nolden, "Kritische Geschichte, " 24.

In July 1880 Abdullah Gjafarovic, a landowner from Kostajnica sold a parcel on his estate that was cultivated by Golub Marinkovic to a settler family arriving from Tyrol. Marinkovic protested the sale and refused to move from his holding. Gjafarovic passed a petition to the Provincial Administration stating that he would allot to Marinkovic another parcel on his estate that was even more fertile. The Provincial Administration did not allow Gjafarovic to expel Marinkovic from his holding on the grounds of Article 8 of the Bosnia Regulation of 1859 which prohibited the eviction of the cultivator from his holding so long as he fulfils the agreed contractual conditions. The case was then conveyed to the Common Ministry of Finance, maybe with the interference of the Tyrolean family. The Common Ministry deemed that the way in which Article 8 of the Bosnia Regulation was interpreted by the Provincial Administration was not in accordance with other provisions of the regulation. It was deemed that the Regulation did not prescribe for an absolute irrevocability of the tenancy contacts and Article 12 of the Regulation stipulated the renewal of the contract if the head of the family would die. The denial of Marinkovic to exchange his holding with another one was a restriction of the landlord's right of disposal of property and an obstacle not only to the transfer of land in general but also to land settlement and to the consolidation of plots of land. Thus, it was decreed that the Provincial Administration had to order the authorities in Kostajnica to promote the exchange of the fields in a way that was most suitable for both of the parties. If it would be impossible to settle the dispute, or if the tenant would be at a disadvantage that the landlord would not agree to compensate, the Provincial Administration was ordered to re-evaluate the case by considering:

> [W]hether the tenant had erected a building or planted fruit trees (Article 44 of the Land Code) on the plot; and, finally whether the tenancy agreement between Gjafarovic and Marinkovic was a long-standing, verbal contract

within the scope of the Law of 14 Safer 1276,[262] or whether it was a contract limited for a certain period of time or a contract which can be cancelled.[263]

A new interpretation of the Bosnia Regulation of 1859 was provided in line with the policies of the government regarding land tenure. It was underlined that the economic development of the province required limiting the application of Article 8 of the Bosnia Regulation. In any case, according to the decree, this stipulation of the law was not valid for other tenancy agreements.[264] It was also underlined that the Regulation did not have any stipulations about the exchange of plots which were occupied by tenants.[265] As important, there was a particular reason why the authorities were to consider if the sharecropper had erected a building or planted trees on the plot.[266] The Austrian jurists came to redefine the rights of the sharecroppers to the land they cultivated as a preference right, i.e., the priority to purchase the land when it was transferred on the grounds of Article 44 of the Ottoman Land Code. According to a subsequent ordinance published by the Provincial Administration, the landowners complained that they could not sell their land to foreigners for favourable prices because "the peasants cultivating these lands restrained the transfer claiming that they had a preference right to buy the land on the grounds of the Ottoman Land Code."[267] Most presumably, the cultivators did not

[262] The Austrian legislators referred to the Bosnia Regulation of 1859 as the Law of 14 Safer 1276 (Gesetz vom 14. Safer 1276).
[263] "Erlass des gemeinsamen Ministeriums vom 15. Juli 1880," in Landesgesetzblatt BH 1878-1880, 1. Bd., 531-532.
[264] Although not clearly defined these must be pri-orac and kesim arrangements.
[265] The cultivators were designated as tenants in this context.
[266] Indeed, Milutin Kukuljevic de Sacci stated that the çiftçi was the owner of the buildings and trees on the land. In Kukuljevic de Sacci, *Bosnien*, 15. Kukuljevic de Sacci's account was most probably the first official report about land tenure in Bosnia following the occupation. Article 44 of the Ottoman Land Code prescribed that "the owner of land on which there are trees or buildings, the freehold property of another, and which is held and cultivated in subjection to such trees and buildings, cannot alienate it to another gratis, or for a price, while the owner of the trees and buildings is willing to take it for its Tapu value." (In Ongley, *Ottoman Land Code*, 23).
[267] "Verordnung der Landesregierung in Sarajevo vom 27. August 1880," in Landesgesetzblatt BH 1878-1880 1. Bd., 539.

argue that they had a priority to buy the land, rather they refused to leave their holdings claiming that these were their own fields.[268]

Though they were well aware of disputes over land and the Ottoman regulations regarding cultivators' right to land the Austrian legislators disregarded them. Indeed, in November 1875 the Austrian consular representative Wassitsch wrote to Andrassy that in 1847 after Ömer Paşa had pacified the rebelling landowners in Bosnia he published a decree and promised to grant the cultivators title deeds to the lands which they reclaimed and cultivated.[269] The Austrian authorities avoided making reference to any Ottoman regulation particular to Bosnia.[270] As important, the provision of the Ottoman land law, the *hakk-ı karar*, namely priority to use of land by long-standing tenure and payment of tax[271] which was also prescribed by Article 78 of the Ottoman Land Code was disregarded by the Austrian jurists. In this way, the new administration reduced the cultivators' rights to the land they cultivated to a right of preference to purchase the land when it was transferred. The legislation on the grounds of which the cultivator's right of preference was to be considered was determined as Article 44 of the Ottoman Land Code.

The second step towards the erosion of the cultivators' right to land involved the restriction and eventual evasion of the priority to purchase the land. The

[268] In 1859 the sharecroppers from İzvornik claimed that they were paying half of the grass instead of one-third and the reason was that cultivators reclaimed and cultivated woodland and the landowners tried to appropriate these lands. In Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 887.

[269] Actenstücke aus den Correspondenzen des kais. und kön. gemeinsamen Ministeriums des Äussern über orientalische Angelegenheiten, General-Consul Wassitsch an Grafen Andrassy, Mostar 22. November 1875, 618.

[270] As mentioned earlier, at the time when Cevdet Paşa was sent to Bosnia he promised to issue title deeds to wasteland which was reclaimed and cultivated by the cultivators. In Kaya, "Les Enjeux du Cadastre Ottoman en Bosnie," 144. The regulation at the time of Cevdet Paşa was not mentioned in the Austro-Hungarian official sources either.

[271] Mundy, *Governing Property*, 48. Article 78 of the Ottoman Land Code prescribed that "if a person has possessed Arazi Mirié and Mevkufé for ten years without disturbance his prescriptive right becomes proved, and whether he has a title-deed or not such land cannot be looked upon as Mahlul, but a new Tapu sened should be given to him gratis. In Ongley, *Ottoman Land Code*, 41-42.

Provincial Administration published a decree in the aftermath of a case when a Muslim landowner had alienated a parcel of land to an Austro-Hungarian subject and "the holder of the adjacent parcel had claimed to have a preference right to buy the land on the grounds of the Ottoman law." The decree deemed that the right of preference was only applicable for the properties that were not jointly held and the individuals who would have a right of preference when the land was transferred were:

> The person who possess buildings and fruit trees on the land of another person and additionally cultivates on this land as well (namely the tenant, kmet, and çiftçi) has the preference right, that is to say, if the owner of the land wants to alienate it to another person gratis, or for a price, he has to ask first to the owner of the buildings and fruit trees and who at the same time has cultivated on the land, if he wants to purchase the land for the estimated value; if he would not want to purchase the land or he could not pay the estimated value, the land could be transferred to other persons under the present rules (informing the authorities for permission). [272]

According to this re-interpretation of Article 44 of the Land Code, the cultivator would have the right to purchase the land only if he would claim for it at the time when it was sold to another person and only if he could pay the estimated value of the land. The decree did not include the second clause of Article 44 of the Ottoman Land Code which prescribed that if the land was transferred, the person who had a right of preference had the power to claim such land during ten years. The cultivator's right to challenge the transfer in the following ten years was overridden by this interpretation of the law.[273] The decree then referred to Article 45 of the Ottoman Land Code: "The inhabitant of a village has the power to claim the land that was sold to a foreigner within one year for its estimated value if he needs it for

[272] "Circularerlass der Landesregierung in Sarajevo 30 September 1879, " in Landesgesetzblatt BH 1878-1880 1. Bd., 515-516.
[273] The Ottoman Land Code of 1858 was translated in its entirety in German and was published in the second volume of the Collection of Laws. According to this translation, the person who has the right of preference has the right to claim such land for five years. See Landesgesetzblatt BH 1878-1880, 2. Bd., 283.

[agricultural] production." In the decree, it was underlined that if the plot of land was outside the borders of a village or a town, the right of preference was not valid. Furthermore, it was ordered to ask the village residents whether they wanted to buy the plot and whether they could definitely prove their need for the land before it was transferred; if they could not, the land could be sold without taking into consideration the right of preference. [274] Although legally any landholder of the village could claim priority over outsiders wishing to buy land,[275] according to this interpretation he should definitely prove that he would use the land for agricultural production.

The legislators made further regulations in order to restrain the rights of the cultivators to the land they cultivated, as reflected in the decree of the Provincial Administration which concerns "granting of tapu in case of a claim to preference right":

> The so-called preference right prescribed by the Ottoman Land Code would hinder the transfer of land and the drawing up of the takrir and tapu deeds only then if it were an essential right of preference that could be claimed against the vendor of the land instead of being a right to withdrawal that could be claimed against the new owner.
>
> By the indefinite style and the possible indefinite translation of the clauses of the law that, in one case, prescribe for a prohibition of the transfer (Article 44), and in the other, for a right that can be claimed towards the purchaser (Article 45); and considering that the person who has the so-called preference right has to pay only the estimated value, but not the amount that is demanded by the vendor or paid by the purchaser, this cannot be definitely interpreted as an essential preference right.
>
> Furthermore, even by an essential preference right, not the claim, but only the real existence of such a right could hinder the completion of the transfer to a third party. Since the latter [the real existence of the preference right] is to be examined and determined by the courts, a premature action of the tapu-commission in favour of the person who has an alleged preference right is questionable since the law -as the clause of Article 44 demonstrates- does not prescribe for the invalidity of the transfer if the preference right is disregarded, and furthermore by such an interpretation of the law every individual could impede the transfer *ad graecas calendas* by claiming such a right and, in addition, since it is dubious if the vendor would later be able to

[274] "Circularerlass der Landesregierung in Sarajevo 30 September 1879, " in Landesgesetzblatt BH 1878-1880 1. Bd., 515-516.
[275] Mundy, *Governing Property*, 149.

> find a purchaser under the same favourable conditions, it could frustrate every transfer [of land].
>
> As long as . . . the courts are authorized to hear the cases relating to the preference right, it appears that in order to promote the free alienation of land it is appropriate to implement the rule that is practiced by the tapu commission in Sarajevo, according to which takrir and tapu are to be produced and given to the purchasers without taking into consideration the claim for preference right; and the individuals who have an alleged right of preference should plead their cases before the courts.[276]

The Austrian jurists considered the sharecropper as having preference right to his holding when it was transferred on the grounds of Article 44 of the Ottoman Land Code of 1858.[277] Including an interpretation of Articles 44 and 45 of the Land Code, the decree directly concerned the cultivator's right to land. However, although the decree was about the status of the cultivator in relation to his holding when the land was transferred, it only referred to "the claimants of a so-called preference right". The decree concluded that the preference right should not be interpreted in such a way that would disadvantage the landowners who could sell their lands for favourable prices and, most importantly, that would hinder the free alienation of land. According to the decree, the tapu commissions could permit the transfer of land and render tapu deeds without taking into account whether there was a person who claims a preference right, namely the cultivator who tilled the land. [278] The decree involved a long, detailed argumentation that reveals the awareness of the Austrian jurists of the delicacy of the issue under discussion.

This was an important step towards the gradual erosion of the right of the cultivator to his holding. The next step involved a denial of the recognition of the sharecropper as the owner of the buildings, including his house, and trees on the

[276] "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 24. October 1884," in Landesgesetzblatt BH 1884, 599-600.
[277] "Circularerlass der Landesregierung in Sarajevo vom 30. September 1879," in Landesgesetzblatt BH 1878-1880 1. Bd., 515-516.
[278] "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 24. October 1884," in Landesgesetzblatt BH 1884, 599-600.

land. In two decrees issued subsequently in 1887 and 1888, it was stated that the buildings, orchards and vineyards on the holding were not belonging to the sharecropper who cultivated the land but they were improvements for which he should be compensated when he was evicted.[279] In another decree issued in June 1891, it was deemed that:

> Neither the kmet nor the kmet family acquire ownership of the buildings which are constructed by them or the fruit trees or vineyard which are planted by them on the kmet holding on the grounds of the [Ottoman] Land Code since they undertake these actions only in their status as kmet and they can acquire rights only in the limits of their title to possession. The title to possession of the kmet is based on the agrarian relations thus the kmet can acquire rights limited by this relationship.
>
> In accordance with Article 7 of the Law [Bosnia Regulation of 1859], the kmet can only demand compensation for the estimated value of the buildings he constructed and for the improvements he made by planting trees or vineyards in accordance with established custom. [280]

Thus, according to the decree, the buildings and trees on the holding could not be the mülk property of the kmet or of the kmet family but these were to be considered an integral part of the çiftlik. In reality, however, Article 7 of the Bosnia Regulation prescribed that the buildings on the çiftlik should be erected and maintained by the landowner and that the buildings that were erected by the cultivator earlier were to be maintained by himself, but the Regulation did not explicitly proclaim that the buildings on the çiftlik were to be considered a part of it. Furthermore, the Bosnia Regulation did not include any stipulations about the trees or vineyards planted on the çiftlik. In 1890 Janos de Asboth, who was a member of the Hungarian parliament, claimed that "the house is, as a rule, the freehold property of the man who built it, the fruit trees that of the man who planted and cultivated them."[281] By

[279] Posilovic, *Das Immobilar-Recht*, 110.
[280] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 19. Juni 1891," in Landesgesetzblatt BH 1891, 361. In this context, the sharecroppers were referred to as kmets rather than tenants.
[281] Asboth, *Bosnia*, 163.

declaring the buildings and trees an integral part of the çiftlik rather than owned by the cultivator the decree effectively eliminated the possibility that the cultivator would claim the land on which he had erected buildings or planted trees. It also eliminated the possibility that the peasant who was evicted can return to his old land to gather the fruit from his orchards and vineyard.[282]

The final step towards the erosion of the right of the cultivator to the land involved a regulation which set other tenancy agreements like *pri-orac*[283] outside the scope of the law prescribing for preference right of the cultivator. On 22 April 1886, the Provincial Administration published an ordinance which prescribed that the administrative authorities were authorized to resolve the conflicts between the sharecroppers and landlords. In 1890, referring to this former ordinance it was deemed that:

> [T]he kmet has a preference right to the land he cultivates as kmet in accordance with Article 3 of the Law of 7 Muharrem 1293 at the time when land is sold by auction or alienated by private individuals. The administrative authorities are authorized to hear and decide cases relating to preference rights with the same levels of appeal for the agrarian conflicts.[284]

Since the Austrian jurists did not recognize the sharecropper as the owner of the buildings and trees on the çiftlik anymore,[285] the legal base for preference right was provided by interpreting it on the grounds of the third article of the Ottoman Law of 3 February 1876 (7 Muharrem 1293 HA) which prescribed that "farmers who are cultivators in certain çiftliks and who are Mussulman or non-Mussulman subjects

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[282] Besides, since the buildings, orchard and vineyard were to be considered a part of the *çiftlik*, they could be foreclosed with the land on which they were standing. Posilovic, *Das Immobilar-Recht*, 112.
[283] Pri-orac means "to plough in addition to" and was widely seen in Herzegovina. These were mostly scattered plots tilled by the cultivators in addition to the land they held under sharecropping arrangements. The due owed to the landowner was determined by established custom. In Schmid, *Bosnien*, 309.
[284] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 24. Juni 1890, " in Landesgesetzblatt BH 1890, 80.
[285] Interestingly enough, the same ordinance prescribed for the compensation of the cultivator for the "buildings belonging to him". Nikaschinovitsch, *Bosnien*, 86.

shall have preference right at the time when land sold by auction or alienated by individuals".[286] Although they fell into the category of "farmers who are cultivators" (*muzarri çiftçiler*), a further regulation issued in 1892 prescribed that the cultivators who held land with other tenancy agreements like pri-orac and *kesim* would have no preference right when the land was transferred.[287] As important, it deemed that the cultivators who would claim the preference right should apply to the administrative authorities, whereas formerly they could have recourse to the courts.[288]

An ordinance issued on 3 August 1912 stipulated that the preference right of the sharecropper which was based on the Ottoman Law of 3 February 1876 was valid after the preference right of the joint-holders, but it had primacy over the preference right of the person who owned the orchards and buildings on the çiftlik and of the villagers who needed land.[289] As reflected in the words of Karszniewicz, these were all incompatible with liberal principles and their elimination in Bosnia was only a matter of time.[290] It is possible to think that the preference right of the cultivator was not recognized already in the 1890s, if not earlier, since the cultivators had to go to the district administrations and prove that they were sharecroppers on these lands and claim a preference right to buy the land at the time when the land was already transferred.

In 1890 the Provincial Administration issued an ordinance deeming that if the cultivators would claim that the land belonged to them the issue had a private law character. According to Stefan Posilovic, who was a member of the High Court in Sarajevo, the cultivator's right to land was not to be determined according to

[286] Ongley, *Ottoman Land Code*, 259.
[287] Karszniewicz, *Das bäuerliche Recht*, 124. Posilovic, *Das Immobilar-Recht*, 118.
[288] Posilovic, *Das Immobilar-Recht*, 117.
[289] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1913, 50-51.
[290] Karszniewicz, *Das bäuerliche Recht*, 82. Karszniewicz served as Agrarreferent for many years and was well-acquainted with the agrarian relations in Bosnia.

particular regulations like the Bosnia Regulation of 1859 which should be applied in cases relating to agrarian arrangements, but according to civil law.[291] The administrators had to convey these cases to the courts where they should be settled according to the Austrian Civil Code.[292] If the cultivator had reclaimed and cultivated a plot of land which was not belonging to the landlord, then the land should be considered state land and the political authorities had to convey the case to the Provincial Administration.[293] Likewise, the Regulation for the Possession of Woodland deemed that the individuals could not appeal to the courts if they would disagree with the decision of the Landescommission as the issue was not of private law character, but they could have recourse to the Common Ministry in six weeks. The discussion on whether rights to land have a private or public legal character enabled the lawmakers to come up with creative solutions regarding the settlement of disputes over land.[294]

The issue on the use of the Mecelle in the civil courts is a unique example of the Austro-Hungarian administrative practices in Bosnia as well. The authorities deemed that the Mecelle was to serve as a source of law in the land for the civil and *shari'a* judiciary. However**,** Mecelle was translated only partially, because according to Eichler, it was reasonable to wait for the French translation of the Mecelle as Code Civil Ottoman which should take place within a short time.[295] Karcic argued that the Austrian jurists were not able to apply Mecelle because they did not know Turkish

[291] Posilovic, *Das Immobilar-Recht,* 115.
[292] Karcic, "Survival of the Ottoman Islamic Laws in post-Ottoman Times in Bosnia and Herzegovina," 54.
[293] Posilovic, *Das Immobilar-Recht,* 116.
[294] Huri İslamoğlu explained that "Bifurcation of law into private law and public law is central to 19th century Rechtsstaat formulations, it consecrates the oppositional relation between state and society. Private law, referring to the law of contracts (with definitions of legal subjects and objects) and formulations of private property in civil codes, is perceived as a formalisation of what takes place in society or in the sphere of exchange, thus making possible certainty and predictability in market transactions". İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 8.
[295] Becic, "Das Privatrecht in Bosnien-Herzegovina (1878-1918)," 98.

and because they were not trained in Ottoman-Islamic law.[296] Yet in 1881 the High Court in Sarajevo issued a special ordinance which was sent to all courts in the counties and in the districts deeming that the civil judges were to apply the Austrian Civil Code. However, they were prohibited to refer to the Code in their judgment.[297] Thus while the Austro-Hungarian administration opted for the reception of the Austrian Civil Code in civil courts, it was only ostensibly that the Mecelle served as a source of law.

The disputes between the cultivator and landowner were to be tried by the administrative authorities because their relationship was considered a matter of public law. The cases relating to the eviction of the cultivator, the determination of the amount to be paid to the cultivator for the improvements he made should be determined by the administrative authorities as well.[298] Peter Sugar stated that the Austro-Hungarian administration abolished the lower courts and entrusted the functions of the courts to their "not too competent and already overworked" administrators. According to Sugar, this was because the Habsburg administration intended to administer the province cheaply.[299] However, this bifurcation of the courts, the civil courts and administrative offices, was important in terms of cases they had to deal and the law they had to apply.

3.8 Legislation regarding the division of the peasant holdings

The regulations of the Austro-Hungarian government promoted the division of the peasant holdings. In 1883, the Provincial Administration declared that the issue of

[296] Karcic, "Survival of the Ottoman Islamic Laws in post-Ottoman Times in Bosnia and Herzegovina," 54.
[297] Pilar, "Entwicklungsgang der Rezeption des österreichischen allgemeinen bürgerlichen Gesetzbuches in Bosnien und der Herzegovina unter besonderer Berücksichtigung des Immobilienrechtes," 708.
[298] Posilovic, *Das Immobilar-Recht*, 113.
[299] Sugar, *Industrialization of Bosnia-Herzegovina*, 31.

the subdivision of the peasant holding among the members of the family after the death of the head of the family was to be considered as a simple agrarian issue and the district administrations were authorized to deal with such cases. If the landowner would agree, the subdivision of the peasant holding among the family members should not be prevented by the authorities.[300] The holding could be subdivided among the members of the peasant family even within the lifetime of the head of the family.[301]

In the subsequent regulations it was underlined that if the members of the peasant family would cultivate parts of the holding individually, the administrative authorities could intervene only if there would be a complaint on the part of the landowner or other members of the peasant family.[302] The subdivision of the peasant holding among the members of the peasant family could be recorded in the land register if the authorities would approve it.[303]

The government policies promoted the dissolution of the *zadruga*, the house communion as well. Walther argued that the government tried to reduce the number of the house communions with the aim of creating individual peasant households and therefore assigned small parcels to peasant families who were considered to be in need of land.[304] In most of the cases, a young man who was dismissed of the zadruga was considered a landless agricultural labourer "beskucnik". The so-called

[300] "Verordnung der Landesregierung vom 9. Jänner 1883," in Landesgesetzblatt BH 1883, 1-2.
[301] Posilovic, *Das Immobilar-Recht*, 109. Presumably, even if the landowner would not allow it the peasant holdings were divided. Indeed, Article 4 of Lex Halilbasic prescribed for landowner's leave for subdivision of the holding. Feifalik, *Agrarfrage*,150.
[302] Karszniewicz, *Das bäuerliche Recht*, 59.
[303] Karszniewicz, *Das bäuerliche Recht*, 27, 59.
[304] "Die Regierung begünstigt die Verminderung der Zahl solcher Hausgenossenschaften im Interesse der Schaffung möglichst vieler selbständiger Einzelwirtschaften; sie muß dann diesen im Wege der internen Kolonisation das Existensminimum geben. " In Walther, "Österreich-Ungarns Verwaltung und Wirtschaftspolitik in Bosnien und der Herzegovina," 151. Walther claimed that until 1909, almost 10,000 hectares were assigned to 4000 families of 24,000 souls. On the other hand, Feifalik considered that the assignment of land to peasant families was one of the government efforts in order to gain the support of the Orthodox fraction of the population. In Feifalik, *Agrarfrage*, 132. In this sense, Walther's account complements the picture with important detail, namely the intention of the government to promote the emergence of individual households with insufficient holdings.

colonization tenure (*Kolonisationspacht*) involved that the peasant had to pay a rent of 10 hellers per dönüm a year except for the first three years. The peasant was recognized as the holder of the land he reclaimed and cultivated after ten years in return for 0. 7 crowns per dönüm in total.[305] Almost 30,000 peasants had received plots by 1910, but the size of these plots averaged only 1. 2 hectares, roughly one-tenth of the average area assigned to foreign settlers.[306]

In consequence of the regulations allowing the divisibility of property, at the beginning of the 20th century, many cultivators had insufficient holdings. In order to supplement their meagre incomes, many had become seasonal workers in the factories.[307] Yet the regulations in this regard were considered as insufficient by some fractions of the population. In 1910 some Serbian deputies, presumably backed by improving landowners willing to buy small farms that would emerge by the split of peasant holdings, introduced a bill in the provincial parliament which included a clause prescribing that the peasant holdings could be subdivided to the extent that each plot would be sufficient for the subsistence of a peasant family.[308]

3.9 Regulations regarding commons and wastelands

The authorities argued that the practices of the Austrian administration regarding land tenure were in accordance with the Ottoman land law. However, this new interpretation of the law by the Austrian jurists brought profound changes in regard to the possession of and rights to land, particularly commons and wastelands.

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[305] Feifalik, *Agrarfrage*, 66. The Heller was one- hundredth of the Krone (crown), the official currency of the Austro-Hungarian Empire from 1892 until the dissolution of the empire in 1918. The annual rent of a holding of 20 Joch was 11 crowns or 5. 50 florins. In 1908 in Sarajevo cigarette fabrik average minimum daily wage of a male worker was 0. 80 florins. In Sugar, *Industrialization of Bosnia-Hercegovina,* 246.
[306] Lampe and Jackson, *Balkan Economic History*, 287.
[307] Cupic-Amrein, *Die Opposition*, 222-223.
[308] Schmid, *Bosnien*, 339.

"Virtual nationalization of the land"[309] was the main feature of the Austro-Hungarian policies regarding land tenure in Bosnia and the Austrian legislature primarily used the Ottoman Forest Regulation of 1870 in order to introduce a more generalized and powerful concept of state ownership in land. A new understanding of the category of mevat land of the Ottoman land law was central to this interpretation.

The Austrian authorities argued that the Ottoman legislators realized the value of the mevat land only in the subsequent years following the promulgation of the Ottoman Land Code and published the Forest Regulation of 1870. They stated that the Code allowed everyone to cut trees and fetch firewood in the *cibal-i mubaha* (open hills) which was a subcategory of mevat land. The Forest Regulation, on the other hand, deemed the cibal-i mubaha as state forests and adopted restrictive measures in its use.[310] Indeed, the Regulation distinguished the state forests while the cibal-i mubaha were assimilated into this category.[311] The Austrian jurists translated the term cibal-i mubaha as primeval forest (*Urwälder*) and extended the scope of the provisions of the Forest Regulation regarding cibal-i mubaha to the category of *mevat* land.[312] In this way, the meaning of the term mevat land was changed from emphasising the land's unclaimed status and distance from residential sites to an understanding of such land as being woodland which is valuable and should be protected due to its nature as primeval forest "with due regard to public interest".[313] The Austrian legislators claimed that the mevat lands were registered as domain

[309] Hobsbawm, *Age of Revolution*, 198.
[310] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 298.
[311] Dursun, "Forest and the State," 236, 238. "Cibal-i mubaha literally means 'permitted mountains' but the term refers to the 'unenclosed common forests'" In Dursun, "Forest and the State," 65.
[312] Feifalik, *Agrarfrage*, 45.
[313] The discourse of the need to protect the forest was important. In the Administrative Report for 1909 it was claimed that the main cause of the forest depredation is the rise of the price of timber. Another important factor was grazing of large numbers of animals. In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1909," 150-151.

lands in the land register completely in line with the prescriptions of the Ottoman Forest Regulation.

This new interpretation of the Ottoman land law had profound implications on the ground. The Austrian legislators deemed that it was an offence to clear and cultivate mevat land which was now considered to be domain land.[314] Referring to Article 103 of the Ottoman Land Code, they claimed that the Bosnian cultivators were familiar with the prescriptions of the Ottoman land law according to which mevat land could be reclaimed and cultivated.[315] Indeed, it was fairly common that forest areas were reclaimed and cultivated by peasants who were in need of land. In 1859 the cultivators from İzvornik claimed that they were paying half of the grass now instead of one-third to the landowner and the reason was that the landowners intended to appropriate the land cleared and cultivated by them.[316] Similarly, Schmid pointed out that shifting cultivation was fairly common because of the prevalence of livestock-raising throughout Bosnia and Herzegovina.[317]According to Schmid**,** the peasants were inclined to have large areas of pasture in the vicinity of their dwellings. Thus, land was laid for pasture while areas of woodland were cleared and cultivated. As mentioned earlier, the Austrian authorities must have been fairly aware of the former regulations which deemed that cultivators could acquire the possession of the land they cleared and cultivated but these regulations were left unmentioned in the official sources which were produced when the province was under their rule.

[314] Eichler, *Das Justizwesen*, 287.
[315] Feifalik, *Agrarfrage*, 45. Article 103 of the Ottoman Land Code prescribed that "empty (*hali*) places. . . which are not in the possession by anybody by Tapu, and which *ab antiquo* are not assigned to the inhabitants of towns and villages, and which are distant from a town and village so that the loud voice of a person cannot be heard from the extreme inhabited point, are Arazi Mevat; this category of land can be opened up newly and created into arable land, with the permission of the official." In Ongley, *Ottoman Land Code*, 54.
[316] Güran and Uzun, "Bosna-Hersek'te Toprak Rejimi: Eshâb-ı Alâka ve Çiftçiler Arasındaki İlişkiler (1840-1875)," 887.
[317] In this process land was cropped till it was exhausted and then let go back to grass, and new land was ploughed up in forest clearings. Jovanovic contended that shifting cultivation was fairly common in Serbia and in most remote territories like Krajina in Bosnia, Rudnik, Toplica, and Pirot. In Warriner, *Contrasts in Emerging Societies*, 309.

The regulations of the Austro-Hungarian administration were in marked contrast with the prior practice and were strongly resisted by the cultivators.

The attitude of the British government towards introducing a more generalized concept of state ownership in land in Mandate Palestine is comparable to that of the Austro-Hungarian government in Bosnia. Like it was the case in Habsburg Bosnia, the late Ottoman land legislation laid the groundwork for legal reforms and government policies of the British in Palestine. As mentioned earlier, LeVine argued that state ownership in land, which was reformulated in the Ottoman Land Code of 1858, was central to the British policies regarding land tenure. The categories metruke, mahlul and mevat were brought under tighter control than in the previous period becoming de facto if not de jure state land under British rule. During the Ottoman period, one could assume possession, cultivate and gain title to mevat lands. However, "the British wanted to retain control of as much land as possible, and in 1921 the Mevat Land Ordinance was issued, making it an offence to cultivate mevat land." This marked an important change in the status of mevat land as "undeveloped, vacant land proper which cannot be possessed except by allocation from the State." Being state property, mevat land "was more easily allocated to those thought capable of developing it", namely the Jewish settlers. As put by LeVine "this new dynamic of permanently altering the quality of land and the concomitant change in its status is in marked contrast to the local experience of marginal or unclaimed land brought into use when needed and left fallow during other times."[318] This was similar to the change in the status of mevat land in Bosnia under Habsburg rule where it was declared to be state-owned woodland which should be protected with due regard to public interest.

[318] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 105-106.

The Austrian legislators introduced a new interpretation of the Ottoman Forest Regulation of 1870 regarding the rights to woodcutting as well. They argued that while the Forest Regulation provided protection to mevat lands which were now declared to be domain lands, Article 5 of the law allowed:

> [T]he village residents free of charge to take from the state forests all the wood and timber they needed for the repair or construction of their houses, granaries, and barns, for manufacturing vehicles and farm implements . . . to collect firewood and produce charcoal necessary for their subsistence.[319]

Yet the Austrian authorities offered a new interpretation of this provision of the Regulation. They deemed that local people were allowed to fell timber only in that part of the state forests which were under the category miri, namely that part of the state forests which were rented out to individuals.[320] They underlined that the Regulation for the Possession of Woodland of 1884 was of primary importance because it aimed to separate the state forests (of the category domain lands) from forests which were rented out to individuals and thus provided protection to state forests.[321]

As important, there was a gradual change in regard to rights to pastures and coppices which were held in common. In the first years of the Austro-Hungarian rule the legislators conceived of metruke as lands which were within the boundaries of villages and which were ascribed to village communities.[322] During the cadastral survey, it was prescribed that pastures and coppices which were held in common by the villagers were to be designated as such, and they were to be displayed as a single

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[319] Article 5 of the Ottoman Forest Regulation of 1870, in Dursun, "Forest and the State," 243.
[320] "eine teilweise Entlastung des Staatwaldes von den ihm gemäß des ottomanischen Forstgesetzes anhaftenden Holzbezugs- und Weiderechten der bäuerlichen Bevölkerung…. , daß diese ihre Holz- und Weiderechte in erster Linie in den ihnen verliehenen Waldungen zu befriedigen haben…." "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 301. Dimitz, *Die forstlichen Verhältnisse,* 99.
[321] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 301.
[322] "Katastralschätzungsinstruction für Bosnien und die Hercegovina vom 7. Juli 1880," in Landesgesetzblatt BH 1878-1880 3. Bd. 1. Abt., 442-494.

parcel within the boundaries of the villages on the cadastral maps. However, the first winter after the on-site survey works had begun the Common Ministry of Finance issued an important decree which confined the work of laying out the village boundaries to skilled surveyors who were to be sent out in the districts by the cadastral directorate. According to the decree, fixing the village boundaries was of particular importance as the villages would form the cadastral units for the repartition and collection of the land tax. Yet, the concern of the administration about the demarcation of the village boundaries was merely relating to its objective of reclaiming pastures and coppices which were held in common rather than the exact definition of the village area in order to make a tax assessment. The decree deemed that if the surveyor would recognize that particular parcels of land, for instance state forests, were not within the boundaries of the adjacent villages -the decree didn't explain how-, he had to carefully lay out the boundaries of this parcel along the abuttals with adjacent villages. These parcels were to be surveyed as separate cadastral units, they were to be displayed individually on boundary maps and they were to be registered as state land in the cadastral registers (Art. 5). [323] The decree, in fact, prescribed the division of the pastures and forests, presumably concerning large areas, whether held in common by the village communities or held by individuals or vakıfs. In many cases, there were disputes about laying out the village boundaries

[323] " Circularerlass der Landesregierung für Bosnien und die Hercegovina," in Landesgesetzblatt BH 1881, 23-31. This parcel should be designated as *Prädium* and it should be treated in all stages of the survey as a cadastral unit. In the decree, it was underlined that this parcel of woodland should not be assigned to one of the adjacent villages. Beyond administrative concerns, according to the decree, it was forbidden to assign these parcels to neighbouring villages in order to promote the completion of the work of fixing the boundaries of the villages and state forests without delay and for the uninterrupted proceeding of the cadastral survey (Art. 5). In this later decree, the *vakıf* properties were not mentioned either. Wessely explained that like it was prescribed for the villages, the boundaries of the *Prädien* were to be delineated in boundary maps at a scale of 1:25,000 and accurate descriptions of them were to be given in boundary registers (*Grenzbeschreibungsprotokoll*), separately from the villages. In Wessely, *Die Catastral-Vermessung,* 2.

between the surveyors and the peasant inhabitants who felt that their rights to the use of pastures and coppices would be violated.[324]

While in the official sources the meaning of the term metruke changed from land ascribed to village communities to abandoned land[325] government policies regarding commons changed as well. This entailed a new interpretation of the stipulations of the Ottoman Land Code of 1858 regarding village pastures (*mera*) and village coppices (*baltalık*) which were held in common. The "Regulation for the Possession of Woodland" prescribed that its stipulations were valid for all land which was considered to be a part of the woodland and deemed that the village communities could not claim the possession of woodland (Article 3).[326] This prescription of the law was justified by the argument that "this was a matter which was in close relationship with the question of the rights of communities to grazing and fell timber and which could be regulated through a particular procedure."[327] Subsequently another decree was issued by the Provincial Administration in response to the questions it received whether it was permissible to assign areas of pasture to village communities. In the decree, it was stated that:

> [I]n regard to the permissibility of assigning of mera to the communities and issuing of tapu to the communities, it is declared that Article 97 of the Ottoman Land Code of 7 Ramazan 1274 forbids the possession of mera without considering the legal subjects. Furthermore, Article 8 of the same Code prohibits collective village ownership in general and the last clause of Article 15 forbids the exchange of possession as had been the case until that time in D.-Tuzla . . . Although the strict implementation of Article 97 of the Land Code does not correspond to economic and fiscal concerns, the practice of the Ottoman administration should be maintained . . . until the completion of the land registers and the definitive separation of the state land is carried out.[328]

[324] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 488.
[325] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 299. "[D]as auch theoretisch unter die sogenannten Metruké Grundstücke, das ist die sich selbst überlassenen gehörte."
[326] "Verordnung über die Verleihung von Tapien auf Grundstücke , welche zum Waldlande gehören," in Landesgesetzblatt BH 1884, 82-86.
[327] Posilovic, *Das Immobilar-Recht*, 97.
[328] "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 14. März 1884," in Landesgesetzblatt BH 1884, 247.

Although the decree referred to Article 97 of the Ottoman Land Code, it did not quote the first clause of the article which stipulated that villages could have exclusive rights to pasture land.[329] The drafters of the decree argued that Article 97 of the Code prohibited possession of pasture land by village communities and buttressed this argument by Article 8 of the Code. The provisions of the Ottoman Land Code were interpreted in such a way as it was depriving the village communities of their right to pasture while the practices of the Austro-Hungarian administration were to provide relief to this situation. As important, referring to Article 15 of the Ottoman Land Code, it was decreed that the Code allowed joint possession of miri land but forbade *muhaiat*.[330] Posilovic explained that muhaiat was not the subdivision of the holding but the possession of land by turns and therefore it was not suitable for the market conditions of the day.[331] This attitude was in conformity with that of the British authorities in Mandate Palestine regarding *musha*, i.e., collective village ownership or tenure of a plot of land. The British authorities argued that collective ownership

[329] Article 97 of the Ottoman Land Code stipulated that "A Mera reserved ab antiquo to a village can only be grazed upon by the animals belonging to the inhabitants of that village; the inhabitants of another village cannot drive animals there. A Mera common ab antiquo to the inhabitants of two, three or more villages, can be grazed upon in common by the animals belonging to the inhabitants of those villages: it does not matter in the boundaries of what village it may be, they cannot prevent each other from doing so. Meras reserved ab antiquo to the inhabitants of one village only or in common to the inhabitants of several villages, cannot be bought or sold, enclosures, sheepfolds and other buildings cannot be made on them, they cannot be created into vineyards or gardens by planting trees or vines." In Ongley, *Ottoman Land Code*, 50-51.

[330] "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 14. März 1884," in Landesgesetzblatt BH 1884, 247. Article 15 of the Ottoman Land Code stipulated that "Land possessed in partnership capable of division, that is, if it is possible for each one of the partners to derive a profit from his allotted share, and the partners or some of them ask for division, the share of each one shall be separated and assigned by the official in the presence of the partners or their legal agents . . . And if it is not capable of division it shall be possessed as before in partnership. "Muhaiat," that is to say, the system of possession by turns, is not applicable." In Ongley, *Ottoman Land Code*, 10.

[331] Posilovic, *Das Immobilar-Recht*, 190-191.

prevented the commodification of land "that was the prerequisite for privatization and modernisation of agricultural sector".[332]

In contrast with the prescriptions of the Regulation for the Possession of Woodland, Article 27 of the Land Register Law stipulated that:

> [A]reas of woodland and pasture which are claimed to be the baltalık or mera of one or several villages, should be registered in the name of the related village according to the procedure of Separation of Baltalık and Mera. All pasture and woodland shall be registered as state land, if it is not registered in the name of an individual or a village.[333]

In this way, the Austrian legislators invented and introduced a special procedure for the allotment of pastures and coppices to the villages. The main reasons for this were, according to official sources, the fact that the pastures and coppices which were held in common were not clearly demarcated and the people used to graze their herds or fell timber on the land that was recorded as state land in the land register. Furthermore, because of the lack of regulation in regard to village communities, there were any legal subjects appropriate for a definition of collective village ownership.[334] According to Feifalik, who was the author of a comprehensive treaty about the agrarian question in Bosnia, although the village commons were registered as domain land in the land register, the rights to grazing and wood of the village residents were recognized *ex lege* and a future regulation of these rights, the so-called Separation of the Baltalık and Mera was on the agenda of the government.[335] Though the allocation of parcels of pasture and woodland to the village communities continued to be a matter of debate throughout the period under Habsburg rule, it was never carried out.

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[332] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 105.
[333] "Grundbuchsgesetz für Bosnien und die Hercegovina," in Landesgesetzblatt BH 1886, 67. In the text "auf Grund des Ergebnisses des wegen Ausscheidung der Ortsweiden und Wälder eingeleiteten Verfahrens für die betreffende Ortschaft als Eigentümer zu tragen".
[334] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1913," 53.
[335] Feifalik, *Agrarfrage*, 56.

The regulation of the use rights of the mountain pastures was on the agenda of the government as well. The legislators emphasized that the Ottoman Forest Regulation of 1870 permitted forest grazing underlining the fact that the mevat lands were now declared to be domain lands.[336] The forest administration was to determine the time and duration of grazing "within delimited tracts."[337] In Bosnia, like in Montenegro, transhumant stock-raising was practiced as well. Palairet explained that in Montenegro most stock-raising was transhumant and though patterns varied according to local conditions, "reverse migration" system was probably representative for the region.[338] A similar pattern was practiced in Bosnia, too. The livestock overwintered in the shelters termed *koliba* near the stores of hay and dried grass on the hills[339] and they were brought down again when new grass appeared at the village level.[340] Yet the practice was not much welcome by the government as reflected in the Administrative Report for 1906:

> There are traces of nomadic habits among the population. The peasants of Vrhovina and of the uplands south of Banjaluka (Kljuc, Jajce, and Varcar-Vakuf) come down in the spring and graze their herds on the fields in the lowlands before the beginning of the field work without paying to the landowners. In the same manner, the mountain people (*Alpen*) in the karst uplands move in order to find water and they leave in summer in the greatest heat.[341]

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[336] "Ferner anerkennt zwar dieses Gesetz das von altersher bestehende Weiderecht der Dorfbevölkerung an den nunmehr als Staatswälder erklärten Mevatgründen." "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 298.

[337] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 298. The Administrative Report for 1906 includes a lenghty discussion of the Ottoman Forest Regulation of 1870.

[338] In this system in summer, hill hay was mown on intermediate level pastures, while livestock grazed *suvat*s, the waterless high-level pastures above the tree line. The shepherds made stores of hay and dried grass, from which they built large, lofty piles like straw-ricks.[338] In autumn when the rains began, the animals were brought down to the villages, where they found more temperate air, and a herb which is preserved under the snow. When snow was too deep and its surface frozen, the animals would be driven upwards to feed on the hill hay, stored where it had been mown. The movement from the lower level to the mountains took place again as spring advanced to summer and as heat and drought burned off the lowland grass. In Palairet, *Balkan Economies*, 143.

[339] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 331.

[340] Palairet, *Balkan Economies*, 143. Palairet pointed out that this arrangement was indicative of a perennial fodder shortage, particularly in winter, and served to make maximal use of the mountain pastures and minimize the need for cultivated fodder.

[341] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 331.

The Report proceeded that in Herzegovina the rights to pasture were determined by common practice and custom and the residents of villages did not pay a pasture tax (*Weidegebühr*) when the sheep spent the winter in the kolibas on the hills.[342] In 1884 the Austrian administration instituted the *kolibarina*, a pasture tax levied per koliba in Herzegovina and in Foca. It also introduced a new use tax of eighty hellers per head on animals pastured on the Alpine pastures. The ordinance of 1886 and further regulations imposed that the peasants who would graze their herds on the pastures in Herzegovina and Foca had to submit certain documents (*Legitimationskarten*) to the authorities including the name of the owner of the herd, the name of the herdsman, the number, the type, and the age of the animals. Most importantly the peasants were not to violate the boundaries of the pastures which were determined by the authorities.[343]

In the 1890s, the authorities in Mostar claimed that the rights to pasture should be conferred to communities rather than to individuals and regulated. They claimed that the locality, boundaries and extent of Alpine pastures in Herzegovina and Foca were surveyed and the watering places and the amount of the fodder they provided were determined. The second step involved imposing new rules in order to promote the use of pastures by certain communities. According to this, each village or groups of households had to form a unit and should have the right to graze a certain number of livestock on a certain part of the mountain pasture. Each unit would receive an *Alpenzertifikat* valid for several years to be submitted in the controls made by the officials. In determining the rights to pasture, the acquired rights of *kolibari* were to be considered as well. The regulation which was to be

[342] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 331. In Montenegro pastures were owned communally or by the state and rules were enforced as to when any particular hillside was open and closed. Palairet, *Balkan Economies*, 143.
[343] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 331-332.

initially introduced in Herzegovina was to be implemented for other state-owned pasture lands in the following days. The aim was, as it was claimed by the authorities, to promote the use of the state-owned pastures by large parts of the population who were in need of it rather than being confined to people (*Älpler)* whose location was advantageous, i.e., on the mountains.[344]

The Austrian administration proposed for the construction of forest maps of the province in the years following the compilation of cadastral maps. The boundaries of the parcels of forest as determined by the detailed survey, the boundaries of settlements and main roads were delineated on the original sheets of the cadastral survey. These maps were reduced to the scale of 1:50,000 and were reproduced using lithography whereby grey hachures were used to distinguish the forests. Forest areas were valued by special valuation officers and the forest maps were supplemented with data including the type and age of various stands of trees and the wood supply per unit of area. According to official sources, the forest maps were providing a bird's eye view of the forests of the province and they were also veritable tools for efficient management of the woodlands. Although it was claimed that the forest maps would serve to support the administrative measures relating to the separation of the state-owned forests from those held by private individuals or vakıfs, the forest maps of Bosnia did not differentiate state from private land or land assigned to villages and presumably this was the reason why the forest maps of the province were available only for official use.[345]

[344] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1909," 152-153. The herds of the native peasantry roamed the Alpine pastures in Herzegovina. Although it sometimes caused conflicts, the mountain people of Pjeşivci in Montenegro had been driving their herds to inland locations in the Herzegovina when the region was under the Ottoman rule. Some tribes from Montenegro took their flocks to overwinter as far as the Sava valley. In Palairet, *Balkan Economies*, 144.

[345] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 298-299, Wessely, *Die Catastral-Vermessung*, 4.

The authorities claimed that under the Ottoman rule the forests were unprotected because the most important prescriptions of the Forest Regulation of 1870 concerning description and demarcation of the boundaries of the state forests were not implemented.[346] In 1886, the administration proceeded to mark the boundaries of state forests on the ground systematically. Not only the boundaries of the forests but also those of mountain pastures and quarries which were "valuable sources of revenue" for the state, were demarcated. The boundaries were marked with enumerated signs (staves or stones) on the ground and the descriptions of the boundaries were recorded in the *Grenzmanualien* (boundary registers). The district administrations were entrusted with maintaining the boundary marks on the ground and report its conditions to the Provincial Administration twice a year. Between the years 1886 and 1906, 1,167,717 hectares of pasture and woodland were demarcated as state lands.[347] When the work of demarcation in a district was completed, the forest map of the related district was revised as well.

3.10 The competition over land

Feifalik argued that the landowners came to consider the value of the woodland only after private entrepreneurs had wanted to buy timber in return for some hundreds of thousands of crowns. This was the reason why many landowners only later passed petitions to the administration in order to gain title to woodland or claiming that the boundaries of their properties were not determined accurately.[348] In 1895, the Bosnian landowners passed a petition to the emperor claiming that only 10 per cent

[346] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 297-298. The Report for 1906 includes a lengthy discussion of the Ottoman Forest Regulation of 1870 and the demarcation of the boundaries is mentioned in two places, revealing the delicacy of the issue under discussion.
[347] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 301-302. The mountain pastures in Livno and Zupanjac were divided, demarcated and assessed between 1895 and 1900. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 332.
[348] Feifalik, *Agrarfrage*, 57-58.

of the woodland which had been belonging to them was recognized as their possessions by the new government.[349] In 1911, the Regulation for the Possession of Woodland was the subject of an interpellation by Rifatbeg Sulejmanpasic, the representative of the landowners, in the provincial parliament. The landowners' demand for the re-settlement of rights to the possession of woodland was rejected by the government on the grounds that the landowners had to appeal to the Common Ministry within the notification period of six weeks which had yet expired. The issue came to the fore again in the meeting of the provincial parliament during the discussions over the draft of the Law on the Separation of Baltalık and Mera in 1914. Rifatbeg argued that if the law would be passed, this would be a gift to the cultivators and added that the landowners would approve the law only if their rights to land would be recognized by the government:

> The Regulation for the Possession of Woodland did harm to the landlords partly because of their ignorance of the importance of the regulation and partly because of the lack of the title deeds to land. When the landlord claimed 1000 hectares of woodland, he was assigned only 100 hectares as private forest. This was the first curtailment of the right of the landlord to the possession of woodland. The second was due to the principle that the cultivator has rights of servitude on the woodland which was allotted to the landlords whereas under the Turkish rule the cultivators had rights to the use of the common coppices, the baltalık. In time the forest keeper banned the kmets to practice servitude rights in the baltalık -which were declared to be state land- and told them they had rights of servitude on the 100 hectares of woodland held by the landlord. In this way, the woodland held by the landowner came to be *ius nudum* which only had the burden of taxation and worry. [350]

Feifalik argued that the landlords were well aware that the administration was not inclined to allot parcels of woodland to them and therefore they demanded the abolition of the servitude rights of the cultivators on the woodlands held by them.

[349] Babuna, *Bir Ulusun Doğuşu,* 55.
[350] Feifalik, *Agrarfrage*, 60-61.

The sharecroppers should be obliged to fell timber or graze their animals in the coppices which should be assigned to the village communities.[351]

Though it was deemed to be an offence to clear and cultivate mevat land, the peasants continued to reclaim and cultivate wasteland.[352] Feifalik argued that they thought if they would not clear and cultivate the land, it would be sold to a foreign firm or speculators or it would be assigned to a settler, 10 hectares for free and with the valuable trees on it. [353] Indeed, the administration powerfully encouraged the settlement of colonizers in Bosnia.[354] After 1894, land settlement was more planned. People of different language groups from Austro-Hungarian Monarchy were settled in Gradiska, Dubica, Prnjavor, Derventa, Tesanj, Zepce, Zvornik, and Zenica[355] with the aim of increasing the cultivated area. In the 1910s 2, 203 families of 13, 333 souls claimed the ownership of 21, 892 hectares.[356] They were granted initial tax exemptions, thus encouraging savings and improvement.[357] As the pressure on land intensified, the administration had to end to settle "hard-working, intelligent cultivators".[358] The struggle between the government and the peasants continued throughout the years under Austro-Hungarian rule. In the instructions for the

[351] Feifalik, *Agrarfrage,* 61-62.
[352] The authorities claimed that particularly the oak forests in Banjaluka were in danger. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1909," 153.
[353] Feifalik, *Agrarfrage*, 51-53.
[354] In Bjelina 3, 772 hectares of land were allotted to 487 families of 2, 621 souls which created the Franz-Josefsfeld. Colonizers from Sachsen, Westfallen, Prussia and Holland were settled in Windhorst in Gradiska.
[355] Dimitz, *Die forstlichen Verhältnisse,* 67. Dimitz didn't indicate the area of land that was assigned to these settlers.
[356] Feifalik, *Agrarfrage* 63-64. Administrative Report for 1913 gives similar figures. According to this at that time there were 38 colonies (in them, 12 were Polish, 11 German, 4 four Czech or Polish-Ruthenian, three Ruthenian, two Italian, one Hungarian, one Slovenian) consisting of 13, 340 souls, holding an area of total 20, 845 hectares. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1913," 51.
[357] The settlers were assigned 9. 95 hectares land on average. By 1910, they were consistently using horses, iron ploughs, and some mechanical threshers while wooden ploughs pulled by oxen or by hand were still overwhelmingly the implements of the native peasantry. In Lampe and Jackson, *Balkan Economic History*, 287. Laveleye argued that colonists from Tyrol and Wurtemburg had applied their perfected systems of cultivation, especially in Dervent, Kostajnica and Livno. In the valley of Vrbas, in the environs of Banjaluka there were even irrigated meadows. In Laveleye, *Balkanländer*, 117.
[358] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1913," 51.

demarcation of the boundaries of state forests, it was prescribed that even those areas of land which were recorded as woodland in the cadastral survey but was later reclaimed and used as arable or pasture were to be demarcated only if these were registered as forest in the land register.[359]

The Austro-Hungarian government was very much interested in developing forestry and the lumber industries. The exploitation of the Bosnian forests was left almost entirely to private enterprise. Sugar argued that all forestry enterprises must have been extremely profitable both the Provincial Administration and the entrepreneurs. Most of the contracts which the government concluded with the various forest exploitation enterprises were long term agreements and the prices were almost always fixed for the entire duration of the contract and low. This caused continuous attacks on the government where the authorities were charged with bad management, favouritism and ruthless forest exploitation for small gains.[360] Kallay refused to submit contracts which he negotiated with various companies for the exploitation of the forests of Bosnia to the Delegations who were authorized to supervise the administration of the province. He refused to submit the balance sheet of the Provincial Administration as well. His successors finally agreed to submit the balance sheets but refused to produce these contracts. According to Sugar, the actions of Kallay and those of his subordinates were often not in the best interest of the province. Sugar added that most of these contracts disappeared and the few which he could find seemed to support the accusers of Kallay.[361]

In 1890, the government promulgated a new law on forest use. Any violation of the law on forest use, in many cases unauthorized gathering firewood which happened due to an urgent need, was severely punished. In addition, the accused had

[359] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 302.
[360] Sugar, *Industrialization of Bosnia-Herzegovina*, 129-131.
[361] Sugar, *Industrialization of Bosnia-Herzegovina*, 55-56.

to compensate for the loss. This was on the basis of the value of the wood taken, calculated in pieces or cartloads, or on the basis of the extent of the land reclaimed or on the basis of the type and number of animals grazed in the woodlands.[362] The law also prescribed that the individuals who could not compensate for the harm they caused in the state forests were to pay for it by performing labour services and its value was to be determined according to the daily wage.[363]

3.11 Conclusion

One major step towards the erosion of the cultivators' rights to the land they cultivated was the disregard of the category of hakk-ı karar of the Ottoman land law. On the other hand, the jurists deemed that the cultivator occupying the land would have a right of preference when the land was transferred according to the Ottoman Land Code. This regulation was not implemented either, in parallel with the government policies proposing for unhindered markets in land. Yet, at the same time, "cultivator's right of preference" had an important place in the official documents, for when the cultivators contested the sale of their plots and denied to leave their holdings, it was claimed that the cultivators wanted to have a priority to purchase the plot on the basis of their right of preference. As important, the Habsburg regulations favoured the fragmentation of holdings and contributed to the formation of small farms with extremely limited resources.

In the Austro-Hungarian Empire, the Land Emancipation Act of 1848 revolutionized the rural conditions as the old rights of woodcutting, gathering reeds and that of pasturage were abolished with the institution of serfdom and common

[362] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906, " 326. The violation of forest laws was subject to fine varying from one to 50 crowns, in case of fire to 250 crowns, or arrest of one to 14 days in case of fire upto two months. This amount was doubled if the forest was in a region of poor communications.
[363] Karszniewicz, *Das bäuerliche Recht,* 173-174.

pastures were divided up. A similar transformation in rural conditions happened in Bosnia as well, yet through a different mechanism. "The transformation in property and rights in land"[364] took place through the reassertion of state ownership in land under Austro-Hungarian rule. The Austrian lawmakers afforded to introduce a more generalized and powerful concept of state ownership in land by the "recodification"[365] of the Ottoman Forest Regulation of 1870. Being now under the category domain lands, mevat land could not be possessed and the peasants were deprived of their customary rights to wood and grazing on these lands.

Since the peasants were deprived of their rights of servitude on mevat land, as a compensation for this, according to the interpretation of the Austrian legislators, the Ottoman Forest Regulation of 1870 prescribed that the residents of villages had the right to grazing and fell timber on the miri forests,[366] namely plots of woodland held by private individuals. Yet, at the same time, the amount of land which was recognized as belonging to individuals was severely reduced since many title deeds to land submitted by the landowners to the commissions which were responsible to determine the rights in land were considered to be falsifications and thus legally invalid. This was of profound significance because the cultivators had a recognized right to pasture and woodland held by the landowner.

The pastures and coppices which had been collectively used by the villagers were registered as domain lands as well and the peasants were deprived of their rights to grazing and woodcutting on these lands. The authorities argued that through a particular procedure, which was termed the Separation of the Baltalık and Mera,

[364] İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 16.
[365] LeVine, "Land, Law, and the Planning of Empire: Jaffa and Tel Aviv During the Late Ottoman and Mandate Periods," 115.
[366] Dimitz, *Die forstlichen Verhältnisse*, 99.

the village communities would be regulated and the rights of the usufructuaries would be laid down. Nevertheless, it was never carried out.

Furthermore, mountain pastures which covered large areas in Herzegovina and Foca were deemed to be state property. Large areas of pasture were divided up, enclosed and brought into tight control at the expense of peasants who practiced transhumant stock-raising. The change in the rural conditions was of primary importance because Bosnia was largely dependent on stock-raising and livestock formed the principal wealth of the Bosnian peasant.[367] Feifalik commented that:

> To the outsider, the Bosnian agrarian question is the question of the kmets in itself. But for the one who knows, the question of the use of the pasture and woodland is equally important. Through the complaints of the people runs, like a red thread, always the same word, the "suma", the woodland![368]

The change in the status of land, namely metruke and mevat land becoming domain lands had further consequences on the ground. Under the Ottoman rule, a law peculiar to Bosnia was passed which prescribed that one could clear and cultivate forest land and gain title to it. Furthermore, shifting cultivation was fairly common because of the prevalence of livestock-raising in Bosnia. Under Habsburg rule, it was deemed to be an offence to clear and cultivate woodland. This was in marked contrast with the prior practice and was much objected by the peasants during the Austro-Hungarian rule.

The practices of surveying and mapping played a key role in establishing state ownership and control over land as well. The authorities argued that the objective of the cadastre was to set taxation on a more equitable footing. In reality, however, the cadastre was never used to revise tax assessments. On the other hand,

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[367] Dimitz, *Die forstlichen Verhältnisse*, 61.

[368] "Für die Aussenwelt ist die Kmetenfrage die bosnisch-hercegowinische Agrarfrage an sich. Die Wissenden sin sich aber bewusst, dass an Wichtigkeit dieser Frage jene der Wald- und Weidenutzung ebenbürtig zur Seite steht. Wie ein roter Faden zieht sich durch all Beschwerden der Bevölkerung immer das eine Wort, die suma-, der Wald!" Feifalik, *Agrarfrage*, 48.

forest maps were compiled which were to provide a bird's eye view of the forests of the province and which were considered to be veritable tools for efficient management of the woodlands. Although the authorities claimed that the forest maps would serve to support the administrative measures relating to the separation of the state-owned forests from those held by private individuals or vakıfs, the forest maps of Bosnia did not differentiate state from private land and presumably this was the reason why the forest maps of the province were available only for official use.

CHAPTER 4

REGULATIONS REGARDING AGRICULTURAL TAXATION AND AGRARIAN ARRANGEMENTS

4.1 Introduction

The Austro-Hungarian authorities frequently emphasized that the legal measures and administrative practices of the Habsburg government elevated the status and ameliorated the conditions of the Bosnian peasantry. In order to understand to what extent this official claim reflected the actual conditions in Bosnia, the first two sections of Chapter 4 analyse the legislation and practices of the government regarding taxation of agricultural production. The following sections examine the institution of mortgage credit which was introduced in Bosnia by the Habsburg government and the regulations regarding peasant indebtedness. There is a particular reason why these four sections follow each other. While from 1883 to 1886 the government acted as an agent of the Union Bank at Vienna, investigating the trustworthiness of the prospective buyer and collecting the annuities owed to the bank, in the later years the government itself engaged in providing loans to cultivators whereby the tax offices were responsible for bookkeeping of the loans and for collecting the instalments. This study argues that the burden of taxation imposed upon the cultivators, the conditions under which the cultivators could take a mortgage credit for redeeming their land and the regulations regarding peasant indebtedness are parts of a coherent whole paving the way to the increase in the burden of debt upon them. Consequently, many peasants were evicted from land which they had recently acquired. The government measures were far from improving the lot of the peasantry and Bosnia was a place where there was “such a

vast discrepancy between appearance and reality, between the creature and the mask".[369]

The following section of Chapter 4 discusses the policies and practices of the Habsburg administration regarding agrarian arrangements. Throughout its rule, the Habsburg administration did not introduce regulations regarding agrarian arrangements. On the other hand, in the official sources, the focus was mainly directed to the disputes arising from sharecropper-landowner relationship, giving data about the number and nature of agrarian conflicts which were referred to the authorities. Giving an overview of these data published in official sources, this study argues that the Austrian statisticians indeed achieved to create an outlook that the number of agrarian conflicts did decline as a result of the well-directed policies and practices of Austrian administrators.

The next section discusses the different proposals made by contemporary statesmen and scholars regarding the Bosnian agrarian question. Their accounts clearly depict the consequences of the government policies and practices regarding land tenure and taxation and provide an understanding of the economic conditions of the Bosnian cultivators. Moreover, some of them critically examined the conditions under which the cultivators were granted mortgage credit to redeem their land and concluded that these regulations led to a situation where the Bosnian cultivators were even more exploited. While several statesmen and scholars criticized the government measures regarding agrarian arrangements, they did not consider the regulations relating to the rights of the cultivators to the use of commons and waste and this is the major gap in their analysis of the agrarian relations in Bosnia. As important, the

[369] Warriner, *Contrasts in Emerging Societies*, 200. Discussing the causes of the peasant revolt of 1907 in Rumania I. L. Caragiale argued that "there is perhaps in no state, at least in Europe, such a vast discrepancy between appearance and reality, between the creature and the mask." However, Rumania was no exception even in the European context.

Habsburg government insisted on the voluntary sale of land by the landowners throughout its rule. This study argues that the "impartial" policies of the Habsburg government regarding agrarian arrangements, protecting the landowners' right to land by promoting voluntary land redemption were in order to counterbalance the harsh government policies of reclaiming privately appropriated lands.

The last section of Chapter 4 examines the land use patterns in Bosnia. The discussion about methods of cultivation and the chief crops is followed by a discussion on livestock-raising. The data indicate that an initial increase in agricultural production and stock holdings was followed by a decrease after 1895. Since the cultivators were deprived of their rights to pastures and woods the area for pasture had been largely reduced and plough land was increasingly turned into pasture. Government practices regarding land tenure had a profound impact on agricultural production as well.

4.2 Taxation of agricultural production

The tithe imposed on the peasantry was the major source of revenue of the Habsburg government in Bosnia. Between the years 1878 and 1906, the proportion of the tithe in the total amount of direct taxes was more than 70 per cent, and it didn't fall below the level of 50 per cent until 1914.[370] Ostensibly, the new government cut the state tithe back from 12. 5 per cent to 10 per cent.[371] But, at the same time, it added new taxes, the rates on the old ones were increased and the methods of collection became

[370] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 438-443; "Bericht über die Verwaltung von Bosnien und der Hercegovina 1908," 221; "Bericht über die Verwaltung von Bosnien und der Hercegovina 1910," 150; "Bericht über die Verwaltung von Bosnien und der Hercegovina 1911," 170; "Bericht über die Verwaltung von Bosnien und der Hercegovina 1913," 94; "Bericht über die Verwaltung von Bosnien und der Hercegovina 1914-1916," 32, 215.
[371] Palairet, *Balkan Economies*, 203.

more efficient.[372] The new administration effectively collected taxes with the intervention of the gendarmerie.[373]

Before the occupation, the cultivator had to pay only the grain tithe.[374] Under Habsburg administration, it was ordered that "not only the important products like wheat and barley but hay, millet, lentil, chickpeas, beans, all fruits, grapes and beehives are to be assessed."[375] As important, immediately after the occupation the administration enforced the payment of tithe in cash which was formerly collected in kind.[376]

The tithe was assessed by the tithe assessor selected by the administration among the population. The tithe assessors were members of the tapu commissions as well.[377] He was accompanied by the village headmen (muhtar or knez) and two representatives of the village chosen by the district administration, if possible belonging to different confessions.[378] The tithe assessor was the "representative of the state treasury and the head of the commission", in case of a disagreement between the members of the commission his opinion was decisive. The landlord or his bailiff and the peasant had to be present by the assessment of the tithe as well. The tithe was assessed and recorded in the tithe register (*Zehentdefteri*) in *okka*,[379]

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[372] Jelavich, *History of the Balkans*: *Twentieth Century*, 61.
[373] Cupic-Amrein, *Die Opposition*, 213.
[374] Nikaschinovitsch, *Bosnien*, 64.
[375] Article 55 of "Gesetz über die Einhebung des Zehents von allen Producten, ausgenommen Tabak, Seide, Oel und Oliven," in Landesgesetzblatt BH 1878-1880, 3. Bd. 1. Abt., 391. In the assessment of the tithe of maize ten per cent was added for green beans and pumpkin even if they were not cultivated because it was a widespread practice that they were cultivated among maize on the farms. In Karszniewicz, *Das bäuerliche Recht*, 155-156. In addition, a certain amount was assessed for each female member of the family even if flax and hemp were not cultivated. In zadruga households, every woman used to spin and weave and make shirts for themselves and the family. In Warriner, *Contrasts in Emerging Societies*, 297.
[376] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 424.
[377] Eichler, *Das Justizwesen*, 282.
[378] Nikaschinovitsch argued that in 1897, 500 sharecroppers passed a petition to the Kaiser claiming that the representative of the cultivators was only there in order to protect other members of the commission from the dogs of the village. In Nikaschinovitsch, *Bosnien*, 45-46.
[379] Even in the later years of Habsburg administration, the tithe was assessed in okka, rather than quintal, the Austrian measure which equals 100 kilograms and which was used in the official statistics. In the Administrative Report for 1906, it was stated that "even today, the use of the metric

the weight which had been used for grain in the province, under the name of the head of the peasant household (*staresina*) who was the person who took the responsibility for the payment of tax (*Zehentpflichtige*) for all the plots the family cultivated[380] and a document which prescribed the amount of the tithe was given to the staresina in the presence of the tithe commission. Immediately after the assessment was made, the tithe assessors had to give the tithe register to the tax offices in the district administrations. The price was to be determined annually by the district administrations for each type of produce. The tobacco cultivated by the peasant was bought up by the State Tobacco Monopoly. A tithe for the tobacco for household consumption and for the crop rendered to the Monopoly was assessed and it was deducted from the amount which was paid to the peasant.[381]

The tithe was assessed more than ten per cent of the produce for several reasons. The tithe for grain was assessed for the probable yield and if the crop was damaged between evaluation and harvest times the tithe remained unchanged. The peasant could object to the assessed amount of tithe in eight days but the real amount of the harvest would be clear after threshing which would end in several weeks and months when an objection would not be possible.[382] Though the peasant had to pay the tithe in autumn,[383] the prices which were used in the calculation of tithe were determined by the authorities in May and June, when the prices of all crops were higher. Thus, the cultivator had to sell a higher amount of the produce in order to be

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weights in the assessment of tithe would lead to difficulties and inconveniences, above all the resentment of the population. The people regard with mistrust a change in the customary weights, beyond doubt it is considered unfavourable." A bill for the obligatory use of metric scales and weights was prepared but because of the people's opposition, it was decreed that the old weights and measures were to be used for a limited period of time. In order to introduce the metric weights, a higher fee was demanded for the calibration of the old scales and it was ordered that they should be calibrated in shorter periods than the metric scales. In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906, 486.

[380] Schmid, *Bosnien,* 414.

[381] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906, " 423-427.

[382] Karszniewicz, *Das bäuerliche Recht,* 154-155.

[383] The peasant had to pay the tithe in three rates in October, November and December.

able to pay the tithe. As important, the tithe assessors were remunerated with 4 per cent of the tithe assessed[384] and presumably, they were inclined to make a higher assessment than the real amount.[385] Nikaschinovitsch argued that the taxes paid by the peasant rose four-fold under Austro-Hungarian rule.[386] In many cases, the cultivators had to borrow from private money-lenders at usurious rates in order to pay taxes.[387] Walther reported that the traders in the towns advanced money or seeds against the future sale of the crop. It was a widely seen arrangement that the peasants borrowed 1 *tovar*[388] seed in return for 2 tovars produce at the harvest time.[389] Bosnia was the scene of serious uprisings in 1881 and 1882 and a major cause of irritation was the system of taxation.[390]

Although the government commissioned a cadastral survey between the years 1880 and 1885, it was never used to revise tax assessments.[391] In the Administrative Report for 1906, it was stated that the cadastre was still incomplete, and a thorough revision of the survey and assessment operations in order to determine the average yield for each distinct plot would necessitate time and considerable amounts of money.

The government introduced a new system of taxation in 1905. The practice of determining the amount of tithe each year by making an assessment for all plots

[384] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 24. Mai 1884," in Landesgesetzblatt BH 1884, 473-480.
[385] Grünberg argued that the tithe assessors were unreliable people who were unqualified for this task. Grünberg, *Die Agrarverfassung*, 41.
[386] Nikaschinovitsch, *Bosnien*, 51.
[387] Konanz, *Agrarverhältnisse,* 38.
[388] One tovar equals 100 okka which equals 128.29 kilogram.
[389] Walther, Österreich-Ungarns Verwaltung und Wirtschaftspolitik in Bosnien und der Herzegovina," 152-153.
[390] Jelavich, "The Revolt in Bosnia-Hercegovina, 1881-2," 420-422.
[391] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 489. The article of Zeljko Obradovic is a good account of the technical peculiarities of the cadastre which was conducted by the Habsburg rulers in Bosnia. Obradovic significantly pointed out that during the Second World War there was significant destruction of the land cadastre and land registry records. But Obradovic falsely maintained that the cadastre promoted a tax reform. Zeljko Obradovic, "Cadastre in Bosnia and Herzegovina."

which were cultivated by a peasant household was abandoned. According to the Report, the average amount of tithe was calculated for each village in relation to the figures of the past ten years in the tax registers. This amount was to be apportioned among the parcels in the village by taking into consideration their extent and quality of the soil and the type of the produce. The quality of the land was to be determined by a commission selected among the villagers.[392]

Nineteenth-century governments used to resort to scientific reasoning for the justification of their administrative practices.[393] In the Administrative Report for 1906, the former method for the assessment of the tithe as a fixed proportion of the gross yield was considered to be a factor that was preventing the development of intensive agriculture. Since the increase in the amount of the net yield would not be in proportion to the increase in the amount of the applied labour and capital, the tithe as ten per cent of the gross yield would mean a higher burden of taxation on the net yield by intensive agriculture.[394] By this statement, the Report made reference to the law of diminishing returns in agriculture (*Gesetz des abnehmenden Bodenertrags*) which implies that after a culmination point, the increase in the amount of the output would not be in proportion to the increase in the amount of applied labour and capital, since "due to natural conditions only a limited amount of plants can grow on a given plot of land."[395] If the intensive, rational agricultural production was taxed relatively heavy, then the cultivators using backward methods would resist making any improvements in order to maintain their privileged tax position.[396]

[392] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906,", 427-428.
[393] Milosevic, "The Agrarian Reform-A 'Divine Thing': Ideological Aspects of the Interwar Agrarian Reform in the Kingdom of Serbs, Croats, and Slovenes/Yugoslavia," 50.
[394] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906,", 427.
[395] Philippovich, *Grundriss der politischen Oekonomie,* 182-183.
[396] Konanz, *Agrarverhältnisse*, 33.

In reality, however, the administration aimed to avoid a decrease in the amount of tax. Many peasants had suspended cultivation in favour of animal breeding. The tax was now owed collectively by the peasants and it is not clear whether the apportionment of the tax was in relation to the actual amount of the produce yielded from a field. Presumably, there were injustices in the apportionment of the tax stemming from the process of surveying the boundaries and calculating the superficial area of the fields. In addition, as it was recounted about Hungary: "The more astute inhabitants who are either in authority themselves or in league with the assessors lighten their own burdens at the expense of less fortunate . . . their estimates are nowhere more harmful in the classification of land, which in any case is extremely difficult to determine accurately."[397] The allotment of individual taxes out of the amount levied upon each village was entrusted to the local authorities and this presumably contributed to the resentment of the cultivators.

4.3 The state as the landlord

The tithe was not the only tax levied on the produce of the soil by the new administration. In 1880 the Common Ministry of Finance prescribed that the cultivators had to pay one-third of the produce as ground rent which was to be collected by the Provincial Administration, considering the cultivator as a tenant on state lands.[398] However, neither the Administrative Reports nor the account of Schmid, the head of the statistical office in Sarajevo, includes information about the imposition of tretina on the peasantry who held their land. [399] In 1880, in a decree

[397] Warriner, *Contrasts in Emerging Societies*, 52.
[398] Zeitschrift für die gesamte Staatswissenschaft Bd. 36, H. 2. (1880), 381.
[399] Yet Schmid explained the issue in an implicit manner by claiming that the vakıfs, the monasteries and even the state had kmets. "Es kommt insbesondere vor, dass der Vakuf und selbst Klöster sowie auch der Staat Kmeten besitzen." Schmid, Bosnien, 304.

issued by the Common Ministry of Finance on the settlement of colonizers it was stated that:

> [T]he fields in Livno are cultivated by the peasants and the Financial Directorate is collecting the tretina from them, namely a type of rent in addition to the tithe. The pastures are rented out in return for a payment in cash or for the payment of tithe. In the report of the district administration . . . it is stated that there were also tapu title deeds in relation to these fields and pastures . . . Therefore, renting out these lands to colonists might lead to the opposition of the inhabitants of Livno.[400]

While the state came to collect one third of the produce as ground rent from Bosnian cultivators who held their own land, the Common Minister decreed that it was not appropriate to allocate state lands to settlers because it would lead to competition to acquire the state lands which the native people could acquire the possession of on the grounds of the Land Code of 1858 and this might negatively influence the resolution of the Agrarfrage. [401]

The authorities enforced the peasants to make agricultural contracts as to the terms on which they were to hold the land. In 1885, the Provincial Administration issued a decree concerning the issue:

> The Provincial Administration was informed that by renting out state-owned lands, the tenants who could not pay the ground rent on time should pay 6 per cent interest for late payment calculated from the day of delay. After the lapse of fourteen days, a penalty of 30 kreuzers per week was added to this amount in accordance with Article 2 of the tenancy contracts which were made with the tenants. Since the penalty to be paid harms the agriculture, in order to improve agriculture, the penalty is abolished. Therefore, the second clause of Article 2 of the future tenancy contracts will read:
>
> "If the tenant would not pay the ground rent on time, he should pay 6 per cent interest for late payment calculated from the day of delay . . . This ordinance has retroactive effect as well, accordingly the penalties which were to be paid by the tenants and which were unpaid are to be cancelled by the tax offices."[402]

[400] "Erlass des gemeinsamen Ministeriums vom 5. November 1880," in Landesgesetzblatt BH 1878-1880, 1. Bd. , 543-545.
[401] "Erlass des gemeinsamen Ministeriums vom 5. November 1880," in Landesgesetzblatt BH 1878-1880, 1. Bd. , 543-545.
[402] "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 22. Juni 1885," in Landesgesetzblatt BH 1885, 476. One florin equals 60 kreuzers. In Warriner, *Contrasts in Emerging Societies*, 387.

As stated in the decree, the contracts which the peasants cultivating on "state-owned" lands were enforced to make involved also default interest provisions. Aside from the alleged claim that the regulation was made to improve agricultural production, the real cause of such regulation should have been the fact that the peasants could not pay the required amount.

Indeed, the state became a landlord in Bosnia. In 1907, an ordinance was issued on "escheat miri lands and the mülk objects on these lands". It was ordered that if the escheat land was cultivated by kmets, they were to deliver the same dues to the state treasury which they had been rendering to the deceased landowner. For ease, the state treasury had to make kesim contracts with the peasants whereby the stipulated amount had to be approved by the tax offices. If an appropriate amount for kesim could not be determined, the district office had to employ a bailiff with the approval of the provincial administration who should collect a fixed produce-levy on behalf of the state treasury.[403]

The government established direct control over the landed property which belonged to religious endowments claiming that the revenues from these lands were badly managed and could not be used for public works due to the misconduct of their members. The peasants who cultivated on the land held by religious endowments were obliged to pay ground rent to the state as well.[404]

4.4 Land redemption and mortgage credit

The Habsburg government upheld the policy of promoting voluntary land redemption by offering credit to sharecroppers to buy out the land they cultivated.

[403] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 1. Mai 1907," in Landesgesetzblatt BH 1907, 181-184.
[404] Laveleye, *Balkanländer,* 197.

The price that the sharecropper had to pay for redeeming the land was calculated as thirtyfold of the average amount of the tithe of the previous three years. In other words, it was proposed that the landowners should be compensated at the rate of ten times the annual value of the abolished dues when the sharecropper cultivated the land for a third. Karszniewicz explained that there were cases when the cultivators intensively cultivated their own land and used the land they held with sharecropping agreements for animal grazing. Since the land would have a lower value if calculated in proportion to the tithe, the land register commissions were to make an assessment for the correction of the value.[405] Though the authorities proposed that the departing sharecropper should be compensated for the expenses incurred in the buildings and improvements in accordance with Article 7 of the Bosnia Regulation of 1859,[406] there was no regulation proposing for such a deduction of the value of the improvements from the price that the sharecropper had to pay when he would buy the land.[407]

The cultivators who wanted to redeem their lands were provided loans to the security of land. The authorities represented this practice as an instance of paternal interference of the Habsburg administration addressing the agrarian issue. On the other hand, the lack of land registers was considered as a drawback for mortgage credit. Thus, according to the authorities, the compilation of Grundbuchsprotokolls (individual title certificates) which was introduced by decree in 1883 was of major importance. The same year Union Bank at Vienna established a branch in Sarajevo. It was entrusted with providing mortgage credit up to half of the value of the land. The government acted as an agent of the bank investigating the trustworthiness of the

[405] Karszniewicz, *Das bäuerliche Recht*, 90-91.
[406] Posilovic, *Das Immobilar-Recht*, 110.
[407] Karszniewicz, *Das bäuerliche Recht*, 90.

prospective buyer. The annuities owed to the bank were collected by the tax offices and delivered to the bank.[408]

In 1886 the Beamtenpensionfonds (employees' pension funds) began operating in this field. Loans were provided to the sharecroppers who wanted to redeem their lands up to half of the value of their holdings. Loans were provided also to the landowners for the improvement of agricultural production including buying land and equipment. In the districts where the land registers were compiled, credit was provided to the security of land even if the loan would be used for purposes other than agriculture. The interest rate was 6 per cent and the amortisation and the interest were to be paid back in ten years. As the demand for credit increased, as stated by the authorities, in 1889 the employees' pension funds evolved into the Hypothekarkreditanstalt. In the cases when the amount of the loan which was demanded by the sharecropper exceeded half of the value of the land, the Provincial Administration provided loans for the remaining part with 3 -6 per cent interest.[409]

In 1895 the privileged Landesbank für Bosnien und die Hercegovina, which was under the authority of Common Minister of Finance, was established.[410] Again, the tax offices were responsible for the bookkeeping of the loans and for collecting the instalments.[411] The cultivator who took a loan by pledging his land against debt could not subdivide the holding or exchange a parcel of it with another one. The cultivator had to pay for interest and amortization. If the cultivator could not make the payments on time, he should pay default interest at the rate of eight per cent and

[408] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 380.
[409] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 380-381.
[410] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 382. The Landesbank absorbed the Hypothekarkreditanstalt.
[411] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906, " 409.

had "to compensate the loss caused by the unpaid debt" as well. A special court in Sarajevo was authorized for seeing the cases relating to unpaid loans.[412]

The Landesbank made considerable profits. In 1908, the Common Ministry of Finance decided to provide loans to cultivators to the entire value of the land, whereby the estimated value of the land was to be determined by the district administrations. The newly established Agrar- und Kommerzialbank für Bosnien und die Herzegowina was granted the monopoly of giving loans to cultivators who wanted to buy the land they occupied. The bank was exempt from taxes and fees payable to the state and it was protected by the state against financial losses for ten years. In addition to the interest on capital and the taxes arising from the credit operation, the cultivator had to pay for the expenses relating to the transfer of land as well.[413] The cultivators had to pay for interest and amortization in half-year periods. Together with the additional payments the cultivator had to make, the bank charged 9 per cent interest rate on debt,[414] a substantial amount compared with the 4-4.75 per cent interest rate on debt put by the German mortgage banks at the 1890s.[415] Again, the government was to collect the payments due to the bank and sell the holdings of delinquent buyers for the account of the bank. The cultivator could transfer land only with the approval of the bank and on the condition that the new holder would pay the debts of the cultivator. [416]

[412] Grünberg, *Die Agrarverfassung*, 64-65. The cultivator who took a loan by pledging his land against debt could not subdivide the holding or exchange a parcel on it with another one.
[413] Grünberg, *Die Agrarverfassung*, 71.
[414] Grünberg, *Die Agrarverfassung*, 68-73. The interest rate was even higher in the case of the delay of the payment. Grünberg contended that in the years 1908 and 1909, 14. 83 per cent of the children could go to school and the low literacy rate was one of the reasons why the cultivators missed the days of payment as well.
[415] Nolden, "Kritische Geschichte," 23.
[416] Sugar, *Industrialization of Bosnia-Herzegovina*, 93.

In Bosnia, the "real estate business was the one on which the banks concentrated."[417] Despite their limited field of activity, the Bosnian banks achieved to pay high dividends (9-12 per cent) to stockholders. Whereas Sugar was unable to explain how these high dividend rates were possible,[418] the "business that the mortgage banks were engaged in" was well-documented in the inaugural dissertation of Hugo Nolden dating to 1892:

> It is well-known that the business that the mortgage banks are engaged in is to issue bonds and sell them in the stock exchange for providing the necessary funds, or they are giving the debtor the bonds as loan which the debtor had to sell by himself. The bank requires some guarantee of financial solvency thus the land which has at least a value equal to the loan was mortgaged against debt. The mortgage banks are then only acting as mediators between the landed property which is mortgaged and the holder of the bonds. Due to the nature of the business, in time and with the gradual increase of gains in the capital market the expression on the top of the statutes, "promoting credit for landed property" which perhaps had initially been the guiding principle, has become an attractive advertising sign serving to provide the confidence of the landholders in need of credit. The real aim which comes to light from its initial shell is to gain as much as possible by the way of this intermediation and to distribute ever-increasing amounts of dividends to the shareholders."[419]

Nolden stated that by paying amortization and interest at the rate of 6 per cent,[420] the cultivator could pay off the debt in thirty-three years. But, according to Nolden, this definite and easy calculation was in contradiction with the fact that the cultivator could hardly ever get so much from his holding and pay the high interest rate and high assessed instalments, taking into consideration the nature of his exchange

[417] Sugar, *Industrialization of Bosnia-Herzegovina,* 93.
[418] Sugar, *Industrialization of Bosnia-Herzegovina,* 94. In the words of Sugar "It is astonishing to see that with such limited field of activity, which did not include participation in really large enterprises like railroad building, mining, or industry… [I] cannot explain how these high dividend rates became possible."
[419] Nolden , "Kritische Geschichte, " 23-24. Nolden explained that "of course, it is an advantage that the debt owed to the mortgage bank is not revocable by call and the cultivator can pay for the debt in instalments. But it is costly for the cultivator to enjoy these advantages … He has to pay the sums termed as "additional payments" which include not only the management costs of the bank but also additional payments which provide the surplus in order to be distributed to the shareholders. The burden born by the cultivator is increased by the high interest rates that the mortgage banks charge in return for providing the loan. If the debtor could not pay the debt on time, he has to pay a high penalty which is secured in advance by an arrangement called *Kautionshypothek*."
[420] It is presumed that 1. 25 amortisation charge was added to 4. 75 interest rate.

economy.[421] These unpaid instalments in time became new debts which were subject to interest and redemption.

In parallel, Schmid contended that many cultivators who bought the land they cultivated were obliged to take loans from private money lenders at high rates in order to be able to pay the instalments owed to the mortgage bank and the taxes owed to the state and added that peasant indebtedness eventually led to bankruptcy and sale. Schmid argued that the government had to implement the stipulations of the Ottoman legislation which prescribed for immunity from forced sale the cultivator's house and a basic amount of land required for survival.[422]

4.5 Regulations regarding peasant indebtedness

The prevailing view among the Austrian lawmakers about legal restrictions on dispossessing the cultivator of his lot for debt is well-documented by Stefan Posilovic who was a member of the High Court in Sarajevo. First, Posilovic referred to Article 115 of the Ottoman Land Code of 1858 which stipulated that a holding of miri land cannot be pledged against debt and a lender cannot force the sale of miri land of a debtor. Then he quoted from Article 117 of the Code which allowed the land to be mortgaged as a guarantee for debt if the parties had reached an agreement beforehand.[423] But Posilovic and his colleagues in the High Court considered the stipulations of the Ottoman Land Code inadequate to provide the security to the claims of creditors to whom the land had been mortgaged.[424]

[421] Nolden, "Kritische Geschichte," 23-24. The term "Erwerbswirtschaft" is translated as "exchange economy" for "it seems relatively unproblematic to translate "Erwerbswirtschaft" with "exchange economy", hence countering subsistence to exchange activity". In Tribe "Translating Weber," 214.
[422] Schmid, *Bosnien*, 342, 347-348.
[423] Posilovic, *Das Immobilar-Recht*, 192.
[424] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 53.

Posilovic conceded that the restraints on the forced sale of miri land for debt were removed in the subsequent Ottoman legislation. He then referred to the Ottoman Law of 27 December 1869 which set conditions fixing the securing of debt after the death of the debtor.[425] The subsequently enacted Law of 28 December 1871, Posilovic claimed, was a very important law allowing the sale of miri land to pay off the debt. Posilovic stated that Article 3 of the law which prescribed that "if the debtor proves that the net revenue of his land for three years is sufficient to pay the debt with the legal interest and expenses, and he concedes the creditor its recovery, the sale of his immovable property will be abandoned"[426] was implemented by the Austro-Hungarian administration in Bosnia.[427] The stipulations of the same law which prescribed for immunity from forced sale, in case of the owner being a cultivator, the house and a basic amount of land required for survival, were not implemented by the Austro-Hungarian administration.[428]

To guarantee the claims of creditors and other lenders was considered crucial by the Habsburg government. Therefore immediately the third article of the Land Register Law declared null and void the provisions of the Ottoman Land Code of 1858 regarding pledging land against debt and deemed that in order to guarantee the claim of the creditors to the land the prescriptions of the Austrian Civil Code were to

[425] Posilovic quoted Article 2 of the Law which stated that "if a person mortgages to his creditor by means of the authority, in return for the debt, the arazi mirié and mevkufe which he possess, and dies before paying it . . . a sufficient quantity of that land to cover the debt will be conferred by auction on the candidate for its equivalent value, and the said debt shall be paid" In Ongley, *Ottoman Land Code*, 178.
[426] Ongley, *Ottoman Land Code*, 218-219.
[427] Posilovic, *Das Immobilar-Recht*, 193.
[428] Eichler, *Das Justizwesen*, 232. First article of the Law of 28 December 1871 prescribed that "arazi mirié can be sold like movables for a judgment debt without the consent of the debtor, but one of the houses of the debtor appropriate to his state will not be sold for debt: it will be left. If the debtor is an agriculturist, a sufficient quantity of his land for the management of his house will likewise not be sold, but left if it has not been mortgaged or put under a rule." In Ongley, *Ottoman Land Code*, 218.

be applied.[429] Thus "the legalization of mortgaging of land, a significant step toward commodification"[430] was accomplished in an Austrian manner.

In 1888, the Provincial Administration proposed for a regulation according to which the cultivator's house and a basic amount of land required for subsistence should be excluded from forced sale. It was rejected by the High Court in Sarajevo on the grounds that economic concerns did not entail such regulation and that it would badly affect the mortgage credit as the loans would no longer be properly secure.[431] In 1907, again, a bill was prepared which introduced the institution of the protected minimum homestead that could not be sold or foreclosed for the payment of debts but it was not promulgated.[432]

4.6 Government policies regarding agrarian arrangements

The Austro-Hungarian administration intervened hardly and very cautious in the relationship between the sharecropper and the landowner which was designated a "kmet relationship."[433] Other forms of land tenure like pri-orac were mentioned only accidentally in the official sources. The Bosnia Regulation of 1859, which was promulgated again by the new administration, virtually remained in force. As mentioned earlier, cultivator's right to land came to be redefined by the Austrian administration by interpreting the relevant provisions of the Regulation in particular ways. Its provisions which determined the amounts of the produce share payable to the landowner were not strictly implemented either. In many districts in Bihac, for instance, half of the produce was surrendered to the landowner although the

[429] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 536.
[430] Aytekin, "Agrarian Relations, Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," 939.
[431] Posilovic, *Das Immobilar-Recht*, 196.
[432] Schmid, *Bosnien*, 342.
[433] Schmid, *Bosnien*, 301.

Regulation prescribed for one-third of the produce. In cases of dispute, the authorities were to settle the case considering the amount which was established by custom or which was negotiated among the parties; if this was not possible the amount prescribed by the Regulation was to be considered.[434]

In August 1879 the Provincial Administration published a decree concerning the amount of the dues payable to the landowner. In the decree it was stated that most of the appeals which had been made to the Provincial Administration as the court of second instance were about the amount of the dues payable to the landlord:

> The landlord claims that the amount of the tretina was low and it was not in proportion to the high yield of the land and soil which was cultivated by the çiftçi (Grundholde), and the Grundholde claims on his part that the due was assessed much higher . . . [and] that the landlord or his subaşı were unfair by the valuation of the harvest.[435]

The Provincial Administration decreed that it would be fair to determine the amount of the dues payable to the landlord according to the amount of the tithe which was assessed by state officials. The landlord or his bailiff and the sharecropper were to be present when the tithe was assessed in order to prevent any lower assessment because of an agreement between the sharecropper and the tithe assessor.

The new regulation about the settlement of the amount of the due according to the amount of the tithe led to a situation when the peasant was obliged to render a higher amount of the harvest to the landowner, as reflected in the words of contemporary commentators.[436] The tithe was assessed mostly more than ten per cent

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[434] Karszniewicz, *Das bäuerliche Recht*, 143.

[435] "Circularerlass der Landesregierung in Sarajevo vom 29. August 1879," in Landesgesetzblatt BH 1. Bd., 514-515. The wording of the document is noteworthy as well. In the early years of the occupation the sharecroppers were designated as "Grundholden" (men bound to the soil) or "Pächter" (tenants). Later, the sharecroppers were designated as tenants despite of the fact that their standing before the law didn't change.

[436] Karszniewicz, *Das bäuerliche Recht*, 153-156. Nikaschinovitsch contended that the landlord could go to the tax office and have a copy of the report about the amount of tithe in return for forty kreuzer fee. If the sharecropper had to pay 100 okka wheat and 200 okka maize as tithe, he had to render 300 okka wheat and 600 okka maize to the landlord. In this way, Nikaschinovitsch argued, the

of the actual amount of the harvest. Besides, the tithe was evaluated before the harvest and it remained unchanged even if the produce was destroyed between evaluation and harvest times. In a subsequent ordinance it was stated that the landlord could determine the amount of his share while the crop was still standing in the sheaf or after threshing, as it had been practiced earlier. If the sharecropper and the landlord would not come to terms with the amount of the dues, it should be determined by the authorities in proportion to the tithe.[437]

In April 1880 the Provincial Administration published an ordinance which deemed that the landowners could have recourse to the district administrations to enforce the payment of the dues by the sharecroppers by filling out particular "documents of outstanding dues" (Rückstandsausweis, see Appendix Figure B1, B2, C1 and C2). The documents described in detail the dues and labour services owed by the peasant household. The district authorities had to determine the amount of the due within fifteen days. The landowners could appeal to the Provincial Administration as the court of second instance if they would disagree with the decision of the district administrations. On this document which described the obligations of the peasant household in detail, labour services were categorized as an integral part of the ground rent when one-fourth or one-fifth of the cereal produce was rendered to the landowner. [438] The new administration institutionalized the labour rent as "if the kmet renders one-fourth or one-fifth of the produce to the

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sharecropper had to render almost half of the produce to the landowner. In Nikaschinovitsch, *Bosnien*, 37.

[437] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 19. September 1881," in Landesgesetzblatt BH1881, 433-434. The landowners could have recourse to the district administrations for the unpaid dues immediately after the harvest or until the end of December of the same year. If the landowner would have recourse to the authorities later, the authorities might prescribe the payment of the due in money. After the end of December of the following year the right of the landowner to appeal to the authorities for unpaid dues would lapse. If the landowners would appeal to the authorities between March and December of the subsequent year, the authorities could prescribe for the payment of the dues in rates in several months, extending to one year.

[438] "Verordnung der Landesregierung in Sarajevo vom 18. April1880," in Landesgesetzblatt BH 1. Bd., 516-521.

landlord he is obliged to transport the landlord's share to his home or to the market, and to work on his field, garden or vineyard."[439] Unpaid dues were converted into money and recorded on the document as well.

The authorities decreed that the disputes between the landowners and the sharecroppers had a public law character and that the administrative authorities were authorized to hear cases involving agrarian conflicts.[440] While the procedure which was to be followed by the authorities in agrarian conflicts was not clearly defined by the administration, it was emphasized that the authorities should uphold the principle of fairness by determining the amount of the due which was to be rendered to the landowner and to avoid further trials in cases of dispute.[441] The disputes were to be dealt with effectively and within a short time, if possible in a single session.[442] However, in most cases, the decisions of the authorities were regarded as being unfair by the people and many of them tried to commence lawsuits in the courts. In a subsequent decree, the authorities once again emphasized that the courts should convey agrarian conflicts to the administrative authorities.[443]

It was only in 1895 that the Habsburg administration published an ordinance which determined the procedure which was to be followed by the district administrations in agrarian conflicts. The ordinance again prescribed that the district administrations were authorized to settle agrarian disputes. In case of appeals against the decisions of district administrations, the Provincial Administration pronounced in the final instance. In the ordinance, it was emphasized that the proceedings should be verbal (Art. 21 and 22) and without strict formalism. This involved two stages.

[439] Posilovic, *Das Immobilar-Recht,* 107. Karszniewicz, *Das bäuerliche Recht,* 173-179.
[440] The district administrations were authorized as courts of first instance and the Provincial Administration as the higher court.
[441] "Circularerlass der Landesregierung für Bosnien und die Hercegovina vom 2. Mai 1881," in Landesgesetzblatt BH 1881, 269.
[442] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 5. Februar 1884," in Landesgesetzblatt BH 1884, 41-42.
[443] Nikaschinovitsch, *Bosnien,* 85.

Before the trial the district administrator should conduct a hearing in private in order to determine the issues under dispute, to explain the parties which points they were to prove and which evidences they had to provide for the main trial. It was underlined that the district administrator had to intervene personally in order to reach an agreement between the parties in this first hearing (Art. 16 and 18). If the dispute was not settled in this way the day for the trial was to be determined and the parties, the witnesses and the agrarian advisors should be informed about the time of the trial. The agrarian advisors were selected by the district administrator among the village headmen (muhtar or knez), prominent landowners and cultivators who were well-acquainted with the agrarian relations. Before the trial, the district administrator was informed by the agrarian advisors in private (Art. 21). The trial was headed by the district administrator. The judgement must be passed immediately and was recorded only if the interested parties demanded. [444]

In regard to the amount of the dues owed to the landowner Article 29 of the ordinance prescribed that it could be determined in relation to the officially assessed amount of the tithe. If one of the two parties should submit evidence which should outweigh, the amount of the dues was not to be in proportion to the tithe. In the ordinance it was underlined that the amount of the dues should not exceed the amount which was prescribed by the Bosnia Regulation of 1859. The ground rent in pri-orac and kesim tenancy agreements was not subject to this restriction (Art. 36). The landowners could demand the payment of the dues until the end of the year following the harvest. The parties could not resort to the Provincial Administration

[444] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 8. December 1895," in Landesgesetzblatt BH 1896, 1-15.

against the decision of the district administrations about the amount of the dues payable to the landowner. [445]

In 1905, the administration converted the tithe into a tax levied on the basis of ten years' harvest. The authorities claimed that the new system of taxation improved the conditions of the sharecroppers because it deprived the landlords of a method for determining the amount of the dues in a practical and cheap way.[446] It was prescribed that the cultivator had to inform the landowner about the time of threshing so that the landowner or his bailiff could be present on the threshing floor and the part of the harvest which was owed to the landowner could be separated.[447] Still, the landowner could see into the tax register in order to learn about the amount of state tithe and demand a copy of it, as was the case before the introduction of the new system of taxation. The landowner could appeal to the district administration for the determination of the amount of the dues as well. In the "liquidation procedure" the authorities had to verify the evidence and ascertain the facts in an "inquisitorial procedure". In order to determine the amount of the due, the authorities had to consider the amount of the tithe which was assessed for the plot in question, the type and amount of the seed which the peasant had planted, and the market price of the crop. The authorities were to determine the amount of the due in twenty-four hours.

[445] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 8. December 1895," in Landesgesetzblatt BH 1896, 1-15.
[446] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 55. The Report includes a lengthy explanation as well. It was claimed that if the tithe was assessed for 100 okka whereas the real amount of yield was 80 okka, the peasant had to render 30 okka (90 divided by 3) to the landlord after the deduction of tithe instead of 24 okka (72 divided by 3). Note that the calculation was made for 100 okka, the weight which had been used for grain in the province, rather than quintal which was used in the official statistics.[446]
[447] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1907," 14.

The parties could not appeal to a higher court against the decision of the district administration.[448]

In his treatise about the agrarian arrangements in the province, Karszniewicz provided a detailed account of the bundle of obligations the tenants owed to the landowners towards the end of the 19th century. He explained that the chief obligation of the peasant family was to render the *hak* i.e., a tribute in kind levied on the produce of the soil, [449] though not on livestock. It amounted as a rule to one-third or to half of the produce and was termed *tretina* and *polovina*, respectively.[450]

There were four main types of arrangements. The first was the kesim which involved the payment of a fixed amount of the produce or a fixed amount of money. Since the Austro-Hungarian administration made the payment of tithe in cash obligatory, the payment of kesim as a fixed amount of money had ceased because the peasants were not able to make both payments in money in most of the cases. The second type of arrangements -and this was the most widely seen practice- was to surrender a certain share of the produce as the landlord's due. The due could involve the same share of all the produce or different shares of different types of the produce like: one-third of grain, one-fourth of hay, vegetables, and fruit; or one-third of grain and vegetables, half of the fruit, and one-fourth of hay. Karszniewicz explained that the ground rent amounted to the half of the produce if the soil was of good quality or if the landowner provided the seed, oxen and fodder. On lands which require artificial irrigation, if the wheel (*kolo*) was built by the landowner, the cultivator had

[448] "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 31 Mai 1905, " in Landesgesetzblatt BH 1905 1. Bd. , 83-85. "Bericht über die Verwaltung von Bosnien und der Hercegovina 1907," 14.
[449] *Hak* or *hakk-ı arazi*, it was termed *aginski dohodak* as well.
[450] Karszniewicz, *Das bäuerliche Recht*, 139.

to hand over half of the produce.[451] If the cultivator harvested twice a year, he had to pay the landowner's due of both of the produce.[452]

The third type was the combination of kesim with a share of the produce. Like five tovar of grain, one-third of hay, fruit, and vegetables or 12 ducats,[453] one-fourth of grain, one-fifth of fruit and vegetables. Sometimes the dues consisted of one-third of the produce together with kesim like one-third of grain and fruit, 10 florins for hay, 80 groschen[454] for the vegetables; or one-third of grain and fruit, two ducats for hay, one okka of hemp for each married female member of the tenant family;[455] or one-third of grain and vegetables, 12 florins in return for using the mill; or one-fourth of grain, 15 okka butter for hay, 1 thaler[456] for fruit and vegetables, 1 ducats as ground rent; or one-fifth of grain, one-sixth of hay, a lamb instead of a share on fruit and vegetables, and one and a half okka *kaymak*; or one-fourth of grain, one gulden payment in cash, a sheep, 15 tovar firewood, working eight days for the landlord with cattle, and rendering a *gunj*, namely a farmer's jacket every four years; or one-fourth of grain, vegetables and fruit, three sheep, two lambs, seven okka butter, 6 *arşın klasanj*, red woollen cloth, 22 groschen, and a coarse woollen blanket.[457] The cash crops cultivated in Bosnia were flax, hemp, dyer's madder, tobacco and later, sugar beet. Tobacco was purchased by the State Tobacco

[451] Karszniewicz, *Das bäuerliche Recht*, 139-141.
[452] Karszniewicz, *Das bäuerliche Recht*, 147. If the fruit was produced for the market, like the renowned Bosnian plums, grapes, apples and nuts, the *hak* was surrendered for the total amount of it. The cultivator was not obliged to render the *hak* for a lesser amount of the produce. The vegetables that the cultivator planted in the garden of his house were not subject to hak. Hak was rendered only for green beans, potatoes and cabbage, rarely for onion, garlic, pumpkin. *Hak* was handed over for the seedlings if they were planted on landowner's land for the market. Karszniewicz, *Das bäuerliche Recht*, 146.
[453] For large amounts "ducats madzarija" were used. In Karszniewicz, *Das bäuerliche Recht*, 149.
[454] 50 groschen (Turkish piastres) equal four or five florins. In Karszniewicz, *Das bäuerliche Recht*, 148.
[455] In Hungary in 1818, the peasant had to spin the wool or hemp which was provided by the landowner. Most probably the hemp was spun by the peasant family, then handed over to the landowner in Bosnia. In Warriner, *Contrasts in Emerging Societies*, 46.
[456] One thaler equals two florins (or gulden).
[457] Karszniewicz, *Das bäuerliche Recht*, 138-140.

Monopoly. Therefore the landowner's share of tobacco was not rendered by the cultivator but the tobacco purchasing offices or tax offices were paying the share of the landlord in money.[458] For tobacco, though the Provincial Administration raised the question of whether and how a reduction in the landowner's share should be made since the cultivation of tobacco necessitated extensive work, no regulations were made.[459]

The fourth type of dues involved labour services. Karszniewicz explained that in Bosnia, where mostly a tripartite division took place, if the hak was lesser than one-third of the produce, it was supplemented by additional dues, and labour services were performed to this end. Labour services could involve delivering the landowner's share to his house or to the market place; or working on the field, garden, or vineyard of the landowner. Karszniewicz contended that since the amount of labour services was not determined by the Bosnia Regulation of 1859, it was impossible for the Habsburg government to determine its amount as so many days' labour. The type and amount of labour services were determined according to the size and value of the holding, the amounts of main and additional dues, the customary local daily wage, the distance of the market place or the landowner's house from the holding, but mainly by the agreement of two sides. If the sharecropper had agreed to perform labour services by the time of the establishment of the contract, he was obliged to perform labour services as long as the contract endured. The field works which were not performed in the year of harvest could no longer be demanded in the following year.[460]

Karszniewicz argued that time and labour appeared to Bosnian peasant commodities but of little value. Labour services, assessed as so many days' labour,

[458] Karszniewicz, *Das bäuerliche Recht*, 159-60.
[459] Karszniewicz, *Das bäuerliche Recht*, 147.
[460] Karszniewicz, *Das bäuerliche Recht*, 173-176.

were a medium of exchange.[461] Thus, according to Karszniewicz, while the tenant cultivator was free to determine another due instead of services of labour most of the time they preferred to work for the landowner instead of making payments in money or in kind. In Zagorje, Foca, the sharecroppers used to work in the house or in the field of the landowner, instead of handing over a share of the vegetables.[462]

In the Administrative Reports under the heading "agrarian relations"[463] (*Agrarverhältnisse*) the focus is mainly directed to the disputes arising from the sharecropper-landowner relationship. In the Administrative Report for 1908 it was stated that between the years 1880 and 1904 the number of disputes which were resolved by the authorities had increased steadily every year. As rightly pointed out by Schmid, the figures were given for the conflicts which were settled by the authorities rather than the number of conflicts which were referred to the authorities.[464] It was also emphasized that in this period 99,104 of the 200,543 cases, namely 49.42 per cent of the conflicts, were resolved by mutual agreement of the parties promoted by the authorities.[465] In the Report, it was underlined that since 1896 the number of appeals to the Provincial Administration had dramatically decreased because nearly half of the decisions had become unappealable by the Ordinance of 1895.[466] Though the statistics contain no information about the issues under dispute, from this latter statement it can be concluded that nearly half of the

[461] For the dues owed by the community to the head of the village or village keeper the community had to perform labour services like hoeing, reaping, threshing. In Karszniewicz, *Das bäuerliche Recht*, 174.
[462] Karszniewicz, *Das bäuerliche Recht*, 175-176.
[463] The term "Agrarverhältnisse" was defined as "the relationship between the *rajah*, the Christian peasant cultivating the land, and the landowner". In "Telegraphischer Erlass der Militärkanzlei seiner Majestät an FZM. Baron Phillipovich und FML. Baron Jovanovic vom 12. October 1878," in Landesgesetzblatt BH 1878-1880, 1. Bd. , 511-512.
[464] Schmid, *Bosnien*, 319.
[465] According to the Report for 1908, of all the cases 32.07 per cent were settled by the courts of first instance; 16.95 per cent by the withdrawal or dismissal of the complaint *a limine* and 1.56 per cent of the cases were referred to the courts. The Report contains the same categories for the period 1895-1904 as well. In "Bericht über die Verwaltung von Bosnien und der Hercegovina 1908," 11-12.
[466] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1908," 11-12.

cases which were settled by the authorities were about the amount of the dues owed to the landowner. As mentioned earlier, the parties could not appeal to a higher court against the decision of the district administrations concerning the amount of the dues.

The Administrative Report for 1911 contains also data about the number of conflicts which were referred to the authorities and about the issues under dispute. In 1910, most of the conflicts (7,306 cases, according to the report 62.88 per cent of all cases) involved cases in which the cultivators refused to pay the dues owed to the landowners. The second highest number of cases involved "the disputed kmet relationship in regard to being kmet on a çiftlik or on a part of it" (1,373 cases). As rightly pointed out by Schmid, the content of this category was not clearly defined. Another category was about "eviction of the kmet because of neglect of duties set by the law" (924 cases). According to the Report only 137 cases, namely 14.82 per cent, resulted in the eviction of the sharecroppers.[467] However, Schmid argued that the landowners could appeal to the Provincial Administration as the higher court, and in 1910 in approximately 77 per cent of the cases the authorities deemed to evict the sharecroppers. Schmid argued that the value of land increased as the population and the demand for land and its products increased and the landlords were rather inclined to evict the sharecroppers rather than to come terms with them.[468]

The authorities claimed that the administration had taken effective measures in order to resolve the disputes arising from the cultivator-landowner relationship, which had been completely unregulated under the Ottoman rule. Thus, the Administrative Reports included data about the number of resolved cases and it was underlined that most of the cases were settled by mutual agreement of the parties by the intermediary role of the officials. Given the nature of the disputes which were

[467] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1911," 15-16.
[468] Schmid, *Bosnien*, 338-339. Palairet argued that "at least by 1902, if not earlier, untenanted arable was worth more than land with *kmet*s on it." In Palairet, *Balkan Economies*, 207.

mostly about the payment of the dues or eviction of the cultivator from the land he occupied, it is hardly plausible that most of the cases were resolved smoothly by the authorities. But, of course, this claim is in parallel with the orders of the administration that the authorities should personally intervene in order to promote an agreement. Furthermore, the data in the reports include neat, precise figures for every category under discussion. It was in this way that the authorities indeed achieved to create a coherent language which is still affecting the opinions of the commentators. Looking at the official figures, Radusic claimed that there was a significant decrease in the lawsuits -yet in the Administrative Report for 1908 the figures only represent the number of cases which were settled by the authorities rather than the number of conflicts and presumably in the following reports the number of conflicts were intentionally reduced as well- and concluded that "the Austrian authorities had endeavoured to treat both parties with impartial justice" and "achieved a certain level of success" as reflected in the decrease in the number of lawsuits.[469]

In reality, however, social tensions increased due to the subversion in landholding and the burden of taxation imposed upon the cultivators. More and more the cultivators refused to pay the ground rent owed to the landowner. On 27 May 1906 in Narevo the representatives of the cultivators came together and decided to report their grievances to the Provincial Administration. Beside an agrarian reform, they demanded the abolition of the tithe and the new system of taxation and the abolition of labour services.[470] As important, one of their main grievances was that

[469] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 152-153.

[470] The peasants had to work in the construction of the roads and railways without remuneration. As important the ordinance of 1890 on state forests prescribed that the individuals who could not compensate for the harm they caused in the state forests were to perform labour services and its value was to be determined according to the daily wage. In Karszniewicz, *Das bäuerliche Recht*, 173-174.

they were deprived of their rights to pasture and wood and they demanded the administration to assign areas of forest and pasture to village communities.[471]

In June 1910, the passive disobedience turned into a revolutionary movement in Gradiska district. It was followed by much larger demonstrations in many villages in the Banjaluka and Tuzla districts. The Bosnian press wrote that thousands of people gathered together and moved from village to village peaceably and with no violence; yet, at the same time, it condemned the attempt to influence the decisions of the provincial parliament. According to the authorities, "the movement was not directed against the Emperor or his authorities . . . taxes, even the tithe, were promptly paid, even by people who usually reckoned on remissions" and this was the outright manifestations of the compliance of the population with government regulations.[472] The movement grew to such an extent that the government had to mobilize troops in these regions. While the authorities claimed that the reason of mobilizing troops was "to give the landlords full support in claiming their legal share of the harvest"[473] this was not the only grievance which the people expressed.[474]

4.7 Discussions on the agrarian question

As mentioned earlier, the Austrian statesmen called for an immediate enfranchisement of land in the days preceding the occupation but this was no longer approved in Vienna following the occupation of Bosnia by the Austro-Hungarian troops. The change in the official attitude towards the agrarian question was well

[471] Cupic-Amrein, *Die Opposition*, 220-222.
[472] Grünberg, *Die Agrarverfassung*, 101-102.
[472] Radusic,"Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 158.
[473] Grünberg, *Die Agrarverfassung*, 102
[474] Cupic-Amrein claimed that many cultivators worked as seasonal workers in the factories and came into contact with factory workers. Impressed by the workers' protest which took place in 1906 they termed the uprising a "strike". In Cupic-Amrein, *Die Opposition*, 222-223.

reflected in an article published in 1887. Carl Zehden, who was an Austrian scholar, argued that the Agrarfrage in Bosnia-Herzegovina consisted of two parts. One was about the manner in which land was possessed and used and the taxes imposed upon the cultivators. The other was about the nature of agricultural production. Zehden argued that after the deduction of tithe and the due owed to the landlord, the Bosnian peasants could keep a good fifty-eight per cent of their crops and thus the situation of the Bosnian peasant was better than that of his counterparts in other parts of Europe. In Zehden's account the conditions of land tenure in Bosnia were only of secondary importance.[475] In subsequent years, the term Agrarfrage was omitted in the works compiled by Austrian statesmen regarding agrarian relations or land law.[476] It was prohibited even to discuss issues relating to agrarian relations among civil servants.[477] Yet, at the same time, the authorities frequently emphasized that the government ameliorated the conditions and elevated the status of the peasantry. Schmid argued that it was only after the government granted monopolistic rights to a Hungarian bank regarding providing mortgage credit to sharecroppers who wanted to redeem their land in 1908 that the Bosnian Agrarfrage and the conditions of its peasantry became an object of public concern in Austria.[478]

The Habsburg government insisted on the voluntary enfranchisement of land as the only solution to the problem of agrarian relations throughout its rule. [479] On 3 March 1910, when the contract with the Hungarian Agrar- und Kommerzialbank was abolished, the Emperor personally wrote to Common Minister Burian ordering to draw up a draft law on voluntary land redemption for the first session of the

[475] Zehden, "Bosnien und die Hercegovina im Jahre 1886," 126-127.
[476] According to Eichler, there was rather a question of the possession of the woodlands in Bosnia-Herzegovina.
[477] Schmid, *Bosnien*, 324.
[478] Schmid, *Bosnien*, 331.
[479] According to the population census of 1910, there were 14,744 landowners, 79,677 sharecropper families and 31,416 sharecropper families who also held their own lands. From Schmid, *Bosnien*, 342.

parliament of Bosnia.[480] In the days when the peasant uprising continued, on 6 July 1910, the Draft Law arrived the parliament under the name "Draft Law on Granting of Loans for the Voluntary Redemption of Kmet Holdings". It was then sent to the parliamentary agrarian council for consideration and it was not until April 1911 that it appeared again on the agenda for the parliament, when the peasant uprising was suppressed by the military.

In the Explanatory Introduction to the Draft Law it was argued that the Draft Law proposed only for a voluntary redemption, since "obligatory redemption could only with difficulty be reconciled with existing rights over property in land" and therefore "the legally enforceable rights of property must not be prejudiced." [481] Furthermore, "the economy of the country would be weakened, possibly even severely damaged" through an obligatory land redemption because "a compulsory enfranchisement of the land would require a large credit operation" and this would impose "a considerable burden on the peasantry, now struggling to make the transition from a subsistence to a money economy." [482] It was prescribed that the cultivators were now to be provided loans to an equivalent amount by the Provincial Administration in order to prevent the economic ruin of the cultivators:

> Hitherto the kmets could borrow only half the value of the holding from the privileged Landesbank for Bosnia and Herzegovina, they had to provide the remaining part by their own resources. Some farmers redeemed land with insufficient livestock and capital and a burden of debt, and so cannot pay the

[480] Schmid, *Bosnien*, 331. Bosnia was given its own diet when it was annexed to Austro-Hungarian territories in 1908. The franchise strongly favoured the wealthier, conservative elements in the population. The large landowners had one representative for 80 voters, the city-inhabitants had one for 2,300 and the peasants one for every 10,000. On the other hand, the representatives of the provincial government were a very significant factor in the work of the parliament and their attitudes mainly determined the direction of parliamentary discussions and the voting of proposals and laws. At the same time the parliament had only limited legislative rights and bills it passed could be vetoed by the Common Ministry of Finance. In Jelavich, *History of the Balkans*, 62. Radusic,"Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 158.
[481] Feifalik, *Agrarfrage*, 160.
[482] "Bericht über die Verwaltung von Bosnien und der Hercegovina 1906," 56.

> interest and the instalments of the purchase price, so that the redeemed land must be sold.[483]
>
> The experience of land redemption in other countries as well as in Bosnia and Herzegovina and the fact that the loans should be provided by the means of the Provincial Administration makes it necessary to give credit only to those kmets whose economic efficiency appeared to ensure their independent existence after redemption.[484]

The law was promulgated on 13 June 1911. This time the government was not to act as the agent of a bank rather the government itself was to grant loans to the security of land to the cultivators who would apply for redeeming their lands.[485] A special department was established within the Provincial Administration to this end. The Provincial Administration was to issue bonds in order to obtain the means to give loans to the cultivators (Art. 4). The amount of the loan was to be determined according to the economic situation of the cultivator; in any case, this amount was not to be more than the value of the redeemed holding. The loan was to be paid in cash or in bonds if the landowner would agree (Art. 6). The cultivators had to make the interest and amortisation payments in half year's instalments and they were to pay back these loans at a low rate of interest over thirty to fifty years (Art. 12).[486] For arrears, the same procedure was to be applied like that of the tax arrears, namely if the cultivators could not pay their debts the land was to be expropriated by the government on the basis of the Austrian Civil Law.[487]

The law led to fierce debate in the provincial parliament. The main concern was whether land redemption should be obligatory or optional. The Serb-Orthodox representatives argued that the result of voluntary land redemption was evident during the 32 years rule of the Austrian administration and maintained that

[483] Feifalik, *Agrarfrage*, 159.
[484] Feifalik, *Agrarfrage*, 161.
[485] Schmid, *Bosnien* , 333.
[486] "Gesetz vom 13. Juni 1911 über die Erteilung von Darlehen zum Zwecke der freiwilligen Ablösung der Kmetenansässigkeiten," in Landesgesetzblatt BH 1911, 189-191.
[487] Schmid, *Bosnien*, 333.

particularly by those landowners who held a large number of tenant holdings the land redemption would never end.[488] They claimed that the only solution to the agrarian issue would be the compulsory buyout of the çiftliks. Petar Kocic claimed that the peasants' debt would reduce them to beggars if the harvest would fail. On the other hand, according to Kocic, the state would benefit from the peasants who were freed by a compulsory enfranchisement since it would gain "loyal subjects, filled with love towards the homeland, who would be the basis of order and legality."[489]

In the days preceding the promulgation of the law on the voluntary redemption of kmet holdings, there had been also other proposals for land reform. In 1910 at the meeting of the representatives of the provincial government, Baernreither argued that the land could be divided among the landlord and the cultivator in the way in which the crops were shared among them and the regulations which were applied for the dissolution of the landed estates in Prussia, Rumania and Russia were to be considered.[490]

Several contemporary commentators criticized the government for adhering to the principle of voluntary land redemption. Karl Grünberg, who was a Professor of Political Economy in Vienna, argued that the only way to eliminate the factors hindering the development of agricultural production was an agrarian reform which would secure the land to its cultivators free of produce-levies and labour services and thus criticized the government for setting itself against any radical interference with the existing agrarian structure and for establishing voluntary enfranchisement of land by law. [491] Yet, at the same time, Grünberg claimed that not every solution for land

[488] Schmid, *Bosnien,* 335.
[489] Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups,"161-162.
[490] Grünberg, *Die Agrarverfassung*, 62.
[491] Grünberg, *Die Agrarverfassung*, 59. In 1911 Karl Grünberg published a comprehensive treatise about agrarian relations in Bosnia. He based his account mainly on the Administrative Reports

redemption would be convenient and referred to Georg Friedrich Knapp's work about the agrarian reforms in Prussia.[492] In Prussia, the peasants who had hereditary tenures had to give over one-third of their lands to the landlords; and those with non-hereditary tenures had to cede half of their lands to the landlords in payment in order to become freeholders of the remainder.[493] Knapp argued that the effect of the reforms was a twofold liberation of the peasants: they were emancipated from feudal dues and bondage while many of them lost their land and had to work on the former landlords' estates in return for modest wages. Quoting from Knapp, Grünberg stated that the agrarian reform of 1807-1816 led to an increase in the number of large agricultural enterprises and also to an increase in the number of landless agricultural labourers in the lands east of Elbe River. Nor the regulations regarding peasants' emancipation in Rumania where the Agrarian Reform Law of 1864 abolished the service of labour and tithe paid by the peasant to the landowner as rent of the land he

published by the Common Ministry of Finance, government regulations and the works produced by Austrian civil servants. Grünberg studied law in Vienna and from 1890 to 1893 he studied as a graduate student with Georg Friedrich Knapp (1842-1926), a representative of the younger Historical School. Grünberg registered as a lawyer in 1893 and took up a university career in 1894 as a *Privatdozent* in Political Economy at the University of Vienna. During these years, he wrote his doctoral thesis, nearly a thousand pages long, on *The Liberation of the Peasants and the Abolition of Manorial-Peasant Conditions in Bohemia, Moravia, and Silesia*. His thesis was inspired by Knapp who had published in 1887 his two volumes on *The Emancipation of Peasants and the Origin of Rural Worker in the Older Parts of Prussia*. At the end of 1899, Grünberg was appointed temporary Professor of Political Economy at the University of Vienna, with the support of the socialist academic Eugen von Philippovich. Grünberg then gave up all his legal activities and devoted himself entirely to academic work. In 1910, he founded the journal *Archiv für die Geschichte des Sozialismus und der Arbeiterbewegung (Archive on the History of Socialism and Labour Movement*). In 1923, Felix Weil offered him the post of director of the Frankfurt Institute which was founded for research on the history of socialism and the labour movement. With the Cologne Research Institute of Sociology, it was one of the most important German social science institutes of the period. In Wiggershaus, *The Frankfurt School*, 21-25.

[492] Knapp's depiction of the agrarian reforms involved a bitter critique of the liberal state that didn't consider the social consequences of its measures. In Schneider, "Aufbruch in die Freiheit?". The works of Knapp, *Die Bauernbefreiung und der Ursprung der Landarbeiter* and *Grundherrschaft und Rittergut* (1897) were described by Schumpeter as two masterpieces which had created a standard pattern for a large literature. In Schumpeter, *History of Economic Analysis*, 811.

[493] Mooers, *The Making of Bourgeois Europe*, 128-129. The government also set up credit banks to this purpose. The peasants were allowed to pay back the loans at a rate of 5 per cent interest over forty-one and a half year.

cultivated or used as pasturage,[494] as argued by Grünberg, did not ameliorate the situation of the peasantry. As important, Grünberg added that the Bosnian cultivators would strongly oppose ceding a part of their land to the landowners.[495]

For several contemporary observers, the official attitude towards the agrarian relations in Bosnia resembled the attitude of the Habsburg government towards the abolition of labour services during the long period stretching from the death of Joseph II in 1790 to 1848. According to these statesmen and academics, although labour services for long had been considered incompatible with the modern principles of economic development and people's well-being, the Austrian government did not make necessary regulations for an agrarian reform until 1848. According to them, the authorities considered the idea of reform as an attack on the sanctity of property while at the same time arguing that the serfs could redeem their land on the basis of the then existing laws. Yet this did not happen as the serfs lacked the necessary funds and the landlords the incentive. Even the Galician peasant uprising in 1846 did not affect the situation. At the end, the serfs called for political reform in order to change their conditions which eventually led to the revolutions of 1848.[496] Ferdinand Schmid, who was the head of the statistical office in Sarajevo, argued that the attitude of the Habsburg government toward the agrarian issue could lead to the violence of 1848 in Bosnia as well. The administrators of Bosnia ignored the warnings of history. If it would not be possible to solve the agrarian question with a voluntary land redemption, as argued by Schmid, then a land reform was to be

[494] Warriner, *Contrasts in Emerging Societies*, 179, 187. The peasant became "the unreserved owner of his house and enclosures and of all the land he possessed." In return for this he was to pay the government for fifteen years a certain amount changing according to the number of oxen possessed by the peasant. In compensation for the loss of his land and the labour and tithe of produce hitherto due by the peasant, the landlord was to receive treasury bonds. But it was not legally permissible that more than two-thirds of the property of a landlord would pass into the ownership of the peasants, the peasant cultivators could not claim any rights on the remaining part of the land.
[495] Grünberg, *Die Agrarverfassung*, 62-64.
[496] Grünberg, *Die Agrarverfassung*, 113-114.

introduced resembling that of 1848 in Austria-Hungary.[497] In a similar vein, Grünberg opposed the idea that private property was an eternal right in the sense that the relationship between the property and its owner can never be modified. According to Grünberg, historically constructed rights to property could be modified by the state in order to promote economic and social progress.[498]

While some commentators like Grünberg advocated compulsory land redemption for which the landowners would be fully compensated, some observers like Schmid even argued that it would be politically advisable to carry out an agrarian reform similar to the one which took place in Bulgaria and Serbia where the land of the landowners was expropriated by the state and redistributed to the cultivators. Schmid claimed that it would be politically more appropriate to allocate the property of the Muslim part of the population to hard-working cultivators and to the arriving colonizers. In this way, the government would also gain the sympathy and loyalty of the larger part of the population, namely the cultivators. In addition, the development of agricultural production would be promoted because the fixed produce levy which the cultivator had to render to the landowner was an obstacle to better cultivation and reinforced the cultivators' aversion to technical progress.[499]

The Common Ministry of Finance published data in the Administrative Reports about the progress of land redemption in Bosnia. Up to the year 1907, the figures are given as the number of sharecropper holdings which were redeemed, it was only after 1907 that the surface areas of redeemed holdings were given. Starting from the year 1898 the number of redeemed holdings were given in two categories: the number of holdings of which the entire area was redeemed and the number of holdings of which a part was redeemed. Calculating the number of partial

[497] Schmid, *Bosnien*, 345-347.
[498] Grünberg, *Die Agrarverfassung*, 82-83.
[499] Schmid, *Bosnien*, 343-344.

redemptions for the period 1895 to 1897 on the basis of the figures given for the period 1898-1909, Grünberg offered the data as shown in Table 1 in order to evaluate the speed of land redemption for the first and second interval of fifteen years of Habsburg rule. He argued that the number of redeemed holdings between the years 1895 and 1909 was not higher than that of between the years 1879 and 1894. For the same periods, the amount of payment rose by 65 per cent but this could be explained by the increase in the value of land and the increasing demands of the landlords for redemption. Grünberg stated that if the scale and rate of redemption in Bosnia were to be determined by the free play of economic forces it would be completed in the first quarter of the 21st century.[500]

Table 1. Number of Redeemed Holdings and the Amount of Paid Capital

Years	Number of complete redemptions	Number of partial redemptions	Total number of redeemed holdings	The total amount paid in million crowns
1879-1894			13,127	7.74
1895-1909	10,604	2,488	13,092	12.52
Total number for 1879-1909			26,219	20.26

Source: Grünberg, *Agrarverfassung*, 67.

The data about number of redeemed sharecropper holdings was far from reflecting the actual conditions because of another reason as well. Schmid explained that in many cases the cultivators had to sell their livestock and to resort to usurers in order to obtain the necessary funds for purchasing the land. As the cultivators were not accustomed to a money economy, they did not consider the legal consequences if they would not make their payments on time. Consequently, their holdings were

[500] Grünberg, *Die Agrarverfassung*, 66-67. Furthermore, as pointed out by Schmid, the statistics contained any data if the holdings were occupied by sharecroppers or by cultivators who also held their land in addition to a tenancy on a landlord's estate.

foreclosed against debt and they became again tenants on their holdings now ceding half of the produce to the new landowners whereas they had formerly paid one-third. As a statistician, Schmid argued that only statistical data on the number of peasant holdings which were subject to foreclosure against debt would allow for an evaluation of the results of the former land redemptions which was carried out until that time. Schmid argued that the government gad to introduce the institution of protected minimum homestead in order to prevent the foreclosure of peasant holdings against debt.[501]

Several contemporary observers criticized the Law on the voluntary redemption of kmet holdings arguing that it did not change the conditions under which the sharecroppers could redeem their land as it prescribed for voluntary land redemption. Grünberg calculated that together with the additional amounts the cultivators had to pay, they were obliged to pay substantial amounts of interest on debt and it was even higher if the cultivator would fall into arrears. Furthermore, according to Grünberg, many cultivators were illiterate and thus could not plan properly the repayment of the cash liabilities incurred and consequently paid higher rates of interest.[502] Anton Feifalik, who was a senior official in the Provincial Administration, offered the following calculation regarding the conditions of state credit: The sharecroppers were allowed to pay back the loans at a rate of 6.1 per cent interest over thirty to fifty years. The average size of a sharecropper holding was 70 *dönüm*. The average amount tithe was 70 hellers per dönüm, the total amount of tithe was 49 crowns, and the average price that should be paid for purchasing the land was

[501] Schmid, *Bosnien*, 341-342.
[502] Grünberg, *Die Agrarverfassung*, 68-73. Grünberg stated that in the years 1908 and 1909, 14. 83 per cent of the children could go to school and that the low literacy rate was one of the reasons why the cultivators missed the days of payment as well.

1800 crowns.[503] The gross yield of the holding was 490 crowns and the sharecropper had to pay out of 490 crowns, 183 crowns and 44 hellers (49 crowns as the tithe, 24 crowns 50 heller as other taxes and dues, 109 crowns 94 hellers as amortization). With the remaining part of his income, namely 306 crowns and 56 hellers, the sharecropper had pay the productions costs and the subsistence of his family throughout a year. Thus, in many cases the sharecroppers had to sell the livestock and even the oxen they farmed the land in order to pay their debts to the tax offices. Feifalik stated that of 5,821 sharecroppers who took loans from the Provincial Administration in the first year following the promulgation of the Law on the Voluntary Land Redemption, 436 of them were on arrears and their land was foreclosed against debt.[504]

Echoing the views of Grünberg and Feifalik, Schmid maintained that it was far from clear why the cultivators should necessarily make their payments on time to the tax offices in order to pay their instalments while they had been on arrears when they had to take loans from private money lenders. Schmid explained that although the law prohibited granting of privileges to the banks regarding the loans for land redemption new banks were established in Bosnia. As they were aware of the high dividends that the Landesbank formerly had paid to its shareholders, according to Schmid, these institutions intended to make considerable gains by providing mortgage credits to cultivators.[505] Schmid argued that the new regulations were far from benefiting the cultivators.

While Grünberg and Schmid mainly criticized the government policy promoting voluntary land redemption and the regulations regarding the conditions of

[503] In the 1890s the price of land was thirty-fold of the average amount of the tithe of previous three years. In Karszniewicz, *Das bäuerliche Recht*, 90-91. Feifalik takes a higher price in his calculation which may be indicative of a rise in the price of land.
[504] Feifalik, *Agrarfrage,* 28-29.
[505] Schmid, *Bosnien*, 340-342.

mortgage credit, another major point of government policies, the burden of taxation imposed upon the cultivators, was severely criticized by several foreign observers. In 1892, S. Auzepy, the French consul who served in Sarajevo,[506] wrote that the agrarian problem was misunderstood by the Habsburg authorities. He argued that in Vienna the impression was that the landlords were unwilling to sell their land. Auzepy claimed that the landlords indeed would have been glad to sell if they could have found buyers. The authorities argued that, as recounted by Auzepy, the cultivators did not know how to run their farms once they bought them and went to bankruptcy within a short time. In reality however, the cultivators rarely had the money to buy the land, and when they got it, they had no working capital left to run their holdings after acquiring them. The cause of this evil, according to Auzepy, was the tithe. Auzepy claimed that the tithe assessors assessed the harvest so high that the tithe usually equalled 20 per cent and not the legal 10 per cent. Appeal against the assessment was forbidden and the cultivators had to pay the assessed tax in cash in the early fall before they could sell their crops profitably. Taxes were collected on the day on which they were due thus the cultivators had to resort to usurers to borrow the tax money. While the interest rates were exorbitant, they were obliged to sell their crops at any price they could get in order to repay the loan with interest in time. According to Auzepy, this was the real situation prevailing in the Bosnian countryside.[507]

Karl Konanz,[508] a German scholar who compiled a treatise about the agrarian relations in Bosnia also argued that the government measures had to be mainly in the sphere of taxation. He conceded that an extortionate burden of taxation was imposed

[506] Auzepy served in Sarajevo from 1887 to 1902 and spent most of his time studying economic conditions in Bosnia. In Sugar, *Industrialization of Bosnia-Herzegovina,* 34.
[507] Sugar, *Industrialization of Bosnia-Herzegovina,* 34.
[508] Konanz worked as a professor at theUniversity of Tauberbischofsheim at the time.

upon the cultivators and the obligation to pay the tithe in cash was an important factor which increased pauperism among a significant part of the population.[509] He maintained that the cultivators had to borrow at usurious rates from urban usurers or traders (who were sometimes the same person) by selling their crops in advance at lower prices. On the other hand, the government was obliged to cover the high amount of state expenditures. Konanz argued that an income tax should be imposed upon the landlords of which the amount could be easily determined according to the amount of the tithe. He maintained that if the amount of the ground rent of the landlords would be reduced by an income tax they would demand smaller amounts to sell their lands.[510]

Konanz maintained that even under these conditions many of the cultivators would not be able to purchase their land because they lacked the necessary funds. He argued that another government measure should be promoting the functions of the Bezirksunterstützungsfonds, the agricultural credit institutions. Konanz claimed that they could provide loans to the cultivators under more favourable conditions. In addition, according to Konanz, the cultivators lacked the opportunity to sell their crops for favourable prices. Therefore, the Bezirksunterstützungsfonds could build warehouses for grain in each district which would enable the cultivators to sell their crops dearer. This would diminish the disadvantages of the payment of the tithe in cash as well and would ameliorate the conditions of the peasantry.[511]

By contrast, Feifalik argued that a resolution of the agrarian question could not be achieved by offering cheap credit to sharecroppers. Feifalik proposed for allotting land to sharecroppers who wanted to redeem their holdings. He argued that while one-third of the holding could be ceded to the landlord, this part could be

[509] Konanz, *Agrarverhältnisse,* 38-39.
[510] Konanz, *Agrarverhältnisse,* 28-29.
[511] Konanz, *Agrarverhältnisse*, 40-41.

supplemented by the state. He argued that by 1916 there were 94,000 sharecropper families who held an area of 566,076 hectares. In order to redeem the land these sharecroppers could be allotted 188,692 hectares (566,076 divided by 3) waste land. Feifalik argued that the state owned 2,490,535 hectares forest and pasture (1,918,900 ha forest and 571,635 ha pastures) and could allot thus land to cultivators without a substantial curtailment in the area of state land.[512] Explaining that the Law on the Separation of Baltalık and Mera was adopted at the last meeting of the provincial parliament on 20 June 1914, Feifalik claimed that there would be still enough areas of forest and pasture to assign to village communities. Feifalik added that this solution could not be applied in Posavina where there were considerable amounts of arable land and 20 per cent of state land should be allotted to cultivators in such a case. It could be proposed that in Posavina the cultivators would not give over a part of their holding to the landlords, but landlords could be allotted land in the districts where there were larger areas of state forest and pasture, which would mean a "transplantation" of the rights of the landlords to the land.[513]

During the years of the First World War, Feifalik came up with a solution to the agrarian question similar to that which was proposed by the Austrian consular representative Wassitsch approximately 40 years earlier. In 1875, Wassitsch wrote to Andrassy that the lands which were not assigned to the village communities were designated as "*haliluk*" in Bosnia. Wassitsch argued that the state first had to regulate the rights of servitude of the village communities on pastures and coppices which were held collectively. Then haliluk land should be parcelled out and assigned to sharecroppers, between seven and ten joch to each of them on the condition that they

[512] Feifalik, *Agrarfrage,*78-79, 106-107.
[513] Feifalik, *Agrarfrage,*109.

would reclaim and cultivate the land.[514] Yet when Wassitsch proposed Server Paşa that haliluk land assigned to cultivators he replied that he could allot land to cultivators in the marshy lowlands of Albania which were abandoned because of malaria. Server Paşa argued that he could not allot cultivators land in the province as there was any haliluk land in Bosnia.[515]

Indeed, the government policy in Bosnia involved reclaiming privately appropriated lands. On the other hand, the authorities insisted on the voluntary sale of land by landowners as the only possible solution in Bosnia. Peter Sugar argued that the Common Minister of Finance was bound to act in agreement with the two governments of Austria and Hungary and a measure of obligatory land redemption would have never receive the blessing of the Hungarian government which was usually led by a great landowner and was dependent on a parliament in which landowning class dominated.[516] Obligatory land redemption in Bosnia would be in opposition to vested interests in Hungary. Most importantly however, though the authorities emphasized that as a legal state the Habsburg government was not in the business of expropriating landed property, the Habsburg government indeed expropriated large areas of land belonging to the landowners. The "impartial" policies of the Habsburg government regarding agrarian arrangements, protecting the landowners' right to land by promoting voluntary land redemption, was in order to counterbalance its harsh policies of reclaiming privately appropriated lands.

[514] 1 joch equals 5. 5 cadastral dönüm. In Karszniewicz, *Das bäuerliche Recht*, 32.
[515] Actenstücke aus den Correspondenzen des kais. Und kön. Gemeinsamen Ministeriums des Äussern über orientalische Angelegenheiten, General-Consul Wassitsch an Grafen Andrassy, Mostar 22 November 1875, 617-618.
[516] Sugar, *Industrialization of Bosnia-Herzegovina, 1878-1918*, 33.

4.8 Land use

The total area of Bosnia was 51,199 km^2. The area under cultivation, including fields, gardens, meadows and vineyards, was 27.3 per cent of the total area in 1886,[517] it was 34 per cent of the total area in 1910.[518] Providing the data as presented in Table 2 Schmid argued that the cultivation of areas of pasture and forest led to the increase in the area under tillage. [519] He added that the increase in the area of garden was due to the plum gardens which were started in northern Bosnia.

The official statistics indicate that 88.34 per cent of the population was involved in agriculture in 1895, and 86.57 per cent in 1910 (the population of Bosnia was 1,568,092 in 1895 and 1,898,044 in 1910).[520]

Table 2. Breakdown of Land Types

		field	garden	meadows	vineyard	pasture	forest	other
1886	Area (km^2)	10,302	394	3,262	50	9,229	26,879	1,042
	%	20	0.8	6,4	0.1	18	52.5	2
1895	Area (km^2)	11,032	438	3,465	59	8,488	26,591	1,040
	%	21.6	0.9	6.8	0.1	16.6	52.0	2
1904	Area (km^2)	11,550	543	3,991	62	7,870	26,104	1,038
	%	22.6	1.1	7.8	0.1	15.4	51	2

Source: Schmid, *Bosnien*, 413

In 1910, 566,076 hectares were tilled by sharecroppers, roughly one-third of the total cultivated area.[521] As shown in Table 3, more than the half of the holdings of the peasants who held their own land was smaller than two hectares and a quarter of them were between two and five hectares in 1906. Pointing out to the increasing

[517] Schmid, Bosnien, *413*.
[518] Feifalik, *Agrarfrage,* 43, 138.
[519] Schmid, *Bosnien*, 413.
[520] Feifalik, *Agrarfrage* 135-136. Schmid, *Bosnien*, 346.
[521] Feifalik, *Agrarfrage,* 79.

subdivision of the peasant holdings into smaller plots, contemporary observers claim that these were mostly those holdings which were held by their cultivators. The category of free peasants, according to Feifalik, also included approximately 4000 settler families and the cultivators who had cleared and cultivated state -owned land.[522]Again one-fifth of the sharecroppers tilled land under two hectares. It was hardly possible to make a living on a holding with less than two hectares. Only if this area of land was completed with a bigger area of forest, it was possible to make a living by livestock-raising.[523]

Table 3. Distribution of Land

Size of Properties in 1906	% Peasants	% Sharecroppers
under 2 hectares	51.48	19.95
2-5 hectares	25.39	28.21
5-10 hectares	13.71	28.38
over 10 hectares	9.4	23.46

Source: Grünberg, *Agrarverfassung*, 44.

Agriculture in Bosnia was based on subsistence farming. In Serbia in 1910 the peasants who held farms up to one hectare sold 11 per cent of the produce in the markets. The peasants who held from one to two hectares of land sold 19 per cent of the produce, and those who held from two to ten hectares of land roughly 20 per cent of the produce in the market.[524] The results could be indicative of the economic conditions of the Bosnian peasant household as well, at least for the northern parts of the province.[525] In Bosnia, agriculture was based on subsistence farming and

[522] Feifalik, *Agrarfrage* 2, n.2. Feifalik stated that the average size of a farm declined from 7,5766 hectares to 6,7306 hectares (The number of families involved in agriculture was 198,492 in 1895; it was 252,250 in 1910). Feifalik, *Agrarfrage*, 138.
[523] Simonson, "Social Democracy and the Peasants in Sweden before World War I," 189.
[524] Bogdanovic, "Serbian Social Democracy and the Peasantry, 1903-1914," 373.
[525] Especially in Herzegovina the quality of land varied very much and the price of land varied between 10 hellers and 600 crowns per dönüm. Feifalik, *Agrarfrage*, 65.

increasingly greater numbers of peasant households became so due to the split of the peasant holdings.

The methods of cultivation in Bosnia are vividly discussed in Schmid's account. He explained that on the hills and in the forests which were cleared and cultivated the prevailing system was ley farming (*Feldgraswirtschaft*), namely the use of land as field and as meadow in succession.[526] In this system of land use, a part of the land was cropped for several years till it was exhausted and then let go back to grass and used for grazing. Then a part of the land which had been used as meadow and which was now rich of the remnants of grass and manure, was ploughed up and cultivated. Only a small part of the land was cultivated and the yields were low, livestock-raising being the main occupation.[527] Schmid stated that in Bosnia this extensive system of land use prevailed because fertilization of the soil was much neglected.

Schmid pointed out that shifting cultivation was fairly common because of the prevalence of livestock-raising throughout Bosnia.[528] In this process of soil exhaustion, the land was cropped till it was exhausted and then let go back to grass; and new land was ploughed up in forest clearings. The prevalence of livestock-raising, according to Schmid, was due to the Ottoman tax system, because while livestock was lightly taxed, the produce of the land was heavily burdened with taxes and dues payable to the landlord. Only in the lowlands along the Sava valley and in the vicinity of the towns, crop rotations were practiced. In general, as explained by

[526] Schmid, *Bosnien*, 349.
[527] *Meyers Großes Konversations-Lexikon*, s. v. "Feldgraswirtschaft," accessed June 6, 2019, http://www.zeno.org/Meyers1905/A/ Feldgraswirtschaft
[528] Shifting cultivation was also fairly common in Serbia and in most remote territories like Krajina in Bosnia, Rudnik, Toplica, and Pirot. In Warriner, *Contrasts in Emerging Societies*, 309.

Schmid, a transition to more intensive type of farming was slow as the backward methods of land use were accompanied by primitive methods of cultivation.[529]

In Bosnia, the construction of stables and barns was of poor quality with the exception of the northern parts of the province. The houses were built of wood, in the southern part of the province and in Herzegovina the houses were of stone. They were covered with wooden shingles, a mode of roofing very common in Slavonic countries.[530] In the regions where bora[531] blows the houses were covered with thin slices of stone and they were with thatched roofs in the Sava valley and in the karst region. Mostly there were only poor stables for cattle covered on the top. There were usually no barns for storing, they existed only in the settlers' villages. The grain was stored in *hambars*, simple sheds covered with a roof. Pits for manure did not exist either. In southern Herzegovina there were no barns for livestock but transportable barns and shelters for livestock and herdsmen were widely seen. In the regions where plums were planted widely, ovens for drying the fruit were of importance. In the southern parts of the province there were cisterns.[532]

Three sorts of plough were used. The most primitive was scratch plough (*ard* or *ralo*) consisting of a wooden share, with long sloping slides, reaching to the holder, and placed at a very acute angel with the horizontal foot. It was drawn by two oxen, yoked to the pole.[533] Scratch plough lightly broke up the surface of the soil, without turning it. The second type was a small wooden plough (*Karrenpflug*) with an iron ploughshare. The third type was the wooden plough which was an advance on the *ralo* in that it turned the furrow and went deeper. This type of plough was

[529] Schmid, *Bosnien*, 348- 349. Schmid stated that in the forest regions where cultivable land was scarce and in the entire Karst region there was a sort of *Körnerwirtschaft* beside livestock-raising, but did not make further comments.
[530] Warriner, *Contrasts in Emerging Societies*, 367.
[531] Bora is the furious north-east wind which usually accompanies heavy falls of snow. In Warriner, *Contrasts in Emerging Societies*, 139.
[532] Schmid, *Bosnien*, 350-352.
[533] Warriner, *Contrasts in Emerging Societies*,368.

widely used in the karst uplands. Owing to its weight, it required twice as much draught power as the iron plough. The wooden plough was pulled by oxen. Iron ploughs pulled by horses were used almost only in colonies. According to Schmid, lack of the ploughs for deep ploughing combined with the wrong timing of ploughing the soil was responsible for the low crop yields. Hoes were used in regions where it was impossible to plough because of the quality of the soil. Again only in settlers' villages threshing was made with flails on proper threshing floors. Almost throughout entire Bosnia-Hercegovina threshing was carried out in the open by the horses and oxen treading out the corn.[534] Because of lack of proper barns for grain**,** the cultivator had to begin threshing immediately after the harvest and in consequence he was held back from the autumn ploughing and sowing.**[535]**

Schmid argued that fertilization of the soil was much neglected due to the shortage of manure. The animals were not usually kept in stalls but were generally left to forage on their own. The manure was not kept in the pits. Furthermore, manure was brought to the field long before cropping so that it was dried up or washed out under the open sky.[536]

Maize, a crop with a very high gross and net return per acre, was the principal crop in Bosnia. It was mainly cultivated for subsistence and for animal fodder. Maize, beans, and pumpkins were often grown on one and same piece of land, indicative of the need of the smallholder to grow on the one and the same field the greatest possible quantity of a variety of crops.[537] Maize and beans provided food for

[534] Schmid, *Bosnien und die Herzegovina*, 351-352.
[535] Warriner, *Contrasts in Emerging Societies*,323. The land was ploughed in autumn and then the corn was sown. "It grows to half a span before the snow comes; then, when the snow settles on it, it sinks, and in spring continues to grow to maturity." In Warriner, *Contrasts in Emerging Societies*, 138.
[536] Schmid, *Bosnien und die Herzegovina*, 323.
[537] Karszniewicz, *Das bäuerliche Recht,* 155.

the peasant and pumpkins fed the pigs.[538] Maize was sown in spring and reaped in August.[539] In Serbia in the river valleys the land was often continuously cropped with maize because these lands were flooded in spring so that no other grain crop could be sown, and the high fertility of the soil, aided by the floods, allowed this permanent cropping. When crop rotation was practiced, the three-field system was the most general in Serbia and presumably in Bosnia as well. The land was left fallow in the first year, it was cropped with maize in the second year, and with wheat, oats, and barley in the third year.[540] Schmid also noted that wheat, barley and oats were widely cultivated. Barley was particularly cultivated on the hills, where maize could not be sown. Rye was not cultivated.

The conditions in Bosnia were very suitable for the cultivation of fruits. Walnuts, chestnuts, apples, pears, and figs grew wild. In Bosnia several sorts of fruits were cultivated, while in Herzegovina pomegranates, almonds, apricots, peaches, carob, olives, orange, plums, and vines were cultivated.[541] Plums were planted particularly in the districts where the climatic conditions were suitable, namely cool, moist nights, a warm temperature by day, and a chalky soil were to be found. Plums were the article of commerce which brought the most money into the country.[542]

Tobacco was the one all-important crop and article of commerce in Herzegovina. Under Austrian rule, tobacco was a government monopoly. Drage

[538] Warriner, *Contrasts in Emerging Societies*, 354-355. In Slovenia, maize, millet, beans and pumpkins were often grown on one and the same land. There were also many different rotations in which buckwheat, the main crop of the region was usually planted as a second crop in the stubble of winter wheat and barley. Millet was the peasants' cashcrop for they made besoms from it and sold them in order to buy salt for cattle.
[539] Warriner, *Contrasts in Emerging Societies*, 138.
[540] Warriner, *Contrasts in Emerging Societies*, 309.
[541] Dimitz, *Die forstlichen Verhältnisse,* 74. In Rumania "vines [were] buried after the end of the vintage and remain buried until the time comes to tie them to stakes and prune them." In Warriner, *Contrasts in Emerging Societies*, 138.
[542] Drage, *Austria-Hungary*, 620. Palairet stated that before the Austro-Hungarian occupation the northern towns of the province, the Posavina in particular, exported prunes through the Sava port of Brcko. In Palairet, *Balkan Economies*, 140, 357.

claimed that although the price paid to the tobacco growers had diminished by 1904, its cultivation was increasing because the peasants were sure that they would have a certain market for all the tobacco they could grow.[543]

The Habsburg administration published data on agricultural production for the period from 1882 to 1896. The data presented in Table 4 indicate considerable production increases for the major crops in Bosnia. The rapid increase in potato production marks a shift to potatoes as a staple food. In 1906 the district administrative head in Bihac reported that the massive importation of wheat and potatoes by the administration had broken the monopoly of maize in the area and introduced crop rotation.[544]

Table 4. Average Crop Yields in Bosnia (in 1000 Metric Centners)

	1882-86	1887-91	1892-96	The increase in %
Grain (wheat, rye, barley, oat, maize)	2854	4125	5095	78,56
Legumes	63	104	143	126,82
Potatoes	179	355	520	190,10
Fodder crops	3225	4910	6641	105,94
Fruits	817	1344	1526	86,82
Vines	37	54	65	73,40
Vegetables	599	1066	1617	170,01

Source: Schmid, *Bosnien*, 415-416.

The administration tried to encourage autumn ploughing and sowing. As stated above, this was mainly due to the absence of proper threshing floors and barns which compelled the cultivator to begin threshing immediately after the harvest. In 1906, the administration offered each peasant who ploughed and planted in the

[543] Drage, *Austria-Hungary*, 620.
[544] Gonsalves, "A Study of the Habsburg Agricultural Programmes in Bosanska Krajina, 1878-1914," 353.

autumn ten to thirty crowns in gold depending on the size of the area ploughed but the programme was ruined by an early snowfall. Iron ploughs, autumn planting and fertilization was promoted in repeated articles in Bosansko-hercegovacki Tezak from 1902 to 1914, but they were only slowly accepted.[545]

Bosnia was largely dependent on stock-raising.[546] Indeed, livestock formed the principal wealth of Bosnian peasants. [547] In Feifalik's words, its mountainous terrain, its vast forests and pastures made Bosnia well suited for rearing a great number of quadrupeds.[548] Animal husbandry was based to almost three-fourth of its volume on grazing.[549] Livestock made inroads not only to grass and small shrubs but also on bigger shrubs and leaves on the lower branches of trees because of the shortage of fodder and fluctuations in its production.[550] Dimitz recounted that the Bosnian peasants used to cut the branches of the trees in order to feed their herds with leaves and acorns of the oak trees. In Dimitz's words, the pasture of livestock in Bosnia was mainly on the trees.[551]

As shown in Table 5, the data on stock holdings reveal that between 1879 and 1895 there was a rapid increase in stock holdings, particularly in small animal holdings. Gonsalves argued that the inaccuracy of the 1879 census inflates the initial increase in animal holdings. Many animals had been driven into the woodlands at the time of the insurrection and escaped the count of 1879. Some animals were killed during the upheaval.[552] Yet the census of 1895 records a profound increase in cattle holdings (draught animals necessary for expanding agricultural undertakings), an

[545] Gonsalves, "A Study of the Habsburg Agricultural Programmes in Bosanska Krajina, 1878-1914," 363.
[546] Palairet, *Balkan Economies, 139.*
[547] Dimitz, *Die forstlichen Verhältnisse,* 61.
[548] Feifalik, *Agrarfrage,* 43.
[549] Dimitz, *Die forstlichen Verhältnisse,* 61.
[550] Tomaselli, "Degradation of the Mediterranean Maquis,"52.
[551] Dimitz, *Die forstlichen Verhältnisse,* 63.
[552] Gonsalves, "A Study of the Habsburg Agricultural Programmes in Bosanska Krajina, 1878-1914," 354. Dimitz, *Die forstlichen Verhältnisse,* 63.

almost threefold increase in goats and a fourfold increase in sheep. Dimitz argued that since stock breeding was mainly based on grazing the increase in the number of sheep and goats was alarming in regard to the progressive advance of the arid karst land. He argued that particularly in the regions where karst was most abundant, namely in Travnik and Mostar, the number of small animals were the highest. Indeed, the administration put a higher tax on goat[553] in order to control the increase in goat holdings.[554]

Table 5. Stock Holding in Bosnia

	1879	1895	1910
Horses, donkeys mules	161,168	237,453	228,831
Cattle	762,077	1,417,341	1,309,922
Sheep	839,988	3,230,720	2,499,422
Goats	522,123	1,447,049	1,393,068
Pigs	430,354	662,242	527,271
Beehives	111,148	140,061	195,204

Source: Schmid, *Bosnien*, 420-423.

From 1895 to 1910, the number of all kinds of livestock owned by a household involved in agriculture declined from 88 pieces (sheep) to 64 pieces.[555] This is of particular importance because sheep and pigs were the customary investment for the peasant and provided his financial security.[556] One major cause was that the area for pasture had been largely reduced because the cultivators were deprived of their rights of grazing in the village commons. Furthermore, the administration introduced laws regulating the use of state forests which was defined

[553] Tomaselli argued that "goat is of particular importance because it is hardier than the sheep and manages to make use of a far greater quantity of species having a very hard palate and tongue and very strong teeth which can tackle coriaceous leaves and even thorny branches . . . It is obvious that where goats graze, not only herbaceous plants are damaged and destroyed but also garrigues and maquis." In Tomaselli, "Degradation of the Mediterranean Maquis," 53.
[554] Konanz, *Agrarverhältnisse*, 36.
[555] Feifalik, *Agrarfrage* 138. In Feifalik's calculation eight sheep equals eight goats, or two swine, or a cattle.
[556] Gonsalves, "A Study of the Habsburg Agricultural Programmes in Bosanska Krajina, 1878-1914," 355-356.

as including wooded pastures as well and these laws were increasingly enforced. Consequently, plough land was increasingly turned into pasture.[557] The administration tried to promote the cultivation of fodder crops as a balancing factor.[558]

Jovanovic pointed out to a similar decline of livestock production in Serbia and added that the small holdings which increased in number due to the dissolution of the former zadruga holdings had too little labour to care for livestock.[559] In parallel, the dissolution of the zadruga and the subdivision of the peasant holdings might have been a factor which contributed to the decline of the number of livestock per household. Indeed, in the latter half of the Habsburg rule the number of households involved in agriculture had increased rapidly from 49,500 in 1895 to 72,100 in 1910 in Krajina. Gonsalves stated that this could be due to a change in the definition of this category, but it was indicative of the formation of small farms with extremely limited resources as well. She added that the number of stock owners remained relatively stable with 63,200 stock owners recorded in 1895 to 64,800 in 1910 in Krajina and concluded that the programmes of the Austrian administration

[557] Radusic argued that the sharecroppers turned plough land into pasture since there was no levy due on livestock. The landowner could not prevent the switch from arable farming to pastoral farming. In Radusic, "Remnants of Ottoman Agrarian Legislation and Practice in Bosnia under Austro-Hungarian Rule: The Political and Social Impact on the Acceptance of Austro-Hungarian Rule by the Bosnian Peoples and Religious Groups," 154-155.

[558] Schmid suggested that the cultivation of fodder crops had increased because the cultivators were now aware of the importance of winterfeeding. Thus, they grazed the livestock on the pastures not suitable for mowing while reserving the land more suitable for fodder for this purpose. Schmid, *Bosnien, 416.*

[559] Jovanovic pointed out that the restriction of the use of the state forests for grazing and the reduction in the area of pasture due to the continuous clearing of the forest land led to the decline in the number of livestock. One further reason was that the Hungarian government restricted the livestock imports under the pretext of veterinary control although the alleged diseases did not exist. As an inland country Serbia's export markets were confined mainly to Austria-Hungary. In Warriner, *Contrasts in Emerging Societies,* 311.

did not improve the distribution of animals which would have helped the viability of small farmers.[560]

4.9 Conclusion

In Bosnia under the Austro-Hungarian rule, the discourse of state ownership in land was of profound significance for justifying the government policies regarding taxation of agricultural production as well. Ostensibly, the amount of state tithe was cut down to 10 per cent which had been 12. 5 per cent under Ottoman rule, but the weight of taxation upon the peasantry was significantly increased by government measures and effective collection of the taxes. In addition, the collection of the tithe in cash increased the burden of taxation upon the peasantry for subsistence economy prevailed in the province. Most importantly, the cultivators who held their own lands were considered as kmets, sharecroppers who were "belonging" to the state. They were enforced to make agricultural contracts as to the terms on which they were to hold the land and to pay one-third of the produce as ground rent in addition to the tithe to the state. Hobsbawm argued that the increase in the weight of the taxation was one of the main aspects of the legal revolution as "liberal doctrine combined with disinterested rapacity to give another turn to the screw compressing the peasantry."[561] Habsburg-occupied Bosnia was no exception to this. Many cultivators were reduced to the status of tenants as the state emerged as the supreme landlord in Bosnia.

As important, the conditions under which the cultivators could take loans in order to redeem their land were burdensome and many were obliged to sell their holdings because of the burden of debt arising from taxes or annuities owed to the

[560] Gonsalves, "A Study of the Habsburg Agricultural Programmes in Bosanska Krajina, 1878-1914," 356.
[561] Hobsbawm, *Age of Revolution*, 198.

banks. Consequently, redeeming their holdings "did not help them in the slightest" for emancipation soon turned "into a mere instrument of peasant expropriation"[562] in Bosnia under Habsburg rule.

Throughout its rule, the Habsburg administration did not introduce a regulation regarding agrarian arrangements. The Bosnia Regulation of 1859 virtually remained in effect. The district administrations were authorized to hear cases involving agrarian conflicts. Even if the parties would have recourse to the courts, the courts were to convey the case to the administrative authorities. The proceedings were to be verbal, without strict formalism, and the decision was recorded if the parties demanded. Presumably, law was rendered more versatile in the hearings conducted by the district administrators. It can also be argued that the data about the number and nature of the agrarian conflicts in the Administrative Reports were rather made up by the Austrian statisticians. In the Reports, it was underlined that most of the conflicts were settled by mutual agreement with the intermediary role of the officials, a situation which was hardly possible given the nature of agrarian conflicts. The data in the Reports include neat, precise figures for every category under discussion and this helps to create a coherent, integrated language which veils the opaqueness of the narrative. In this way, the official claim that the Habsburg government endeavoured to treat both the landowners and the sharecroppers with impartial justice was buttressed by statistical data.

The treatises of contemporary statesmen and observers on the agrarian question provide an overview of the Habsburg policies regarding agrarian relations and reveal their major consequences. However, any of these commentators did consider the regulations which led to a significant curtailment of the rights of the cultivators to the use of commons and waste and this is the major gap in their

[562] Hobsbawm, *Age of Revolution*, 190.

analysis. Bosnia was largely dependent on livestock-raising and as discussed in the section about land use patterns in Bosnia, agricultural practices heavily relied on the exploitation of common pastures and wastes. Feifalik exceptionally argued that the Bosnian agrarian question was rather the question of the use of the pasture and woodland. Yet, at the same time, he held the opinion that the government would eventually assign pasture and woodland to village communities.

The data indicate that an initial increase in agricultural production and stock holdings was followed by a decrease after 1895. The restriction of the use of commons and wastelands for grazing resulted in a decline in the number of livestock. On the other hand, regulations favouring the dissolution of zadruga and the fragmentation of peasant holdings contributed to the emergence of small holdings with extremely limited resources and too little labour to care for livestock. The decline of the number of livestock per household should have been a major factor which contributed to rural hardship characterized by growing indebtedness and falling standard of living.

CHAPTER 5

CONCLUSION

The politico-legal revolution as conceptualized by Hobsbawm provides insight into the legislative processes in which the late-Ottoman land legislation was reinvented and reinterpreted and supplemented by new laws "in accordance with the changing objectives of the government at different time periods"[563] in Bosnia under Habsburg rule. As important, it would provide insight into the "practice of law"[564] namely to "its implementation, and the understandings and use to which the law was put by different actors"[565] particularly by the colonial state in Bosnia. Furthermore, the analysis of the government measures regulating the relationship between the landowner and the cultivator is just part of the endeavour of understanding the nature of the change in the agrarian relations. This view considers the relationship between the two as a separate sphere isolated from the relationship of the cultivator to the land. In Bosnia under Habsburg rule, the government policies and legal reforms regarding landed property and land tenure, particularly those relating to the use of commons and waste on the one hand, and the administrative and legal practices regarding the taxation of the agricultural production, on the other, had a profound impact on the nature of the agrarian relations. There was no continuity in the nature of the agrarian relations due to the continuity in land legislation between the Ottoman period and under the Austro-Hungarian rule. Seeing this evolution through the lens of the politico-legal revolution enables one to identify the significant transformation

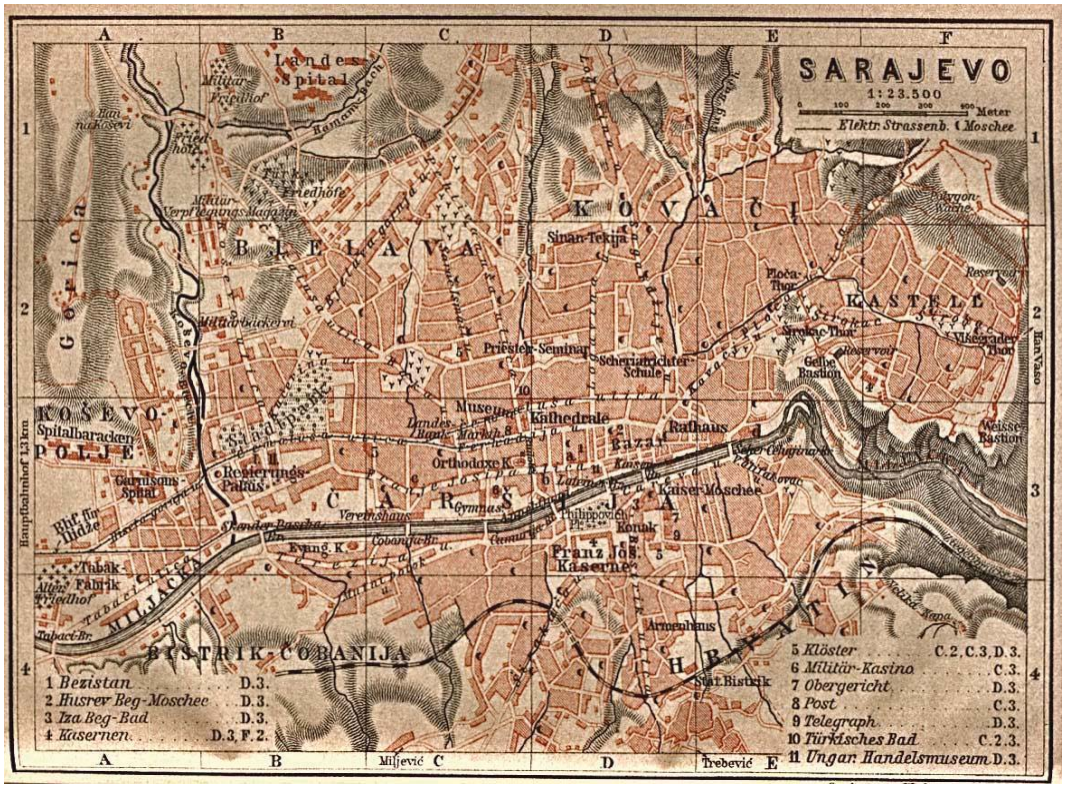
[563] İslamoğlu,"Towards a Political Economy of Legal and Administrative Constitutions of Individual Property," 17.
[564] Terzibaşoğlu, ""Ottoman >Legal Revolution< in the Nineteenth Century Balkans: The Role of Local Councils and Courts in the Making of Property and Criminal Law," 115.
[565] Terzibaşoğlu, "Ottoman >Legal Revolution< in the Nineteenth Century Balkans: The Role of Local Councils and Courts in the Making of Property and Criminal Law," 115.

in the agrarian relations and rural conditions. While the terms of government policy were established through the categories of late-Ottoman land legislation, the ensuing legislation enabled the Habsburg administration to establish state ownership in land "which amounted to a virtual nationalization of the land"[566] in a colonial context. It was in this way that the government achieved to dispossess the native peasantry and the Muslim landowners, to increase the burden of taxation upon the former and to curb the socio-economic power of the latter, and to allocate land to settlers from different language groups of the Habsburg Monarchy and to private enterprise, including large areas of pasture and woodland which had been formerly used collectively. As important, the government policies regarding land redemption benefited the emergence of a class of peasant proprietors with extremely limited resources. While at the outset the government had acted as the agent of the institutions which would give mortgage credit, the government later itself engaged providing loans to cultivators who wanted to redeem their land. However, in many instances peasants were evicted from land which they had recently acquired because they could not pay the taxes and instalments. While the state emerged as the "supreme landlord of all the land,"[567] the nature of the agrarian question completely changed in parallel with the change in the legal, social and economic relationship of the peasantry to the land. In consequence, the revolutionary transformation in land tenure was pushed to the point of the complete breakthrough of liberal principles in agriculture in Bosnia under Habsburg rule.

[566] Hobsbawm, *Age of Revolution*, 198.
[567] Hobsbawm, *Age of Revolution*, 197.

APPENDIX A

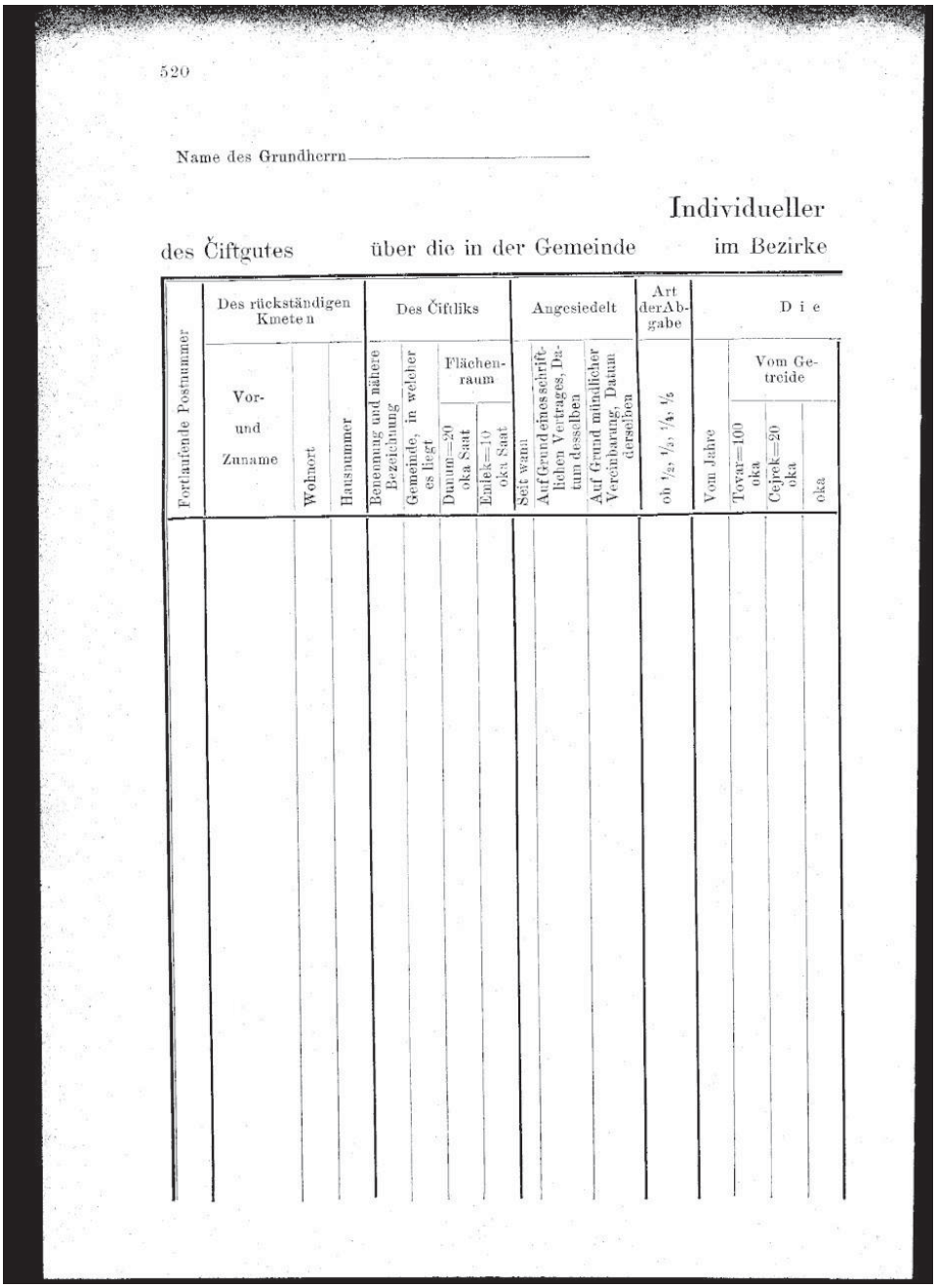
A HISTORICAL MAP OF SARAJEVO



Source: https://legacy.lib.utexas.edu/maps/historical/sarajevo1905.jpg

APPENDIX B

PRIMARY DOCUMENTS



520

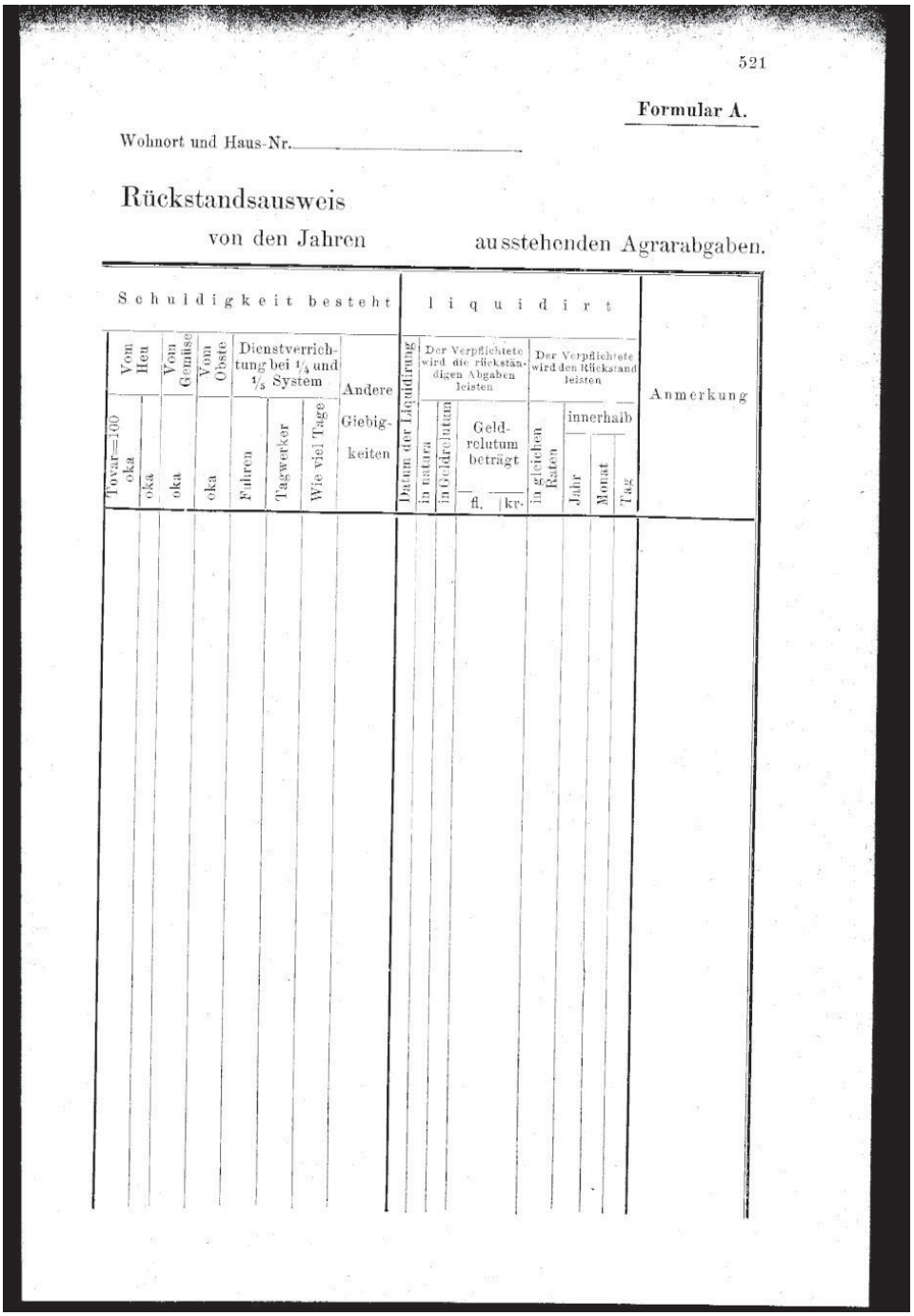
Name des Grundherrn_____

Individueller

des Čiftgutes über die in der Gemeinde im Bezirke

Fortlaufende Postnummer	Des rückständigen Kmeten			Des Čifliks				Angesiedelt			Art der Abgabe	D i e			
	Vor- und Zuname	Wohort	Hausnummer	Benennung und nähere Bezeichnung	Gemeinde, in welcher es liegt	Flächenraum: Dunum=20 oka Saat	Flächenraum: Einlek=10 oka Saat	Seit wann	Auf Grund eines schriftlichen Vertrages, Datum desselben	Auf Grund mündlicher Vereinbarung, Datum derselben	ob ½, ⅓, ¼, ⅕	Vom Jahre	Vom Getreide: Tovar=100 oka	Vom Getreide: Čejrek=20 oka	Vom Getreide: oka

Figure B1 Document of outstanding dues
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 1. Bd., 520.



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Formular A.

Wohnort und Haus-Nr._____

Rückstandsausweis

von den Jahren ausstehenden Agrarabgaben.

Schuldigkeit besteht								liquidirt								
Vom Heu		Vom Gemüse	Vom Obste	Dienstverrichtung bei ¼ und ⅕ System			Andere Giebigkeiten	Datum der Liquidirung	Der Verpflichtete wird die rückständigen Abgaben leisten			Der Verpflichtete wird den Rückstand leisten				Anmerkung
Tovar=100 oka	oka	oka	oka	Fuhren	Tagwerker	Wie viel Tage			in natura	in Geldrelutum	Geldrelutum beträgt fl. kr.	in gleichen Raten	innerhalb Jahr	Monat	Tag	

Figure B2 Document of outstanding dues
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 1. Bd., 521.

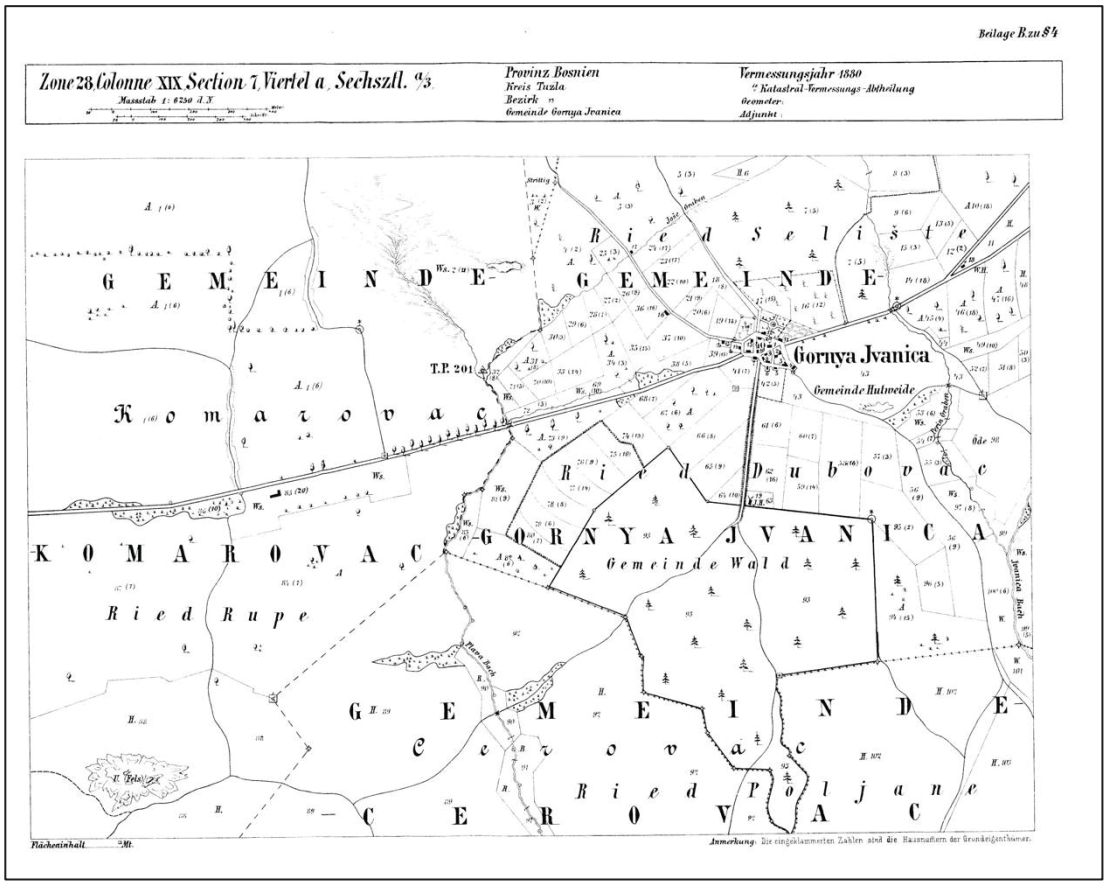
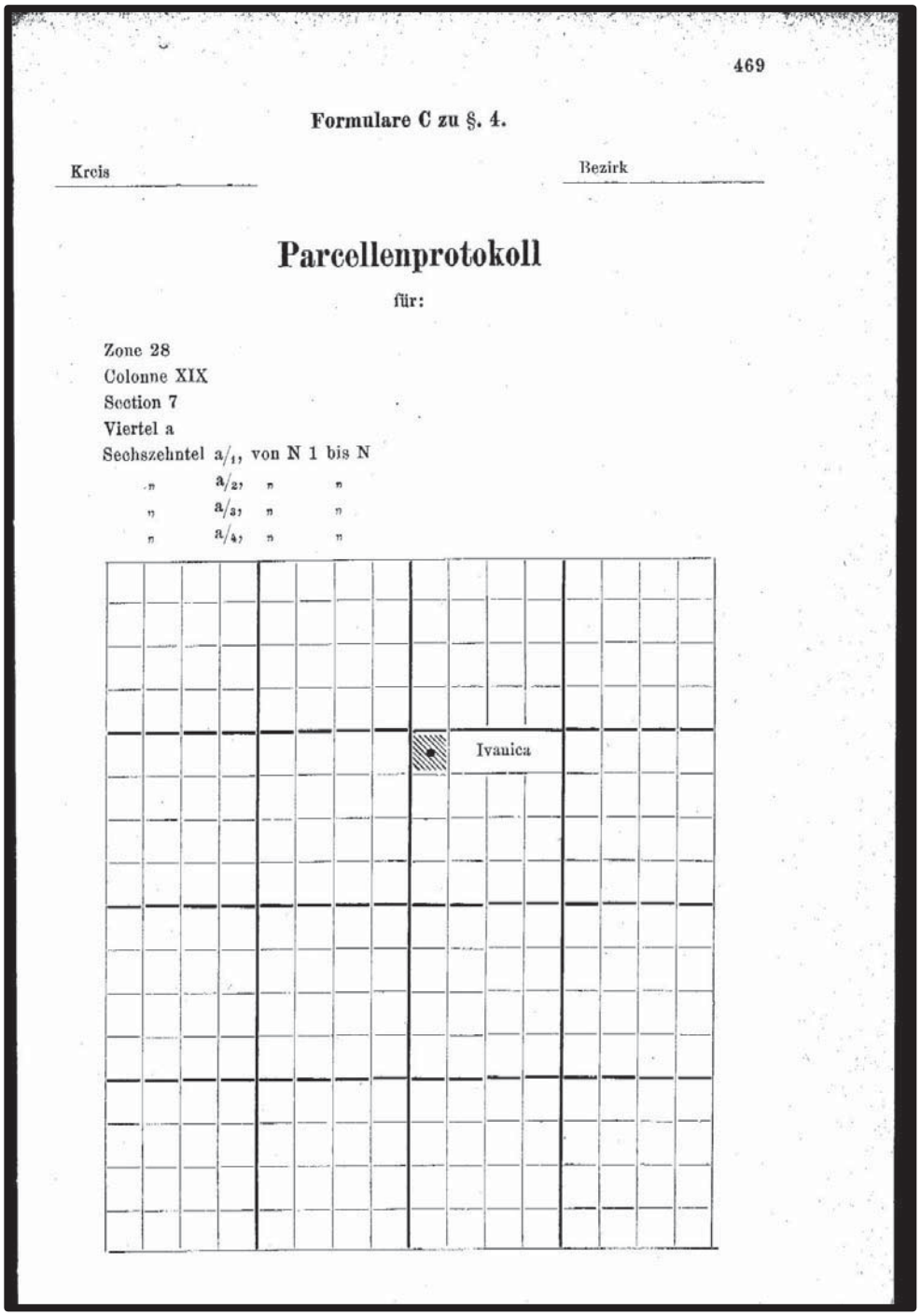


Figure B3 Sample map of the village Gornya Jvanica
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 3. Bd. 1.Abt., 468/473.



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Formulare C zu §. 4.

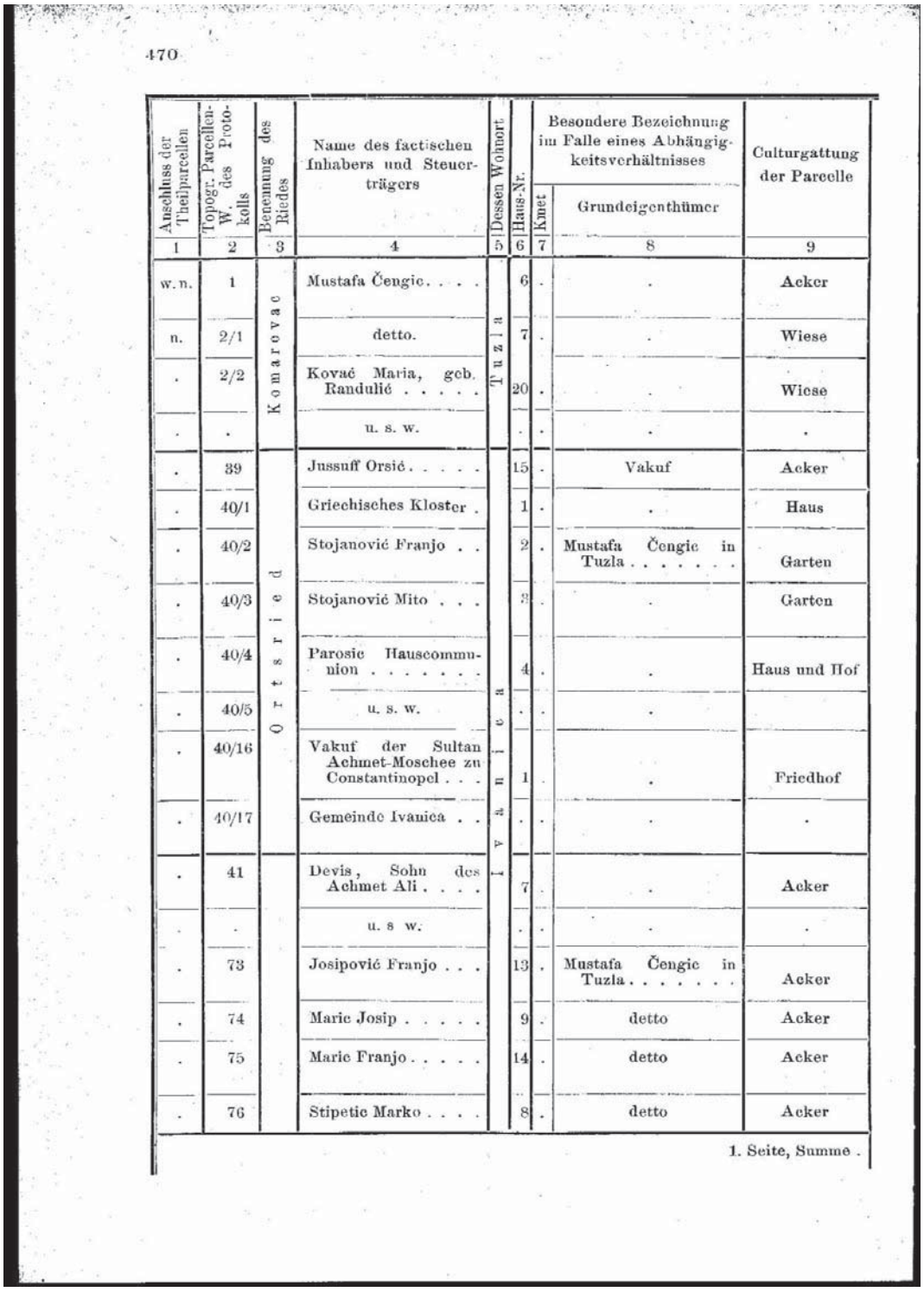
Kreis _____ Bezirk _____

Parcellenprotokoll

für:

Zone 28
Colonne XIX
Section 7
Viertel a
Sechszehntel a/1, von N 1 bis N
" a/2, " "
" a/3, " "
" a/4, " "

Figure B4 Register of land plots
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 3. Bd. 1. Abt., 469.



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Anschluss der Theilparcellen	Topogr. Parcellen-W. des Protokolls	Benennung des Riedes	Name des factischen Inhabers und Steuerträgers	Dessen Wohnort	Haus-Nr.	Besondere Bezeichnung im Falle eines Abhängigkeitsverhältnisses: Knet	Besondere Bezeichnung im Falle eines Abhängigkeitsverhältnisses: Grundeigenthümer	Culturgattung der Parcelle
1	2	3	4	5	6	7	8	9
w. n.	1	Komarovac	Mustafa Čengic	Tuzla	6	.	.	Acker
n.	2/1		detto.		7	.	.	Wiese
.	2/2		Kovač Maria, geb. Randulić		20	.	.	Wiese
.	.		u. s. w.		.	.	.	.
.	39	Ortsried	Jussuff Orsić	Tuzla	15	.	Vakuf	Acker
.	40/1		Griechisches Kloster .		1	.	.	Haus
.	40/2		Stojanović Franjo . .		2	.	Mustafa Čengic in Tuzla	Garten
.	40/3		Stojanović Mito . . .		3	.	.	Garten
.	40/4		Parosic Hauscommunion		4	.	.	Haus und Hof
.	40/5		u. s. w.		.	.	.	
.	40/16		Vakuf der Sultan Achmet-Moschee zu Constantinopel . . .		1	.	.	Friedhof
.	40/17		Gemeinde Ivanica . .	Ivanica	.	.	.	.
.	41		Devis, Sohn des Achmet Ali . . .		7	.	.	Acker
.	.		u. s w.		.	.	.	.
.	73		Josipović Franjo . . .		13	.	Mustafa Čengic in Tuzla	Acker
.	74		Maric Josip		9	.	detto	Acker
.	75		Maric Franjo		14	.	detto	Acker
.	76		Stipetic Marko		8	.	detto	Acker

1. Seite, Summe .

Figure B5 Register of land plots
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 3 Bd. 1. Abt., 470.

Flächen-mass		Steuerfreie oder unproductive			Gesammt-fläche		Wohngebäude			Anzahl der Wohn-bestandtheile	Anmerkung
		Fläche		Bezeichnung desselben			Anzahl	Bauart			
								ohne	mit		
Du-num	□ Meter	D.	□M.		D.	□M.		Stockwerk			
10		11		12	13		14	15		16	17
560	120	.	.	.	560	120	.	.	.	.	Mitbesitzer Achmed Beg zu Gračanica.
240	86	1	350	Tümpel	241	616	.	.	.	.	
.	180	.	.	.							
.	.	.	.	u. s. w.	.	.	.	.	.	.	
1	805	.	.	.	1	805	.	.	.	.	Erbpächter.
.	.	.	.	.	.	.	1	.	.	.	
.	600		150	Haus und Hof	.	750	1	.	.	.	strittig zwischen Beg und Kmet.
.	400	.	450	Haus und Hof	.	850	1	.	1	6	strittig mit Dragonic Jure in Rogatica 15.
.	.	.	100	Hof	.	100	1	.	.	4	
.	.	.	.	u. s. w.	.	.	.	.	.	.	
.	.	2	.	Fried-hof	2	.	.	.	.	.	
.	.	6	20	Strassen u. Plätze	6	20	.	.	.	.	
8	120	.	.	.	8	120	.	.	.	.	
.	.	.	.	u. s. w.	.	.	.	.	.	.	
8	600	.	.	.	8	600	1	1	.	4	
14	200	.	.	.	14	200	1	.	1	8	
8	200	.	.	.	8	200	1	1	.	6	Eigenthum strittig mit Ali Smaić in N.
7	560	.	.	.	7	560	1	1	.	2	
849	871	10	70	.	859	941	8	5	2	40	

Figure B6 Register of land plots
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 3. Bd. 1. Abt., 471.

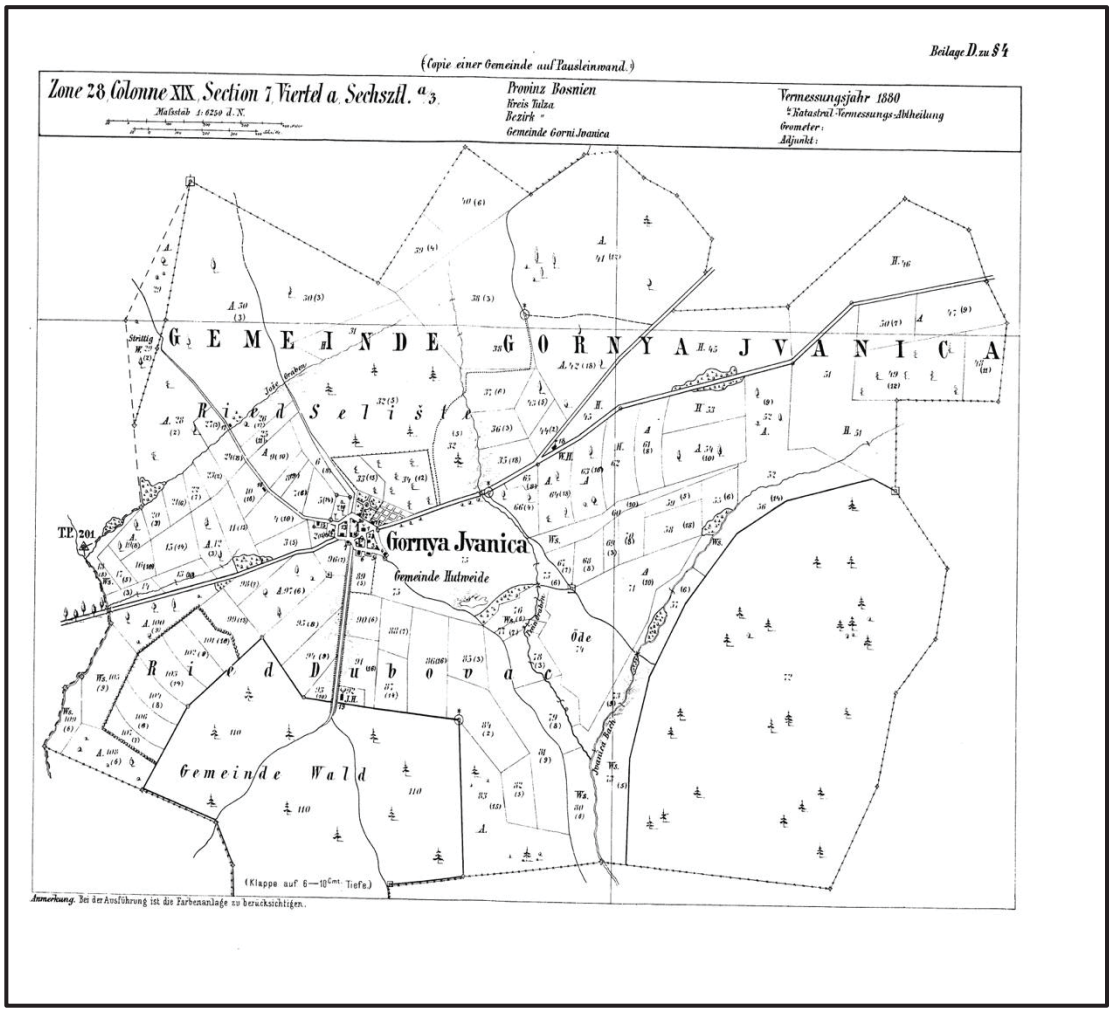

Figure B7 Island map of the village Gornya Jvanica
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 3 Bd. 1. Abt., 472/479.

APPENDIX C

TRANSLATION OF PRIMARY DOCUMENTS

Name of the Landlord _____

Individual Certificate

of the Çiftlik in the Village in the District

Consecutive number	of the Obliged Kmet			of the Çiftlik				Settled			Type of the due	The			
	Name and nickname	Place	House number	Name and description	District, in which it is stated	area		since when	according to a written contract, date	According to a verbal agreement, date	1/2, 1/3, 1/4, 1/5	from the year	of the grain		
						Dönüm=20 okka seed	Emlek=10 okka seed						Tovar = 100 okka	Çejrek = 20 okka	okka

Figure C1 Translation of the document of outstanding dues
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 1. Bd., 520.

of Outstanding Dues

of the Years outstanding dues

due consists of								Liquidated								Note
of hay		Of vegetables	Of fruit	Labour services in 1/4, 1/5 system			other dues	date of the liquidation	The kmet will render the due			The kmet will render the due				
													within			
Tovar = 100 okka	okka	okka	okka	transport	labour services	how many days			in kind	in money	in money	in equal rates	year	month	day	
											Fl Kr					

Figure C2 Translation of the document of outstanding dues
Source: Landesgesetzblatt für Bosnien und die Herzegowina 1878-1880, 1. Bd., 521.

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