

A written consent form dating back to 1524 in Bursa Şer'ıye (Sharia Court) records and a proposal of a new start date for consent forms

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BACKGROUND AND OBJECTIVES: Qadi registers are important documents for Ottoman medical history research. "Sharia Court Records (Ser'iyye Sicilleri)" are notebooks that include the records that qadis kept with regard to their decisions and deeds. These registers are the only authentic sources from which to acquire information on rural life, away from the center of the town, and to understand the daily practices of the Ottoman society. The objective of this study is to provide evidence for the fact that the concept of informed consent on medical interventions, and hence the written consent documents arranged between patients and physicians, dates back to older times in our history when compared to the Western world.

DESIGN AND SETTING: A large number of Ser'iyye (Sharia Court) record originals have been surveyed. The consent form registered as A-40. 221a in Ser'iyye (Sharia Court) Records found in Bursa has been presented here as the earliest consent document found by the authors. Transcription of the original document has been performed and analyzed. The aforementioned consent form dates back to 26/Dhu al-Qi'dah/933 (August 24, 1524).

METHODS: The original version of the referenced consent document is the earliest consent document presented so far to the best of the authors' knowledge; it was found in Bursa Ser'iyye Records and evaluated accordingly.

RESULTS: Based on the document, it is argued that the history of consent forms dates back about 500 years.

CONCLUSION: Obtaining consent in scientific research from human beings was considered to have originated from the Nuremberg Code (1949). However, with this study, it has been shown that the concept of informed consent was already present in the Ottoman Period, during the 16th century, and that the original consent document dates back to 1524, pertaining to a surgical intervention.

Informed consent is defined as the consent voluntarily given by a patient for the administration of a treatment, without any room for doubt, after the physician thoroughly explains to the patient the benefits of the treatment, the alternatives to the treatment, and the risks and benefits of alternative treatments.¹ The main factor that assures the legitimacy of a physician's medical intervention is "consent," and providing information is the first condition for obtaining consent. In this context, consent means renunciation of absolute protection of the body against injuries. Only persons themselves have the right to make decisions about their own bodies, and thus to decide about such risks.

Since medical interventions and actions performed by a physician are related to the health and bodily integ-

rity of individuals, and are likely to pose certain threats, the patient, rather than the physician, is liable to decide whether a certain intervention or action should be conducted.² The relevant studies draw attention to the following important points about informed consent:

1. Respect for an individual's right to free choice.
2. Legal obligation.

Whether it is obtained due to respect for an individual's right to free choice or legal obligation, informed consent aims to protect a patient against threats to her/his life.³

In the Western world, the emergence of the concept of informed consent dates back to the Nuremberg trials. Beauchamp, Childress, and Faden ground informed consent on respect for autonomy and the autonomy

of individuals; Katz and Moreno highlighted that informed consent was related to an individual's right to decide about her/his own body, and they predicated this concept on the principle of respect for autonomy.^{4,5} According to Beauchamp and Childress, the key elements of informed consent were competence, disclosure, understanding, voluntariness, and acceptance.⁵ Given these considerations, it cannot be said that the roots of informed consent date back to ancient times. However, in various regions across the world, there are records showing that written consent forms were used in medical practices from the 17th century.⁶

In the Ottoman State, it has been shown that the concept of informed consent and the use of consent forms date back to older ages than in the Western world.^{7,8} An examination of related documents indicate that human pride was taken at the center of medical practices; human beings were valuable, and hence were endowed with certain rights.

PATIENTS AND METHODS

The purpose of this study is to provide evidence for the fact that the concept of informed consent (related to medical interventions), and hence the written consent documents arranged between patients and physicians, date back to older times in our history than in the Western world.

This study presents a particular consent form, registered as A-40. 221a in Şer'iyye (Sharia Court) Records situated in Bursa, which is the first capital city of the Ottoman State. The date that this written consent was taken is provided as 26/Dhu al-Qi'dah/933 (August 24, 1524). Based on this document, it is argued that the history of the consent forms dates back about 500 years in the Ottoman State. After the transcription of the original document was performed, the document was thoroughly analyzed.

The Ottoman Şer'iyye Records

Also known as qadi records, Şer'iyye Records are of particular importance in Ottoman medical history research. Qadis and courts were mirrors of the law. The registration books, including qadis' judgments together with deeds and the records they used to take as part of their duty, were named as "Şer'iyye Records." These records were also known as qadi records, court records, and zabit-ı vekayi records.

In the Ottoman State, the qadis – vested with broad authority – used to be the ruling authority in Şer'iyye courts. The Ottoman law defined the "qadi" as the highest authority of the state to settle cases and conflicts between persons, in accordance with the Sharia.⁹⁻¹¹ In

addition to making judgments in line with the Sharia principles, qadis were responsible for a great many legal procedures, including taking court records, the marriage of minors without a guardian or custodian, protection of goods of orphans and disappeared people, audits of foundations and their accounting, and arrangement of consent forms signed in the case of a medical intervention.

Şer'iyye Records are of particular value in that they present a great many documents, originals or copies of which cannot be found anywhere else, involving information on all institutions of the Ottoman State based on original records. Şer'iyye Records are indispensable resources for studies regarding the Ottoman society. It is possible to find in those documents information on life dynamics of the period studied.¹²

Şer'iyye Records also present evidence on medical history, deontology, and medical folklore. The documents in registration books provide information on the age, gender, and disease state of patients, as well as how much they paid for the treatment. However, with regard to physician–patient relations, the most important point is the problems they would encounter in the treatment process, primarily including the death of the patient; the patient was required to agree that her/his surrogates would not demand blood money in the case of death and to confirm this before the qadi.¹³ Particularly before surgical interventions, the patient used to grant written permission to the physician; however, over time, this was not found to be sufficient and the patient was required to consent and confirm in the presence of witnesses in the court, so as to eliminate any possible conflicts.¹⁴

Bursa Şer'iyye Records

Bursa was the first capital city of the Ottoman State. Also, Bursa is one of the most important cities in Ottoman studies, since the Ottoman social structure first developed and the first intensive Muslim and non-Muslim relationships were established in this city. Given that the oldest registration books of the Ottomans are in the Bursa Court Records archives, these archives are of particular importance.

Bursa court records involve a large archive of documents in over 1000 registration books related to Bursa and its districts. Bursa Şer'iyye Records hold an exceptional place in the Ottoman archives.¹⁵

The original "Written Consent Form," registered as A-40. 221a in the Bursa Şer'iyye Records, is presented in **Figure 1**, and its English translation is also provided. This document is one of the oldest consent forms that we have found so far.

In this document, the patient declared consent to

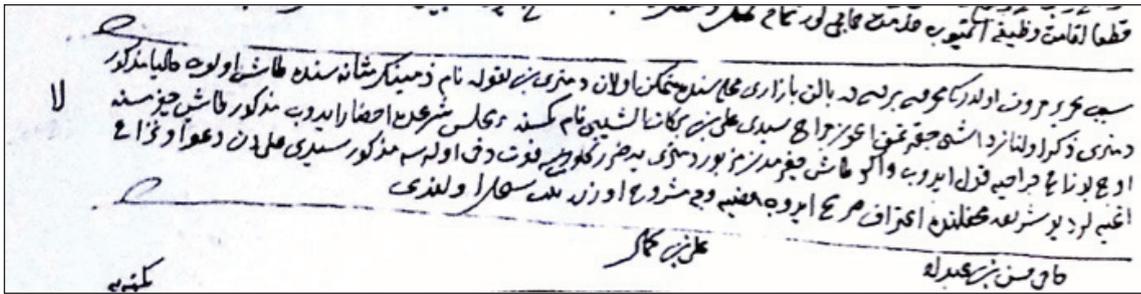


Figure 1. The original written consent form. Notes: Translation into English: "This is written to certify that Dimitri bin Nikola, a dhimmi (a non-Muslim living in the Ottoman State), resident in the Balıkpazarı neighborhood of the city of Bursa, who has a stone in his bladder, presented with Surgeon Cerrah Seydî Ali bin Berekât es-Seybî to the court hearing to have the stone removed, agreeing in the Sharia court in the presence of the qadi that he would pay 300 akçe (silver coins) for the removal of stone and that Seydi Ali would not be sued if Dimitri is harmed or even loses his life due to the stone removal." Witnesses: Hacı Hasan bin Abdullah Ali bin Kemal (Date: 26 Dhu al-Qi'dah 933)

the physician's intervention for "the removal of a stone in his bladder." The document is also important in that it involves information regarding the nonpresence of legal responsibility of the physician. The patient consented that, in the case of any complication or death, the patient and/or his relatives would not sue the physician for blood money and that even if they sue, their application would not be valid to the court. The document also indicates that the patient also paid a certain fee for the health care services he received.

In the Islamic law, because the right to life supersedes free will, consent given by a patient diagnosed with an incurable disease for ending her/his life is not valid.¹⁶ Nevertheless, permission was required to remove an aching tooth or a stone in the bladder.

The most natural and indispensable right of human beings is the right to life. The protection and continuance of the right to life has maintained its importance and been under the guarantee of laws since ancient times. The right to life is the prerequisite for enjoying other rights. While some conditions are required for eliminating the responsibility of physicians for the harm they cause, the primary prerequisite for the legitimacy of a medical intervention or action is documenting that the patient provided prior consent to the treatment.¹³ At this point, this permission, which removed a physician's responsibility for any consequences of action, may be defined as bearing a minor harm to prevent a major harm.

RESULTS

The written consent from, registered in A-40. 221a of Bursa Şer'iyye Records, is one of the oldest pieces of evidence indicating that written consent documents were arranged in the presence of witnesses, particularly prior to surgical interventions, in the Ottoman State. The document presented here is important in that it is one of the oldest written consent forms available to the authors and presented in the published reports. From the perspective of medical ethics history, the document also reveals what the Ottoman State achieved with respect to the protection of physician and patient rights.

DISCUSSION

Surgeons have generally been masters in their specialization field. Surgical interventions, such as removing a bladder stone, were mostly performed by surgeons that commonly carried out similar operations. The document examined in this study shows that, upon the patient declaration that the patient or her/his surrogates would not sue the physician in the case of any negative consequences of treatment, physicians did not bear any legal responsibility. The study is of critical importance, as it presents one of the oldest written consent forms available, dating back to 1524. This finding illustrates that the concept of informed consent has been long established in the Ottoman Empire when compared to the Western world.

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