SIGNS OF STATUS AND SOCIAL HIERARCHY IN OTTOMAN LEGAL CULTURE

(16th-18th CENTURIES)

by

ALİ ATABEY

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SIGNS OF STATUS AND SOCIAL HIERARCHY IN OTTOMAN LEGAL CULTURE (16th-18th CENTURIES)

APPROVED BY:

Hülya CANBAKAL .....

(Thesis Supervisor)

Akşin SOMEL .....

Ateş ALTINORDU .....

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ABSTRACT

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Ali Atabey

M.A., History

Supervisor: Asst. Prof. Dr. Hülya Canbakal

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This study tries to identify signs of status in fatwas of Ottoman *şeyhülislam*s from 16^{th} to 18^{th} centuries. The main issue problematized in this study is the varying legal status of Ottoman individuals according to their moral and socioeconomic status. In order to show the link in this respect, various status signs ranging from occupation, to lineage, to piety, to knowledge, and to economic status are analyzed throughout the study. In this regard, the present study has two broad and interrelated questions on its agenda: how and to what extent socioeconomic status was at issue in determining individuals' legal status, and at what points this relationship between socioeconomic status and legal status intermeshed with concerns about the preservation of the social order. The primary sources that form the basis of this study are *Fetava-yı Ali Efendi*, *Fetava-yı Feyziye me'an-nukul*, *Fetava-yı Abdurrahim*, *Behçetü'l-fetava*, and *Neticetü'l-fetava me'an-nukul*. Apart from that, a group of fatwas belonging to the two 16^{th}-century Ottoman *şeyhülislam*s, namely, Zenbilli Ali Efendi and Ebussuud Efendi are also consulted.

ÖZET

OSMANLI HUKUK KÜLTÜRÜNDE SOSYAL HİYERARŞİ VE STATÜ GÖSTERGELERİ
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Bu çalışma, 16 ila 18. yüzyıllar arası döneme ait Osmanlı şeyhülislam fetvalarında yer alan statü göstergelerini saptamaya çalışmaktadır. Bu çalışmada sorunsallaştırılan temel mesele, Osmanlı bireylerinin ahlaki ve sosyoekonomik statülerine göre farklılaşan hukuki statüleridir. Çalışma boyunca, bu yöndeki bağlantıyı göstermek amacıyla meslek, soy, dindarlık, bilgi ve ekonomik statü gibi bir çok farklı statü göstergesi ele alınmaktadır. Bu bağlamda, mevcut çalışma, gündemine iki genel ve bağlantılı soruyu almaktadır: Sosyoekonomik statü, bireylerin hukuki statüsünün belirlenmesinde nasıl ve ne dereceye kadar rol oynamıştır? Sosyoekonomik statü ile hukuki statü arasındaki bu ilişki hangi noktalarda sosyal düzenin korunmasına yönelik kaygılarla kesişmektedir? Bu çalışmanın temelini oluşturan birincil kaynaklar şunlardır: *Fetava-yı Ali Efendi*, *Fetava-yı Feyziye me'an-nukul*, *Fetava-yı Abdurrahim*, *Behçetü'l-fetava* ve *Neticetü'l-fetava me'an-nukul*. Ayrıca, 16. yüzyıl şeyhülislamları Zenbilli Ali Efendi ve Ebussuud Efendi'ye ait bir grup fetvaya da başvurulmaktadır.

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Note on Transliteration

I use Ottoman Turkish transliteration for words of Arabic origin. For example, *şeyhülislam* is preferred to *shaykh'ul-islam*, *sicil* to *sijill*, and *seyyid* to *sayyid*. For the sake of simplicity, the words that have entered English lexicons have been used without transliteration, such as fatwa, Ulama, sharia, and mufti.

List of Abbreviations

DİA	Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1988-
EI	Encyclopedia of Islam, 2nd ed., Leiden, 1954-

INTRODUCTION

In the present study, I try to identify signs of status in fatwas of Ottoman *şeyhülislam*s from 16th to 18th centuries. The main issue problematized in this study is the varying legal status of Ottoman individuals according to their socioeconomic status.[1] In order to show the link in this regard, various status signs ranging from occupation, to lineage, to piety, to knowledge, and to economic status guide me through the whole process. In this regard, the present study has two broad and interrelated questions on its agenda: how and to what extent status was at issue in determining individuals' legal status, and at what points this relationship between socioeconomic status and legal status intermeshed with concerns about the preservation of the social order? The possible answers to these questions are sought in fatwa compilations, an invaluable source for social history, albeit providing a restricted, edited and filtered view of social reality.

I focus on signs of status in two ways; through the way in which they were included in the inquiries, and through the extent to which the tone of muftis' answers differs according to signs of status presented to them. What is of crucial importance in this regard is to find out whether people's status mentioned in inquiries caused discrimination in favor of or against them in the muftis' responses. However, signs of status that are chosen to be included in inquiries are important in and of themselves, independently of the responses of muftis. Since we accept that fatwas are reflections of social reality, the signs of status the

[1] Lexically, socioeconomic status means an individual's or group's position within a hierarchical social structure. Socioeconomic status depends on a combination of variables, including occupation, education, income, wealth, and place of residence. See, "the definition of socioeconomic status," *Dictionary.com,* 2012, http://dictionary.reference.com/browse/socioeconomic+status.

applicants specified cannot be disregarded. Several questions can help us to understand the matter better: why did applicants include certain signs of status but not others? What were their motives to use these signs? Why were signs of status used in inquiries and responses on legal matters (such as *ta'zir*, marriage, testimony) rather than fatwas on *ibadat* (pious practices, religious obligations)?

In many fatwas, there is no special reference to identities of people in question. But in some others, like the ones consulted in this study, various identity components of individuals were indicated. Then the question arises as to why identity patterns were included in some fatwas and not in others? It would not be far from the truth to argue that signs of status were specified in some inquiries by the applicants who thought they would able to direct the mufti's response in their favor. At other times, when the applicants observed no benefit in presenting them, signs of status related to the applicants themselves and or opposing parties went unrecorded. In this sense, stating any sign of status in their inquiries can be considered as the strategy of the applicants to direct the possible answer of the mufti for the better. However, it should also be noted that it was ultimately the muftis who provided the wording not the applicants. That is to say, an inquiry posed in non-status-conscious terms could well be rephrased as a status-conscious inquiry because certain issues were bound to be status specific, which the applicant may not be aware of. After all, whether preferred to be stated by the applicants or worded in status-conscious terms by the muftis, signs of status in fatwas constitute a fruitful avenue to trace the implications of social hierarchy in the Ottoman world.

In the first chapter, it will be argued that legal reliability of individuals was more or less determined by their place in social hierarchy. In this regard, fatwa compilations will be used in a way to show the link between legal credibility and components of status ranging from occupational status to economic status, to knowledge, and to piety. Related to this, it will also be argued how important material means were to establish one's status as pious, thereby qualifying legal credibility. In order to set the stage for the discussion through what were reflected in fatwas, the ideas pertaining to social hierachy and social inequalities in the writings of the pre-Ottoman Islamic literati and Ottoman literati will be provided. In this connection, focusing on the similarities between the anxieties of the Ottoman elite writers regarding social mobility and the muftis' loyalty to the existing social hierarchy,

the elitist character of fatwas will be discussed. Moreover, the findings of *sicil*-based studies will enable us to evaluate further the extent of the overlap between socioeconomic status and legal credibility.

It will be demonstrated in the second chapter that socioeconomic status of individuals caused a considerable difference on their legal status. The main discussion will be based on the varying *ta'zir* (discretionary punishment by kadi) punishments according to socioeconomic status of offenders. In this connection, fatwas will provide us with a comprehensive picture regarding the extent to which socioeconomic status could be decisive in the punishments the offenders got. The institutionalized legal privileges of the Ottoman world will be shown with reference to three social groups: the Ulama, notables, and *seyyid*s. After that, the link between economic status, law, and social order will be further evaluated through the implications of seclusion in the Ottoman realm; therefore, the focus will be on the term *muhaddere* (secluded, honorable woman).

The third chapter will discuss the Islamic principle of equality in marriage (*kafā'a)* and its reflections in the Ottoman realm through the relevant fatwas. After providing a thematic picture of *kafā'a* in pre-Ottoman Islamic law, the main discussion on the Ottoman context will take place. Through the selected fatwas of Ottoman *şeyhülislam*s, it will be shown to what extent the principle of marriage equality effectively applied in Ottoman society. Due to their strong association with social hierarchy, the focus of this chapter will rather be on some principles such as occupational status, wealth, lineage, knowledge and moral standing while other principles (freedom, religious identity) will only be slightly touched upon since they were relatively better determined in the canon of the Islamic law. In general, the chapter will have three points on its agenda. At the first stage, it will be shown that in reply to the inquiries related to marriage equality, the muftis expressed their opinions in favor of the marriages between the partners of same or similar socioeconomic status. Parallel to this, it will be argued that the muftis contributed to the maintenance of the social order with their sensitivity towards keeping existing differences between social groups. Lastly, the conclusions drawn from fatwas will be compared to the findings of the *sicil*-based studies in relation to the marriage patterns in the Ottoman world.

A. SOURCES AND LIMITS

A.1. Sources

The sources consulted in this study are fatwas from sixteenth, seventeenth, and eighteen centuries. In simplest terms, fatwa can be defined as the non-binding legal opinion of a mufti in reply to the questions posed to him. The primary sources that form the basis of this study are *El-Muhtarat Minel Fetava* (Originally Dated 1525), *Fetava-yı Ebussuud Efendi* (O. Dated 1574), *Fetava-yı Ali Efendi* (O. dated 1692), *Fetava-yı Feyziye me'an-nukul* (O. Dated 1703), *Fetava-yı Abdurrahim* (O. Dated 1715), *Behçetü'l-fetava* (O. Dated 1743), and *Neticetü'l-fetava me'an-nukul (*O. Dated 1800), all of which are compilations of *şeyhülislam* fatwas.

I consult fatwas of two muftis from the 16th century: Zenbilli Ali Efendi and Ebussuud Efendi. Zembilli, the basket man Ali Cemali Efendi, named after his window-hung basket in which inquiries were placed, held the office of *şeyhülislam* for 24 years between the years 1502 and 1526, coinciding the reigns of Beyazid II, Selim I, and Süleyman I respectively.[2] During his period of service, the number of fatwas increased so much that he could not keep step with the inquiries. A selection from his countless fatwas were collected in an opus named *El-Muhtarat Minel Fetava*[3] which I consult in this study. The other 16th century source analyzed here is Fetava-yı Ebussuud of the well-known Ottoman *şeyhülislam* Ebussuud Efendi, best known for his commitment to synthesize Ottoman secular law and sharia. Like Zenbilli Ali, Ebussuud Efendi is also reported to

[2] Abdülkadir Altunsu, *Osmanlı Şeyhülislamları* (Ankara: Ayyıldız Matbbası, 1972) 14-15.

[3] Halil Inalcık. "Djamali." in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), *EI*^{2}, (Leiden: Brill, 1997), 420.

have issued numerous fatwas, some days as many as 1,413.[4] Thus, *fetvahane*, an efficient office within the body of the *şeyhülislam* office, was established under the direction of *fetva emini*, and the fatwa issuance practice was put into more regular and organized basis.[5] His fatwas were compiled by his scribes and disciples such as Bozanzade Mahmud b. Bozan, Veli Yegan, and Kakülüperişan Şeyhi Efendi. Also, there are various compilations attributed to Ebussuud Efendi in various libraries, especially those in İstanbul.[6] Apart from these, some modern scholars have studied Ebussuud fatwas; among which the study by Ertuğrul Düzdağ, including 1001 fatwas of Ebussuud, is the one I consult in this study.[7]

The only 17th century source analyzed here is *Fetava-yı Ali Efendi* which comprises more than four thousand fatwas of Çatalcalı Ali Efendi, who occupied the office of *şeyhülislam* between 1674 and 1686 during the time of Mehmed IV. There are two copies of this source in Süleymaniye library which were compiled during the lifetime of Çatalcalı Ali Efendi in 1689 and 1691 respectively. Having become one of the most popular examples of its genre, *Fetava-yı Ali Efendi* was published more than ten times in 19th and early 20th centuries.[8] The copy which I consult is the one edited by Salih b. Kefevi which is composed of two volumes with Arabic original evidences (*nakl*) placed under each fatwa.[9]

Among the sources of this study, the ones from 18th century constitute the majority. The earliest one of these is *Fetava-yı Feyziye* of Seyyid Mehmed Feyzullah Efendi, one of the most popular Ottoman *şeyhülislam*s. *Fetava-yı Feyziye* is composed of the fatwas issued by Feyzullah Efendi during his period of service in the office of *şeyhülislam* which he occupied two times; after a short period of service in 1688 which resulted with dismissal, he was bestowed the office again and kept until his tragic end in 1703. It is known that the compilation with some editions was finalized after Feyzullah Efendi's

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[4] Uriel Heyd, "Some aspects of the Ottoman fetva," *Bulletin of the School of Oriental and African Studies* 32 (1969), 46.

[5] Heyd, "Some aspects of the Ottoman fetva," p. 47.

[6] Cengiz Kallek, "Fetava-yı Ebussuud Efendi", *DİA*, 1995, Vol. 12: 441-43.

[7] M. Ertuğrul Düzdağ, *Şeyhülislam Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (Istanbul: Enderun Kitabevi, 1972).

[8] Cengiz Kallek, "Fetava-yı Ali Efendi", *DİA,* 1995, Vol. 12: 438.

[9] Çatalcalı Ali Efendi. *Fetava-yı Ali Efendi* (İstanbul: Matbaa-i Amire, 1893).

death but its editor is still unknown to us. Under the title of *Fetava-yı Feyziye maa'n-nukul*, the compilation was published twice; the first one is in 1850 and the second one is in the margins of *Fetava-yı AliEfendi* in 1906-1907.[10] Here I consult the one which was published in 1850.[11]

The second 18th century source which I use is *Fetava-yı Abdurrahim* of Menteşizade Abdurrahim Bursavi Efendi who occupied the office for only one and a half year between the years 1715 and 1716. Despite his short period of service, his fatwa collection, which is composed of more than eleven thousand fatwas, is the most detailed one among the collections published in the 19th century. This published version is composed of two volumes and does not refer to original evidences (i.e. quotations from earlier muftis) but solely includes the inquiries and Abdurrahim's answers to them. Other than the copy without original evidences which I consult here[12], there is also another version edited by Gedizli Mehmed Efendi which includes original evidences as well.[13]

Another source from the 18th century which this study refers to is *Behçetü'l-fetava* of Yenişehirli Abdullah Efendi.[14] Yenişehirli Abdullah's period of service coincides with the so called "tulip period". Although he did not experience a tragic end as Feyzullah, he also lost his position as a result of a rebellion, the 1730 rebellion, aka "Patrona Halil rebellion". Although Yenişehirli's fatwas were compiled during his lifetime, it was a careless edition as to form and order. As such, Mehmed Fıkhi El-Ayni, who once had served Yenişehirli as a scribe, reorganized the compilation. Having added Yenişehirli's later fatwas and inserting original Arabic evidences below each fatwa, El-Ayni named the compilation as *Behçetü'l-fetava*. The compilation was published two times.[15]

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[10] Salim Öğüt, "Fetava-yı Feyziye", *DİA*, 1995, Vol. 12: 443.

[11] Feyzullah Efendi. *Fetava-yı Feyziye me'an-nukul* (İstanbul: Darü't-Tıbaati'l-Amire, 1850).

[12] Menteşzade Abdurrahim Efendi. *Fetava-yı Abdurrahim* (İstanbul: Darü't-Tıbaati'l-Ma'mure, 1827).

[13] Cengiz Kallek, "Fetava-yı Abdurrahim", *DİA,* 1995, Vol. 12: 437.

[14] Abdullah Yenişehirli. *Behçetü'l-feteva me'an nukul* (İstanbul: Matbaa-i Amire, 1849).

[15] Ahmet Özel, "Behçetü'l-fetava", *DİA*, 1992, Vol 5: 346.

The last of the 18th century fatwa compilations forming the basis of this study is *Neticetü'l-fetava* of Dürrizade Mehmed Arif Efendi. As a member of the well-known Ulama family Dürrizades whose about forty members occupied various offices in the Ottoman Empire, Mehmed Arif Efendi occupied the office of *şeyhülislam* three times between the years 1785 and 1798.[16] What is unusual about *Neticetü'l-fetava* is that it does not include solely fatwas of Dürrizade Mehmed Arif but is of a collection of fatwas of various *şeyhülislam*s occupied the office from 1730 onwards. The compilation was published twice in 1821 and 1848[17], and I consult the latter publication.[18]

Apart from these sources, I have partly consulted two important primary sources which are *Fetava-yı Hindiyye* and *Mülteka'l-ebhur*. In this study I depend on the Turkish translations of these two works.[19] *Fetava-yı Hindiyye*, also known as *Feteva-yı Alemgiriyye,* is an Arabic fatwa book covering opinions pertaining to the Hanafi madhhab. At the request of Sultan Aurangzeb Alemgir of Mughal Empire, the book was compiled by a group of Indian scholars between 1664 and 1672.[20] The other source that I have consulted is *Mülteka'l-Ebhur* of Muhammad b. İbrahim Halebi, a renowned Aleppine jurist lived during the time Süleyman I. He is known to have written about twenty works. Based on the works of famous Hanafi jurists, *Mülteka* is the most famous one which became a part of Ottoman madrasa curriculum and was used as a guidebook among the Ulama of later generations.[21] Unlike the other sources consulted in this study, *Mülteka'l-Ebhur* is not a fatwa compilation but of *furu'* (substantive law) genre.

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[16] J. R. Walsh, "Dürrizade", *EI*^{2} Vol. 2: 629-30.

[17] Mehmet İpşirli, "Dürrizade Mehmed Arif Efendi", *DİA*, 1994, Vol. 10: 37.

[18] *Neticet'ül-fetâvâ me'an-nukul* (İstanbul, Matbaa-ı Amire, 1849).

[19] *Fetava-yı Hindiyye*, Translated by Mustafa Efe. (Ankara: Akçağ Yayınları); İbrahim el-Halebi, *Mülteka'l-Ebhur*, Translated by Mustafa Uysal (Istanbul: Çelik Yayınları, 1985).

[20] Ahmet Özel, "el-Alemgiriyye", *DİA*, 1989, Vol. 2: 365-66.

[21] Şükrü Selim Has, "Halebi, İbrahim b. Muhammed, *DİA*, 1997, Vol 15: 231-32.

A.2. Limits

Even if one takes their uniqueness in terms of being situated at the intersection of legal theory and social practice for granted, and puts aside the fact that most of the information provided in fatwas would otherwise have gone unrecorded, studying fatwas for social history brings along certain risks and limitations. This is all the more true for fatwas forming the basis of this study for reasons that will be specified in what follows.

We have two different sets of problems related to our sources. First set of problems are general problems holding true for any particular fatwa. We have enough reasons to take fatwas as products of the interaction between muftis and individuals regarding daily matters. However, several restrictions related to the source call for caution about making general and superficial interferences, and the most important of these pertains to the ability of fatwas in reflecting the social reality accurately. Emphasizing this problem of fatwas as a historical source, Imber argues its limits for studying Ottoman social history due to the reason that their format deliberately removes legal problems from their social context.[22] Related to the matter of the relationship between social reality and fatwas, the question can be reversed in the following way: namely, were the legal opinions of the muftis followed in reality by the applicants? At least theoretically, fatwas were legally non-binding. In other words, neither the individuals nor the judges had to abide by fatwas.[23] In this regard, we should note the possible gaps between the written form of the fatwas and their application in practice. That is to say, it is all ambiguous the extent to which the orthodox attitude in fatwas was put into practice by the applicants. The possible answers to these questions

[22] Colin Imber, "Women, Marriage, and Property: Mahr in the *Behcetü'l-fetava* of Yenişehirli Abdullah," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era, ed.* Madeline Zilfi (Leiden: Brill, 1997), 103.

[23] However, their non-binding character by no means imply fatwas' easy disregard by kadis. Once presented to the court, kadis had to have convincing reasons to disregard fatwas in their decisions. If they disregarded in an unconvincing way, presenters of the fatwa could appeal to the imperial council for annulment, and this might leave the kadi in a difficult position. Mehmet Akif Aydın, *Türk Hukuk Tarihi* (İstanbul: Hars Yayıncılık, 2007), 101. It also can be speculated that at least some disputes were resolved by consulting fatwas without carrying out the issue into the court. Existence of many issues resolved in the family or neighborhood according to the rulings taken from muftis are not of a far possibility.

would not be more than educated guesses, a limitation that calls for case-based *sicil* studies interpreting and situating the findings from fatwas on a more legitimate ground. Thus, we can by no means assume a from end to end overlap between the legal attitude and social practice.

The second set of problems, however, is particularly about the fatwas forming the basis of this study. First of all, the fatwas used in this study are from compilations which were edited and published in the 19th century rather than the original manuscripts. Thus they have been subjected to a selection and reorganization as well as a standardization of the editors. Therefore, we have to be careful about drawing general inferences by using them.

Another point, not as a problem but as a caution, needs to be mentioned beforehand regarding the broad time frame which the present study deals with. The fatwas forming the basis of this study cover a long period of time from the beginning of the 16th to the end of the 18th century. The selection of sources, however, was not arbitrary or accidental but rather a result of an initial concern to see whether certain changes in the attitude of the religious institution could be followed through the fatwas issued by the chief muftis, the head of the religious institution in the Ottoman Empire. To be more precise, I initially intended to see whether, for instance, the Kadızadeli movement of the 17th century, the sociopolitical fluctuations and Islamic revival of the 18th century, or the religious and social reflections of the upheavals that resulted from the blurring of social distinctions were reflected in fatwas.

No noticeable change in the attitude of the muftis has been observed. This may lead the reader to the impression that the muftis who issued these fatwas were all of the similar ideological wings, and that their attitude remained static irrespective of the socioeconomic and political transformations that took place during their terms of office. In his book on the fatwas of Ebussuud, Düzdağ emphasizes the "timelessness" of fatwas, meaning fatwas from different periods, or even different centuries may match verbatim. This is true for the fatwas used in this study too; fatwas from different centuries seem to reflect a monolithic picture of the Ottoman society considering both the inquiries and the responses to them. At this point, it should be noted that this monolithic and static representation of the Ottoman society may be misleading.

From late 16th century onwards, Ottoman Empire underwent serious transformations in socioeconomic and political realms as well as the legal realm. To start with the changes in the legal realm, it should be noted that the relationship between secular law and sharia did not remain static. From the 16th century onwards, social practice was increasingly integrated into sharia as to form and content. In relation with this, during the time of Süleyman I, Ebussuud fashioned the ideal Islamic legal system by means of harmonizing the secular law with sharia.[24] Parallel to this, the importance of sharia increased considerably in the politics of Ottoman Empire during the 17th and 18th centuries.[25] Together with this dominance of sharia and accordingly the office of the *şeyhülislam*, fatwas' importance is also said to increase from the 17th century onwards.[26]

The relation between central authority and religious orthodoxy did not remain the same either. At certain times religious orthodoxy gathered momentum as in the case of Kadızadeli movement and the religious revivalism of the 18th century. Accordingly, as evident in the case of clothing regulations, state emphasis on moral issues also changed from time to time. Although there are indications that there can be changes in the ideological stand of the muftis of different periods, our fatwas do not provide us with cogent evidence in this regard. Unfortunately, in Ottoman historiography too the reflections of the alterations in central ideology on the content and practice of law are still mostly an issue of curiosity. The effects of religious orthodoxy on the ideology and the political attitudes of the central elite have only recently started to receive an academic interest.[27] After a long predominance of the received wisdom which considers Kadızadeli

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[24] Colin Imber, *Ebu's-suùd: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997).

[25] Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (Cambridge; New York: Cambridge University Press, 2010).

[26] Hülya Canbakal, "Birkaç fetva bir soru, bir hukuk haritasına doğru," in *Şinasi Tekin'in anısına: Uygurlardan Osmanlıya, ed.* Günay Kut and F. Yılmaz Büyükkarcı (İstanbul: Simurg, 2005), 258.

[27] Marc D. Baer, *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008); Khaled El-Rouayheb, "The Myth of "the Triumph of Fanaticism" in the Seventeenth-Century Ottoman Empire." *Die Welt Des Islams*. 48.2 (2008): 196-221; idem, "Heresy and Sufism in

movement as marginal and of limited effect both in time and space, the recent tendency shifted the focus in favor of a more detailed analysis of the effects of religious orthodoxy on the ideology of the centre.[28]

Apart from that, it can be said that Ottoman society experienced notable transformations and political turmoil during the 17th and 18th centuries. It has been discussed by several scholars and is generally accepted that distinctions among different social groups in Ottoman society became blurred during the period in question. Although, the concerns related to the preservation of social order have an extensive coverage in other genres of Ottoman political literature written by the members of ruling elite, fatwas do not represent direct reflections of these socioeconomic transformations; rather, they seem to represent a constant orthodoxy. However, this does not rule out the possibility of the existence of certain changes in the muftis' attitude in accordance with contemporary socioeconomic and political issues. In order to come up with an accurate conclusion whether fatwas reflect socioeconomic and political changes, a much more detailed cross examination based on manuscript fatwas rather than those published in 19th century is needed, which exceeds the limits of this study.

B. STATUS AND INDIVIDUAL IN OTTOMAN HISTORIOGRAHY

Various aspects of status in Ottoman society have been subject of Ottoman historiography, although there remains a whole lot more work to be done in this regard. The sources forming the basis of the relevant literature are mostly from the legal realm. No doubt, this is a natural result of the fact that such sources are unique in their ability to reveal the interaction between the ruling class and people from any layer of the society.

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the Arabic-Islamic World, 1550–1750: Some Preliminary Observations," *Bulletin of the School of Oriental and African Studies*. 73.3 (2010): 357-380; Jane Hathaway, "Rewriting Eighteenth-Century Ottoman History," *Mediterranean Historical Review*. 19.1 (2004): 29-53.

[28] See Baer, *Honored by the Glory of Islam*; Mustapha Sheikh, *Qadizadeli Revivalism reconsidered in light of Ahmad al-Rumi al-Aqhisari's Majalis al-abrar* (Unpublished PhD Dissertation, University of Oxford, 2011).

Thus, kadi courts were the institutions "with which for a variety of reasons nearly everyone in the Ottoman empire came into contact – Muslims, Jews or Christians, *reaya* or *askeri*, villagers or urbanites, tribes, visitors from abroad and individuals, as well as groups with different professional, religious or social profiles."[29] The main legal sources exploited by social historians are court records, estate probates, complaint books, marriage records, and partially fatwas. Each serves various purposes of Ottoman historians but each has its own particular shortcomings.[30]

Many historians have exploited court records as a guide to study social history. Although the use of the source is not a recent issue but can be dated back to the 1960s-70s, the way in which court records are used has changed enormously. Particularly noteworthy is the change towards benefitting from court records in a way to examine them with reference to the status of the people involved. In conjunction with this change, the Ottoman court records have been exploited by the historians in a way to analyze the relationship between wealth, prestige, social relations and power on the one hand, and the legal status on the other. Through the data extracted from court records, historians try to provide a full flesh-and-blood portrait of the surrounding societies. In a sense, such studies have shown the variability of justice "according to a person's location in the social landscape-by gender, by class, by place of residence, by religious orientation."[31] Numerous works can be cited in this regard.[32] However, Marcus's study on 18th-century Aleppo, published in 1989,

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[29] Rossitsa Gradeva, "A kadi court in the Balkans: Sofia in the Seventeenth and Early Eighteenth Centuries", in *The Ottoman World, ed.* Christine Woodhead, (London and New York: Routledge, 2012) 57.

[30] For critical analyses on the value of court records as a historical source, see; Dror Ze'evi, "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society*, 5: 1 (1998): 35-56; Abdul-Karim Rafeq, "The Law Court Registers and their Importance for a Socio-economic and Urban Study of Ottoman Syria," in *L'Espace Social de la ville Arabe, ed.* Dominique Chevallier (Paris, 1979), 51-58;

[31] Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley; Los Angeles; London: University of California Press, 2003) 386.

[32] Fariba Zarinebaf, *Crime & Punishment in Istanbul, 1700- 1800* (Berkeley; Los Angeles; London: University of California Press, 2010); Dror Ze'evi, *An Ottoman century: the district of Jerusalem in the 1600s* (Albany: State University of New York Press, 1996); Meriwether, Margaret. *The Kin Who Count: Family and Society*

can be regarded as a turning point regarding the use of *sicil*s as a source of social history because Marcus used the court records in a way to represent Aleppine society with its almost all aspects ranging from social stratification, economy, wealth, power, religion, learning, to marriage, social order, public space, and privacy.

Among other *sicil*-based studies Canbakal's[33] and Ergene's[34] works should be singled out due to their emphasis on the link between socioeconomic status and legal status, and hence their importance for the present study. What these two *sicil*-based studies have in common is their contribution to show how social hierachy and class differences affected operation of the legal process. As a case in point, they argue that members of the Ottoman world were well aware of this strong link between legal status and socioeconomic status which is evident in their findings from Ayntab, Kastamonu and Çankırı respectively. They have shown that there is a marked pattern of people from lower status losing more of the lawsuits they filed against people of higher socioeconomic status than it was other way around and most of the lawsuits took place between members of the same or similar socioeconomic levels.

Apart from that, related to the link between social hierarchy and legal status, role of the local notables has been shown in numerous studies. The relevant studies pointed out that the local notables, who acted as agents between center and provinces, seem to have had a similar role in court affairs which is evident from many cases in which they were

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in Ottoman Aleppo, 1770–1840. Austin: University of Texas Press. 1999; Abraham Marcus, "Privacy in Eighteenth-Century Aleppo: The Limits of Cultural Ideals," *International Journal of Middle East Studies*,18: 2 (1986): 165-183; Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989); Boğaç Ergene, "Social Identity and Patterns of Interaction in the Shari'a Court of Kastamonu (1740-44)," Islamic Law and Society, 15:1 (2008), 20-54.

[33] Hülya Canbakal, *Society and Politics in an Ottoman Town: Ayntab in the 17th Century* (Leiden and New York: Brill Academic Publications, 2006).

[34]Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Boston and Leiden: Brill, 2003).

recorded as agents, witnesses, guarantors, or guardians.[35] Local notables, mostly identified through their honorific titles, were among the primary components of the local courts; they either performed as regular witnesses in courts by virtue of their 'righteousness'[36], or served to the courts in different capacities as scribes, *muhzir* (bailiff), *çukadar* (footman) etc.[37]; Indeed, many officials were chosen by the intervention and confirmation of local notables.[38] It should also be noted that common people, too, could enjoy legal privileges to the extent that was allowed by their social ties and networks. In his study on 18th century Salonica, Ginio argues that local notables felt the need of intervention in legal cases in favor of the litigants affiliated to them by some means or other.[39]

Through court records, social historians have been able to provide new glimpses into the advantages or disadvantages that Ottoman individuals experienced before law according to their socioeconomic status. An enormous contribution has come from gender studies which analyzed women's experiences in the male dominant Ottoman society.[40]

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[35] Işık Tamdoğan. "Büyükleri Saymak, Küçükleri Sevmek: 18. yy Adana'sında Ayanların İlişki Ağları ve İki Farklı İlişki Yürütme Üslubu," *Tarih ve Toplum* (Istanbul: İletişim Yayınları, 2005), 77-96.

[36] Canbakal, *Society and Politics in an Ottoman Town,* 123- 173; Abdul-Karim Rafeq, "Public Morality in the 18th Century Ottoman Damascus," *REMMM*, 55-56, (1990), 191-194; Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, 29.

[37] See; Ronald Jennings, "Kadi, Court and Legal Procedure in 17th c Ottoman Kayseri," *Studia Islamica* 50 (1979), 136; Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire,* 26.

[38] Canbakal, *Society and Politics in an Ottoman Town,* 165.

[39] Eyal Ginio, "Patronage and Violence in the Legal Process in Eighteenth-Century Salonica and Its Province", in *Custom, Shari`a, and State in the Muslim World: Studies in Honor of Aharon Layish, ed.* Ron Shaham (Leiden: Brill, 2007), 111-131.

[40] See, for example, Haim Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa 1600-1700," *International Journal of Middle East Studies* 12 (1980), 231-44; Iris Agmon, "Muslim Women in Court according to the Sijill of Late Ottoman Jaffa and Haifa: Some Methodological Problems," in *Women, the Family and Divorce Laws in Islamic History, ed.* Amira el-Azhari Sonbol (New York, Syracuse University Press, 1995), 126-140; Dror Ze'evi, "Women in 17th Century Jerusalem: Western and Indigenous Perspectives," *International Journal of Middle East Studies* 27 (1995), 157-73; Fariba Zarinebaf, "Women and the Public Eye in Eighteenth-Century Istanbul," in *Women in the Medieval Islamic World, ed.* Gavin

Social historians in gender studies have raised several questions to that effect: to what extent women appeared in the courts; how social and legal experiences of women differed according to class, place of residence, lineage, religious orientation; what were the most common matters in dispute; against whom they brought action and so on. All these questions directly or indirectly ended up with new glimpses to the lives of individuals and their socioeconomic status.

Using various sources including probate inventories, title deeds, transactions, kitchens accounts etc., social historians have also tried to reveal socioeconomic status of the individuals through their properties, personal possessions and consumption patterns. By examining individuals' possessions, these scholars tried to estimate their economic status, class affiliations, religious identity, that is to say, their overall standing in society. In fact, Ottoman scholarship's interest in consumption and consumption patterns does not go a long way back but the study of the issue gained momentum only in the last decade. The book edited by Donald Quataert[41] can be regarded as the pioneering work paving the way for further studies. This book was followed by various other studies.[42] Among many others, Suraiya Faroqhi has produced extensively on this subject.[43] In general, the studies

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R. G. Gambly (New York: St. Martin's Press, 1999), 301- 325; Marc David Baer and Fatma Müge Göçek, "Social Boundaries of Ottoman Women's experiences in Eighteenth Century Galata Records," in *Women in the Ottoman Empire. Middle Eastern Women in the Early Modern Era, ed.* Madeline Zilfi (Leiden; New York; Köln: Brill, 1997) 48- 66; Beshara Doumani, ed., *Family history in the Middle East: household, property, and gender* (Albany: State University of New York Press, 2003).

[41] Donald Quataert, ed., *Consumption Studies and the History of the Ottoman Empire, 1550-1922: An Introduction,* (State University of New York Press, 2000).

[42] Donald Quataert, "Clothing Laws, State, and Society in the Ottoman Empire, 1720-1829". *International Journal of Middle East Studies* 29:3 (1997): 403-425; Tülay Artan, "Forms and forums of expression: Istanbul and beyond, 1600-1800," in *The Ottoman World, ed.* Christine Woodhead (London and New York: Routledge, 2012), 378-409; Leslie Peirce, "The Material World: Ideologies and Ordinary Things," In *the Early Modern Ottomans: Remapping the Empire, eds.* Virginia Aksan and Daniel Goffman (Cambridge: Cambridge University Press. 2007); James Grehan, *Everyday Life and Consumer Culture in Eighteenth-Century Damascus* (Washington: University of Washington Press, 2007).

[43] Suraiya Faroqhi, *Stories of Ottoman Men and Women, Establishing Status Establishing Control* (Istanbul: Eren Yayınları, 2002); Suraiya Faroqhi and Christoph

in this regard have shed light on the overlap between people's consumption patterns and their position in the social hierachy: color and fabric of clothes; size, location, fabric and dependencies of dwellings; the patterns related to food and food consumption as well as furnishings, all have been taken as reference points by Ottoman historians to identify socioeconomic status of individuals in the Ottoman world.

No doubt, all the studies cited here provide alternative keys to unlock various aspects of socioeconomic status of Ottoman individuals. Stated in other words, they all give us invaluable insights into the Ottoman world and provide us with new perspectives regarding the inequalities, hierarchies, and signs of status embedded in Ottoman society. Notwithstanding the momentum that status-related studies have gathered, there is still a considerable lack of knowledge about the link between socioeconomic status and legal status. Although fatwas provide a very promising source to be consulted in this regard, they have not received much academic interest. It is true that court cases too provide a basis to study hierarchy-consciousness. However, fatwas may reveal a much more intricate hierarchy. Particularly, the issue of morality and detailed hierarchy of occupations are nearly impossible to trace throughout the *sicil*s. To the best of my knowledge, while fatwa compilations have been exploited to some extent by scholars[44], they have not been analyzed in a way to reveal the signs of social status and social hierachy reflected in them. In a sense, the present study can be considered as an attempt to make a contribution in this regard.

Neumann, eds., *The Illuminated Table, the Prosperous House: Food and Shelter in Ottoman Material Culture*. Würzbürg: Ergon in Kommission, 2003; Suraiya Faroqhi and Christoph Neumann, eds., *Ottoman Costumes, From Textile to Identity* (Istanbul: Eren, 2004).

[44] Heyd, "Some Aspects of the Ottoman Fetva"; Colin Imber, *Ebu's-suùd: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997); idem, "Women, Marriage, *and* Property*:* Mahr in the *Behçetü'l-fetâvâ* of Yenişehirli Abdullah*,"* in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era, ed.* Madeline Zilfi(Leiden: Brill, 1997) 81-104*;* Gökçen Art, *Şeyhülislam Fetvalarında Kadın Ve Cinsellik* (İstanbul: Çiviyazıları, 1996); Tahsin Özcan, *Fetvalar Işığında Osmanlı Esnafı* (İstanbul: Kitabevi, 2003).

Chapter I

SOCIOECONOMIC STATUS AND LEGAL CREDIBILITY

> "When they are brought into court [these] cultural orientations take on an aspect at once distinct to the law's need for definitive results and the cultural propulsion to maintain the room for maneuver that is seen as an inherent aspect of social order. The qadi will, in most instances, thus try to determine who a person is, not just what happened in the circumstance at issue."[45]

In this chapter, I will seek to examine whether the suggestions above apply to the Ottoman context. To this end, I will deal with the extent to which socioeconomic status of individuals had a bearing on their legal credibility. First, I will present a thematic picture of testimony in the Islamic law in general terms to set the stage for the main discussion related to the Ottoman context. Then, I will present the instances in which social hierarchy was reflected in Ottoman fatwas. In this connection, occupational status, knowledge, wealth, and moral standing will be evaluated as criteria in assessing legal credibility. Throughout the process, the perspectives of pre-Ottoman Islamic literati as well as Ottoman literati on the subject in question will be compared with what was reflected in fatwas.

[45] Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society* (Cambridge; New York: Cambridge University Press, 1989) 41.

I.1. Testimony in Islamic Law

One of the most important components of the pre-Ottoman Islamic legal evidence (*bayyina*) is testimony (*shahada*), the others being acknowledgement (*ikrar*) and the oath (*yamin*).[46] Although written evidence is also taken into consideration, it remains of secondary importance.[47] Hallaq argues that beginning in the 9th century it became almost a universal doctrine that without the support of the testimony of two male witnesses, any document or evidence would remain incomplete, failing to constitute proof in court.[48]

Literally, testimony means certain information.[49] No doubt the certainty of any news is directly proportionate to the reliability of its conveyer. However, the process of determining the reliability of a witness was not free from the existing social hierarchy. Before going into the details of this association between socioeconomic status and eligibility to give legal testimony, a brief discussion of the main principles of testimony in pre-Ottoman Islamic law is in order.

In principle, a witness should be a sane, adult, free, and Muslim. Suits cannot be tried unless two males, or one male and two female witnesses are present. As is evident from this requirement, two female are equal to one male in giving testimony. As for slaves and non-Muslims, they are not entitled to give a legal testimony against or for a Muslim, and all schools agreed on this principle with the exception of Hanbalis, who accept slave testimony.[50] Free Muslim men, however, can give testimony in all kinds of cases except those involving female body parts such as the cases related to menstruation, childbirth, virginity and defects of the female sexual organs.[51]

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[46] Rudolph Peters, "Shahid." in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), *EI*^{2} Vol. 9, Leiden: Brill , 1977, 207-208.

[47] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 82.

[48] Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005) 87-88.

[49] Ferit Devellioğlu, ed., *Osmanlıca-Türkçe Ansiklopedik lûgat* (Ankara: Aydın Kitabevi, 1993), 452.

[50] Peters, "Shahid", 207-208.

[51] Peters, "Shahid", 207-208.

The credibility of the parties in a suit, especially the witnesses was a major concern. Formative period jurists were well aware of the possibility of dishonesty by the parties involved in a suit due to concern of personal benefit. Thus there was strong doubt by jurists of all four schools concerning the judges' ability to distinguish between the right and false testimonies. Although judges could be careful, the social reputation of individuals was thought to be a more reliable criterion to check witnesses' credibility.[52] This was in keeping with the idea that no other information than that found in the Quran, Sunna and the consensus of jurists could be considered indisputable and certain.[53]

Judges did not engage in investigations; their responsibility did not go beyond hearing the litigants, defendants and witnesses. However, a special assistant of the judge, the purifier (*muzakki*), was entrusted with the task of preliminary investigation of witnesses' social reputation since the end of the eighth century. A lawsuit with the testimonies of eye witnesses never arrived at conclusion before the *muzakki* examined and ensured the witnesses' credibility.[54] No doubt, this practice was a natural consequence of the importance attached to oral testimony. However, this procedure was not held independently of the existing social hierarchy. Hallaq reports a relevant event from 9th century in which a kadı's assistant who was responsible for finding reliable witnesses for the court was severely criticized on the grounds that he admitted into court the people who lacked both social reputation and property such as tailors, grocers, etc.[55]

Similar to the necessity of witnesses to events or crimes that were tried in courts, civil lawsuits were also considered to be events requiring witnesses. From the beginning of the 9th century, each town court had its own paid official witnesses, called the *shudul 'adl* (later *shudul hal*), composed of 'the just witnesses' whose social reputation and credibility were approved by an examination of the *muzakki*. Having passed the moral test and their

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[52] Baber Johansen, "Signs as Evidence: The Doctrine of Ibn Taymiyya (1263-1328) and Ibn Qayyim al-Jawziyya (d. 1351) on Proof," *Islamic Law and Society* Vol. 9, No.2 (2002): 170.

[53] Baber Johansen, "Signs as Evidence", 170.

[54] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), p. 62; Johansen, "Signs as Evidence", 171.

[55] Hallaq, *The Origins and Evolution of Islamic Law*, 86.

names having been recorded officially, the just witnesses functioned in a way to check the fairness of the judges' rulings.[56]

Parallel to the importance attached to social reputation, social hierarchy was reflected considerably in legal process. In theory, Islamic legal required all Muslims to be just regardless of their socioeconomic status. In practice, however, it seems that this all inclusive legal notion made concessions to power holders and wealthy people, and these concessions were institutionalized as they became an integral part of the legal theory, as evident in the statute books and fatwa compilations. In what follows, I will turn to the Ottoman world and discuss whether Ottoman fatwas conform to what we know about pre-Ottoman Islamic law. I will try to position my discussion to a firmer ground by using related examples from Ottoman fatwa compilations.

I.2. Occupational Hierarchy and Legal Status

> "The chief element which conditioned stratification in the traditional social estates was occupation. Individuals were assigned roles, positions, status and prestige in an estate, and the hierarchical order between estates as determined by occupation and not property or wealth. It is interesting to note that most Muslim social thinkers regarded occupation as the chief determinant of social ranking, and even individual character, rather than blood ties; except, of course, for the Prophet's family and in some cases the members of a dynasty".[57]

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[56] Johansen, Signs as Evidence", 171; Hallaq, *The Origins and Evolution of Islamic Law*, 86. Hallaq argues that, in general, the witnesses were from well-off social groups whose social prestige and reliability went hand in hand. The convincing link between relationship between socioeconomic status and reliability was shown through the court records of some Ottoman towns, see; Canbakal, *Society and Politics in an Ottoman Town*, 123- 173; Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, 29.

[57] Kemal Karpat, "Some Historical and Methodological Considerations Concerning Social Stratification in the Middle East," in *Commoners, Climbers and Notables: A Sampler of Studies on Social Ranking in the Middle East, ed.* C. A. O. Van Nieuwenhuijze (Leiden: Brill, 1977), 83.

As the lines above clearly argue, occupational status could not be explained solely in economic terms; instead, it was a sociocultural phenomenon through which social positions of individuals were determined. Taking for granted the regional variations in terms of the prestige and moral status attached to a certain occupation, it is almost impossible to imagine any occupation free from standards of judgments of society. This being said, occupation played a crucial role in establishing a person's identity not only in Ottoman or Islamic context that we deal with here in detail but elsewhere too. As a main source of social stratification and inequalities, occupational status profoundly affected individuals' legal status. A vital link was assumed by societies to be between the social reputation of professions and their practitioners'' degree of reliability. Before proceeding to the Ottoman context, a brief account of classical Islamic literature on occupational status is in order.

I.2.1. Occupational hierarchy in the Islamic Culture

Occupational status had been an issue of extensive discussion in Islamic-Arabic literature of which I will present only a selective but rather representative part in the hope of setting up a substructure for the main discussion. In their works, many Muslim scholars provided a social model in which the existence of different occupations was regarded as an inevitable requirement posed by the needs of any society. In other words, simply because no man on his own could be master of all crafts or works, specialization was thought to be required. Thus, practitioners of crafts depended on each other in satisfying their needs, and due to this interdependence, the importance of each craft was accepted. Among many similar ones, Al-Ghazali seems to have expressed his ideas more eloquently regarding the need of specialization and cooperation:

> "The farmer produces grain, the miller converts it into flour, the baker prepares bread from the flour. Further, the blacksmith makes the tools for farmer's cultivation, and the manufactures the tools needed by the blacksmith. The same goes for all those who

engage in the production of tools and equipment needed for production of foodstuffs."[58]

The practical side of the occupational division aside, what is rather material to our discussion is the link between one's occupational status and his position in the social hierarchy which Muslim thinkers propose. Discrimination towards base occupations is quite commonplace, albeit from different perspectives, in the writings of the circles of literati, religious scholars and philosophers. The main axis of discrimination was defined according to the extent to which an occupation required rational capacity; thus, occupations were divided into three main categories: idea-generating occupations (*sina'at fikr*) action-generating ones (*sina'at 'amal*), and those that require a combination of thought and action (*sina'a mushtarika bayn al-fikr wa'l-'amal*).[59]

Parallel to this division, thought-required occupations get the edge over the others, thus the rulers and the philosophers were ranked at the top of the hierarchy.[60] As opposed to the mental effort-requiring occupations which were held in highest esteem, the base occupations were placed at the bottom of social hierarchy of the Muslim thinkers, and their practitioners were regarded to be of lower moral status, and even as the worst people in society as in the account of Al-Mawardi.[61] Although their indispensability was not underestimated, the strong tendency seems to have been in favor of a negative link between base occupations and the value attached to them. For instance, in the view of *Ikhwān* al-

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[58] Mohammad Ghazanfar and Abdul Azim Islahi, *Economic Thought of Al-Ghazali (450-505 A.H / 1058-1111 A.D.)* (Jeddah: King Abdulaziz University Scientific Publishing Centre, 1997), 25.

[59] Louise Marlow, *Hierarchy and Egalitarianism in Islamic Thought* (Cambridge: Cambridge University Press, 2002), 159.

[60] Yasien Mohamed, "Islamic Philosophy of Labor and Crafts: The view of the Ikhwan al-Safa, Isfahani, and Ibn Khaldun", *American Journal of Islamic Social Sciences*, 23:1 (1996): 41.

[61] Juan I. Cole, "Al-Tahtawi on Poverty and Welfare," in *Poverty and Charity in Middle Eastern Contexts, eds.* Michael Bonner, Mine Ener and Amy Singer (Albany: SUNY Press, 2003), 230.

Ṣafāʾ[62], the garbage men's services were vital for the well-being of city, and as such, more important than perfumery, default of which does not harm the city as much as the default of garbage men would.[63] However, they also argue that inequality among people is normal since they differ in intellectual and moral capacity.[64] Al-Jahiz (d. 868) exemplifies such a tendency. He states that "every cupper on earth, regardless of their race (*jins*) and the region from which he originates, loves wine; in the same way, rag-sellers, fishmongers, cattle dealers and weavers are in all cases the worst of god's creation when it comes to the conclusion of contracts and transactions".[65] Even a prophetic hadith is reported on the moral corruption of cuppers and weavers, saying that "men are equal, except for the weaver and the cupper".[66]

The contempt for base occupations carved a niche for itself in the accounts of very prominent Muslim thinkers such as Nasir al-Din al-Tusi (d. 1274), Al-Jahiz (d. 868), Al-Ghazali[67], Ibn Khaldun[68] and so on. The most detailed and representative account in this regard is that of Nasir al-Din al-Tusi (d. 1274) who divides base occupations into further categories with common negative connotations attributed to them, albeit from different angles: For example, the practitioners of the occupations which are repugnant to general welfare such as practicing a monopoly or sorcery are included in the first sub-category. The occupations in the second sub-category included tomfoolery, gambling and minstrelsy, which are considered to potentially destroy virtue. Comprised of the occupations such as tanning, cupping and street-sweeping, the last sub-category of base occupations has as its major characteristic on the repugnance to human nature.[69]

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[62] *This is* the name under which the authors of the famous Rasāʾil *Ikhwān* al-Ṣafāʾ wa-khillān al-wafāʾ conceal their identity. "Ikhwān al-Ṣafāʾ," *Enc. of Islam, Second Edition. Brill Online*, 2012.

[63] Mohamed, "The Islamic philosophy of labor", 39.

[64] Mohamed, "The Islamic philosophy of labor", 39.

[65] Marlow, *Hierarchy and Egalitarianism in Islamic Law*, 162.

[66] Marlow, *Hierarchy and Egalitarianism in Islamic Law*, 163.

[67] Marlow, *Hierarchy and Egalitarianism in Islamic Law*, 164-165.

[68] Maya Shatzmiller, *Labour in the Medieval Islamic World* (Leiden: Brill, 1994), 395.

[69] Marlow, *Hierarchy and Egalitarianism in Islamic Law*, 161-162.

With all this being said, although the Arabic-Islamic literature on occupations is of great importance to understand the mentality and sociocultural realities of its time, the identity of the writers should be noted. The writers of the works on labour and occupation were most of the time among the better-off people.[70] The issue of writer's identity is important to understand how the elites positioned themselves vis-a-vis common people, which was at issue in the case of Ottoman thinkers too as will be seen in detail below.

I.2.2. Occupational Status in Ottoman World

I.2.2.1. Ottoman Thinkers and Occupational Hierarchy

The breaking down of the boundaries between elites and the common people, and a dislike for this situation in no uncertain terms, was among main themes repeated by Ottoman *nasihatname* writers from the 16th century onwards. It is immaterial to our discussion whether these points were the reflections of reality, an issue on which an extensive literature is available.[71] What matters for us is the way in which the concerns of Ottoman elites are reflected. At the core of the social model that the writers praised was a

[70] Shatzmiller, *Labour in the Medieval Islamic World*, 370.

[71] There is a relatively extensive literature on this matter. Bernard Lewis, "Ottoman Observers of Ottoman Decline," *Islamic Studies I* (1962): 71-87; Rhoads Murphey, "The Veliyyüddin Telhis: Notes on the Sources and Interrelations between Koçi bey and Contemporary Writers of Advice to Kings," *Belleten* 43 (1979): 547-571; Douglas Howard, "Ottoman Historiography and the Literature of 'Decline' of the Sixteenth and Seventeenth Centuries," *Journal of Asian Studies* (1988): 52-77;Douglas Howard, "Genre and myth in the Ottoman 'Advice for Kings' literature", in *The Early Modern Ottomans: Remapping the Empire, eds.* Virginia Aksan and Daniel Goffman (Cambridge: Cambridge University Press, 2007): 137-167; Rifa'at Abou-el-Haj, "The Expression of Ottoman Political Culture in the Literature of Advice to Princes (Nasihatnameler) Sixteenth to Twentieth Centuries," *Sociology in the Rubric of Social Science. Professor Ramkrishna Mukherjee Felicitation Volume, eds.* R.K. Bhattacharya and A. K. Ghosh, 1995, 282-292; C. Fleischer, "From Şeyhzade Korkud to Mustafa Ali: Cultural Origins of the Ottoman Nasihatname," in *3rd Congress on the Social and Economic History of Turkey, eds*. Heath W. Lowry and Ralph S. Hattox (Istanbul: The Isis Press, 1990), 67-77.

profession-based stratification. Adapting the social model that had been mentioned by many Muslim thinkers prior to the Ottoman period, Ottoman writers described the Ottoman world based on a social model composed of four main classes (*Erkan-ı Erbaa*): the men of the pen, the men of the sword, the tradesmen, and the agriculturalists.[72] The safety of the world order (*Nizam-ı alem*) was said to be based on the balance between and among these four classes. In order to avoid the danger of the breakdown of this balance, members of each layer were expected and encouraged to act in conformity with the certain dressing and behavior patterns that were traditionally associated with their position. Based on such a rigid division, this model limited chances for mobility.

I would like to cite briefly the most famous examples of this trend in the hope of giving an idea regarding how tightly connected occupation and personal status were in the perception of Ottoman elite writers. In his famous and repeatedly-cited epistle, the Ottoman statesman Koçi Bey, complains about the same situation and attributes a pivotal role to the disturbed balance between social layers in explaining the main problems of the time. Comparing the social and political affairs of his time with those of Süleyman I's "golden" age, Koçi bey draws attention to the unjust appointments due to bribery and nepotism rather than merit. In contrast to the time of Süleyman, Koçi bey argues, the governors are recruited from the ranks of the ruled in relation to the disturbed balance between the four classes.[73]

Having much in common in their complaints and criticism towards the system, two important works preceding Koçi bey's epistle are worth mentioning. In his famous treatise *Nasihatu's Selatin*, Mustafa 'Ali argues that there is a general 'decline' which he explains with the breakdown of the traditional balance between the four classes. On the one hand he complains about the shifts within the lower classes, especially the peasant *reaya*'s migration to the cities, where they joined the ranks of the artisans and stopped paying

[72] Baki Tezcan, "Ethics as a domain to discuss the political: Kınalızâde Ali Efendi and his Ahlâk-ı Alâî," in *Proceedings of the International Congress on Learning and Education in the Ottoman World, ed.* Ali Çaksu (Istanbul: IRCICA Publications, 2001), 109.

[73] Rıfa'at Ali Abou-el-Haj, *Formation of the Modern state: The Ottoman Empire, Sixteenth to Eighteenth Centuries* (New York: Syracuse University Press, 2005), 18-23.

taxes, and on the other, he heavily criticizes the unjust appointments to high offices, among which he emphasizes the inadequacy of the scribes, most probably due to his personal disappointment at failing to follow a scribal career.[74] Hasan Kafi's point of view did not differ considerably; the same four classes were repeated, and the maintenance of the world order was said to require each person's remaining within and acting according to his class. The people had to be treated in a manner consistent with their classes; otherwise the world order would become damaged.[75] As for sane people with legal capacity who did not fit into any of these four classes, Kafi makes a striking remark which he attributes to "some philosophers" without naming them. According to him, outcasts should be forcibly incorporated into the existing four classes; otherwise they could be killed since they were a burden on the members of the four groups.[76] This interesting and striking point further emphasizes the importance that Ottoman thinkers attached to preserving the social order.

The well-known 16th-century Ottoman moralist Kınalızade Ali provides us with a more systematic and philosophical explanation for the four-classed social model. His perception of the ideal society is based on a practical division of labor which requires mutual help and expects everyone to practice the occupations that they are good at. Therefore, the boundaries between the four layers should be maintained and members of each layer should be kept in their original places for the safety of the world order. However, as Tezcan argues, there are significant reasons to suspect the presence of reasons other than practical reasons behind the strong emphasis on the four-classed system they

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[74] Abou-el-Haj, *Formation of the Modern State*, 17; Andreas Tietze, *Mustafa Ali's counsel for sultans of 1581* (Wien: Verlag der österreichischen Akademie der Wissenschaften, 1979), 18; Esra Akın, ed. *Muṣṭafá Alī's Epic Deeds of Artists: A Critical Edition of the Earliest Ottoman Text about the Calligraphers and Painters of the Islamic World* (Leiden: Brill, 2011) 235.

[75] Mehmet İpşirli, "Hasan Kâfi Akhisarî ve Devlet Düzenine Dair Eseri," *Tarih Enstitüsü Dergisi* 10-11, (1979-1980): 251-252.

[76] [Emma akil ve sahib-i teklif iken dört sınıfdan haric olan kimesne nice olmak gerekdür dersen: pes bu makule kimesne ehl-i İslam hükeması katında kendü haline konmamak gerekdür, belki ibram olunup, cebr ile esnaf-erba'adan birine ilhak olunmak gerekdür, ta ki cümle esnaf ehline muzayaka olmaya. Emma ba'z-i felasife hükeması katında bu makule işsiz ve güçsüz kimesne, ki bi-menfa'at olup yürüye, katl olunmak gerekdür dimişler.]. İpşirli, "Hasan Kafi", 252.

argue.[77] In conjunction with the identity of the writers, this model was a reflection of the elitist way of thinking. The four-classed social model was not solely the reflection of a basic need for division of labor for the sake of efficiency but it also marked the thick lines between the elites and the common people. Thus, what frightened Ottoman writers were the attempts by the common people to change their life for the better in a way by adopting so called elite patterns of life. In one of the earliest examples of Ottoman *Nasihatname* literature, for instance, Lütfi Pasha takes a strong dislike against social mobility: he says that the subjects (*ra'iyyet*) should not be indulgent. If they find a way of entering the ranks of soldiers (*sipahi*) or the learned men (*ulema*), they should not patronize their relatives; they can acquire wealth which cannot be prevented and means no harm for the safety of order; however, they should be prevented from reaching the level of soldiers in terms of apparel, horse and property. These distinctions are required to keep the existing boundaries between the social layers.[78]

Matching occupations with a social value, Kınalızade signals the ideological foundations of social stratification in the Ottoman world. Similar to those of some Muslim scholars cited before, Kınalızade Ali's model divides crafts into three in a hierarchical order; honorable crafts, mid-range crafts, and base crafts. Their activities requiring a considerable use of reason, the rulers, viziers, philosophers and soldiers are regarded as members of the first category, and are accordingly the most honorable members of the society. No contempt or honour is attached to the mid-range crafts which include two categories, namely, indispensable activities such as agriculture, and dispensable activities such as goldsmithery. The most detailed category of Kınalızade's model is the base activities which had three further categories within: the ones harmful to the social order such as pimping, profiteering, tale bearing and banditry; the ones repugnant to the grace of humankind such as buffoonery and entertainers; and at the bottommost are the ones repugnant to human nature such as astrology, cupping and tanning.[79]

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[77] Tezcan, "Ethics as a domain to discuss the political", 110.

[78] G. Hüseyin Yurdaydın, "Düşünce ve Bilim Tarihi," in *Türkiye Tarihi (1300-1600), Vol. II, ed.* Sina Akşin et al. (Istanbul: Cem Yayınevi, 1988), 161.

[79] Kınalızâde Ali Efendi, *Devlet ve Aile Ahlakı, ed.* Ahmet Kahraman, Tercüman 1001 Temel Eser, 1970, 25-26.

As the given references suggest, the ideal social model of the Ottoman thinkers was completely based on social stratification. Any deviation from this model was considered repugnant to justice. Telling enough, in the dictionary, the meaning of the term *'adl* (justice) was stated as 'keeping things in their proper place'[80], and the term *zulm*, which is the exact opposite of "justice", was defined as 'putting things to different places'.[81] In view of such a connection between justice and preservation of the world order based on social stratification, it does not come as surprise to see that the reliability of witnesses was determined according to their social class and profession, which were indissociable.

I.2.2.2. Occupational Status and Legal Credibility in Ottoman Fatwa Compilations

Regarding occupational status, our findings in fatwas need to be treated from different perspectives. Firstly, when we look at them from the perspective of muftis, our findings do not conform to the contempt for base occupations by Muslim thinkers. Considering our sources, it seems that the practitioners of base occupations were regarded legitimate witnesses, provided they were qualified in terms of justness. In *Fetava-yı Hindiyye* there is no discrimination in legal status on the basis of profession: the queries related to the legal liability of people of lower status professions such as garbage man, sweepers, porters and practitioners of cupping were replied in a way to confirm their testimony provided that they were just.[82] Ibn Abidin, too, argued for assessing people on the basis of justness rather than occupation, and rejected an automatic discrimination of the practitioners of tanning, weaving, sweeping and cupping.[83] The fatwa below taken from *Fetava-yı Feyziye* similarly takes the justness as base rather than occupation in assessing legal credibility:

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[80] As cited in Canbakal, *Society and Politics*, 131.

[81] As cited in Boğaç Ergene, "On Ottoman Justice: Interpretations in Conflict (1600-1800)," *Islamic Law and Society* 8:1 (2001): p. 75.

[82] *Fetava-yı Hindiyye*, Vol. 6: 524.

[83] Ibn-i Abidin, *Reddü'l- Muhtar*, Translated by Ahmed Davudoğlu (İstanbul: Şamil Yayınları, 1982), 12: 492.

Is the porter Zeyd eligible to give a legal testimony? Answer: Yes, if he is just.[84]

Since they were the members of the ruling elite, the muftis' major concern seems to be the moral aspect of occupations. Under no condition did they approve the credibility of people who earned their livelihood from ill-reputed occupations. The people whose professions were religiously forbidden, and traditionally regarded as harmful to the social order, were excluded from the muftis' pool of just witnesses. This sensitivity of the muftis is not surprising, given that they were members of the ruling class, and in a sense responsible for safeguarding the social order. Related to their bad reputation and the social contempt attached to them, some occupations were subjected to the close surveillance by the state. Acting with suspicion towards occupations of ill repute such as the brokers and slave-dealers, the state resorted to the surety system which held responsible the members of these occupations for checking one another's behavior.[85]

Included among them were entertainers who were morally suspected and held with a strong contempt in the fatwa compilations. According to Ibn Abidin, practicing singing as profession for money was religiously forbidden, thus violating the right of giving legal testimony.[86] Taking a negative attitude towards them, Ibn Kemal included the jugglers and instrument players in the category of unreliable witnesses by profession.[87] Mostly caused by the moral concerns which regarded male dancing as an activity going hand in hand with sodomy and alcohol consumption, male dancers also lost their legal credibility as far as the related fatwas concerned:

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[84] Hamal olan Zeyd'in şehadeti makbule olur mu? El-cevab: Adil ise olur. *Fetava-yı Ali Efendi*, 1: 361.

[85] Eunjeong Yi, "Guild Membership in Seventeenth Century Istanbul: Fluidity and Organization," in *Crafts and Craftsmen of the Middle East: Fashioning the Individual in the Muslim Mediterranean, eds.* Suraiya Faroqhi and Randi Deguilhem (London; New York: I. B. Tauris, 2005), 59.

[86] Ibn-i Abidin, *Redd'ül-Muhtar*, Vol. 12: 516.

[87] Ahmet İnanır, *Ibn Kemal'in Fetvaları Işığında Osmanlı'da İslam Hukuku*, Unpublished PhD Dissertation: Istanbul Üniversitesi, 2008, 142.

> Would the testimony of Zeyd, who is a dancer dancing in gatherings, be valid? Answer: It would not.[88]
>
> Given that Zeyd plays tambour and dances in certain places, would his wife Hind get automatically divorced? Answer: She would not if Zeyd does not consider his activities as halal, but he should be prevented from doing so by heavy discretionary punishment and torture.[89]

The practitioners of brokerage (*dellallık*) were among the less prestigious and much suspected members of the Ottoman world. A strong hostility and mistrustfulness was vocalized against them both in literary accounts and fatwa compilations. For instance, the writer of *the Surname-i Humayun*, the visual book for 1582 circumcision festivity, criticizes the public criers for the reason that they are "greedy for money, blindly seeking profit, auctioning off even their property before their death and not opening their mouths without demanding money".[90] The Muftis were frequently asked for a ruling regarding brokers' legal credibility. Whatever the reason of this frequency, it is certain that some applicants were troubled with the testimony of brokers in their cases. Muftis in return seem to be equally negative, at least doubtful, about the eligibility of brokers: some responses are negative while some others have the initial phrase of "if they are just". While they are considered to be liars who mislead people in order to sell his goods, thus not deemed eligible to give legal testimony by Ibn Abidin[91] and Ibn Kemal,[92] it is only *Fetava-yı Feyziye* which does not automatically reject the broker testimony:

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[88] Cemiyetlerde rakkaslık eden Zeyd'in şehadeti makbule olur mu? El-cevab: Olmaz. *Fetava-yı Feyziye,* 298.

[89] Zeyd bazı mahalde tambur çalıp raks eder olsa böyle etmekle zevcesi Hind boş olur mu? El-cevab: istihlal etmeyecek olmaz lakin tazir-i şedid ile zecr ve men olunur. *Fetava-yı Ali Efendi*, 1: 63.

[90] Gisela Prochazka-Eisl, "*Guild Parades in Ottoman Literature: The Surname of 1582,"* in *Crafts and Craftsmen of the Middle East: Fashioning the Individual in the Muslim Mediterranean, eds.* Suraiya Faroqhi and Randi Deguilhem (London; New York: I. B. Tauris, 2005), 50.

[91] Ibn-i Abidin, *Redd'ül-Muhtar*, Vol. 12: 506.

[92] İnanır, *Ibn Kemal'in Fetvaları Işığında Osmanlı'da İslam Hukuku*, 142.

> Would the public crier Zeyd's legal testimony be valid? Answer: It would if he is just.[93]

When we look at from the perspective of the applicants, however, it seems that occupational status mattered considerably in assessing one's credibility. Regardless of the tone of the muftis' answers, frequency of such inquires questioning reliability through occupational status is valuable enough in itself. A look at frequently-cited occupations whose practitioners' credibility was questioned, one realizes the common aspect of these occupations is their being at the bottom of social hierarchy. Irrespective of whether the applicant was plaintiff or defendant, it is certain that occupational status of witnesses could be apple of discord between the opponent parties in a suit. A point which I would like to highlight is the question of why the applicants felt the need to present the occupational status of witnesses in their inquiries. This is important because we have many other fatwas related to witness credibility in which no indication of occupational status is present; instead the applicant simply inform the mufti about justness or unjustness of the witness in question. This suggests that occupational status of witnesses were presented only when lower status occupations were at hand.

When we look at from the perspective of inquiries, a second point strikes the eye that the credibility of court officials was questioned as frequently as that of the practitioners of lower status occupations. Considering the court officials, it is almost clear that the fear of corruption annoyed the applicants of such queries. In other words, court officials were thought to have means to direct the legal process in favor of the opposing party. In addition to this, it is also argued by several scholars that court officials were from among the notable people, at least affiliated to them, besides the direct intervention of notables to the selection and appointment process of court officials, especially in the provinces.[94] This

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[93] Dellal olan Zeyd'in şehadeti makbule olur mu? El-cevab: Adil ise Olur. *Fetava-yı Feyziye*, 295.

[94] Jennings, "Kadi, Court, and Legal Procedure in 17th C. Ottoman Kayseri: the Kadi and the Legal System", 133-172; Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 6; Canbakal, *Society and Politics in an Ottoman Town*, 165.

signifies the extent to which the court officials were placed at the heart of power relations, thereby occurring utterances regarding their credibility.

> Would the testimony of the court bailiff (*muhzır*) Amr be valid in Zeyd's case? Answer: It would.[95]
>
> Would the testimony of the court clerk Amr be valid in Zeyd's case? Answer: It would.[96]
>
> When the court guard (*çavuş*) Bekir, who is just, gives testimony in a certain case which Zeyd and Amr involved in as opponent parties, can Amr refuse Bekir's testimony on the grounds that he is court guard? Answer: He cannot.[97]

I.3. Knowledge-Based Division: *Alim* and *Cahil*

As a key to understand many points pivotal to this study, the sharp contrast between the high culture to which the elites belonged and the low culture attributed to common people by elite writers needs to be mentioned. Both the cited works of the Ottoman thinkers and the fatwa compilations are replete with the terms *'alim* (learned men) and *cahil* (ignorant). Having brought into question in almost all spheres of everyday life ranging from legal to marital and to professional affairs, intellectual capacity and knowledge seems to be one of the main markers of difference between the two main social groups in the Ottoman world, namely, *al-khawass* (special people) and *al-'awamm* (ordinary people). As Messick argues such a division opposes to the egalitarian discourse of the sharia which has a strong emphasis on a collective, shared, and undivided Muslim community as evident in constructs such as "the notion of umma, the community of Muslims; the 'ibad, the believers; and al-Muslimin, the Muslims, as well as in the

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[95] Zeyd'in müddeasına mahkeme muhzırı olup adil olan Amr'ın şehadeti makbule olur mu? El-cevab: Olur. *Fetava-yı Ali Efendi*, 1: 354.

[96] Zeyd'in müddeasına mahkeme katibi olup adil olan Amr'ın şehadeti makbule olur mu? El-cevab: Olur. *Fetava-yı Feyziye*, 294.

[97] Zeyd, Amr ile bir hususa müteallik davasında Zeyd'in müddeasına çavuş olan Bekir-i adil şehadet eylese Amr mücerred Bekir çavuş olmakla şehadetini tutmam demeğe kadir olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi*, 1: 354.

institution of the mosque, locus of collective gathering for prayers led by a layperson (known as an imam)".[98]

In social perception, what was meant by "knowledge" was a good comprehension of Islamic culture, history, and religious sciences. In one sense, the emphasis on knowledge provided a sophisticated explanation for social inequalities because culturally the need of learning was assumed to be a religious duty, expected from and exhorted to anyone regardless of socioeconomic means. Knowledge was considered on such a preferential basis that even women, whose public appearance had always been approached with caution and limited to the exceptional cases, were pardoned when they went out for demanding knowledge since their husbands were ignorant.[99] In the view of Ottoman moralists, there were three kinds of people; the learned, the learners, and the ones who were like a fly which generally settled on the faces of the animals such as sheep and goat.[100]

The muftis' ruling was in favor of the veneration of knowledge and knowledgeable everywhere, including within family: while they were told to treat their children equally, the fathers were encouraged to hold their learned children in the highest esteem and treat them better.[101] In tandem with this, the mufti ruled in favor of the studying children's being supported by their families even after reaching adulthood.[102]

Thus, a vital role was attributed to knowledge and it was decisive in establishing a person's social status. As such, fatwas prove a strong consciousness towards assuming an inextricable link between the witnesses' degree of religious knowledge and their justice:

> Given that when the judge asked about the terms and conditions of Islam the witnesses knew its terms and conditions but did not know the *kunut* prayer and the similar ones,

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[98] Brinkley Messick, *the Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993), 154-155.

[99] Zembilli, *El-Muhtarat Minel Fetava*, 54-55.

[100] Mehmet Ali Ayni, *Türk Ahlakçıları* (Istanbul: Kitabevi, 1993), 73.

[101] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, 87.

[102] Given that the wealthy Zeyd's adult son receives education and thus he is not able to make money, would his maintenance need to be paid by his father? Answer: Yes, it would. [Zeyd-i ganînin oğlu Amr-i baliğ, tahsîl-i ilmde olmağla kâr-i kesble kadir olmayıp, fakir olduğu takdirce, nafakası babasına lâzım olur mu? El-cevab**:** Olur.] Düzdağ, *Ebussuud Fetvaları,* 180.

would their testimony be valid? Answer: It would be if they are just.[103] Would the testimony of Zeyd and Amr who do not know main principles of Islam be valid? Answer: It would not.[104]

Given that Zeyd is a man knowing none of the obligatory, necessary and Sunna aspects of the prayer, performing the prayer negligently, not knowing the worship and its reward, engaging in tittle tattle, eating publicly, and not having justice, would his testimony be valid? Answer: It would not.[105]

Would the testimony of Zeyd who does not know the principles of Islam be valid? Answer: It would not.[106]

This emphasis on knowledge served as a legitimate ground to justify the existing social hierarchy; ignorance and the lower classes were strongly associated with each other while the upper classes' position was ideologically vindicated. It can be said that emphasizing the dichotomy between the elite and lower classes, that is to say knowledge versus ignorance, to a degree served naturalization of social stratification. In the models of professional hierarchy mentioned by jurists and thinkers, the common feature of the top professions was expressed as their being done by means of intellectual capacity rather than by manual work. For the same reason, the special status attached to the Ulama as the heirs of the Prophet was among the themes kept repeated in medieval Islamic literature.[107] By taking advantage of the value that Islamic culture set on knowledge, and posing their own world perception in their writings, the Ottoman literati unsurprisingly allocated a highly-prestigious seat to themselves. They expected the respect of the ignorant, common people. The following lengthy quotation from Mustafa Ali clearly demonstrates the primary

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[103] Bir hususda Zeyd'in üzerine şehadet eden şahidlere hakim şerait-i İslamı sual eyledikte mezburlar şerait-i islamı bilip lakin kunut duasını veya bedelini bilmeseler şehadetleri makbule olur mu? El-cevab: Adil ise olur. *Fetava-yı Abdurrahim*, 2: 402.

[104] Şerait-i İslamı bilmeyen Zeyd ve Amr-ın şehadetleri makbule olur mu? El-cevab: Olmaz. *Neticetül´ Fetâvâ*, 307.

[105] Salâtın ferâizin ve vâcibâtın ve sünnetin bilmeyip, ve namazı alaca kılıp, gammazlık edip, Kunutu ve bedelini bilmeyip, pazarda ta'âm ekl edip ve bi-l-cümle kat'â adaleti olmayan Zeyd'in şehâdeti makbule olur mu? El-cevab: Olmaz. Düzdağ, *Ebussuud Fetvaları,* 137.

[106] Şerait-i İslamı bilmeyen Zeyd'in şehadeti makbule olur mu? El-cevab: Olmaz. *Behçetü'l-Feteva*, 400.

[107] Louise Marlow, "Kings, Prophets and the 'Ulama in Mediaeval Islamic Advice Literature", *Studia Islamica* 81, (1995): 110.

importance attached to learned men, even vis-a-vis another elite position, on the one hand, and the overlap between ignorance and common people from the perspective of an elite on the other:

> "According to this humble one, on the other hand, to give precedence to the pen is [for the following reasons] an obvious conclusion. First, in the a'la-'i 'iliyyin, the highest heaven and the supreme sphere, where the divine ordinance and secrets of faith arose, the Tablet and the Pen were present, while the firm sword was not. Second, it was at all times manifest that, in the hands of those who write, the sword was that which serves the pen. [These] I argue, brought auspiciousness of the pen, ultimately, it is impoverished and overwhelmingly destitute. And if the pen does not gain the service of the sword, its connection to the excellence of knowledge and virtue is hidden. As such, because the pen is the spigot of the pleasant waters of knowledge, and because, in essence, the sword usually finds fame amongst the commoners and the ignorant, it is again the pen, in my opinion, that deserves precedence".[108]

This being said, Kınalızade Ali's statement comes as no surprise; he says that an authority is needed to preserve the social order, which was under threat of being harmed by the self-interests of people, "especially the common people whose appetites are not well-refined and are marked by evil".[109] The content and emphasis in such texts cannot be assessed in itself regardless of the identity of its author and the context in which they appeared. For the same reason, the emphasis on the preservation of the world order in the texts at hand was caused in no small part by their authors' social identities, including the fatwa-issuing muftis. According to a fatwa from Zembilli Ali Efendi, the dichotomy of *'alim* and *cahil* takes center stage; having this dichotomy in mind, Zembilli considers normal the mistakes that common people make in reading some suras during prayer for the reason that they are ignorant.[110]

According to Ibn Abidin, the testimony of an ignorant against a learned man was not admissible on the grounds that by shirking his responsibility to learn the main principles of Islam the ignorant had become dissolute. By the same token, the judge had the right to decline such peoples' right to give legal testimony. Diametrically opposed to the definition of the ignorant, the learned man was assumed to grasp the meaning of the complex

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[108] Esra Akin, ed., *Mustafa Ãli's Epic Deeds of Artists* (Leiden: Brill, 2011), 183.

[109] Tezcan, "Ethics as a Domain to Discuss the Political", 117-118.

[110] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, 24-25.

statements (*terkib*), to comment on various matters, and to search for the truth.[111] Unlike Ibn Abidin, Ali Efendi did not express an opinion in favor of the invalidity of an ignorant's testimony against a learned men. Nevertheless, the inquiries are noteworthy in themselves presenting us the awareness of sociocultural and economic differences and how these differences were somehow incorporated into legal processes, thus giving us a chance to access their mentalities to the degree possible.

> Can Amr, one of the Ulama, reject Zeyd's testimony against him on the grounds that Zeyd is not from the Ulama? Answer: He cannot.[112]
>
> Would the testimony of the ignorant Zeyd, who is just, be valid on the learned Amr regarding an issue? Answer: It would.[113]

These two fatwas are important in terms of their ability to show the dichotomy between learned men and common people. Although the muftis' rulings were not in line with the demands of the members of the Ulama, the demands are valuable in themselves: in one sense social hierarchy matters here; the members of the Ulama look askance at the testimonies of people who were not in the same status with them.

I.4. Piety, Morality, and Legal Status: Who was just (*Adil*)?

Other than occupational status and knowledge, two other main criteria were used by muftis in assessing witness reliability; namely, being pious (fulfilling the religious duties) and being moral (avoiding morally disapproved acts). In the first category, the most frequently referred religious duty was the daily prayers which, Ebussuud proposed, should

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[111] Ibn-i Abidin, *Redd'ül-Muhtar*, Vol. 12: 505.

[112] Ulemadan olmayan Zeyd bir hususda Ulemadan Amr'ın üzerine şehadet ettikte Amr mücerred Zeyd Ulemadan olmamağla şehadetini tutmam demeğe kadir olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi*, 1: 355.

[113] Adaleti olan Zeyd-i cahilin bir hususda Amr-ı alim üzerine şehadeti makbule olur mu? El-cevab: Olur. *Fetava-yı Abdurrahim*, 2: 404.

be performed under any circumstances;[114] and failing to do that would obviously result in losing credibility to a give legal testimony.

> Would Zeyd who got into the habit of not performing the daily prayer be eligible to give legal testimony? Answer: He would not.[115]

> Can a worker and someone who does not perform the daily prayers be considered just? Answer: Never. Anyone who considers such a person as just should be dreaded.[116]

In the last fatwa, the connected use of worker and someone who did not perform daily worship also strikes the eye. Interestingly, neither the applicant nor the mufti makes any distinction between them although they point to two completely different aspects of status; that is, while worker symbolizes occupational status, not performing daily worship has to do with moral status. In that sense, this fatwa supports the assumption that people of lower socioeconomic status could easily be associated with immorality or impiety.

Like the principle regarding the daily prayers, anyone who did not attend three Friday prayers was considered dissolute. Exceptions of this rule were people with disabilities, people living away from a city, and people who did not attend prayers due to the dissoluteness of their imam.[117] No other reasons were tolerated; a reliable Muslim had to give priority to prayers, including the Friday prayers, over everything.

> Would Zeyd's testimony be valid if he undertakes trade on Friday instead of attending the Friday prayer? It would not if he is unjust.[118]

Despite of this rigorous link between justness and performing religious duties, performing religious duties regularly was not simply a matter of piety. Related to religious

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[114] Ba'zı müslümanlar "çıbanlarım vardır ba'zı dahi "yaralarım vardır" deyu i'tizâr edip namaz kılmasalar, şer'an özür olur mu? El-cevab: Namaza özür olmaz, kanı akarken dahi kılınmak lâzımdır. Düzdağ, *Ebussuud Fetvaları,* 59.

[115] Terk-i salat adeti olan Zeyd'in şehadeti makbule olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi,* 1: 357.

[116] Bî-namaza ve 'âmile 'âdil denilir mi? El-cevab**:** Ne'ûzübillâh, diyen kimselerden (küfürden) havf olunur. Düzdağ, *Ebussuud Fetvaları,* 59.

[117] *Fetava-yı Hindiyye*, Vol. 6: 518.

[118] Zeyd, cum'a günü cum'a namazına varmayıp bey' ü şirâda olsa şehâdeti makbul olur mu? El-cevab: 'Âdile olmayıcak olmaz. Düzdağ, *Ebussuud Fetvaları,* 137.

duties, it is crucial for our purposes to note the direct link between certain types of wealth and performing religious duties. In other words, establishing one's status as pious could be strongly related with financial means. Putting aside the religious obligations such as pilgrimage and alms which could not be possible without economic capital and hence were required of who could afford them, some other basic obligations including daily prayers were also related to wealth. According to a fatwa, a person working for someone should not attend the Friday prayers in order not to prevent his patron's profit. Similarly, fasting should also be renounced since it could lead in turn to performance decline for employees.[119] Considering the social reputation that these prayers provided to their practitioners on the one hand, and the money and free time required to perform some of the religious obligations on the other, we are led to conclude that wealth and property created more opportunities to engage in socially prestigious acts such as performing prayers regularly, or doing charity works etc., and consequently, to be socially *persona grata.*

Apart from performing prayers, there are many behaviors which were considered socially and morally deviant by the muftis: playing games such as backgammon, chess, as well as the games of ring, tray, and egg; playing and performing music; pigeon-breeding all these acts associated with immorality, thereby violating justness. Accordingly, the people who failed at performing religious duties, or engaged in such morally-suspected acts were considered dissolute, thus ineligible to give legal testimony. However, the matter of dissoluteness was not free from social hierarchy. Related to this, *Fetava-yı Hindiyye* comes up with a striking report from Abu Yusuf (d. 798), a notable Hanafi jurist, that if the dissolute man is a person holding a notable position in the society, his testimony is valid.[120] In this connection, it is not coincidental that we do not encounter with any cases in which wealthy people are accused of being immoral (*fasık*) or impious (*facir*), a point confirming that wealth and nobility are the criteria that somehow automatically generated reliability.

In terms of its relationship with social hierarchy, we should note another aspect of the link between the concerns regarding the maintenance of the social order and the issue of *adl*. The crucial question in this regard is who was responsible for the maintenance of the social order. For instance, who was consulted when establishing a witness's morality or

[119] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, 34-35.

[120] *Fetava-yı Hindiyye*, Vol. 6: 517.

immorality? The relevant studies from the secondary literature show how social hierarchy mattered in this regard. In several studies, we are informed that elites served a decisive function in the courts as reliable witnesses, or as the agencies consulted about moral standing of offenders or prospective witnesses. Regarding pre-Ottoman Islamic judicial process, we learn from Hallaq that witnesses were from well-off social groups whose social prestige and reliability went hand in hand.[121] As for the Ottoman context, among many similar studies, Canbakal and Ergene are the ones who most clearly addressed that elites nearly monopolized *adl* witnesses' pool in the courts in addition to the various official court services they engaged in.[122] As another aspect of the link between socioeconomic status and reliability, Rafeq points to the role that the notables of played in determining moral status of neighborhood inhabitants through the example of 18th century Damascus[123] He shows that the people who combated against "evil-doers" were mostly from the higher echelons of society. These examples suggest that by virtue of their socioeconomic status, elites not only could establish their status as reliable but also were closely involved with assessing moral status of other people. In a sense, they were responsible for safeguarding the social order while people of lower status were kept under control with regard to the possible danger they could create for the safety of the order from the elite perspective.

Conclusion

Fatwas suggest that the elite certainly enjoyed special privileges before the law. In other words, the legal credibility of wealthy people was a self-appointed phenomenon which was created by virtue of their status. Standing in stark contrast to the self-evident

[121] Hallaq, *The Origins and Evolution of Islamic Law*, 86.

[122] Canbakal, *Society and Politics in an Ottoman Town*, 123- 173; Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, p. 29.

[123] Abdul-karim Rafeq, "Public Morality in the 18th Century Ottoman Damascus,"*Revue du monde musulman et de la Méditerranée* Vol. 55/1, (1990): 180-96.

rectitude of elites, the people of lower socioeconomic status frequently went through a moral and social test whose measures were mostly reflections of elites' way of thinking. Thus, what someone needed to qualify for legal credibility was not only good moral standing but also a good position in the socioeconomic hierarchy. The two antagonisms, one between *alim* and *cahil*, and the other between upper status occupations and base occupations, which occur frequently in fatwa compilations, seem to support the relationship between status and reliability in sociocultural perception.

Reflecting such a perception, the emphasis on preservation of the social order on the one hand, and the contempt for the common people and practitioners of base occupations seem to have gone hand in hand in fatwa compilations and the literature examined. In other words, while the boundaries between various social classes and indispensability of base occupations were thought to be essential for the safety of social order, immorality and ignorance were attributed to the lower classes in a way legitimizing the compartmentalized social model.

Thus the identity of the writers emphasizing social order and attributing inferiority to the lower classes is important to understand the whole discussion on socioeconomic status and legal credibility. However, it should also be noted that awareness of socioeconomic status was not specific to upper classes; instead, the common people could also present a similar consciousness since they shared the same cultural horizons with the upper classes, though located on its two opposite sides. Thus we can assume that common people' perception of justice and their attitude towards social stratification and the safety of social order did not differ much from that of upper classes, an issue which will be further discussed in the next chapter.

Chapter II

TA'ZİR AND SOCIOECONOMIC STATUS

II.1. *Taz'ir* in the Islamic Law

In general, there are three types of crime in Islamic law: *hudud*, *qisas* and *ta'zir*. Hudud crimes are the ones whose punishments are determined in the Quran and Sunna such as apostasy, transgression, theft, highway robbery, adultery, slander and drinking alcohol- whereas the *qisas* crimes are not determined in the Quran, and as such, decided according to the legal doctrine and judicial process. These are murder, voluntary homicide, involuntary homicide, intentional crimes against the person and unintentional crimes against the person.[124]

On the other hand, *ta'zir* means discretionary punishment by the judge for the minor offences for which no textual punishment (*hudud*) is specified. It takes the form of imprisonment, fines, and physical punishments by hand, whip or stick, *ta'zir* punishments should be lower than the lowest punishments of other two categories.[125] However, Heyd argues that the number of strokes could be much more than what is stated by sharia.[126] Also, for instance, *hadd* punishments cannot be applied upon suspicion whereas *ta'zir* is

[124] M. Cherif Bassioni, "Crimes and Criminal Process," *Arab Law Quarterly*, Vol. 12, No. 3 (1997): 269.

[125] M.Y. Izzi. Dien, "Taʿzīr." Encyclopaedia of Islam, Second Edition. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Brill Online, 2012. Reference. Sabanci University. 16 April 2012

[126] Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 271-74.

obligatory if there is suspicion. Related to its being not as severe as *hadd* punishments, which are not applicable to minors, *ta'zir* punishments do not differentiate between minor and adults.[127]

In most basic terms, *ta'zir* aims at protecting the social order, and in order to do that, any conduct thought to pose danger to social order can be punished. By *ta'zir*, it is intended to make individuals to desist from their "bad" or "inappropriate" habits. Thus *ta'zir* is corrective in feature. In deciding *ta'zir*, judges are assumed to consider the social interest, rehabilitation of the offender, the claims of the victim, and correction for violation of a regulatory norm.[128] In what follows, I will try to show the relationship between status and *ta'zir* punishments by using Ottoman fatwa compilations. My discussion will be based on two interrelated pillars: On the one hand, I will focus on the question how people of different socioeconomic status get different punishments for the same crime, and on the other, I will present the conducts that were not considered as crime but became crimes when committed against a person of high status, a notable, Ulama etc. Three denominators of social status will occupy the centre ground of my discussion to show the varying positions of Ottoman individuals vis-a-vis law according to their status: Being a member of the Ottoman ruling class, either from the religious institution or military ranks, being a descendant of the Prophet, and being an honorable woman.

II.2. *Ta'zir* and Status in *Şeyhülislam*s' Fatwas

When Ottoman fatwa compilations are analyzed, the elite's advantageous position before law appears striking. These advantages are reflected in fatwas in two ways: at times, members of the elite enjoyed the privilege of immunity from punishment for crimes which would require punishment when committed by someone from among common people. At other times, when the aggrieved party was of elite status, even the simple revilements, which would otherwise be of no legal consequence, required punishment of the offender.

[127] Dien, M.Y. Izzi. "Taʿzīr." *EI*^{2}, Brill Online, 2012.

[128] Bassioni, "Crime and Criminal Process", 270.

In general, *ta'zir* parts of the legal compilations start with typical inquiries in which the muftis are asked for a ruling on the descriptive features of *ta'zir*. These selections bring forward different opinions from medieval Islamic jurists. Accordingly, the lightest type was said to be composed of three lashes whereas the heaviest type was composed of thirty lashes. According to a report from Hanafi jurist Abu-Yusuf, however, the maximum of *ta'zir* was said to be as high as seventy five lashes.[129] Providing different accounts and drawing attention to the difference between them, *şeyhülislam* Abdurrahim Efendi left it up to the discretion of the judge.

> What is the amount of heavy *ta'zir*? Answer: It is thirty nine. According to a report from Abu Yusuf, it is seventy five, yet another report says that it is seventy nine. Since there is difference of opinion, it is left to the judge to decide.[130]

Although the chief muftis transmitted the opinions of the earlier jurists and left the decision to the judge's preference, they also clearly indicated the link between status and criminal charge. The fatwa below from the chief mufti Ibn Kemal proves to be corroboration for the fact that if one aspect of *ta'zir* is its variability according to the type of the crime, the other aspect of it is its variability according to the position and status of the offenders:

> What is *ta'zir*? Answer: there is a *ta'zir* proper to the situation of each person. The decision related to this matter is left to the judge. Up to one hundred strokes, it is *ta'zir*, and even the long term imprisonment is *ta'zir*.[131]

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[129] Halebi, *Multeka El-Ebhur*, vol. 2: 286-87.

[130] Ta'zir-i şedid ne miktar celdedir? El-cevab: Otuz dokuzdur. Ebu Yusuf'dan zahir rivayette yetmiş beştir rivayeti uhrada yetmiş dokuzdur. Ceraimde tefavüt vardır hakim bu nazardan ne miktar ile inzicaran-ı fehm ederse ona ihtiyar eder. *Fetava-yı Abdurrahim*, 1: 105.

[131] Ta'zir-i beliğ nedir? El-cevab: Her kimsenin haline münasip ta'zir beliğ vardır. Ol hususda rey kadı'nındır. Yüz değneğe dek ta'zirdir haps-i medid dahi ta'zirdir. İnanır, Ahmet. *İbn Kemal'in Fetvaları Işığında Osmanlı'da İslam Hukuku*. Unpublished PhD Dissertation, İstanbul Üniversitesi Sosyal bilimler Enstitüsü, 2008, 131.

Zembilli Ali provides us with a concrete picture of the institutionalized privileges based on status and position. According to him, *ta'zir* of notables (*eşraf*) consists of informing them of the situation; *ta'zir* of scribes and chiefs occurs in the form of having them come to the office of the judge; *ta'zir* of middle class people is imprisonment; and *ta'zir* of lower class people is beating.[132]

The same division based on status is present in Halebi, too. Providing us with a detailed list of revilements, Halebi sorts revilements according to whether they require *ta'zir*. Accordingly, revilements which required *ta'zir* when targeting a Muslim are as follows: dissolute, infidel, malign, thief, sinner, factious, sodomite, the people playing with children, the people getting interest, wine addict, pander, pimp, traitor, son of a bitch, son of a sinner woman, heretical, bawd, den of thieves, and illegitimate child. As for the ones that do not require *ta'zir*, Halebi includes among them lighter revilements such as cur, monkey, donkey, snake, porcine, blood taker, cunning, foolish and so on. However, these lighter revilements too were subjected to punishment when the aggrieved party was a notable person.[133]

A fatwa from Ebussuud suggests that the relationship between *ta'zir* and status was much more established than we tend to assume. In reply to an inquiry asking about the appropriate punishment for a bath attendant of inappropriate conduct, the mufti expresses his opinion in favor of punishment of the person in question in the same way that other bath attendants are punished. This shows how decisive occupational status was in determining *ta'zir*; that is, the mufti's emphasis is not on the type of crime but on occupational status of the offender:

> Given that the *seyyid* Zeyd, who is a bath attendant in a waqf bath that he rented, engages in evil acts requiring *ta'zir*, in what way *ta'zir* needs to be imposed on him? Answer: He should be punished by the *ta'zir* imposed on other bath attendants.[134]

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[132] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, 67.

[133] Halebi, *Multeka El-Ebhur*. vol. 2: 280-87.

[134] Zeyd-i âl-i Resul (sallâllâhu aleyhi ve sellem) bir vakıf hamamı icâre ile tutup içinde dellâklık edip, bi-hasebiş-şer" ta'zîr lâzım olsa, ne veçhile ta'zîr olunur? El-cevab**:** Sâir dellâklar ta'zîri ile ta'zîr olunur. Düzdağ, *Ebussuud Fetvaları,* 82.

The short discussion above based on fatwas clearly reveals the fact that *ta'zir* was not a simple as its theoretical definition- the discretionary punishment for the crimes that do not fit in the categories of *hudud* and *qisas*- suggests. In practice it was complicated by considerations of socioeconomic differences and existing social hierarchy. In a way contradicting with the egalitarian discourse of Islam, and fed by custom and social hierarchy, varying *ta'zir* practices according to status represent quintessentially the institutionalized privileges in the Ottoman world. In what follows, the issue will be further analyzed with reference to the legal privileges of the some prominent groups in Ottoman society.

II.2.1. The Ulama

> "Throughout Ottoman history, with few exceptions, members of the *ilmiyye* were immune from persecution and prosecution. Part of their special status derived from the fact that they served as guardians of din, religion. Ottoman Islam was the ideology through which the Ulama order gained nearly a total immunity. Even though religion was at the heart of the ideology, however, the continued support and favor offered the Ulama in the political and social arenas throughout the Empire's history require thorough and systematic study. Remarkably enough, this historiographical issue must be counted among the least studied in Ottoman scholarship."[135]

In tandem with the advantages that they enjoyed in social terms through marriages and as the guardians of religion, misbehaviors of the Ulama were somehow turned a blind eye, and this immunity from certain punishments was institutionalized as well. To be more precise, the Ulama were the most privileged class in terms of immunity from punishment. Although they enjoyed certain privileges compared to common people, until the imperial edict of Gülhane, Ottoman officials and officers could be killed discretionally by the sultan (i.e. *siyaseten katl*).[136] The Ulama constituted the exception of this rule; they were generally immune from capital punishment and other forms of physical punishment including *ta'zir*. Instead, if considered necessary, they could be punished by dismissal or

[135] Abou-el-Haj, *Formation of the Modern state,* 46-47.

[136] Heyd, *Studies in Old Ottoman Criminal Law,* 262.

banishment.[137] This strong position of the Ulama had its background in Islamic culture. One could name many jurists and philosophers who wrote on this matter, but for our purposes al-Ghazali's perspective summarizes the essence of the matter; he said "god might forgive a scholar's sins because of his knowledge".[138]

The institutionalized privileges of the members of the Ottoman religious institution reflected in fatwas in several ways. In many instances, which have been already discussed in the previous chapter, the Ulama were praised and privileged as the guardians of religion, and as such, positioned in the highest echelon of the society in sharp contrast to the "ignorant" people. Related to this, two main legal privileges of the Ulama are reflected into the fatwas presented in this chapter: the penal immunity of the Ulama, and the sensitivity towards the preservation of the social prestige of the Ulama. The fatwa below from Abdurrahim Efendi clearly addresses penal immunity of the Ulama.

> If *ta'zir* is required for Amr who is from among the Ulama, in what way does the judge impose the punishment? Answer: By informing and saying that if you do so, do not do again.[139]

As already stated, the legal advantages of the elite, in this case of the Ulama, were not limited to exemption from some punishments but also intended to secure their social prestige and grace by punishing revilements, or criticisms targeting the Ulama. In keeping with their privileged socio-legal position, perceived as threats to their legitimacy, no criticism of the religious institution and the learned men were tolerated.

> What should be done to the poet Zeyd if he falls into the habit of heavily criticizing some people from among the Ulama and righteous people? After punished by heavy *ta'zir*, he should be prisoned until his good conduct is certain.[140]

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[137] Heyd, *Studies in Old Ottoman Criminal Law,* 269-70.

[138] Patricia Crone, *God's Rule - Government and Islam: Six Centuries of Medieval Islamic Political Thought* (New York: Columbia University Press, 2005), 336.

[139] Ulemadan olan Amr'a ta'zir icab edecek hakim Amr'ı ne veche üzere ta'zir eder? El-cevab: İlam edip sen böyle işlersen işleme demekle. *Fetava-yı Abdurrahim*, 1: 105.

[140] Zeyd-i şâir, ulemâ ve sulehâdan ba'zı kimseleri el-fâz-i kabîha ile hicv etmek âdet edinse, şer'an Zeyde ne lâzım olur? El-cevab: Ta'zir-i şedîdden sonra zindana ilkâ

> What is due people who say that all fatwas given in relation to four madhhabs are innovation (*bid'at*) because they appeared after the time of the Prophet? Answer: After having been punished with heavy *ta'zir*, if they are reasonable enough, they think better of their doubts.[141]

The fatwa below describes a different situation whereby the chief mufti does not prescribe an automatic punishment to criticism targeting some members of the *ilmiyye*, and herein lies its difference: the chief mufti does not find punishment necessary if the criticism is not about the scholarship of the criticized people but concerns with some illegitimate acts of the people from among the Ulama.

> What is due for Amr if he is in the habit of examining the imperfections of the religious scholars and experts of sharia, and condemning them vehemently in social gatherings in a way inculcating people with hatred towards the Ulama by saying that "what the judges eat and drinks are forbidden, and those of the mudarrises are not beyond doubt. Even ignorant people do not act the same way they do. The evil-doers are the learned men whereas the ignorant ones avoid the forbidden"? Answer: If his hatred towards the scholars of religion has something to do with their scholarship he becomes an infidel. However, if his hatred comprises the issues he attributed to Ulama, no punishment is required, provided he does not slander the innocent ones.[142]

Apart from that, if we get back to Halebi's classification, some simple revilements were said to require *ta'zir* only if the aggrieved party was an important person. The same logic applies to the cases in which someone from the Ulama stood as the aggrieved party.

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olunup, tevbe ve salâhı zahir olmayınca ihrâc olmamak lâzımdır. Hazret-i Ömer İbn-ül-Hattâb (radiyalldhu te'âlâ anh), Hatî'e, meşâhir-i şu'arâ-i İslâmiyyeden iken şi'rinde ba'zı kimselere ta'arruz etmeğin, ta'zîr ve habsedip, hapisten tevbesi zahir olmayınca ıtlak etmemiştir. Düzdağ, *Ebussuud Fetvaları,* 181.

[141] "Dört mezheb üzerine cümle verilen fetvaları bid'attir, Resûlullah (sallallâhu aleyhi ve sellem) zamanında yok idi" diyene şer'an ne lâzım olur? El-cevab: Ta'zîr-i şedîd olunduktan sonra, aklı var ise şüphesi' hallolmak lâzımdır. Düzdağ, *Ebussuud Fetvaları,* 178.

[142] Amr'ın her zamanda âdeti, 'ulemâ-i dîni ve erbâb-i şerî'ati kadh edip, "kâdîlerin yedikleri ve içtikleri haramdır, ve müderrislerin dahi şüpheden hâlî değildir. Bunların ettikleri câhil etmez. Her ne fesâd olursa dânişmend taifesinden zuhur eder ve cehele haramdan artık ictinâb ederler" deyip ve 'ulemânın 'uyûbunu tecessüs edip, 'ale-d-devâm bunlara bu'z ü 'adavet üzere, mecâliste mezemmetlerin etmeden hâlî olmayıp halka nefret verse ana ne lâzım olur? El-cevab: Eğer 'ulemâ-i dîne ilimleri için bu'z ü 'adaveti olup söylediği andan nâşi ise küfür lâzımdır. İsnât ettiği umura te'âti için bu'z ederse nesne lâzım olmaz, içlerinde bî-günâh olanlara iftira etmeyicek. Düzdağ, *Ebussuud Fetvaları,* 181.

It can be said that since the chief muftis were the head of religious institution, they were sensitive about the prestige of the religious institution, and as such, they took seriously any attempt tending to injure the social prestige of the religious men. When informed of such cases, the chief muftis almost always approved the punishment of the offenders. Fatwa compilations include dozens of cases of this type. Below are a few typical examples:

> What should be done to the ignorant Zeyd if he insults the scholar and righteous Amr saying "who are you? O cruel!"? Answer: *Ta'zir*.[143]
>
> What is due for Amr who says to Zeyd, who knows the Quran and is of the Ulama, "compared to me, you are not even excrement, excrement is preferable? Answer: *Ta'zir* is required.[144]
>
> Are renewal of belief and act of marriage due for the Muslim Zeyd who says to Amr from among the Ulama that "I would not swear by have faith in you even you were the Prophet". Answer: Yes.[145]
>
> What is due for the ignorant Zeyd who slandered the learned Amr by calling him "cursed and liar"? Answer: *Ta'zir* should be imposed on him by judicial decision.[146]

II.2.2. Notables

> If discretionary punishment is required for Zeyd from among the notables, in what way does the judge impose the punishment? Answer: By informing and having him come to the door of the judge related to the event in which he is involved.[147]

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[143] Zeyd-i cahil, ehl-i ilm ve salih olan Amr'a "sen nesin bre zalim" deyu şetm eylese Zeyd'e ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Ali Efendi*, 1: 138.

[144] Ulemadan olup ehl-i Kuran olan Zeyd'e Amr "sen benim yanımda necaset kadar değilsin ve necaset senden yeğdir" dese Amr'a ne lazım olur? El-cevab: Ta'zir olunur. *Fetava-yı Abdurrahim,* 1: 119.

[145] Zeyd-i Müslim Ulemadan Amr'a sen peygamber de olsan sana eyman getirmezim dese Zeyd'e tecdid-i iman ve nikah lazım olur mu? El-cevab: Olur. *Neticetül΄ Fetâvâ,* 119.

[146] Zeyd-i câhil, ehl-i ilmden Amr'a "behey mel'un, be hey kezzâb" dese şer'an ne lâzım olur? El-cevab: Re'y-i hâkim ile ta'zir olunur. Düzdağ, *Ebussuud Fetvaları,* 181.

[147] Eşrafdan olan Zeyd'e şeran ta'zir icab eyledikte hakim Zeyd'i ne veche üzere ta'zir eder? El-cevab: İlam ile ve bab-ı kadıya cerr-i husumet ile ta'zir eder. *Feteva-yı Abdurrahim*, 1: 105.

The above fatwa from Abdurrahim Efendi informs us of the legal privileges that the elites enjoyed. Informed that the person is engaged in a *ta'zir*-requiring act, the circumstances of which remains unknown to us, the chief mufti grants the person immunity from being physical punishment, which was the regular form of *ta'zir* imposed the offenders from among common people. Most of the elites shared similar privileges by virtue of their social ties and networks regardless of their profession. However, as this example suggests, the immunity of notables from *ta'zir* was different from that of the Ulama. Unlike the Ulama whose *ta'zir* was not to go beyond a warning for not repeating their mistake, the notables had to go to the office of the judge, which might have been considered beneath a notable's dignity. Although not as derogatory as beating was, getting to the court was considered as something which was equally beneath an elite's dignity. However, this does not mean that elites did not appear in the court in person. On the contrary, they were very present at the court for various businesses. At this point, it is likely that elites avoided appearing at the court as defendant due to the possible social stigma attached to it and thus we should not confuse defendant position with other ways of presence at the court. A fatwa from Ebussuud Efendi clearly reflects elites' avoidance of appearing at the court in person. Equally important for our purposes is the reply of the chief mufti which welcomes warmly the person's demand of not being ready in the court due to his fame. In a sense, the chief mufti's reply suggests that such demands were not unusual or surprising:

> Can Zeyd appoint an agent for his case with Amr by saying that "I am renowned" although he does not have any legal excuse? Answer: Yes, he can even he does not have a legal excuse.[148]

It should be noted that being a member of the *askeri*, non-tax-paying ruling class, did not mean to be a notable, and thus, it did not bring an automatic exemption from punishment. This also held true for soldiers who were punished for the crimes they

[148] Zeyd Amr ile olan da'vâsına, özr-i şer'îsi yok iken "ben zîşânım" deyu vekîl nasb eylemeğe kadir olur mu? El-cevab: Olur, ma'zûre dahi değil ise. Düzdağ, *Ebussuud Fetvaları,* 177.

committed. However, compared to common people, they also had certain privileges. For example, they could choose to be tried in special courts before the military judge or by their own commanders, instead of ordinary judges.[149] Accordingly, if they faced a lawsuit from a civilian, soldiers could refuse to appear in an ordinary court in favor of being tried by the military judge:

> Can Amr from the *askeri* reject the town habitant Zeyd's demand that the case in which both are involved as plaintiffs to be tried before the judge of Edirne saying "I want to have my suit tried before the military judge"? Answer: Yes he can.[150]

However, Heyd argues that soldiers were not privileged but tried by a local judge if they were engaged in non-military offences.[151] Therefore, when they were invited to the court related to a non-military offence, they had to appear in local courts in person as any ordinary person. The following fatwa exemplifies such a situation. Although its circumstances remain unknown to us, we can assume that the matter was non-military, most probably about family matters, since the other party was his wife; and as such, the man's membership to *askeri* class did not prevent the chief mufti from passing his remark in favor of the man's punishment by *ta'zir*.

> What is due for Zeyd of the *askeri* if he rejects his wife Hind's invitation to the court by saying that "I do not come with you, bring a çavuş to take me to the court"? Answer: *Ta'zir*.[152]

The chief muftis were sensitive regarding petty offences committed against the notables. Any possible harm targeted the social prestige of notables, including the simple revilements, was thought to require punishment. As already noted, when said to a

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[149] Heyd, *Studies in Old Ottoman Criminal Law,* 221.

[150] Beledi olan Zeyd-i müddei askeri olan Amr-ı müddea aleyhe "seninle Edirne kadısında murafaa olalım" dedikde Amr razı olmayıp "ben kadıasker huzurunda murafaa olurum" demeğe kadir olur mu? El-cevab: Olur. *Fetava-yı Ali Efendi,* 1: 335.

[151] Heyd, *Studies in Old Ottoman Criminal Law,* 221.

[152] Hind askeri taifesinden olan zevci Zeyd'i şera' davet ettikte Zeyd Hind'e ben seninle gitmem var çavuş getir dese zeyde ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Abdurrahim*, 1: 110.

commoner some forms of purple language such as 'donkey', 'cur' or 'porcine' were not deemed to require discretionary punishment. When the insulted person was a notable, however, the offender was punished by *ta'zir*. At this point, it can be argued that what mattered was not the damage caused by the offence, but rather the sensitivity towards keeping people in their appropriate places, and preventing them from transgressing their limits:

> What should be done to Zeyd if he insults Amr from among the notables saying "you cur!"? Answer: *Ta'zir.*[153]

> What should be done to Zeyd if he insults Amr from among the notables saying "you excrement!"? Answer: *Ta'zir*.[154]

That being said, another crucial point needs to be mentioned that patron and client relationship could provide individuals with certain advantages before the law. The people who had strong vertical ties could manage not to get, or at least mitigate punishment for the illegal acts they were involved in. For instance, Ginio informs us of a case from Salonica court records in which a eunuch intervened in favor of his apparent protégé, and enabled him to be released from prison by the order of sultan. Apart from that, he highlights also the direct effect of social ties and power relations in the legal process noting the frequent intervention of the local notables to the legal process, at times for the release of a culprit affiliated to them, at other times to shorten their imprisonment term.[155]

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[153] Zeyd eşrafdan Amr'a "bre köpek" deyu şetm eylese Zeyd'e ne lazım olur. El-cevab: Ta'zir. *Fetava-yı Ali Efendi*, 1: 139.

[154] Zeyd eşrafdan Amr'a "bre necaset" deyu şetm eylese Zeyd'e ne lazım olur. El-cevab: Ta'zir. *Fetava-yı Ali Efendi*, 1: 139.

[155] Eyal Ginio, "Patronage and Violence in the Legal Process" 111-131; Also see, Bruce McGowan, "The *Age* of the *Ayans*, 1699-1812," in *An Economic and Social History of the Ottoman Empire, vol. 2, eds.* Halil Inalcik and Donald Quataert (Cambridge: Cambridge University Press, 1994) 637-758; Işık Tamdoğan, "Büyükleri Saymak, Küçükleri Sevmek", 77-96.

II.2.3. *Seyyid*s

Seyyid and *sharif* are the special terms meaning membership to the family of the prophet Muhammad.[156] Empowered by the only institutionalized lineage, the descendants of the prophet Muhammad, *seyyid*s, enjoyed an advantageous social position in most Muslim societies, including the Ottoman Empire. As a sign of their respect to *seyyid*s, Muslim states bestowed them exemption from various taxes, designated for them a distinctive dress code identified with the green turban[157], and obliged the public to respect them.[158]

In the Ottoman Empire, any claimant to descent from the prophet had to obtain the approval of state, which meant to prove a claim before the *nakibüleşraf* (the chief of the descendants of the prophet). In this connection, Canbakal shows that the creation of the office of the imperial *nakibüleşraf* and the attempt to introduce central registration of *seyyid*s took place at the turn of the 16th century.[159] The claimants had to fulfill two main preconditions to have their name recorded in the list of the descendants of the prophet: having witnesses from among the *seyyid*s, and proving the family members' involvement in the lists of *seyyid*s during the time of the previous *nakibüleşraf*.[160] However, establishing a person's identity was not an easy matter that could be achieved by the limited means of

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[156] Rüya Kılıç, "Sayyids and Sharifs in the Ottoman State: On the Borders of the True and the False," *Muslem World* 96 (2006): 21.

[157] Although the green turban has been the most common public mark for *seyyid*s, some variations in regard to both time and place should be noted. During the time of Abbasids, the common mark of *seyyid*s was the black turban. The green turban became the common sign for *seyyid* status only in the late 14th century, especially in Egypt. It is also claimed that the green turban was made the common mark for *seyyid* status in Egypt by a late 16th century Ottoman pasha. However, variations continued to be observed hence. For instance, the black turban was preferred in Persia until the late 18th-century. On the other hand, in Arabia, the white turban is still the most common mark for *seyyid*s. "Sharīf," *EI*^{2}, Brill Online, 2012.

[158] Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), 61.

[159] Hülya Canbakal, "The Ottoman state and descendants of the prophet in Anatolia and the Balkans (c. 1500-1700)," *Journal of the Economic and Social History of the Orient*, Vol.52, No.3 (2009): 542-578.

[160] Kılıç, "Sayyids and Sharifs in the Ottoman State", 27.

communication and strategies used by pre-moderns states, but rather it was, as Haykel argues, "a hoary problem in every human society, Islamic or otherwise, and often led to spectacular cases of imposture across time and place."[161] The same difficulty holds true for distinguishing real *seyyid*s and fake *seyyid*s who sought privileges of *seyyid*s. Related to this point, Canbakal draws our attention to the considerable increase in the number of *seyyid*s in the Ottoman Empire from 16th century onwards, which was caused not only by the ambitions of the common people for the privileges of *seyyid*ship but also, possibly, by state policies aiming at obtaining the loyalty of tribes and Alevids.[162] She argues that this increase was in no small part caused by the vulnerability of the judicial process which recorded people as *seyyid*s even if the people bearing witness to their claim were *seyyid*s.[163] The matter of false *seyyid*s was reflected in fatwas as well:

> What is due for Zeyd who insulted the *seyyid* Amr by saying "you! False *seyyid*" and responded to him "You infidel! God damn you and your ancestors" when Amr replied his first revilement by saying "I am of the descendants of the prophet Muhammad"? Answer: *Ta'zir* is required, and if they demand, he should beg the pardon of the elders of the *seyyid* in question.[164]

> What should be done to Zeyd if he robes green turban and falsely says "I am of the descendants of the Prophet" with the aim of attaching himself to the pure lineage? Answer: He should be punished by heavy *ta'zir*, and kept in prison until his repentance and good conduct become obvious, and he should be prevented from using the signs special to *seyyid*s.[165]

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[161] Bernard Haykel, "Dissembling Descent, or How the Barber Lost His Turban: Identity and Evidence in Eighteenth-Century Zaydi Yemen". *Islamic Law and Society* 9 (2002): 195.

[162] Canbakal, "The Ottoman state and descendants of the Prophet", 544-557.

[163] Canbakal, *Society and Politics in an Ottoman Town*, 132.

[164] Zeyd sadat-ı kiramdan olan Amr'a "bre müteseyyid" deyup, Amr dahi "ben sadat-ı kiramdanım" dedikde "ceddine lanet bre kafir" deyu şetm eylese Zeyd'e ne lazım olur. Ta'zir ve ecdad-ı karibi murad edecek istiğfar lazım olur. *Behçetü'l-feteva me'an nukul*, 151.

[165] Siyadette alakası olmayan Zeyd başına yeşil sarık sarıp Al-i resuldenim deyup hilaf-ı vaki nesl-i tahire intisab eda eylese Zeyd'e şeran ne lazım olur? El-cevab: Ta'zir-i şedid ve tövbe ve salahı zahir olunca habs ve alamet-i hazeratdan men edilir. *Behçet'ü-l feteva me'an nukul*, 150.

The connection between the usurpation of *seyyid* status and socioeconomic status of the claimants to the title should also be emphasized. As Canbakal argues, after the 16th century, the notables frequently usurped *seyyid* status.[166] Besides many limits to control and prevent usurpation of the title, she argues that the system's reliance on the social recognition in detecting the authenticity of the claims contributed considerably to the proliferation of *seyyid*ship among the notables due to their reputation in the community. Moreover, she also draws our attention to the chance that the notables enjoyed in terms of marrying into *sadat* families[167], which will be further discussed in the next chapter.

By virtue of the nobility attached to their lineage, *seyyid*s differed from ordinary individuals in Ottoman society. Judging by the relevant fatwas, *seyyid*s' social asset could be transferred into legal process in a way that paralleled their state-sponsored social prestige. In what reflected into fatwas, a two way interaction between the advantageous social standing of *seyyid*s and their legal privileges is conspicuously reflected in fatwas: on the one hand, *seyyid*s could be pardoned when involved in certain acts which would otherwise require *ta'zir*, and on the other hand, when the aggrieved party was a *seyyid*, simple revilements could culminate in the punishment of the perpetrator party by *ta'zir*. The fatwa below from Ibn Kemal combines these two legal attitudes:

> If a person who is a descendant of the Prophet Muhammad [a *seyyid*] says to someone, "You idiot! You cur!" and that person in turn says "That's what you are!" legally what must be done to the two of them? Answer: The *seyyid* is pardoned; the other is sentenced to punishment by the judge.[168]

This fatwa is a good example opening a legitimate ground to discuss the legal privileges of *seyyid*s and the relationship between social status and legal status. In this example, we are not given the details of the dispute between these two people. What we have rather is the words that they used during the quarrel: according to the fatwa, the

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[166] Hülya Canbakal, "On the nobility of urban notables," in A. Anastasopoulos (ed.), *Halcyon Days in Crete 5*, (Rethymno, Greece: Crete University Press, 2005), 39-50.

[167] Canbakal, "On the Nobility", p. 45.

[168] Leslie Peirce, "The law shall not languish: Social Class and Public Conduct in 16th-century Ottoman legal discourse," in *The Hermeneutics of Honor: Negotiation of Public Space in Islamic Societies, ed.* Asma Afsaruddin (Cambridge, Harvard University Press, 1999), 151-152.

person who affronted the other first is the *seyyid*; what the other person did is only to speak in response, and not with different or heavier words but by exactly the same words. However, although the one who started the quarrel was the *seyyid*, and the other person responded the revilement in the same way, the mufti expresses his opinion in favor of the punishment of the other person and exculpation of the *seyyid*.

This is not the only fatwa to that effect. Many examples confirm the already mentioned point that simple revilements did require *ta'zir* only if the aggrieved party was a notable, a member of the Ulama, *seyyid* etc. Accordingly, inquiries asking for the opinion of the mufti regarding the punishment appropriate for the offenders who insulted *seyyid*s are in abundance in the *ta'zir* parts of the fatwa compilations:

> What is due for Amr if he insults the *seyyid* and pilgrim Zeyd saying "you cur! Do not be full of yourself for you becoming a pilgrim, even a donkey can arrive at Mecca"? Answer: *Ta'zir* should be applied by the judicial decision.[169]
>
> What is due for Amr if he is vexed with the *seyyid* Zeyd and says to him "look at that face and body"? Answer: *Ta'zir.*[170]
>
> What should legally be done to Zeyd if he insults the *seyyid* Amr saying "You cur!"? Answer: *Ta'zir*.[171]

Interestingly enough, for some revilements which directly targeted the *seyyid* status itself the anticipated punishment is not *ta'zir* but *ta'dib*. Lexically, *ta'dib* means chastening; corrective punishment for a fault; or to teach someone his place (*haddini bildirmek*).[172] Although in what ways *ta'dib* was imposed remains ambiguous, especially the last part of the definition, teaching some his place, is crucial for the following examples. In one sense, the intention behind this punishment was to remind the offenders

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[169] Âl-i Resulden olup hacc-ül-haremeyn olan Zeyd'e, Amr "bre kelp, hac eylemek ile merteben ziyâde mi oldu sanırsın, bir merkep dahi varır Mekke'ye" dese Amra ne lâzım olur? El-cevab**:** Re'y-i hâkimle ta'zir olunur. Düzdağ, *Ebussuud Fetvaları,* 65.

[170] Sadat-ı kiramdan olan Zeyd'e Amr gazab edip "bak şunun endamına ve suratına" deyu şetm eylese Amr'a ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Abdurrahim*, 1: 117.

[171] Zeyd sadat-i kiramdan Amr'a "bre it oğlu it" deyu şetm eylese Zeyd'e ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Feyziye*, 141.

[172] Devellioğlu, *Osmanlıca-Türkçe Ansiklopedik Lügat*, 1555.

the difference of status between them and *seyyid*s, which is in keeping with the state-warranted social respect to *seyyid*s. However, here we again have to face the limits of our sources: since we are not given the context of the events, we cannot figure out whether the insulted *seyyid*s were from among the ones who usurped the certificate of *seyyid*ship later, and hence, whether the revilements against them were a result of doubts about the authenticity of their *seyyid*ship.

> What should be done to Zeyd if he insults the *seyyid* Amr saying "have you become big bird by becoming a descendant of the prophet, hit your head to the hardest stone"? Answer: *Ta'dib* is required.[173]
>
> What should be done to Zeyd if he insults the *seyyid* Amr saying "I am the subject of the Sultan; you are the penis of cur!"? Answer: *Ta'dib*.[174]

It should be noted, however, that the respect and toleration towards *seyyid*s were not limitless, meaning that they could be subjected to *ta'zir,* or even executed according to the severity of the crime or activity that they were involved in. According to a 17th century traveler, *seyyid*s' punishment was imposed with special consideration: "when a *şerif* was condemned to the bastinado his green turban was first respectfully removed, placed on an embroidered handkerchief and covered with another one; only then was the punishment inflicted."[175] Our fatwas suggest that if they engaged in any activity challenging the legitimacy of the state or Islamic law, their status fell short to rescue them from punishment. The following fatwas are important for two reasons: firstly, they show the limits of the *seyyid* status; and secondly, they signify that *seyyid*s were well aware of their privileged status, and sometimes, as is the case here, they did not hesitate exaggerating this status. Especially, the first fatwa is very crucial in terms of its ability to represent an extreme example of the meanings attributed to *seyyid* status:

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[173] Zeyd sadati kiramdan amra "sen peygamber evladı olmakla büyük kuş mu oldun, başını hangi taş katı ise ona vur" dese zeyde ne lazım olur? El-cevab: Te'dib. *Feteva-yı Abdurrahim,* 1: 117.

[174] Zeyd sadattan Amr'a ben hünkar kuluyum sen itin sikisin dese Zeyd'e ne lazım olur? El-cevab: Te'dib. *Fetava-yı Ali Efendi*, 1: 140.

[175] Heyd, *Studies in Old Ottoman Criminal Law,* 275.

What is due for them if some of the descendants of Prophet Muhammad say that "even if we offend individuals [as opposed to god or the state as implied by *huquq Allah*[176]], we are immune to divine judgment; we ascend to heaven unconditionally"? Answer: Believing this way, they become deniers. If they insist on their claim, they should be executed.[177]

What should legally be done to Zeyd if he rejects Amr's invitation to be present in the court for the case related to a dispute between him and Amr by saying that "I will not come with you; since I am a *seyyid*, bring a çavuş from the *nakib*"? Answer: *Ta'zir* is required.[178]

II.2.4. *Muhaddere*

In fatwa compilations, the principle of seclusion strikes the eye as one of the most strongly worded issues. In numerous examples, the chief muftis expressed their sensitivity about the matter of female seclusion: they disapproved women's public appearance on her own even for the most basic outdoor dealings and the prayers, and as such, allowed the society to control women's good conduct in public, and men to exercise ultimate authority in limiting their wives' public appearance. Despite of the significance of such fatwas, here I will only deal with the term *muhaddere* due to the fact that it is placed at the intersection of the three major axes of this study: law, status, and social order.

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[176] *Huquq Allah* refers to the rules that uphold purely public interests while *huquq al-'ibad* includes the rules that benefit individuals only such as exclusive entitlements to one's property. See, Anver M. Emon, "Huqūq Allāh and Huqūq Al-Ibād: A Legal Heuristic for a Natural Rights Regime." *Islamic Law and Society*. 13.3 (2006): 325-391.

[177] Sâdâttan ba'zi, "bize hukûk-i ibâd zarar eylemez, biz âhirette hukûk-i ibâddan mes'ul olmazız, âlâ külli hâl, biz cennete dâhil oluruz" deseler, mezburlara ne lâzım olur? El-cevab: Bu i'tikâd üzerine musir olup, İslâma gelmezler ise, zındıkları mukarrer olup, katilleri vacip olur. Düzdağ, *Ebussuud Fetvaları,* 83.

[178] Zeyd'in Amr ile bir hususa müteallik davası olmağla Zeyd Amr'ı şer-i şerife davet eyledikte Amr "ben sadattan olmağla seninle gelmem var nakibden çavuş getir" dese Amr'a ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Abdurrahim*, 1: 109-110. Actually, this is a controversial issue: *nakib*s were supposed to attend *seyyid*s' cases, yet they were brought to ordinary courts. See, Canbakal, 'On the Nobility', 39-50.

Lexically, *muhaddere* means veiled, modest women, virtuous lady.[179] As its definition suggests, a woman's honour was directly linked to the degree that she satisfied the requirements of the principle of seclusion. Put differently, women who fulfilled this principle enjoyed high social prestige. Related to this prestige-generating aspect of acting in accordance with seclusion, the principle of seclusion had important socioeconomic implications. It has been widely argued in the secondary literature that seclusion was a matter of class. Peirce draws our attention to the link between seclusion and wealth. She argues that since material means were required for women to assure seclusion, it was a privilege of the elite women to qualify for *muhaddere* status.[180] In his study on 18th century Aleppo, Marcus makes the similar point that wealthy women of Aleppo could fulfill the principle of female seclusion since their daily outdoor dealings, such as shopping or other errand, were run by their servants, thereby unburdening them of the trouble of mixing with the public; and "court documents referred to these wealthy models of righteous female life as "the most eminent of secluded women" (fakhr al-mukhaddarat)."[181]

Considering the women of lower economic status, however, the picture changes radically; economic concerns subordinated the principle of seclusion. In other words, in order to make a living, the women of lower socioeconomic status had to work out of home and mix with the public. These women worked in various jobs such as maids, midwives, wet nurses, matchmakers, bonesetters, hairdressers, professional mourners, beautician at weddings, bath house attendants, tutors for girls, textile workers, peddlers, singers, dancers, prostitutes, procurers of prostitution, and distillers of alcohol.[182] As both Sariyannis and Zarinebaf show, women of lower economic status committed crimes in

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[179] Robert Avery, (ed.), *The Redhouse Turkish/Ottoman - English Dictionary* (İstanbul: Sev Yayıncılık, 2000), 789

[180] Peirce, "Social Class and Public Conduct in 16th-century Ottoman legal discourse", 144.

[181] Marcus, *The Middle East on the Eve of Modernity*, p. 54.

[182] Marcus, *The Middle East on the Eve of Modernity*, 54; Elyse Semerdjian, "Sinful profession: illegal Occupations of Women in Ottoman Aleppo, Syria". *Hawwa*, 1 (2003): 60; Suraiya Faroqhi, *Osmanlı Dünyasında Üretmek, Pazarlamak, Yaşamak* (Istanbul: Yapı Kredi Yayınları, 2003), 239.

cooperation with their husbands in order to survive regardless of the socially assumed gender roles.[183] The picture we encounter in rural areas, too, supports the existence of such a deep relationship between economic concerns and seclusion. In rural areas, women actively participated in outdoor activities as but they were not subjected to any social stigma unlike their urban counterparts.[184] This suggests that besides being a matter of class, seclusion was also an urban phenomenon.

Moreover, due to the shortness of their material means, many families of lower socioeconomic status had to live in communal dwellings, a situation directly limiting the possibility of proper seclusion for women. As Marcus shows, there were many families sharing adjoint residences facing each other and using the same courtyard (*avlu)*[185].This does not mean that those families living in shared houses did not have privacy concerns. Nevertheless, they had to dwell in this kind of communal residences rather than private residences due to economic reasons regardless of their privacy concerns.

What has been presented thus far can be crosschecked in the light of a set of inquiries addressed to Ebussuud Efendi. The fatwas in question seem to have been intended to obtain the legal opinion regarding the basic criterion to measure whether a woman was honorable. Both the inquiries and the replies to them emphasize the essential link between seclusion and honor on women's part.

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[183] Marinos Sariyannis, "'Neglected Trades': Glimpses into the 17th Century Istanbul Underworld," *Turcica* 38 (2006): 176; Fariba Zarinebaf, *Crime and Punishment in Istanbul,* 78.

[184] Fariba Zarinebaf, "Women and the Public Eye in Eighteenth-Century Istanbul," in (ed.), *Women in the Medieval Islamic World, ed.* Gavin R. G. Gambly (New York: St. Martin's Press, 1999), 308; Pierce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, 54. A fatwa from Ebussuud Efendi in the same direction suggests that muftis took the context into consider in their replies: Question: In rural areas(*köylük yerde*), it is normal for Muslim women to serve, and wife of Zeyd, imam of the mentioned village, too, deals with some outdoor services (*suya ve bağa ve sığır iledip getiricek*). Can villagers obstruct Zeyd's imamate because of her wife's outdoor dealings? Answer: They cannot. Düzdağ, *Ebussuud Fetvaları,* 68.

[185] Abraham Marcus, "Privacy in Eighteenth-Century Aleppo", 166.

> Can Hind be *muhaddere* if she goes to the public bath and to the countryside? Answer: Yes, provided she goes in a way not vitiating her honor and respectability, and is companied by servants.[186]
>
> Can Hind be *muhaddere* if she goes to the public bath, to weddings, and to other neighborhoods? Answer: Yes, if she is accompanied by her retinue.[187]

Apart from their emphasis on seclusion of women, these fatwas highlight an important point closely associated with our whole discussion. In both examples, the chief mufti seems to have affirmed women's public appearance on one condition- women had to be accompanied by their retinue. This again reveals the difference in elite women's and lower class women's chances of appearing in public space free of any social stigma. Given that employing servants and attendants was not possible for everyone but mostly a privilege for the better-off families, in no sense can the issue be discussed independently of the socioeconomic status of individuals.

> Can Hind of a village be *muhaddere* if she handles her own affairs and brings water from the spring? Answer: She is not.[188]
>
> Can Hind be *muhaddere* if she appears to her father's freed slaves and their sons as well as husbands of her sisters? Answer: The essential element of being *muhaddere* is not to act upon the rulings of the noble Sharia. For this reason, even non-Muslim women can be *muhaddere*. A woman can be *muhaddere* if she does not handle her own affairs, and avoids appearing to men who are not of the family.[189]

In order to meet such a criterion, however, two things were required: having servants to run errands and other daily business of women, and more importantly, not being obliged to work outside of the home. In one sense, as the examples suggest, economic status

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[186] Hamam ve kuraya giden Hind muhaddere olur mu? El-cevab: Olur, ırz ü vakarla ve hadem ü haşem ile giderse. Düzdağ, *Ebussuud Fetvaları,* 55.

[187] Hamam ve düğüne ve ahar mahalleye seyrana giden Hind muhaddere olur mu? El-cevab: Olur, eğer haşmetle varır ise. Düzdağ, *Ebussuud Fetvaları,* 55.

[188] Karye ehlinden maslahatını kendi görüp, pınardan su getiren Hind, muhaddere olur mu? El-cevab: Olmaz. Düzdağ, *Ebussuud Fetvaları,* 55.

[189] Babası 'utekasına ve evlad-ı 'uteka ve hemşireleri zevcine görünen Hind muhaddere olur mu? El-cevab: Muhadderelikte mu'teber olan hudud-i şerait-i şerifeyi riayet değildir. Onuncun kafirelerde dahi muhaddere bulunur. Ele görünüp mesalihine bizzat mübaşeret eder değilse muhadderedir. Düzdağ, *Ebussuud Fetvaları,* 55.

proved to take precedence over religious status in establishing a woman's identity as *muhaddere*. Considering the fact that many women had to work outside of the home, and as such, to mix with the public to earn their living, though we do not know its extent as far as urban women are concerned, the chief mufti's criteria support the existence of a convincing link between presenting elite way of life and the concerns of seclusion as the ideal model.

In the light of the discussion above, it is obvious that elite women had far greater chance to fulfill the requirements of being *muhaddere*, and thus, enjoying a higher status in society. At the same time, different legal attitudes were prevalent towards women according to their socially assumed morality. Whether a woman qualified as an honorable woman from the perspective of legal doctrine or stayed out of this category came into effect in determining their legal rights. Women who had the status of *muhaddere* enjoyed certain legal privileges which were reflected in both fatwas and statute books. For instance, a related article from the statute book of sultan Süleyman stipulates different punishments for the same crime according to whether the involved women were *muhaddere*:

> "If women come to blows and tear each other's hair or beat each other severely -if they are not veiled ladies (*muhadderat*), [the cadi] shall chastise [them] severely and a fine of one *akçe* shall be collected for every two strokes; if they are veiled ladies, [the cadi] shall threaten their husbands and a fine of 20 *akçe* shall be collected."[190]

This article reveals that elite women could escape from *ta'zir* like elite men. As already argued, *ta'zir* of elite men was limited to inform them about their misbehaviors and having them come to the office of the judge. As the article above suggests, the same held true for elite women whose *ta'zir* was converted to a fine instead of beating. In other words, elite status enabled both men and women escape corporal punishment.

Apart from that, fatwas show another legal privilege that elite women attained by virtue of acting in accordance with the principle of seclusion, namely, they could authorize male proxies to act for them instead of appearing in court in person. Actually, it seems that not appearing in the court in person was regarded as a requirement of being *muhaddere*:

[190] Heyd, *Studies in Old Ottoman Criminal Law,* 109.

> Given that she is in the habit of appearing to men, and presenting herself in court, can Hind be *muhaddere*? Answer: She cannot.[191]
>
> If *muhaddere* Hind and Zeyneb appoint Amr as their agent for the law suit related to their dispute with Zeyd, can Zeyd demand their being ready in court instead of their appearance by attorney? Answer: He cannot.[192]

As the last example reveals, if they had a dispute with a *muhaddere*, men could not insist on the woman's appearance in the court in person. Considering the advantageous position of elite women in establishing their status as *muhaddere*, it can be said that elite women were the ones who benefitted most from the legal tolerance showed towards the *muhaddere* women. Several studies based on court records seem to corroborate this observation. For instance, Peirce argues that 16th century court records of Ayntab show that elite women did not appear in the court at all.[193] Similarly, Tucker argues that elite women seem to have appeared far less frequently than women of lower socioeconomic status in the court records of 18th-century Damascus, Nablus and Jerusalem.[194] Although elite women's underrepresentation in the court records does not necessarily mean that they did not appear in the court at all, it still supports the possibility that by virtue of their *muhaddere* status, elite women were able to refuse to be present at the court. Instead, they authorized male proxies to act on their behalf in the court. Although everyone could authorize a proxy, the women who were not known as *muhaddere* were legally incapacitated to refuse to be present in the court if the opposing party or the judge was not content with appearance of a proxy only. Thus, if summoned, non-*muhaddere* women had to appear in the court in person; otherwise they would be punished by *ta'zir.*

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[191] Ricale beruz ve mahkemeye huzur adeti olan Hind muhaddere midir? Değildir. *Fetava-yı Ali Efendi*, 2: 395.

[192] Muhaddereler olan Hind ve Zeyneb, Zeyd ile bir hususa müteallik davalarında Amr'ı tevkil eyleseler Zeyd "Amr ile murafaa olmam, Hind ve Zeyneb hazire olsunlar" demeğe kadir olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi*, 2: 394.

[193] Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, 6.

[194] Judith Tucker, "Telling Tales: Women in the Early Modern Arab World," in *Attending to Early Modern Women and Men, eds.* Amy E. Leonard and Karen Nelson (Delaware: University of Delaware Press, 2010), 329.

What is due for non-*muhaddere* Hind if she defaults and does not attend the court, albeit invited by Zeyd of opposing party? Answer: *Ta'zir*.[195]

Given that non-*muhaddere* Hind maliciously appoints Amr as agent in her lawsuit with Zeyd, can Zeyd object saying "I want to have oral argument with Hind herself"? Answer: Yes, he can.[196]

Conclusion

In conclusion, what I have tried to show in this chapter is the existence of a convincing link between socioeconomic status, law, and social order with reference to various interrelated points ranging from varying punishments according to social status to the representation of the elite way of life as ideal from a religious point of view. In this connection, the fatwas analyzed here suggest that people of different status could get different punishments for the same crimes that they committed. In other words, social hierarchy found an echo in the muftis' rulings which made concessions to the people from the higher echelons of the society.

In this regard, the severity of *ta'zir* punishments varied not only according to the type of the crimes committed but also according to the socioeconomic status of offenders. It has been argued that the Ulama were the most privileged group in terms of immunity from certain punishments. This immunity was in line with the Ulama's crucial position in the Ottoman polity as the guardians of the religion. Apart from the Ulama, other social groups were subjected to legal charges accordance with their socioeconomic position. In other words, the higher the socioeconomic position of the offender was, the lower the charge he got.

Throughout this chapter I argued that the legal concessions made to elites were linked to concerns for the maintenance of the social order. In a sense, the Ottoman polity was depended on the distinctions between different social groups in terms of

[195] Zeydin muhaddere olmayan Hind ile davası olup Hind'i şere' davet edip hind temerrüd edip gitmese Hind'e ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Ali Efendi*, 1: 142.

[196] Muhaddere olmayan Hind, Zeyd ile olan davasında azrar kasdıyla Amr'ı tevkil eylese Zeyd razı olmayup Hind ile murafaa olurum demeye kadir olur mu? El-cevab: Olur. *Fetava-yı Ali Efendi*, 2: 394.

socioeconomic and legal privileges. Material to this point, the issue of *muhaddere* has been considered as a useful basis to show the intersection between wealth, social prestige and legal status. In this regard, it has been argued that seclusion was an elite ideal due to the means required to qualify it, and thus, it enabled elite women establish their status as honorable.

Chapter III

MARRIAGE AS STATUS; PRESERVING EXISTING SOCIAL HIERARCHY

> One man of the men of virtue was always telling to his children that I have always been doing you favors; before, while as well as after your birth. They [the children] asked that how it could be possible doing someone favors before his birth? He replied; before you were born, I generated you from a good, clean, and pedigreed woman. I did not marry a woman from lower [status] families so that you would not suffer an affront and fall into contempt for this reason during your life.[197]

Among other social contracts, marriage appears to be an issue of primary importance through which distinctions and hierarchal structure of societies have long been maintained. The possibility of matching between two people can either be prevented or supported by their socioeconomic standing since marriage is attributed some expectations not only by the families involved but also by the relevant society. What makes the equality in marriage an issue lies in its social connotations, that is to say, "no criterion is more indicative of social stratification among a group than that of whom they consider equal to, and therefore worthy of, marrying their daughters".[198] In this part, I will focus on the issue of marriage equality in the Ottoman Empire by using examples from Ottoman fatwa

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[197] "Efadilden birisi evladına dermiş ki ben size doğmanızdan evvel, doğduğunuz zaman, doğduktan sonra iyilik edip duruyorum. Doğmazdan evvel iyilik nasıl olur? Derler. Dermiş ki doğmazdan evvel size iyi, temiz, soyu sopu belli bir kadından tehsil ettim. Alçak ailelerden kadın almadım ki müddet-i hayatınızda bu sebeple lavm ve ta'na uğramayacaksınız." Kınalızade Ali Efendi, cited in Mehmet Ali Ayni, *Türk Ahlakçıları*, p. 89.

[198] Farhat J. Ziadeh, "Equality (*Kafā'a*) in Muslim Law of Marriage," *The American Journal of Comparative Law*, 6:4 (1957): 503.

compilations. Before proceeding into the fatwas, a theoretical frame, that will enable us to understand the Ottoman case better, needs to be provided.

III.1. The Islamic Principle of Equality in Marriage: *Kafā'a*

The special term used for the Islamic principle of marriage equality is *kafā'a,* an Arabic term that literally means equality, parity and aptitude, but in the terminology of *fiqh,* it states the "equivalence of social status, fortune and profession (those followed by the husband and by the father-in-law) as well as parity of birth, which should exist between husband and wife, in default of which the marriage is considered ill-matched and, in consequence, liable to break-up".[199] As mentioned by some scholars, Quran has no clear indications of such a principle, and actually *kafā'a* fails to comply with the egalitarian principles of Islam. However, *kafā'a* became a part of the Islamic holy law, and made its presence felt in a considerable part of the social and familial relations in Islamic societies, if in different ways.[200] Taking its origins from the pre-Islamic Arab traditions, in which main differences in terms of wealth and influence prevailed to play a decisive role in spouse selections,[201] this principle became institutionalized and expanded both in effect and content in the later centuries of Islam.

In general, the principle was mainly concerned with the equality, or if possible superiority, of men to women in marriage with respect to religion, freedom, lineage, piety, occupation and wealth. In Shafi´i doctrine, these criteria were added with equality in age and absence of physical defects on the husband's end.[202] The party who was supposed to measure up the other in marriage was the male partner. This rule has much to do with the

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[199] Y. Linant De Bellefonds, "Kafā'a", in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), EI^2, vol. IV, Leiden: Brill, (1997), 404.

[200] Bernard Lewis, *Race and slavery in the Middle East: an historical enquiry* (New York: Oxford University Press, 1990).

[201] Lewis, *Race and Slavery in the Middle East*, 85; Marlow, *Hierarchy and Egalitarianism in Islamic Thought*, 32.

[202] Hamza Aktan, "Kefāet", *DİA* 25, 1988, 167.

men's religiously-sanctioned superiority over women. According to jurists, there was no reason for men to be annoyed by the lower status of their wives because, as Ibn Abidin says, "the marriage is a kind of slavery to the women, while the husband is master".[203] If we take the marriage as something this analogy suggests, it also becomes obvious that being free was required for men since a "slave" could not be the "master" of a free Muslim woman in marriage. Accordingly, a man should be a free Muslim to measure up a free Muslim woman. However, being a free Muslim do not automatically guarantee a man's equality to a Muslim women; instead men were required to measure religiously up to women at least in the last three generations, that is to say, if both a woman's father and grandfather were Muslim as she was, then, the man was required to satisfy the same lineage. This quality was not demanded for more than past three generations.[204] It should also be noted that while Muslim men could marry non-Muslim women from among Jews and Christians (people of book [*kitabiyya*]), which excludes polytheists and idolaters, Muslim women were required to marry Muslim men.

Not every Muslim was *persona grata* in the society's perspective. At this juncture, piety becomes a requisite in default of which being Muslim by itself did not mean much. For this reason, piety was as important as satisfying the quality of being Muslim. In order to avoid the stigma of impious groom, the bride's side is provided with the right to look for the principle of equality in piety. As noted in previous chapters, performing religious duties regularly was a means of social prestige; therefore, such a principle comes as no surprise. The importance attached to piety was so great that according to Maliki doctrine, piety is the only criterion in default of which a marriage could result in divorce. The idea behind this doctrine was that Maliki School regarded marriage equality as a safeguard of preventing women from marrying men of bad moral status.[205]

Once criteria of lineage, religion, and piety are met, material concerns, which best manifested themselves in the principle of equality in wealth and occupation, come to fore. Although strongly related with each other, occupation and wealth were of different

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[203] As cited in Ziadeh, "Equality (*Kafā'a*) in Muslim Law of Marriage", 509.

[204] Ziadeh, "Equality (*Kafā'a*) in Muslim Law of Marriage", 511.

[205] Ömer Nasuhi Bilmen, *Hukuki Islâmiyye ve Istılahatı Fıkhiyye Kamusu,* Vol. 4 (İstanbul: Bilmen Basım ve Yayınevi, 1985), 67.

spheres. Wealth was much more germane to lineage when compared to occupation which was more about personal status. Apart from Malikis, all the Sunni schools of law affirmed equality in wealth and occupation as an absolute prerequisite for marriage. For Hanbelis, apart from satisfying the principles of equality in religion and piety which were the indisputable prerequisites accepted by all the Sunni schools of law, equality in wealth and occupation was the only criterion for man's measuring his partner in marriage.[206] In terms of occupation, the groom had to measure up to the bride's father or grandfather. If a woman had a profession, albeit unlikely, her profession provided no basis on which to compare with that of the groom. Other than the income variation they created, occupational status provided individuals with certain advantages or disadvantages in almost every walk of the everyday life. Thus, the main criteria seem to be connected not only with material affairs but also with reputation of a particular occupation.

With some considerable variations, all four law schools of Sunni Islam adopted aforementioned equality principles between spouses. The Hanafi School, which the Ottomans adopted as the official school of law, is said to have the most rigid rules in marriage equality which is evident in the right given to the guardians (*wali*) to annul marriages violating the *kafa'a* principle. In the Hanafi School, women who reached their puberty no longer have to go by the directions of their guardians when deciding to whom they would marry.[207] At the first look, it may seem a 'democratic way' in which individual will is given credit. However, this right seems to have led to the application of the requirements of marriage equality rather more strictly when compared to those of other *madhhabs*. To put the phrase differently, women of full-age enjoyed the right to choose their spouse provided that the requirements of marriage equality are satisfied. *Wali*s could demand the annulment of the marriage in cases in which women married themselves off without the permission of their *wali*s, or the groom brought about the marriage under false pretence. However, the guardian could annul the marriage only if the bridegroom had no child. Once a marriage between nonequals was settled within the *wali*'s knowledge, the wali was no longer able to apply to the judge with an annulment request. The rigidity of the Hanafi School, according to Ziadeh, was caused by its being the imperial law during the

[206] Aktan, "Kefãet", 167.

[207] Marlow, *Hierarchy and Egalitarianism,* 31.

Abbasid Empire as well as by local traditions and the highly stratified society in Iraq and Kufa. Accordingly, the Hanafi School appropriated social distinctions and the complex society into consideration in its rulings. Related to geography based differences, the Maliki School is said to have inherited its moderate tone from the social composition of Medina where stratification was less tangible. Explained with reference to their original birthplaces, the differences between the Hanafi and the Maliki schools reinforced the assumption that Islamic law had been fed by the local traditions, which is the issue of an on-going debate over the relationship between Islamic law and custom.

III.2. Concerns for Equality in Marriage as Reflected in Ottoman Fatwa Compilations

As it can be understood from the Islamic principles regarding marriage equality, it is all clear that marriage has been an institution beyond being simply a matter of two people's combining their lives in line with their personal choices. In tandem with marriage's strong association with power alliances, social prestige, and economic networks, marriage and decisions related to marriage occupied an important place in the lives of Ottoman individuals. Judging by fatwas, it seems that Ottoman society was sensitive to almost all components of the principal of marriage equality.

Intricate queries addressed to the muftis in regard to whom to marry were in abundance, and a considerable number among them are related to the criteria of being Muslim and free. At this point, I would like to remind the reader again that the present study primarily problematizes the link between socioeconomic status and legal status, and consequently the points that are not caused by socioeconomic status of individuals but rather of relatively well-defined categories of Islamic law are deliberately left out of the scope of this study. This being said, below are a few examples meant to give an idea.

> Is it a valid marriage if Hind, daughter of the deceased Shafi'i Zeyd, is married by her full uncle 'Amr to her equal Hanafi Bekir at her precedent dowry? Answer: It is.[208]
>
> Is Zeyd, a convert Muslim whose father is a non-Muslim, equal to Muslim Hind whose father is also a Muslim? Answer: He is not.[209]
>
> Is Zeyd, who is a Muslim but a Copt [here, probably, a gypsy], equal to Hind of the *seyyid*s? Answer: He is not.[210]
>
> Is Zeyd, son of a freeborn father and grandfather, equal to freeborn Hind? Answer: He is.[211]
>
> Is the free 'Amr, Zeyd's former slave, equal to freeborn Hind? Answer: He is not. [212]

The criteria other than religion and freedom comprise a significant part of the fatwa compilations, providing us with invaluable clues regarding how socioeconomic inequalities and the social hierachy were maintained through marriage. It seems that, with some variations according to positions and means, all Ottoman subjects were concerned with marriage due to its socio-economic connotations.

III.2.1. Economic Status

While other aspects of marriage equality provide us with considerable means to trace the effect of status on marriage, none would be as indicative as wealth and occupation in terms of demonstrating the Ottoman class awareness. As Meriwether argues, marriage

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[208] Şafi'i el-mezheb olan Zeyd-i müteveffanın sağire kızı Hind'i veli akrebi liebeveyn ammi amr hanefi'u-l mezheb olup hinde küfüv olan bekire mehri misliyle tezvic eylese akd-i mezbur sahih olur mu? El-cevab: Olur. *Behçet'ü-l Feteva*, 56.

[209]Babası Müslim olmayan Zeyd-i Müslim-i muhtedi babası dahi Muslim olan Hind-i Müslimeye küfüv olur mu? El-cevab: Olmaz. *Behçetü'l-feteva*, 57.

[210]Müslim olup lakin kıbti olan Zeyd sadat-ı kiramdan 'Amrın kızı Hind'e küfüv olur mu? El-Cevab: Olmaz. *Behçetü'l-feteva.*, 57.

[211]Babası ve babasının babası hürrül 'asl olan Zeyd hürretül 'asl olan Hind'e küfüv olur mu? El-cevab: Olur. *Behçetü'l-feteva*, 58.

[212]Zeyd'in azadlı kulu 'Amr hürretül 'asl olan Hind'e küfüv olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi*, 1: 40.

had nothing or little to do with love; instead, it was the socioeconomic concerns of families which were influential on spouse choices.[213] Accordingly, our sources strongly suggest that material interests of families took precedence over personal preferences of prospective grooms and brides.

There is not a shadow of a doubt that elite families were much more concerned about social, economic and political standing of the prospective spouses for their daughters or sons not only to solidify or strengthen their overall standing but also to avoid marriages that might place them in the lower echelons of the power and influence scale. To phrase it differently, it was not only the incentive of acquisition but also the fear of losing their existing ground that determined families' fine tooth combing of spouse selection. As a result, the poor and people of lower status were excluded from elites' possible spouse pool.

> Is the poor Zeyd, who is not a learned man or a notable and also not capable of paying bride money and alimony, equal to the rich Hind? Answer: He is not.[214]
>
> Is Zeyd, who is incapable of paying prenuptial support and maintenance, equal to Hind? Answer: He is not.[215]

In a sense, wealth or high status could be a handicap for women in the matter of spouse selection due to the concerns of elite families about socioeconomic standing of the prospective spouses. In other words, elite women were bounded by more rigid rules while the poor were subjected to more relaxed rules regarding marriage equality. In tandem with this, the jurists seemed not to be uncomfortable with the possibility of unequal marriages if the woman was poor, that is to say, no threat arose to the social order in such cases. Otherwise, the criteria seemed to be strictly implemented for the stability of social order. For instance, women of lower socio-economic status could be married off by their

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[213]Margaret Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770–1840* (Austin: University of Texas Press, 1999), 113.

[214] 'Alim ve şerif olmayub mehr-i muaccele ve nafakaya iktidarı olmayan Zeyd-i fakir Hind-i ganiyeye küfüv olur mu? El-Cevab: Olmaz. *Neticetül´ Fetâvâ*, 34.

[215] Mehr-i muaccel ve nafakaya kadir olmayan Zeyd Hind'e küfüv olur mu? El-cevab: Olmaz. *Fetava-yı Abdurrahim*, 1: 166.

neighbors or by people other than their guardians while women of higher status could be married only by their guardians in default of which the marriage would be annulled.[216]

> If Hind marries to the poor Bekir from among *seyyid*s without permission of her father wealthy Zeyd who is from among judges, can Zeyd have the marriage in question dissolved by the decision of the judge on the ground that Bekir is not equal to Hind due to his being incapable of providing Hind with none of the prenuptial support, maintenance and cloth? Answer: He can.[217]

As manifested in the last example, even the descendants of the prophet Muhammad, a very prestigious social position as already mentioned, does not make an exception in terms of not satisfying these requirements. For family well-being and preserving marriage continuity, on which the Islamic law set a great value, a certain degree of material means were required on the men's end. Men had to be capable of providing their wives with the bride price (*mehr*), maintenance (*nafaka*) and cloth (*kisve*) in default of which the marriage could dissolve.[218] Since it is the responsibility of men in the Islamic law to provide his family's subsistence on grounds that women should keep themselves out of foreign men's sight as much as possible, men incapable of paying prenuptial support and providing their wives with basic subsistence (mainly food and cloth) are not eligible for marrying any women, regardless of the latter's socio-economic status, even those of lower economic status.[219]

The initial phase of setting economic equality between the partners was to determine the bride price (the money or goods the groom provided the bride, and unsurprisingly it notably varied according to the parties' socioeconomic standing. At this point, the relevant term for our purposes and much more telling regarding socioeconomic

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[216] Marlow, *Hierarchy and Egalitarianism,* p. 32.

[217] Kudattan olup ağniyadan olan Zeydin kızı Hind Zeyd'in izninsiz nefsini mehr-i muaccel ve nafaka ve kisveye kudreti olmayub sadattan olan Bekir-i fakire tezvic eyledikde Zeyd küfüvü değildir deyu tefrike kadir olur mu? El-cevab: Olur. *Fetava-yı Abdurrahim*, 1: 161.

[218] Nelly Hanna, "Marriage Among Merchant Families in Seventeenth-Century Cairo," in *Women, the Family, and Divorce Laws in Islamic History, ed.* Amira Sonbol (Sycracuse: Sycracuse University Press, 1996), 147.

[219] Halebi, *Multeka El-Ebhur*, Vol. 1: 358.

standing is *mehr-i misli,* literally means "bride money of equal amount." The law left the duty of determining the amount of the dowry to the involved parties and, consequently, the Ottomans took as reference the amount of dowry paid to bride sides of similar socioeconomic status. In other words, *mehr-i misli* was directly determined by social class. Related to this, men needed to satisfy not only the amount brides' standing required but also had to abide by the social expectations attached to the men's status. In other words, "the better-off families in particular felt pressured to bargain for high dowers, to lavish sizable settlements on them as a way of attracting bids from men of good status, and to spend heavily on the festivities".[220] The following fatwas are important in their emphasis on the link between the amount of the *mehr* and the social standing of the involved parties. In the first fatwa, the mufti expresses clearly his disapproval of the lower bride price on the grounds that such a low amount clashes with the 'glory' of the person in question. It is also important that the mufti's solution regarding determining *mehr-i misli* emphasizes social expectations attached to the people's standing: the 'glory' of the person, the social class to which the person belonged were emphasized while the duty of determining amounts was given to the knowledgeable people who were expected to know what amount was required for what class.

> Hind, the freed concubine of an agha, who was the previous Pasha of Algeria, and the wife of Hayreddin Pasha's son Hasan Pasha, applies to the court claiming "my marriage contract is worthy of one thousand gold", and producing a deed (hüccet) in order to refute the opposition of the heirs of her deceased husband who claim that "the marriage contract in question is worthy of ten dirham silver". Given that the deed in question is in Algeria and cannot be presented in Istanbul since a long time has elapsed, can Hind get ten thousand gold pieces by presenting the deed in Algeria? Answer: She can get it provided that the amount is in keeping with her *mehr-i misli* and the witness testimonies are transmitted to Istanbul. However, a marriage contract worthy of ten dirham clashes with the glory of the deceased Hasan Agha.[221]

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[220] Marcus, *The Middle East on the Eve of Modernity,* 203.

[221] Sabıkan Cezayir paşası olan ağanın mu'tekası ve Hayreddin paşa oğlu Hasan paşanın menkuhası olan Hind "nikahım bin altındır" deyu da'va edip, veresenin "nikahın on dirhem gümüştür" dediklerinde bir hüccet ibraz edip, amma hüccet Cezayir'de olup, müddet-i medide mûrur etmeğin İstanbul'da beyyineye kadire olmayup Cezayir'de beyyineye kadire olsa, ayniyle bin altın mehrin almağa kadire olur mu? Mehr-i misli müsaid ise olur, ve illa şahidlerin şehadetleri nakl oluncaya değin alamaz, ama Hasan paşa merhumun şanından on dirhem ile nikah baiddir.Düzdağ, *Ebussuud Fetvaları,* 42-43.

> Thusly, to whose *mehr-i misli* should that of Hind be legally compared? Answer: The knowledgeable people should determine and agree on an amount that complies with the glory of Hasan Agha.[222]

If they were of a notable socioeconomic position in society, individuals were willing to reflect their status into marriage contracts in accordance with the social expectations. Accordingly, the amount of *mehr* could reach exorbitant levels as the following fatwa exemplifies. In a sense, the high *mehr*s guaranteed elite women's economic liberty during marriage and after marriage in case of divorce.[223] Considering the amount of the *mehr* we can assume that the groom was an important person in society although no sign of status or title is given:

> Zeyd dies after contracting with Hind a marriage for a *mehr* of one hundred loads of musk, one hundreds loads of saffron; each of them equal to 30 *batman*, one hundred male slaves, one hundred concubines and one hundred camels. In this case, can the heirs of Zeyd pay nothing more than Hind's *mehr-i misli*? Answer: They can because the amount is not clear.[224]

Status was important also in determining the domestic responsibilities of the wife in marriage. According to Zembilli Ali, if the woman was from among the notable families, she should not be forced to cook.[225] Breast feeding also exemplified the varying responsibilities of women according to socioeconomic status. For rich and elite women, employing wet nurses was a common practice: "it was health reasons and a desire to maintain their figure or to shorten the interval between pregnancies that made them

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[222] Bu surette Hind'in mehr-i misli şer'le ne makule kimseye kıyas olunur? Hasan ağanın şanına kıyas, eshab-ı vukuf tayin ve ittifakları ile olunur.Düzdağ, *Ebussuud Fetvaları,* 42.

[223] Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (New York: Cambridge University Press, 2005), 13.

[224] Zeyd Hind'i her yükü 30 batman olmak üzere, yüz yük misk, yüz yük zaferan ve yüz kul ve yüz cariye ve yüz deve mehr ile nikahlayıp, fevt olucak mümkün olmamağın, verese-i Zeyd Hind'e mehr-i mislinden ziyade nesne vermemeğe kadir olurlar mı? Olurlar, mikdar-ı kıymet meçhuldür.Düzdağ, *Ebussuud Fetvaları,* 43.

[225] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, p. 54.

avoiding the trouble of breastfeeding".[226] While a rich woman could take the advantage of having someone feed her baby instead, women of lower economic status had to feed their babies on their own.[227]

Marital responsibilities remained in effect in the event of divorce too. Various payments were required to be paid by man to his ex-wife including a one-year alimony, *'idda* support[228], a possible compensation (*muta'*)[229], the late and due portions of the bride money, and any arrears in payments of support and clothing.[230] However, if the woman was the party who initiated the action for divorce, she had to forfeit any financial right arising from divorce. This means that it would not be a reasonable choice for a woman who had no financial guarantee on her own to lose her husband's financial support and protection. Thus, we can mention the difference between high status women and law status women in terms of their chances to ask for a consensual divorce *(khul')*; that is, women who could secure a big trousseau given by her family and a big dowry by her husband should have been less worried with regards to losing financial support of her husband.[231] Materiality of these payments to our discussion lies in their determination according to social status of the involved parties. For instance, fatwas from Zembilli Ali determined the

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[226] Avner Giladi, *Infants, Parents and Wet Nurses: Medieval Islamic Views on Breastfeeding and Their Social Implications* (Leiden; Boston; Köln: Brill Academic Publications, 1999) 5.

[227] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, 54.

[228] A kind of alimony in the form of support and lodging which ex-husbands had to provide to divorcees for the following three months after the divorce to see whether woman was pregnant. Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 70.

[229] This is a compensation which had to be paid to women by their ex-husbands who arbitrarily divorced them. The divorcee was entitled to get this compensation unless she forfeit it in her divorce agreement. Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 71.

[230] Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 70; Abdal-Rehim Abdal Rahman Abdal Rehim, "The Family and Gender Laws in Egypt during the Ottoman Period," in *Women, the Family, and Divorce Laws in Islamic History, ed.* Amira Sonbol (Syracuse, N.Y: Syracuse University Press, 1996), 96-112.

[231] Fariba Zarinebaf, "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century," in *Women, the Family, and Divorce Laws in Islamic History, ed.* Amira Sonbol (Syracuse, N.Y: Syracuse University Press, 1996), 81-96.

amount of alimony on the basis of economic status: two *müdd*[232] for the rich, one and a half *müdd* for the middling and one *müdd* for the poor.[233] Such a difference on the basis of social class seems to have two main purposes: on the one hand, it seeks to accomplish economic equality between partners, and on the other, it aims to enable elite women to maintain the living standards that they were used to in their family home.

III.2.2. Occupational Status

All the material concerns and class-conscious spouse choices mentioned up to here were strongly connected with occupational status. According to a report, Abu Hanifa is said to have been unconcerned with occupational equality. However, *Fetava-yı Hindiyye* disregards the accuracy this report. Instead, it internalizes another report attributed to Abu Hanifa, posing a hierarchy among occupations, in which vets, practitioners of cupping, linen-weavers, tanners, barbers and garbage men were not equal to daughters or sisters of people in prestigious occupations such as linen drapery or money changing. If marriage partners were relatives, however, equality in occupation could be ignored.[234] Halebi repeats the same prestige and income-based division among occupations, and adds woolen drapers and blacksmiths to the category of lower status occupations while perfumers and mercers are included among occupations of higher status.[235] Fatwas from Ibn Abidin provide us with a chance to construct a more or less generic classification of occupations in relation to marriage equality. Accordingly, the upper strata consisted of the members of religious institution (*'ilmiyye*) such as judges and scholars; the middle strata was composed of tailors, perfumers, linen drapers, money changers, mercers; the lower strata included members of various professions such as stablemen, shepherds, tanners, bath attendants,

[232] A measure for grain, double handful.

[233] Zembilli Ali Efendi, *El-Muhtarat Minel Fetava*, 53.

[234] *Fetava-yı Hindiyye*, Vol. 2: 331-32.

[235] Halebi, *Multeka El-Ebhur*, Vol. 1: 358-59.

vets, practitioners of cupping, linen-weavers, barbers and garbage men.[236] Local variations brought considerable differences in terms of the prestige and income of various occupations, for instance, a weaver could be equal to a perfumer in Alexandria, Abidin says.[237] What placed some occupations among lower status occupations was whether they required close contact with dirty substances such as garbage, animal skin, or animal itself. These occupations in a sense were dealt by "outcasts". Moreover, sellers were not considered of lower status according to the substances of the goods they sold. For instance, although shoemaking had a stigma, shoe-sellers were free from any negative social perception.[238]

As already argued, one of the main divisions in the Ottoman society was between the knowledgeable and ignorant. Related to this, it has also been shown that knowledge was highly respected in the writings of the Ottoman literati. This prestige attached to knowledge revealed itself in the placement of the Ulama in the higher echelons of the occupational hierarchy as well. Although the positions of the people in the religious institution were specified in some instances in fatwa compilations such as preacher, teacher, judge etc., regarding the fatwas related to the principle of marriage equality, the inscription of "from among the Ulama" (*Ulema'dan olan...*) was applied to all members of the '*ilmiyye*, without specifying the particular positions they held in the '*ilmiyye*, which indeed contained in itself many occupations differing greatly in terms of income and prestige as well as political influence. Judging by our fatwas, knowledge was preferred by the muftis to material wealth. In a sense, as they owed their prestigious position to the political and cultural importance attached to knowledge, the muftis emphasized superiority of knowledge vis-a-vis material wealth. Accordingly, practitioners of ordinary occupations were not regarded to be equal to the daughters of the members of the Ulama under any circumstances. The following fatwas should illustrate how that worked:

> Can 'Amr give his daughter Hind of Muslim in marriage to the rich Bekir against her will while Zeyd, a man of knowledge, have made his proposal and sent a sum of

[236] Ibn-i Abidin, *Reddü'-l Muhtar*, Vol. 5: 435, 436.

[237] Ziadeh, "Equality (*Kafā'a*) in Muslim Law of Marriage", 514.

[238] Ibn-i Abidin, *Reddü'l Muhtar,* Vol. 5: 435.

prenuptial support already? Answer: It is beneath Muslims to prefer someone else to the men of knowledge.[239]

What happens to 'Amr if he still prefers Bekir to Zeyd on the ground that Zeyd is poor? Answer: Knowledge of Zeyd is better than the other's wealth, knowledge should be preferred.[240]

Is the ignorant 'Amr a member of the grocers' guild equal to Hind whose father Zeyd is among from the Ulama. Answer: He is not.[241]

If the righteous Hind whose father is from the Ulama marries her unequal Bekir without the permission of her guardian 'Amr, who is Hind's full brother, can 'Amr separate Hind from Bekir by the decision of judge? Answer: He can.[242]

III.2.3. Moral Status

At the very least, families were concerned with having moral and well-behaved partners for their daughters. In this regard, fatwas are full of the epithets associated with moral standings of people. Some epithets such as *fasık* (impious), *facir* (dissolute), *müdmin-i hamr* (wine addict), *cahil* (ignorant) and *rezil* (disreputable) are the most commonly encountered ones in the fatwas concerning marriage equality in terms of piety and morality. It comes as no surprise that the people characterized as such were not considered as proper partners for the moral and pious women deemed to be defined with complimentary epithets like *salihe* (righteous), *muhaddere* (virtuous), or *mümeyyize*

[239] Ehl-i ilm olan Zeyd, Amrın kızı Hind-i müslime nara-zed olup, bir miktar mehr-i mu'accel dahi gönderse, kabl-en-nikâh Amr Hindi rızasıyla Zeyde vermeyip akçalı olan Bekre vermeğe kadir olur mu? El-cevab: Müslime lâyık değildir ki, ehl-i ilmden gayri kimseyi tercih ede. Düzdağ, *Ebussuud Fetvaları,* 180.

[240] Bu Surette 'Amr, Zeyd "fakirdir" deyu Bekir'i tercih edicek, şer'an Amra ne lâzım olur? El-cevab**:** Zeyd'in ilmi gayrinin dünyâsından hayırlıdır, ilmi tercih etmek lâzımdır. Düzdağ, *Ebussuud Fetvaları,* 180.

[241] Ulemadan olan Zeyd'in kızı Hind'e bakkal taifesinden Amr-ı cahil küfüv olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi*, 1: 40.

[242] Ulemadan olan Zeyd'in kızı Hind-i salihe nefsini veli akrebi olan erkarındaşı 'Amrın izninsiz küfüvü olmayan Bekir'e tezvic eylese hala 'Amr Hind'i Bekir'den hakime tefrik ettirmeye kadir olur mu? El-cevab: Olur. *Fetava-yı Abdurrahim*, 1: 162.

(qualified). The examples below show the concerns of parents or guardians who want to obtain a fatwa in favor of their effort to prevent unfavorable marriages.

> Is the sinner Zeyd equal to righteous Hind, daughter of righteous ‘Amr? Answer: He is not.[243]

> Is ignorant and wine addict ‘Amr equal to Hind, daughter of the righteous and learned Zeyd? Answer: He is not.[244]

In many instances similar to those fatwas above, parents or guardians presented their worries at the initial phase with the hope of eliminating the possibility of inappropriate marriages their daughters might fall for. Most probably because of the already mentioned difficulty in measuring the moral status, some marriages ended up between unequal spouses (The other possibilities may be the groom’s being from a different town or his being away from his hometown for a long time and, consequently, remained out of the society’s sight). In such cases, as far as stated in the queries, the groom or the people that knew him deceived the bride side about the former’s moral status and behaviors and, consequently, the marriage was conducted. Keeping in line with Islamic doctrine, the Muftis almost always handed down an opinion in favor of the bride’s side, either to the guardians or to the woman herself, allowing them annul the marriage. The same also applied to cases in which women married themselves to someone their guardians disapproved.

> Being said that Zeyd is an innocuous and righteous person and without knowing his immorality, parental guardians of the righteous Hind give her, with her consent, in marriage to Zeyd. Given that Zeyd had sexual intercourse with Hind, can the guardians of Hind have the marriage in question dissolved by the decision of the judge on the basis of Zeyd’s immorality? Answer: They can.[245]

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[243] Fasık olan Zeyd ‘Amr-ı salihin kızı Hind-i saliheye küfüv olur mu? El-cevab: Olmaz. *Fetava-yı Ali Efendi*, 1: 40.

[244] Zeyd-i salih ve ‘alimin kızı Hind’e müdmin-i hamr olup cahil olan ‘Amr küfüv olur mu? El-cevab: Olmaz. *Fetava-yı Abdurrahim*, 1: 166.

[245] Zeyd Hind-i saliheyi tezvice talip oldukda Zeyd kendi halinde salihdir deyu ihbar olunmağla Hind’in evliyası Zeyd’in faskına ‘alim değil iken Hind’i rızasıyla Zeyd’e tezvic Zeyd dahi Hind’e duhul olduktan sonra Hind’in evliyası Zeyd’in faskına ‘alim

> When Zeyd asks for the little Hind, who is the daughter of righteous ‘Amr, in marriage, ‘Amr marries his daughter to Zeyd in regard to some people’ saying that Zeyd is righteous and pious. However, after marriage, it becomes obvious that Zeyd is wine addict. In this case, can Hind have her marriage dissolved by the judge after reaching puberty? Answer: She can[246]

> When Amr asks for minor Hind in marriage, her father righteous Zeyd accedes his demand since he supposes that ‘Amr is righteous. If it becomes obvious during the marriage that ‘Amr is dissolute and wine addict, can Hind apply to the judge to have her marriage dissolved after reaching puberty? Answer: She can.[247]

This being said, the question arises as to whether it is possible to measure the morality, and who decided the moral standing of people according to what criteria? It can be assumed that some points were easier to observe and can be used to support or negate people’s moral standing; for instance, performing the daily prayers was essential to be a good Muslim while attending wine houses might signal bad morality. However, not all behaviors or habits are that clear in terms of their moral connotations; the chances are limited to define unambiguously whether a person is really deviant or moral. This confusion necessarily brings mind the possibility that these blurred definitions and measuring-difficulty of morality and moral behavior enabled at least some guardians to get rid of unwanted men for any reason both in marriages or legal matters such as testimony, which has already been discussed.

Related to this, as already argued in the previous chapters, morality and immorality were not decided independently of the socioeconomic hierarchy. Moreover, the stigmas related to immorality did not always correspond to the actual conduct of people. Rather, in many instances, socioeconomic hierarchy was likely to be at work: while fatwa

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olmalarıyla rey-i hakimle Hind’i Zeyd’den tefrike kadir olurlar mı? El-cevab: Olurlar. *Fetava-yı Abdurrahim*, 1: 161.

[246] Zeyd sulehadan ‘Amrın sağire kızı Hind’i istinkah ettikde bazı kimesneler Zeyd salih ve mütedeyyindir demeleriyle ‘Amr Hind’i Zeyd’e tezvic ettikten sonra Zeyd’in şarib-ül hamr olduğu zahir olsa Hind baliğe oldukta raziye olmamağla hakime murafaa oldukta hakim Hind’i Zeyd’den tefrike kadir olur mu? El-cevab: Olur. *Behçetü’l-feteva*, 59.

[247] Sulehadan Zeyd sağire kızı Hind’i tezvice talip olan ‘Amr’ı salih zannetmekle Hind’i ‘Amra tezvic edip bade Hind baliğe olup ‘Amr’ın facir ve şarib-ül hamr olduğu sabit olsa Hind kadıya varıp nikah-ı mezburu feshettirmeye kadir olur mu? El-cevab: Olur. *Fetava-yı Abdurrahim*, 1: 162.

compilations have many instances in which people of lower status are associated with immorality, no match between people of higher status and immorality or ignorance is present. It should also be added that, as noted before, the people who vouched for one's morality or had the right to comment on one's immorality were the notables of the neighborhoods or towns who acted in collaboration with the state officials, for example, to maintain safety and order.

III.3. Religious Ideal or Social Reality: Historiography on Ottoman Marriage Patterns

Having presented relevant fatwas regarding the relationship between marriage and the maintenance of social boundaries and inequalities, one issue still remains unclear: to what degree fatwas can be regarded as the mirror of reality? Were they religious ideals far from reality? At this point, the findings of studies in this direction can be of avail. Some related pieces from the relevant literature, especially court records based studies, of course with inevitable variations, confirm the socioeconomic concerns attached to marriage.[248]

We do not need to look far in order to see how strategically marriage was used in the Ottoman world: although a dynasty cannot be regarded as the representative of society, a look at the Ottoman dynasty's marriage strategies can be of avail to understand the

[248] A good and complicated example of status concerns in marriage in which the marriage between a woman of prestigious family and a men of lower status both in terms of occupation and morality has been solved by the judge upon the intervention of the woman's guardians shows how various parts of individual identity were at play. The parties in this case are defined respectively as "Ayşe, the daughter of a *seyyid* and perfumer father and the granddaughter of a man holding an important official position, the kaimakam of the chief of the prophet's descendants (*nakibülesraf kaymakamı*)", and "Osman the rose water maker (*gülab*) who is a shoemaker (this suggests that rose water maker is his family name) and servant of someone else, from among the dissolute and spendthrift people (süfehâ-i nas), and also known for his being disgraceful and vile". This 'dead born' marriage, contadicting with almost all concerns of status that were in effect in marriage contracts, was dissolved by the judge. İsmail Kıvrım, "17. Yüzyılda Osmanlı Toplumunda Boşanma Hadiseleri (Ayıntâb Örneği; Talâk, Muhâla'a ve Tefrîk)," *Gaziantep Üniversitesi Sosyal Bilimler Dergisi,* 10:1(2011): 371 – 400.

importance of marriage as a multi-functional tool used at every segment of the Ottoman world. There has been a lot written on the Ottoman dynasty's strategies in its early centuries among which marriage was frequently used as an instrument to secure political alliances.[249] From the 17th century onwards, this strategy from previous centuries came into prominence in a different form in which the Ottoman sultanas were married off to notable Vizier and pashas. At the first glance, this can be regarded as the sultan's favor to the grandees, providing them with the privilege of being a part of the dynastic family, with the epithet of *damad* (groom) added in front of their names. However, it is now much more obvious that such marriages were of mutual benefit as they enabled the Ottoman sultans to have a have better control over the grandees, especially 17th century onwards when Ottoman Vizier-pasha households started to enjoy greater authority in politics.[250] This tendency continued all through the 18th century which is considered as the "heyday of the politics of households", in Kenneth Kuno's terms.[251]

The other segments of the Ottoman world were not very different from their ruling family in terms of their perception of marriage, if in different ways. It has been suggested in a recent study dealing with the relationship between marriage and status to classify marriages into three general groups in relation to the parties involved in: endogamy (marriages among identical socioeconomic groups), homogamy (marriages among similar socioeconomic groups) and heterogamy (marriages among dissimilar socioeconomic groups).[252] Our conclusions from the fatwas, which point to the relative rarity of heterogamy while suggesting a higher degree of endogamy and homogamy, are supported

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[249] Leslie Peirce, *The Imperial Harem: Women and Sovereignty in the Ottoman Empire* (New York: Oxford University Press, 1983); Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (Cambridge: Canbridge University Press, 2008), 61.

[250] Rıfa'at Ali Abou-el-Haj, "The Ottoman Vezir and Pasha Households, 1683-1703 : A Preliminary Report," *JOAS* 94, (1972): 438-475.

[251] As cited in Astrid Meier, "Family Formation in Early Ottoman Damascus: Three Military Households in the Seventeenth and Eighteenth Centuries". In *Syria and Bilad al-Sham under Ottoman Rule: Essays in Honour of Abdul-Karim Rafeq, eds.* P. Sluglett and S. Weber (Leiden: Brill, 2010), 348.

[252] Boğaç Ergene and Atabey Kaygun, "Spouse Selection and Marital Mobility in the Ottoman Empire: Observations from Eighteenth-Century Kastamonu", *Historical Methods: A Journal of Quantitative and Interdisciplinary History,* 45:1 (2012): p. 8.

by the court record findings. Scholars dwelling on court records have found high rates of intramarriage among the elites. Judging by the existing historiography, although it changes from one place to another whether marriages occur among elites of the same profession, i.e. military title holders and religious title holders, or among elites with different titles, the general trend seems to be that elites did not to marry down. To put it differently, intraelite marriages were "as much an alliance or partnership as strategic alignments and power-sharing arrangements common among male grandees".[253]

Whether to marry in or marry outside the household seemed to depend on the families' overall socioeconomic standing. In her observations for Aleppo, Meriwether points out a crucial pattern in which "upwardly mobile families were much more likely to marry outside family since they needed to establish alliances with as many different families as they could".[254] Keeping possible variations in mind, this model can be though to have appeared in many cities or regions of the Ottoman world. Marrying into poor families was likely to be very rare among old established families or families looking for ways of upward mobility, which suggests that the main difference was between the lower classes and upper classes while marriages were possible between higher and lower elites. Not only economic capital but also cultural and social capitals were of great importance, consequently, the descendants of the Prophet and members of the Ulama could make their ways into elite families through family ties of mutual benefit. While elite families provided them with the chance of upward mobility, the prestigious sociocultural position of the latter were of equal importance for elites to solidify their social standing, especially acquiring kinship ties with the prophet's descendants, a status that could be acquired through female members of the descendants of the Prophet. However, nothing motivated higher status families to have ties with lower status families: the latter offered no networks, no prestige, and no economic capital to the former.

These two strategies –marrying in the household in order to keep assets together, and marrying into families of similar, or if possible better, socioeconomic status in search

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[253] Jane Hathaway, "Marriage Alliances among the Military Households of Ottoman Egypt," *AnIsl* 29, (1995): 3.

[254] Margaret Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo*, 138.

of establishing ties and alliances– are well-documented in *sicil*-based studies. As Ergene mentions, in 18th-century Kastamonu, marriages among title holders and the titleless were very unlikely, suggesting a strong socioeconomic barrier between these two broad groups. Although one encounters marriages between titleholders and titleless people, those who married down are holders of most humble titles, in terms of their possible socioeconomic advantages.[255] For 18th-century Egypt, Hathaway draws our attention to the marriage alliances among Egyptian military households in which both women and men acquired a notable degree of wealth, political influence and social prestige. The women married to a grandee could enjoy certain advantages, especially if the grandee in question had no male heirs, while the same was true for men who acquired the dowry and other property of well-to-do women through marriage.[256] 17-th century Sofia and 18-th century Nablus exhibit similar features concerning intraelite marriages. In Sofia, the highest military title holders, *ağa*s, almost exclusively intermarried[257] while the well-known merchant family of Nablus, Arafats, preferred cousin marriage, with the purpose of preventing the family assets to disperse. The findings of Ze'evi for Jerusalem do not differ much in terms of the marriage alliances among the elite. He demonstrates the marriages between the Farrukhs and the Ridwans, two important old-established families. The general tendency of marriages based on hierarchy repeated itself in Jerusalem as well. Here, too, a strict line divided the privileged notables and the unprivileged rest.[258]

According to court records, marriages among the Ulama, the descendants of the Prophet, and military men were the most common way acquiring ties and networks. Barbir argues that through such marriages military men acquired the title of *seyyid* which could be passed through females, and these marriages also enabled elites to have peace by pacifying

[255] Ergene and Kaygun, "Spouse Selection", 12-13.

[256] Hathaway, "Marriage Alliances Among the Military Households", 3.

[257] Gradeva Rossitsa. "Towards a portrait of 'the rich' in Ottoman provincial society: Sofia in the 1670s," in *Halcyon Days in Crete 5, ed.* Antonis Anastasopoulos (Rethymno: Crete University Press, January 2005), 173.

[258] Ze'evi, *An Ottoman century: the district of Jerusalem in the 1600s***,** 46, 79.

factional conflicts that were chronic in the Damascene society.[259] Being from the descendants of the Prophet enabled people enjoy certain advantages including the chance of upward mobility through marriage.[260] Although not as influential as members of the military class or the Ulama, *seyyid*s were ideal spouses for the families who were keen on adding a new ring to their chain of prestige. Variations in this tendency were possible. Damascene ulama[261] and Sofian ulama[262] seemed to be much more concerned with intramarriages rather than marrying out while Aleppo presents a completely different picture in which the Ulama families time and again forged marriage alliances with the families of merchants and military ranks.[263] Interestingly, ulama of Istanbul followed both ways: while the highest ranking Ulama strictly followed endogamy, the middle to high ranking the Ulama could frequently marry off non-Ulama families.[264] However, the ulama of Istanbul, too, did not tend to marry down. While people of different professions could intermarry, such as marriages among sheiks and merchant families, the main gap appeared to be between the poor and the wealthy, the intermarriage of whom was really rare.[265]

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[259] Karl Barbir, "Wealth, Privilege, and Family Structure: the `Askaris of 18th Century Damascus According to the Qassam `Askari Inheritance Records," in *The Syrian Land in the 18th and 19th Century, ed.* Thomas Philipp (Berliner Islam studien, Volume 5, Stuttgart: Franz Steiner Verlag, 1992), 187.

[260] Ergene and Kaygun, *Spouse Selection*, p. 15.

[261] James Grehan. "The Mysterious Power of Words: Language, Law and Culture in Ottoman Damascus (17th and 18th Centuries)," *Journal of Social History*, 37: 4(2004): 991-1015.

[262] Gradeva, *The Portrait of the Rich*, 172.

[263] Meriwether, *The Kin Who Counts*, 145.

[264] Madeline Zilfi, "Elite Circulation in the Ottoman Empire. Great Mollas of the Eighteenth Century," *Journal of the Economic and Social History of the Orient*, 26, (1983): 330- 333.

[265] Nelly Hanna, *In Praise of Books: A Cultural History of Cairo's Middle Class, Sixteenth to the Eighteenth Century* (Syracuse: Syracuse University Press, 2003) 43-44.

Conclusion

In the Ottoman Empire, spouse selection was a matter of great importance due to its direct influence on the status of both spouses' families. Marriage had a meaning beyond individual preference or decision. At the exact center of the everyday life, marriage was among the most important ways to forge alliances, access networks, and seize a chance of mobility. Given this important link, parents got involved in almost every stage of the marriage, and perhaps, the spouse selection was the most important stage among all. Most of the time, families appeared as the sole decision maker in spouse selection, leaving none or limited room for the free will of the prospective groom and bride. Taking the support of the legally and traditionally sanctioned rules and expectations behind them, families did not shy away from actively intervening in the process.

Social reality was not different from what was reflected in the fatwas: most marriages appear between families of similar status in terms of wealth, power and prestige. Studies dealing with marriages in Ottoman society confirm the situation as the examples and patterns offered in them prove the existence of a strong link between status concerns and spouse selection. Studies on marriage and patterns of marriage in the Ottoman Empire indicate that marriages were not arranged independently from material concerns of families which looked for social alliances and new power networks for themselves. Cultural capital in many instances was transformed into economic capital. Despite the absence of a deterrent to men to marry lower women of lower status, endogamy and homogamy were very common while heterogamy was not widespread. This phenomenon allows us to conclude that marriage was not a personal choice that depended on individual's preferences but rather, it was influenced by families' expectations. In a sense, the principle of equality in marriage can be regarded as the social reflection of the Ottoman political discourse of "*yerlü yeründe*", which means to keep people in their own place within the socio-political hierarchy –a motto that was commonly repeated by the Ottoman elite and intellectuals. Through the boundaries between the elite members of the Ottoman society and the ones who did not have a much wealth and prestige, marriage served as a mechanism to maintain the existing order.

CONCLUSION

In this thesis, I have tried to show the link between socioeconomic status and legal status of Ottoman individuals through fatwas, one of the least studied sources of Ottoman history, from 16th to 18th centuries. To this end, the extent to which Ottoman individuals drew certain identity components to the muftis' attention and the ways in which the stated identity components affected the muftis' responses have been examined. The well-defined categories of Islamic law –women, dhimmis, and slaves- and the inequalities stemming from the disadvantageous position of the members of these categories against free Muslim men have been deliberately left out of the scope of this study. Rather, the focus has been on the status components which were not resorted to as criteria to determine legal status of individuals in the canon of the Islamic law but became an integral part of the legal culture as a result of the interaction between law and custom –such as occupation, wealth, lineage, knowledge etc. Stated in other words, only the hierarchies and inequalities that became a part of the Islamic law as a result of the contact between the Islamic law and custom have been emphasized for the purposes of this study.

In the first chapter, the relationship between socioeconomic status of individuals and their legal credibility has been examined with reference to the fatwas regarding who were eligible to give legal testimony. Again, various criteria of assessing legal competence such as age, gender, sanity etc. have been disregarded in favor of socioeconomic characteristics of individuals such as occupation, knowledge, wealth and so on. At times directly, and at other times indirectly, the fatwas in this chapter have suggested that legal credibility and socioeconomic status largely overlapped. In other words, the place of the individuals in the scale of credibility was directly related to their position in the echelons of social hierachy. To be more precise, reliability of people of high status was self-evident while people of lower status were frequently associated with ignorance, dissoluteness or impiety, thereby

deemed ineligible to give legal testimony. The high degree of correlation between the fatwas presented in this chapter and ideas of the Ottoman elite writers in terms of the sharp contrasts between the elite and the common people, the scholar and the ignorant, and the practitioners of high status occupations (exclusively the occupations that were reserved for the *askeri* class) and those of lower status occupations has also been among the salient observations of this chapter. This correlation is important as it shows the overlap between concerns regarding the integrity of the social order and the attitude of the muftis, which will be further discussed later in this part. In general, the link between socioeconomic status and legal credibility that this chapter suggests are supported by findings of scholars of pre-Ottoman Islamic history and Ottoman history alike. For the pre-Ottoman period, Hallaq[266] and Johansen[267] convincingly show the interaction between socioeconomic status of the individuals and their legal status which is evident from the fact that the ones who constituted the pool of just witnesses were mostly from among elites. As for the Ottoman context, findings of Canbakal[268] and Ergene[269] point to the elite hegemony on the testimonial process. They argue that in addition to undertaking various duties in the court, elites monopolized this aspect of the legal process to the degree that it was the same people who appeared as witnesses in different cases.

In the second chapter, it has been argued regarding the *ta'zir* punishments that the socioeconomic status of the offenders was among the criteria used by muftis to determine the severity of the punishment. Put differently, punishments for the same crimes varied according to the offenders' position in the society. In this regard, the Ulama were not sentenced to *ta'zir*. The reason for this was the derogatory feature of *ta'zir* which was generally implemented in the form of bastinado or other ways of beating variably by whip, stick or hand. Armed with the legitimacy of central roles in the Ottoman polity as the guardians of religion and the heirs of the Prophet as imposed by Islamic culture, the Ulama were granted immunity from such a derogatory punishment, which would have injured, if

[266] Hallaq, *An Introduction to Islamic Law*, 62; Johansen, "Signs as Evidence", 171.

[267] Johansen, "Signs as Evidence", 168-193.

[268] Canbakal, *Society and Politics in an Ottoman Town*, 123- 173.

[269] Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, p. 29.

applied, not only the prestige of the Ulama but also one of the main pillars of the Ottoman polity. Instead, when engaged in an inappropriate act, the members of the Ulama were informed of their impropriety and asked not to repeat the acts in question. The balance between severity of the punishment and the socioeconomic status of the offender was not limited to the case of the Ulama; fatwas reveal a much more systematic framework in this regard. Accordingly, *ta'zir* of notables was said to involve having them come to the office of the judge while *ta'zir* of middle class people was imprisonment and *ta'zir* of lower class people was beating. Socioeconomic status mattered also in determining whether an act required *ta'zir* punishment; that is, some acts such as simple revilements were considered punishable only if the aggrieved party occupied an important position in the society. In this chapter, *seyyid*s' advantageous legal position has also been examined with reference to both their immunity from *ta'zir* and the muftis' sensitivity towards the punishment of the offenders who besmirched *seyyid*s' dignity. Regarding the *seyyid*s' advantageous position too, the state's legitimacy concerns seem to have played a decisive role. As Canbakal argues, "although the Ottoman state- builders did not claim Muhammadan pedigree themselves, they did promote the cult of Muhammadan nobility as part of their self-image."[270] This too suggests that the advantageous positions of some groups in the Ottoman world were in accordance with the state's legitimacy concerns, most evident in the cases of the Ulama and *seyyid*s. The last point discussed in this chapter was *muhaddere* (veiled, honorable woman). It has been argued that the issue of seclusion, which was the prerequisite to qualify the status of *muhaddere,* was a matter of class. Stated in other words, elite women had far greater chances to fulfill the requirements of principle of seclusion not only by their ability to hire servants accompanying them in public and running errands but also by the facilities of elite houses with properly enclosed courtyards, private baths, wells and fountains, each enabled the women to meet their various need without mixing with the public. Enjoying greater chances, the elite women could establish their status as *muhaddere.* Once their status was established as *muhaddere,* the elite women could refuse to appear in the court in person when they were summoned.

In the third chapter, the focus has been on the reflections of the Islamic principle of marriage equality in fatwas. Through an examination of the various criteria that the muftis

[270] Canbakal, "On the nobility of urban notables", 39-50.

proposed with respect to the equality between partners, it has been argued that the *kafa'a* principle contributed and reinforced the safety of the existing social hierachy. Considering the criteria proposed, little room was allowed for social mobility. On the contrary, the marriages between partners of similar socioeconomic status were encouraged. In that sense, the marriage patterns prescribed in the rulings of the muftis were on the same wavelength with the exhortation by Ottoman literati towards preserving the existing social hierarchy by keeping people in their proper place. It goes without saying that marriage was a social and economic contract, and as such, both families and partners were pretty much concerned with each other's socioeconomic status. In this regard, families were much more concerned with the socioeconomic conditions of the prospective spouses for their children and thus took active part in the marriage process at every stage. Judging by the fatwas used in this chapter, wealth, occupation, knowledge and piety prove to be decisive for men to measure up to their partners. Since the party that was required to measure up to the other was men, he had to be capable of providing his wife with basic subsistence such as food, clothing, and housing. Men who were incapable of providing these were not considered equal to even the poor women. In this connection, marriages served the elite in a way to manifest their social status as evident in the high amount of dowries that wealthy families paid. Both fatwas and *sicil*-based studies permit us to argue that marriages between the members of similar socioeconomic status groups were much more common compared to those between people of different socioeconomic status. Through the relevant *sicil*-based studies, it has been shown that many marriages were contracted between the members of the same household in order to keep the wealth of the household from dispersing or between partners of similar status to forge profitable alliances. Of great importance, it has also been argued through findings of the studies in question that not only economic capital but also social capital could be a concern in marriage; that is, marriage alliances between wealthy families and member of socially prestigious groups such as the Ulama and *seyyid*s were common.

I would like to present some concluding remarks related to the functions and legal status of fatwas, the muftis' identity as well as the interaction between law and practice. The sources consulted in this study point to the interplay between law and practice. On the one hand, this study has shown the instances in which law reflects social practices. Thus, it

seems that customs and various aspects of social hierarchy were reflected in fatwas. Put differently, socioeconomic structure, power relations and cultural patterns found an echo both in the inquiries posed to the muftis and their responses. On the other hand, it has also been argued through the relevant secondary literature that social practice also reflects law. In this connection, it has been observed that the legal responses of the muftis and findings of the *sicil*-based studies overlap to a considerable extent. It has been argued that fatwas were used more commonly in legal processes from the 17th century onwards.[271] Indeed, fatwas were legally non-binding. In practice, however, fatwa occupied an important place in the lives of Ottoman individuals not only as a manual to follow the religiously right path but also as documents to support their demands in the court.

Secondly, I have observed that fatwas of the Ottoman *şeyhülislam*s from 16th to 18th centuries conform to the rules of pre-Ottoman Islamic law with regard to marriage equality, elite's legal credibility as well as their immunity to some certain punishments. At this point, the question arises as to how we should interpret such a consistency between the Ottoman fatwas from the period in question and pre-Ottoman Islamic law? This question can be answered with reference to two dynamics. The first one is that, as already argued, both pre-Ottoman Islamic law and Ottoman law came into terms with customs and the existing social structure and consequently customs and social structure infiltrated into and became an integral part of the law.

In some instances, however, in accordance with the actual political needs of the Ottoman state, Ottoman *şeyhülislam*s issued fatwas inconsistent with pre-Ottoman Islamic law. For a case in point, we can mention the fatwas by Ebussuud Efendi during the ongoing rivalry in the 16th century between the Sunni Ottomans and Shiite Safavids whereby he legitimized war against a Muslim empire. Although not inconsistent with Islamic law, we have some other instances in which fatwas served the agenda of the Ottoman state such as fatwas by Yenişehirli Abdullah Efendi regarding the official introduction of the printing press in the Ottoman world. These examples suggest that the muftis toned their attitude according to needs of the central ideology. Indeed, the

[271] See; Canbakal, Hülya, "Birkaç fetva bir soru, bir hukuk haritasına doğru" in G. Kut and F. Yılmaz Büyükkarcı (eds.), *Şinasi Tekin'in anısına: Uygurlardan Osmanlıya*.İstanbul: Simurg, 2005, p. 258-270.

şeyhülislam's office was a part of the ruling mechanism and thus, generally speaking, the *şeyhülislam*s' rulings were in line with the demands of the central ideology. In other words, fatwas can be used as a basis to trace the ideology of the *şeyhülislam*'s office.

The second dynamic has to do with the identities of the writers. Both pre-Ottoman Muslim jurists and philosophers, and Ottoman religious and political literati whose writings and rulings were loyal to the existing social hierarchy were from the higher echelons of the society. In tandem with their identity, they underlined the need to maintain the stability of the social order. In a sense, fatwas reveal "the mental world of the Islamic intellectual elites". At this point, the correlation between the ideas in the writings of the Ottoman religious and political literati seems remarkable. Related to the identity of the muftis, fatwas somehow functioned as a social control mechanism. In numerous examples, some of which are cited verbatim in this study, the punishment of the individuals whose acts clashed with the norms of the existing hierarchy and violated the social order was recommended by the muftis. At times, the muftis expressed their opinion in favor of the punishment of such people by *ta'zir.* At other times, the muftis recommended "discipline" (*ta'dib*). Both punishments were corrective in feature and not unrelated to the position of the offenders' in the social hierarchy. The intention behind such punishments was to remind the offenders of the limits of their status. In many other instances, the muftis stated the inappropriateness of certain acts in religious terms with reference not to worldly punishments but to the otherworldly punishments. It would not be far from the truth to argue that fatwas served the state as an important tool to discipline and control its subjects.[272]

Lastly, the limits that have already been specified call for caution about making general inferences through the sources at hand. In order to reach more reliable conclusions, a deeper analysis based on the original manuscripts of the fatwas of Ottoman *şeyhülislam*s as well as the fatwas of the muftis of the Ottoman provinces is needed. Moreover, another

[272] For an analysis of fatwas as a social control mechanism, see; Ekin Tuşalp, *Treating Outlaws and Registering Miscreants in Early Modern Ottoman Society: A Study of Legal Diagnosis of Deviance in Şeyhülislam Fatwas*. Unpublished MA Thesis, Sabanci University, 2005.

approach deepen and widen the analysis would be to compare the tendencies reflected in fatwas with the data available in the courts records from a territory as wide as possible.

PRIMARY SOURCES

Abdullah Yenişehirli. *Behçetü'l-feteva me'an nukul*, [originally dated 1156/1743], İstanbul: Matbaa-i Amire, 1849.

Çatalcalı Ali Efendi. *Fetava-yı Ali Efendi* [originally dated 1103/1692], İstanbul: Matbaa-i Amire, 1893.

Düzdağ, Ertuğrul. *Şeyhülislam Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı,* Istanbul: Enderun Kitabevi, 1972.

El-Halebi, İbrahim. *Multeka El-Ebhur*, (Mustafa Uysal, ed.), Istanbul: Çelik Yayınları, 1985.

Fetava-yı Hindiyye, (Mustafa Efe, ed.) Ankara: Akçağ Yayınları.

Feyzullah Efendi. *Fetava-yı feyziye me'an-nukul [originally dated 1115/1703],* İstanbul: Darü't-Tıbaati'l-Amire, 1850.

Ibn-i Abidin, *Reddü'l- Muhtar*, Ed. And trans. Ahmed Davudoğlu. 18. Vols. İstanbul: Şamil Yayınları, 1982.

Kınalızâde Ali Efendi, *Devlet ve Aile Ahlakı*, *ed.* Ahmet Kahraman, Tercüman 1001 Temel Eser, 1970.

Menteşzade Abdurrahim Efendi. *Fetava-yı Abdurrahim*, [originally dated 1128/1715], İstanbul: Darü't-Tıbaati'l-Ma'mure, 1827.

Muṣṭafā 'Alī. *Muṣṭafā 'ālī's Counsel for Sultans of 1581:* Ed. and trans. A. Tietze. 2. Vols. Vienna: Verlag der österreichischen Akademie der Wissenschaften, 1979-82.

Neticetü'l-fetava me'an-nukul, [originally dated 1215/1800], Matbaa-i Amire, 1849.

Zembilli Ali Efendi. *El-Muhtarat Minel Fetava,* (İbrahim Ural & M. Ali Sarı, eds.), İstanbul: Fey Vakfı, 1996.

SECONDARY SOURCES

Abou-El-Haj, Rıfa'at. *Formation of the Modern state: the Ottoman Empire, Sixteenth to Eighteenth Centuries*. Albany: SUNY, 1991.

_____ "The Ottoman Vezir and Pasha Households, 1683-1703 : A Preliminary Report," *JOAS* 94, (1972): pp. 438-447.

_____ "The Expression of Ottoman Political Culture in the Literature of Advice to Princes (Nasihatnameler) Sixteenth to Twentieth Centuries," *Sociology in the Rubric of Social Science. Professor Ramkrishna Mukherjee Felicitation Volume, eds.* R.K. Bhattacharya and A. K. Ghosh, (1995): pp. 282-292.

Agmon, Iris. "Muslim Women in Court according to the Sijill of Late Ottoman Jaffa and Haifa: Some Methodological Problems," in *Women, the Family and Divorce Laws in Islamic History,* ed. Amira el-Azhari Sonbol. New York, Syracuse University Press, 1995, pp. 126-140.

Akın, Esra, ed. *Muṣṭafá Alī's Epic Deeds of Artists: A Critical Edition of the Earliest Ottoman Text about the Calligraphers and Painters of the Islamic World*. Leiden: Brill, 2011.

Aktan, Hamza. "Kefãet", *DİA,* 25, 1988, p. 167.

Altunsu, Abdülkadir. *Osmanlı Şeyhülislamları*. Ankara: Ayyıldız Matbbası, 1972.

Art, Gökçen. *Şeyhülislam Fetvalarında Kadın Ve Cinsellik*. İstanbul: Çiviyazıları, 1996.

Artan, Tülay. "Forms and forums of expression: Istanbul and beyond, 1600-1800." in *The Ottoman World*, ed. Christine Woodhead. London and New York: Routledge, 2012, pp. 378-409.

Avery, Robert (ed.). *The Redhouse Turkish/Ottoman - English Dictionary.* İstanbul: Sev Yayıncılık, 2000.

Aydın, Mehmet Akif. *Türk Hukuk Tarihi*. İstanbul: Hars Yayıncılık, 2007.

Ayni, Mehmet Ali. *Türk Ahlakçıları.* Istanbul: Kitabevi, 1993.

Baer, Marc David and Göçek, Fatma Müge. "Social Boundaries of Ottoman Women's experiences in Eighteenth Century Galata Records," in *Women in the Ottoman Empire. Middle Eastern Women in the Early Modern Era,* ed. Madeline Zilfi. Leiden; New York; Köln: Brill, 1997, pp. 48- 66.

Baer, Marc David. *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe*. New York: Oxford University Press, 2008.

Barbir, Karl. "Wealth, Privilege, and Family Structure: the `Askaris of 18th Century Damascus According to the Qassam `Askari Inheritance Records," in *the Syrian Land in the 18th and 19th Century*, ed. Thomas Philipp. Stuttgart: Franz Steiner Verlag, 1992, pp. 179-195.

Barkey, Karen. *Empire of Difference: The Ottomans in Comparative Perspective.* Cambridge: Cambridge University Press, 2008.

Bassioni, M. Cherif. "Crimes and Criminal Process," *Arab Law Quarterly*, Vol. 12, No. 3 (1997), pp. 269-286.

Bilmen, Ömer Nasuhi. *Hukuki Islâmiyye ve Istılahatı Fıkhiyye Kamusu,* Vol. 4. İstanbul: Bilmen Basım ve Yayınevi, 1985.

Canbakal, Hülya. "On the Nobility of Urban Notables," in Antonis Anastasopoulos (ed.), *Halcyon Days in Crete 5*. Rethymno: Crete University Press, January 2005, 39-50.

_____ "Birkaç fetva bir soru, bir hukuk haritasına doğru" in *Şinasi Tekin'in anısına: Uygurlardan Osmanlıya*, ed. Günay Kut and F. Yılmaz Büyükkarcı. İstanbul: Simurg, 2005, pp. 258-270.

_____ *Society and Politics in an Ottoman Town: Ayntab in the 17th Century*. Leiden and New York: Brill Academic Publications, 2006.

_____ "The Ottoman State and Descendants of the Prophet in Anatolia and the Balkans (c. 1500-1700)," *Journal of the Economic and Social History of the Orient*, Vol.52, No.3 (2009): pp. 542-578.

Cole, Juan I. "Al-Tahtawi on Poverty and Welfare," in *Poverty and Charity in Middle Eastern Contexts*, eds. Michael Bonner, Mine Ener and Amy Singer. Albany: SUNY Press, 2003, pp. 223-239.

Crone, Patricia. *God's Rule - Government and Islam: Six Centuries of Medieval Islamic Political Thought.* New York: Columbia University Press, 2005.

De Bellefonds, Y. Linant. "Kafā'a", in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), *EI*^{2}, vol. IV, Leiden: Brill, (1997), p. 404.

Deguilhem, Randi, and Suraiya Faroqhi, ed. *Crafts and Craftsmen of the Middle East: Fashioning the Individual in the Muslim* Mediterranean. I. B. Tauris, 2005.

Dien, M.Y. Izzi. "Taʿzīr." *EI*^{2}. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Brill Online, 2012.

Doumani, Beshara ed. *Family history in the Middle East: Household, Property, and Gender*, Albany: State University of New York Press, 2003.

El-Rouayheb, Khaled. "The Myth of "the Triumph of Fanaticism" in the Seventeenth-Century Ottoman Empire," *Die Welt Des Islams*. 48.2 (2008): 196-221.

_____ "Heresy and Sufism in the Arabic-Islamic World, 1550–1750: Some Preliminary Observations," *Bulletin of the School of Oriental and African Studies*. 73.3 (2010): 357-380.

Emon, Anver M. "Huqūq Allāh and Huqūq Al-Ibād: A Legal Heuristic for a Natural Rights Regime," *Islamic Law and Society*. 13.3 (2006): pp. 325-391.

Ergene, Boğaç and Kaygun, Atabey. "Spouse Selection and Marital Mobility in the Ottoman Empire: Observations from Eighteenth-Century Kastamonu," *Historical Methods: A Journal of Quantitative and Interdisciplinary History, 45:1,* (2012): pp. 3-20.

Ergene, Boğaç. "On Ottoman Justice: Interpretations in Conflict (16^{th}-18^{th} Century)" *Islamic Law and Society*, 8:1 (2001): pp. 52-87.

_____ "Costs of Court Usage in the Seventeenth- and Eighteenth-Century Ottoman Anatolia: Court Fees as Recorded in Estate Inventories," *Journal of Economic and Social History of the Orient*, 45:1 (2002): pp. 20-39.

_____ *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)*. Boston and Leiden: Brill, 2003.

_____ "Evidence in Ottoman Courts: Oral and Written Documentation in Early-Modern Courts of Islamic Law," *Journal of the American Oriental Society*, 124:3 (issue of June - September 2004; appeared in January 2006): pp. 471-92.

_____ "Social Identity and Patterns of Interaction in the Shari'a Court of Kastamonu (1740-44)," *Islamic Law and Society*, 15:1 (2008): pp. 20-54.

Faroqhi, Suraiya, and Christoph K. Neumann, eds. *The Illuminated Table, the Prosperous House: Food and Shelter in Ottoman Material Culture*. Ergon in Kommission, 2003.

Faroqhi, Suraiya and Christoph Neumann, eds. *Ottoman Costumes, From Textile to Identity*. Istanbul: Eren, 2004.

Faroqhi, Suraiya. *Stories of Ottoman Men and Women, Establishing Status Establishing Control*. Istanbul: Eren Yayınları, 2002.

_____ *Osmanlı Dünyasında Üretmek, Pazarlamak, Yaşamak.* Istanbul: Yapı Kredi Yayınları, 2003.

Ferit Devellioğlu, ed., *Osmanlıca-Türkçe Ansiklopedik lûgat.* Ankara: Aydın Kitabevi, 1993.

Fleischer, Cornell. "From Şeyhzade Korkud to Mustafa Ali: Cultural Origins of the Ottoman Nasihatname," in *3rd Congress on the Social and Economic History of Turkey,* eds. Heath W. Lowry and Ralph S. Hattox. Istanbul: The Isis Press, 1990, pp. 67-77.

Gerber, Haim. "Social and Economic Position of Women in an Ottoman City, Bursa 1600-1700," *International Journal of Middle East Studies* 12 (1980): pp. 231-44.

Ghazanfar, Mohammad and Islahi, Abdul Azim. *Economic Thought of Al-Ghazali (450-505 A.H / 1058-1111 A.D.).* Jeddah: King Abdulaziz University Scientific Publishing Centre, 1997.

Giladi, Avner. *Infants, Parents and Wet Nurses: Medieval Islamic Views on Breastfeeding and Their Social Implications.* Leiden; Boston; Köln: Brill Academic Publications, 1999.

Ginio, Eyal. "Patronage and Violence in the Legal Process in Eighteenth-Century Salonica and Its Province", in *Custom, Shari`a, and State in the Muslim World: Studies in Honor of Aharon Layish,* ed. Ron Shaham. Leiden: Brill, 2007, pp. 111-131.

Gradeva Rossitsa. "*Towards a portrait of 'the rich' in Ottoman provincial society: Sofia in the 1670s,"* in Antonis Anastasopoulos, (ed.), Halcyon Days in Crete 5, Rethymno, Greece: Crete University Press, January 2005.

_____ "A kadi court in the Balkans: Sofia in the Seventeenth and Early Eighteenth Centuries," in *The Ottoman World*, ed. Christine Woodhead. London and New York: Routledge, 2012, 57-72.

Grehan, James. "The Mysterious Power of Words: Language, Law and Culture in Ottoman Damascus (17th and 18th Centuries)," *Journal of Social History,* 37: 4 (2004): pp. 991-1015.

_____ *Everyday Life and Consumer Culture in Eighteenth-Century Damascus*, Washington: University of Washington Press, 2007.

Hallaq, Wael B. *the Origins and Evolution of Islamic Law.* Cambridge: Cambridge University Press, 2005.

_____ *An Introduction to Islamic Law.* Cambridge: Cambridge University Press, 2009.

Hanna, Nelly. “Marriage among Merchant Families in Seventeenth-Century Cairo,” in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira Sonbol. Sycracuse: Sycracuse University Press, 1996, pp. 143-154.

_____ *In Praise of Books: A Cultural History of Cairo’s Middle Class, Sixteenth to the Eighteenth Century*, Syracuse: Syracuse University Press, 2003.

Has, Şükrü Selim. “Halebi, İbrahim b. Muhammed, *DİA*, 1997, Vol 15, pp. 231-32.

Hathaway, Jane. “Marriage Alliances among the Military Households of Ottoman Egypt,” *AnIsl 29*, (1995): pp. 133-149.

_____ “Rewriting Eighteenth-Century Ottoman History,” *Mediterranean Historical Review*. 19.1 (2004): 29-53.

Haykel, Bernard. “Dissembling Descent, or How the Barber Lost His Turban: Identity and Evidence in Eighteenth-Century Zaydi Yemen.” *Islamic Law and Society* 9 (2002): pp. 194–230.

Heyd, Uriel. "Some Aspects of the Ottoman Fetvā," *Bulletin of the School of Oriental and African Studies*, 32:1 (1969): pp. 35-56.

_____ *Studies in Old Ottoman Criminal Law.* Oxford: Clarendon Press, 1973.

Howard, Douglas. "Ottoman Historiography and the Literature of 'Decline' of the Sixteenth and Seventeenth Centuries,” *Journal of Asian Studies* (1988): pp. 52-77.

_____ “Genre and myth in the Ottoman 'Advice for Kings' literature”, in *The Early Modern Ottomans: Remapping the Empire*, eds. Virginia Aksan and Daniel Goffman. Cambridge: Cambridge University Press, 2007, 137-167.

Imber, Colin. *Ebu's-suùd: the Islamic legal tradition*. Edinburgh: Edinburgh University Press, 1997.

_____ “Women, Marriage, and Property: Mahr in the *Behçetü'l-Fetava* of Yenişehirli Abdullah,” in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline Zilfi. Leiden: Brill, 1997, pp. 81-105.

İnalcık, Halil "Djamali." in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), *EI*^{2}. Leiden: Brill, 1997, p. 420.

İnanır, Ahmet. *Ibn Kemal’in Fetvaları Işığında Osmanlı’da İslam Hukuku*, Unpublished PhD Dissertation: Istanbul Üniversitesi, 2008.

İpşirli, Mehmet. “Hasan Kâfi Akhisarî ve Devlet Düzenine Dair Eseri,” *Tarih Enstitüsü Dergisi* 10-11, (1979-1980): 251-252.

_____ "Dürrizade Mehmed Arif Efendi", *DİA*, 1994, Vol. 10, p. 37.

Jennings, Ronald. "Kadi, Court and Legal Procedure in 17th c Ottoman Kayseri," *Studia Islamica* 50 (1979): pp. 133-172.

Johansen, Baber. "Signs as Evidence: The Doctrine of Ibn Taymiyya (1263-1328) and Ibn Qayyim al-Jawziyya (d. 1351) on Proof," *Islamic Law and Society* Vol. 9, No.2 (2002): 168-193.

Kallek, Cengiz. "Fetava-yı Abdurrahim", *DİA*, 1995, Vol. 12, p. 437.

_____ "Fetava-yı Ali Efendi", *DİA,* 1995, Vol. 12, p. 438.

_____ "Fetava-yı Ebussuud Efendi", *DİA*, 1995, Vol. 12, pp. 441-43.

Karpat, Kemal. "Some Historical and Methodological Considerations Concerning Social Stratification in the Middle East," in *Commoners, Climbers and Notables: A Sampler of Studies on Social Ranking in the Middle East,* ed. C. A. O. Van Nieuwenhuijze. Leiden: Brill, 1977, pp. 83-101.

Kılıç, Rüya. "Sayyids and Sharifs in the Ottoman State: On the Borders of the True and the False", *Muslem World*, No. 96 (2006): pp. 21-35.

Kıvrım, İsmail. "17. yüzyılda Osmanlı Toplumunda Boşanma Hadiseleri (Ayıntâb Örneği; Talâk, Muhâla'a ve Tefrîk)," *Gaziantep Üniversitesi Sosyal Bilimler Dergisi,* 10:1 (2011): pp. 371–400.

Lewis, Bernard. "Ottoman Observers of Ottoman Decline," *Islamic Studies I*, (1962): pp. 71-87.

_____ *Race and slavery in the Middle East: an historical enquiry*. New York: Oxford University Press, 1990.

Marcus, Abraham. "Privacy in Eighteenth-Century Aleppo: The Limits of Cultural Ideals". *International Journal of Middle East Studies,* Vol. 18, No. 2 (1986): pp. 165-183.

_____ *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century*. New York: Columbia University Press, 1989.

Marlow, Louise. Kings, Prophets and the 'Ulama in Mediaeval Islamic Advice Literature", *Studia Islamica* 81, (1995): 101-120.

_____ *Hierarchy and Egalitarianism in Islamic Thought*. Cambridge: Cambridge University Press, 2002.

McGowan, Bruce. "The *Age* of the *Ayans*, 1699-1812," in *An Economic and Social History of the Ottoman Empire*, vol. 2, eds. Halil Inalcik and Donald Quataert. Cambridge: Cambridge University Press, 1994, 637-758.

Meier, Astrid. "Family Formation in Early Ottoman Damascus: Three Military Households in the Seventeenth and Eighteenth Centuries." in *Syria and Bilad al-Sham under Ottoman Rule: Essays in Honour of Abdul-Karim Rafeq, eds.* P. Sluglett and S. Weber. Leiden: Brill, 2010, pp. 347-71.

Meriwether, Margaret. *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770–1840*. Austin: University of Texas Press. 1999.

Messick, Brinkley M. *The Calligraphic State: Textual Domination and History in a Muslim Society*. Berkeley: University of California Press, 1993.

Mohamed, Yasien. "Islamic Philosophy of Labor and Crafts: The view of the Ikhwan al-Safa, Isfahani, and Ibn Khaldun", *American Journal of Islamic Social Sciences, 23 (1)*, (1996): pp. 35-51.

Murphey, Rhoads "The Veliyyüddin Telhis: Notes on the Sources and Interrelations between Koçi bey and Contemporary Writers of Advice to Kings," *Belleten* 43 (1979): pp. 547-571.

Öğüt, Salim. "Fetava-yı Feyziye", *DİA*, 1995, Vol. 12: 443.

Özcan, Tahsin. *Fetvalar Işığında Osmanlı Esnafı.* İstanbul: Kitabevi, 2003.

Özel, Ahmet. "el-Alemgiriyye", *DİA*, 1989, Vol. 2, pp. 365-66.

_____ "Behçetü'l-Fetava", *DİA*, 1992, Vol 5, p. 346.

Peirce, Leslie. *The Imperial Harem: Women and Sovereignty in the Ottoman Empire.* New York: Oxford University Press, 1983.

_____ "The law shall not languish: Social Class and Public Conduct in 16th-century Ottoman legal discourse," In *the Hermeneutics of Honor: Negotiation of Public Space in Islamic/ate Societies*, ed. Asma Afsaruddin. Cambridge, Harvard University Press, 1999.

_____ *Morality Tales: Law and Gender in the Ottoman Court of Aintab*. Berkeley; Los Angelos; London: University of California Press, 2003.

_____ "The Material World: Ideologies and Ordinary Things". In *the Early Modern Ottomans: Remapping the Empire*, eds. Virginia Aksan and Daniel Goffman. Cambridge: Cambridge University Press. 2007.

Prochazka-Eisl, Gisela. "*Guild Parades in Ottoman Literature: The Surname of 1582,"* in *Crafts and Craftsmen of the Middle East: Fashioning the Individual in the Muslim Mediterranean*, eds. Suraiya Faroqhi and Randi Deguilhem. London; New York: I. B. Tauris, 2005, pp. 41-55.

Quataert, Donald. "Clothing Laws, State, and Society in the Ottoman Empire, 1720-1829". *International Journal of Middle East Studies*, Vol. 29, No. 3 (1997): pp. 403-425.

Quataert, Donald, ed. *Consumption Studies and the History of the Ottoman Empire, 1550-1922: An Introduction*. Albany: SUNY Press, 2000.

Rafeq, Abdul-Karim. "The Law Court Registers and their Importance for a Socio-economic and Urban Study of Ottoman Syria," in *L'Espace Social de la ville Arabe*, ed. Dominique Chevallier. Paris, 1979, pp. 51-58.

_____ "Public Morality in the 18th Century Ottoman Damascus,"*Revue du monde musulman et de la Méditerranée* Vol. 55/1, (1990): pp. 180-96.

Rapoport, Yossef. *Marriage, Money and Divorce in Medieval Islamic Society*. New York: Cambridge University Press, 2005.

Rosen, Lawrence. *The Anthropology of Justice: Law as Culture in Islamic Society***.** Cambridge; New York: Cambridge University Press, 1989.

Rudolph Peters, "Shahid." in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), *EI*^{2}Vol. 9, Leiden: Brill, 1977, pp. 207-208.

Sariyannis, Marinos "'Neglected Trades': Glimpses into the 17th Century Istanbul Underworld," *Turcica* 38 (2006): pp. 155-79.

Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Clarendon Press, 1964.

Semerdjian, Elyse. "Sinful profession: illegal Occupations of Women in Ottoman Aleppo, Syria". *Hawwa*, 1 (2003): pp. 60-85.

Shatzmiller, Maya. *Labour in the Medieval Islamic World*. Leiden: Brill, 1994.

Sheikh, Mustapha. *Qadizadeli Revivalism reconsidered in light of Ahmad al-Rumi al-Aqhisari's Majalis al-abrar*. Unpublished PhD Dissertation, University of Oxford, 2011.

Somel, Selçuk A. *Historical Dictionary of the Ottoman Empire; Ancient Civilizations and Historical Eras*, No. 7. Lanham, Maryland, and Oxford: The Scarecrow Press, 2003.

Tamdoğan, Işık. "Büyükleri Saymak, Küçükleri Sevmek: 18. Yy Adana'sında Ayanların İlişki Ağları ve İki Farklı İlişki Yürütme Üslubu," *Tarih ve Toplum,* Istanbul: İletişim Yayınları, 2005, pp. 77-96.

Tezcan, Baki. "Ethics as a domain to discuss the political: Kınalızâde Ali Efendi and his Ahlâk-ı Alâî," in *Proceedings of the International Congress on Learning and Education in the Ottoman World*, ed. Ali Çaksu. Istanbul: IRCICA Publications, 2001, pp 109-120.

_____ *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World.* Cambridge; New York: Cambridge University Press, 2010.

Tucker, Judith. *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press, 2008.

_____ "Telling Tales: Women in the Early Modern Arab World," in *Attending to Early Modern Women and Men*, eds. Amy Leonard and Karen Nelson. Delaware: University of Delaware Press, 2010, pp. 323-347.

Tuşalp, Ekin. *Treating Outlaws and Registering Miscreants in Early Modern Ottoman Society: A Study of Legal Diagnosis of Deviance in Şeyhülislam Fatwas*. Unpublished MA Thesis, Sabanci University, 2005.

Walsh, J. R. "Dürrizade", in E. V. Donzel, B. Lewis, & Ch. Pellat (eds.), *EI*^{2}. Leiden: Brill, 1997, pp. 629-30.

Yi, Eunjeong "Guild Membership in Seventeenth Century Istanbul: Fluidity and Organization," in *Crafts and Craftsmen of the Middle East: Fashioning the Individual in the Muslim Mediterranean,* eds. Suraiya Faroqhi and Randi Deguilhem. London; New York: I. B. Tauris, 2005, pp. 55-84.

Yurdaydın, Hüseyin. "Düşünce ve Bilim Tarihi," in *Türkiye Tarihi (1300-1600),* Vol. II, ed. Sina Akşin et al. Istanbul: Cem Yayınevi, 1988, pp. 158-62.

Zarinebaf, Fariba. "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century," in *Women, the Family, and Divorce Laws in Islamic History,* ed. Amira Sonbol. Syracuse, N.Y: Syracuse University Press, 1996, pp. 81-96.

_____ "Women and the Public Eye in Eighteenth-Century Istanbul," in *Women in the Medieval Islamic World,* ed. Gavin R. Gambly. New York: St. Martin's Press, 1999, pp. 301- 325.

_____ *Crime and Punishment in Istanbul, 1700- 1800.*Berkeley; Los Angelos; London: University of California Press, 2010.

Ze'evi, Dror. *An Ottoman century: the district of Jerusalem in the 1600s***.** Albany: State University of New York Press, 1996.

_____ "Women in 17th Century Jerusalem: Western and Indigenous Perspectives," *International Journal of Middle East Studies* 27 (1995): pp. 157-73.

_____ "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society*, 5: 1 (1998): pp. 35-56.

Ziadeh, Farhat J. "Equality (*Kafa*'a) in Muslim Law of Marriage", *The American Journal of Comparative Law*, 6(4) (1957): pp. 503–511.

Zilfi, Madeline. "Elite Circulation in the Ottoman Empire: Great Mollas of the Eighteenth Century," *Journal of the Economic and Social History of the Orient*, 26, (1983): pp. 318–64.