TREATING OUTLAWS AND REGISTERING MISCREANTS IN EARLY MODERN OTTOMAN SOCIETY: A STUDY ON THE LEGAL DIAGNOSIS OF DEVIANCE IN *ŞEYHÜLİSLAM* FATWAS

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ABSTRACT

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This work investigates the forms of deviance rampant in early modern Ottoman society and their legal treatment, according to the fatwas issued by the Ottoman *şeyhülislam*s in the 17th and 18th centuries. One of the aims of this thesis is to present different behavioural forms found in the *şeyhülislam* fatwas that ranged from simple social malevolencies to acts which were regarded as heresy. In the end of our analysis, the significance of the fatwa literature for Ottoman social history will once more be emphasized. On the other hand, it will be argued that as a legal forum, the *fetvahane* was not merely a consultative and ancillary office, but a centre that fabricated the legal and moral devices/discourses employed to direct and stem the social tendencies in the Ottoman society. The primary sources that form the basis of this study are *Fetava-yı Feyziye me'an-nukul*, *Fetava-yı Ali Efendi*, *Behçetü'-l fetava*, *Fetava-yı Abdurrahim*, and *Neticetü'l-fetava me'an-nukul,* which are the compilations of the *şeyhülislam* fatwas.

ÖZET

ERKEN MODERN OSMANLI TOPLUMUNDA KANUNSUZLARIN TETKİKİ, YARAMAZLARIN KAYDI: ŞEYHÜLİSLAM FETVALARINDA SAPKINLIĞIN HUKUKİ TAHLİLİ ÜZERİNE BİR ÇALIŞMA

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Bu çalışma 17. ve 18. yüzyıllarda verilen şeyhülislam fetvalarından yola çıkarak klasik dönem sonrası Osmanlı toplumunda var olan "sapkınlık" durumlarını ve bunların hukuki alanda nasıl ele alındıklarını incelemektedir. Bu tezin bir amacı şeyhülislam fetvalarına konu olmuş, basit sosyal uyumsuzluklardan zamanında dini sapkınlıkla itham edilen vakalara uzanan çizgideki davranış biçimlerini sergilemektir. Bu çerçevede yapılan çalışma sonucunda fetvaların ve bunları içeren fetva mecmularının Osmanlı sosyal tarihi icin ne derece önemli birer kaynak oldukları bir kez daha vurgulanacaktır. Öte yandan, hukuki bir zemin olarak fetvahanenin, sadece danışma işlevi gören ikincil derecede yasal bir merci olmadığı, aksine Osmanlı toplumundaki eğilimleri yönlendirme ve kontrol etmede kullanılan kanuni ve ahlaki araçları/söylemleri üreten bir merkez olduğu iddia edilmektedir. Bu çalışmanın temelini oluşturan kaynaklar sırasıyla *Fetava-yı Feyziye me'an-nukul*, *Fetava-yı Ali Efendi*, *Behçetü'-l fetava*, *Fetava-yı Abdurrahim*, ve *Neticetü'l-fetava me'an-nukul* isimli şeyhülislam fetvalarından oluşan fetva mecmualarıdır.

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List of Abbreviations

BSOAS	Bulletin of the School of Oriental and African Studies
DİA	Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1988-
EI	Encyclopedia of Islam, 2nd ed., Leiden, 1954-

INTRODUCTION

> Question: Zeyd quarrels with Amr who is a preacher in a mosque and when Amr threatens Zeyd of complaining about him to the judge, Zeyd tells him that "even my ass can complain to the judge as much as you do", what happens to Zeyd? Answer: *Ta'zir* is required.[1]

The short dialogue above is taken from a nineteenth century collection of fatwas issued by the Ottoman Şeyhülislam, Menteşevi Abdurrahim Efendi (d. 1716). Concise, quotational and ciphered in style, it is a very typical example of the Ottoman fatwa. As in other Islamic settings, fatwa had long been a familiar item embedded in the Ottoman milieu. Fatwa is simply a legal consultation method where the mufti provides an answer to the question that is posed to him. Originating from the memories about an omniscient prophet who used to consult people on the requirements of Islam, the practice of issuing ad hoc legal opinions by experts became a part of the highly complex ontological sphere that Islam had created in centuries. In time the *ifta*, that is the process of fatwa giving, proved indispensable in Islamic fiqh which in Baber Johansen's words is "a system of ethical and juristic norms developed by Muslim scholars and judges from the eight century onwards" and "a normative interpretation of revelation, the application of its principles and commands to the field of human acts".[2]

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[1] Zeyd bir camide hatib olan Amr ile çekişdikde Amr Zeyd'e seni hakime ilam idub hakkından getürdürüm didikde Zeyd Amr'a senin hakime soyleyecegin kadar benim dübrüm dahi söyler dise Zeyd'e ne lazım olur? El-cevab: Ta'zir lazım olur. *Fetava-yı Abdurrahim*

[2] Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, Brill, Leiden, Boston, Köln, 1999, p.1

As "the schemes of normation"[3] proliferated in Muslim societies, the term fatwa began to imply a legal genre this time, either in the form of regular handbooks of Islamic law or inscribed in collections of theoretical treatises on topics in Islamic law and jurisprudence. On the other hand, fatwa has always remained as a practical legal tool employed for regulating the legality of the social sphere that Muslims lived in. Either resulting in concise rulings as in the Ottoman fatwas, or producing long essays on intricate legal questions, a fatwa is essentially constituted of two elements: the *mes'ele* that is the question posed to the muftis and the *cevab* where the mufti gives his answer. Conforming to this binary structure, the Ottoman fatwas had a peculiar tendency to avoid the contextual details of the case at hand and the names of the persons involved were unexceptionally encoded by standard Arabic aliases, Zeyd, Bekr, and Beşr for male; Hind, and Zeyneb for female names.

In the Ottoman administrative and legal system, the fatwa genre occupied a significant place and there exists an extensive fatwa literature made up by the Ottoman jurists starting from the early sixteenth century on. However, despite our growing acquaintance with muftis like Ebu Su'ud, Al-Ramli, and Ibn-i Abidin, the bulk of the *fetva*s given by the Ottoman muftis have not been thoroughly examined yet. Hence before elucidating the main tenets of this thesis, the historiographic background upon which the discussions on the Ottoman fatwas have hitherto rested, will be presented. The works published on the Ottoman fatwa giving practices can be grouped along three major axes. First there are works which are directly concerned with the fatwa literature; to be followed by a good amount of historical research conducted on the various aspects of the Ottoman *ilmiye* class; and lastly there are various histories of "Ottoman" or "Turkish law" written with totally different motivations, often under the aegis of the law faculties. Among the first group are publications going back to the 1950s that were directly on the phenomenon of fatwa. Ziya Yörükan and Mario Grignashi in their articles respectively in 1952 and 1963; and Friedrich Salle in his doctorate thesis in 1962, constituted the first generation of scholars who tackled with the issue of fatwas in the Ottoman Empire.[4] The second wave of academic interest on the Ottoman fatwas

[3] Karl Llewellyn and Adamson E. Hoebel, *The Cheyenne Way: Conflict and Case law in Primitive Jurisprudence*, University of Oklahoma Press, 1941, p. 59

[4] Ziya Yörükan, "Bir fetva münasebetiyle, Fetva Müessesesi, Ebussuud Efendi ve Sarı Saltuk", AUİFD, I/2-3 (1952), p. 137-160

was triggered by Uriel Heyd's influential article on the Ottoman fatwa in 1969 which was a full-fledged appraisal of the place of the Ottoman fatwa in the Ottoman legal system.[5] His other contributions in the realm of Ottoman legal history notwithstanding, in this article Heyd manifested the peculiarities of the Ottoman fatwa by focusing primarily on its structural features. Heyd was immediately followed by Vehbi Ecer who in an article published in 1970, noted the significance of the fatwa manuals in the analysis of the "Turkish culture".[6] However it was Ertuğrul Düzdağ who had first presented the material in flesh and blood before our eyes in 1972.[7] Based on the two manuscript collections in Fatih and Bayezid libraries, Düzdağ published the fatwas issued by Şeyhülislam Ebu Su'ud Efendi with an extended foreword on the Ottoman fatwa institution. The title of his work "Ottoman life during the reign of [*Süleyman*] the Lawgiver according to Şeyhülislam Ebu Su'ud Efendi's fatwas" suggests the growing scholarly sensitivity to the importance of the fatwas for the social history of the Ottoman Empire. Although Düzdağ did not abide by the original organization of the fatwas in their manuscript copies and reorganized the material under different thematic chapters; his work still remains today as the most reliable source for those who are interested in Ebu Su'ud's fatwas. Following this work, there virtually began a twenty year pause in the academic field with regard to the Ottoman fatwas, to be unravelled only in the early 1990s. The interest that has been revived by then with the works of Haim Gerber and Colin Imber is being preserved by forthcoming studies on the muftis who practised in the different parts of the Ottoman Empire.[8] Currently however, the

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Friedrich Salle, *Proessrecht des XVI. Jahrhunderts Im Osmanishen Reich*, Wiesbaden, 1962, PhD

Mario Grignashi "La valeur du témoignage dans l'empire Ottoman" Recueils de la Société Jean Bodin, XVIII, 1963, p. 211-323

[5] Uriel Heyd, "Some Aspects of the Ottoman Fetva", BSOAS, Vol. 32, No.1 (1969), p. 35-56

[6] Vehbi Ecer, "Türk Kültürünün Tetkikinde Fetva Kitaplarının Önemi", TK, sy. 90 (1970), p. 402-404

[7] Mehmet Ertuğrul Düzdağ, *Şeyhulislam Ebussuud Efendi'nin fetvalarına göre Kanuni devrinde Osmanlı hayatı: Fetava-yı Ebussu'ud Efendi*, İstanbul: Enderun Kitabevi, 1972; İstanbul: Şule yayınları, 1998

[8] Haim Gerber, *State, society, and law in Islam: Ottoman law in comparative perspective*, Albany: State University of New York Press, 1994

_____*Islamic Law and Culture 1600-1840*, Brill, Leiden, Boston, Köln, 1999

Colin Imber, *Ebu's-su'ud: the Islamic Legal Tradition*, Edinburgh: Edinburgh University Press, 1997

fatwas of only two Ottoman *şeyhülislam*s, Ebu Su'ud and Çatalcalı Ali Efendi[9] have come to light, while the rest remains unavailable to non-Ottoman readers. The second major advent of Ottoman fatwas in the academic arena was through the works of Veli Ertan, İsmail Hakkı Uzunçarşılı and Abdülkadir Altunsu who focused on the Ottoman *ilmiye* class and the *şeyhülislam*s in particular.[10] The Ottoman *ulema* still remain as an attractive historical phenomenon for historians and not only the jurisprudential but also the political functions of the *şeyhülislam* fatwas wait to be explored.[11] The final context that can be associated with the Ottoman fatwas is the field of what is called "the history of Turkish law". One major trend in this field includes the works conducted by Coşkun Üçok and Ahmet Mumcu who preferred to emphasize the sources of the "Turkish legal system" in a chronological fashion with its classical Ottoman, Tanzimat and republican episodes.[12] It was particularly Ahmet Mumcu who discussed the place of the fatwas in the Ottoman phase of "the history of Turkish law" which he mainly considered as composed of the Suleimanic law formulated by Ebu Su'ud and the *Mecelle* of the nineteenth century.[13] Subsequently another school of "legal historians" who this time focused on the Islamic/shar'i character of Ottoman law have resuscitated the insight brought previously by Ömer Lütfi Barkan and Halil İnalcık, by publishing the whole series of the Ottoman regal codes of law, the *kanunname*s.[14] The unexpected appearance of the *şeyhülislam* fatwas in the *kanunname*s has brought along new perspectives into the discussion of the place of the fatwa in Ottoman law.

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[9] Nevfel Dinç's *Şeyhü'l-İslam Ali Efendi Fetvaları/Salih b. Ahmed Kefevi*, İstanbul: Kit-San, 1985, seems to be the first publication of Çatalcalı Ali Efendi's fatwas in modern Turkish; however I was unable to locate this source.
İbrahim Ünal, *Şeyhülislam Fetvaları-Ali Efendi*, İstanbul, Fey Vakfı, 1995

[10] Veli Ertan, *Tarihte meşihat makamı, ilmiye sınıfı, ve meşhur şeyhülislamlar*, İstanbul: Bahar Yayınevi, 1969; İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, Türk Tarih Kurumu Basımevi, Ankara, 1988; Abdülkadir Altunsu, *Osmanlı Şeyhülislamları*, Ayyıldız Matbaası A.Ş., Ankara, 1972

[11] See R. C. Repp, *The Mufti of Istanbul*, Oxford Oriental Institute Monographs-Ithaca Press, 1986, for an extensive account of the development of the Ottoman şeyhülislamate.

[12] Coşkun Üçok, Ahmet Mumcu, et *al.*, *Türk Hukuk Tarihi*, Ankara: Savaş Yayınevi, 1999

[13] Ahmet Mumcu, *Osmanlı devletinde siyaseten katl*, Ankara: Ankara Üniversitesi, 1963
_____ *Osmanlı hukukunda zulüm kavramı*, Ankara: Ankara Üniversitesi Hukuk Fakültesi, 1972, Ankara: Birey ve Toplum, 1985

[14] Ahmet Akgündüz, *Osmanlı Kanunnameleri ve hukuki tahlilleri*, İstanbul: Fev Vakfı, 1990-1992

In such a historiographic plot, this thesis intends not only to re-emphasize the distinctiveness of the Ottoman fatwas within the Hanafi legal literature, but also to demonstrate how the fatwa manuals can become prolific sources for the historians of the Ottoman Empire. For the historians who are interested in the workings of law in a society, there are many sources that can be regarded as proper legal texts. R.J. Macrides, in her essay on the Byzantine conceptions of law and justice, has pointed out to the fact that Byzantine legal thought was characterized by the juxtaposition of arguments of equal authority in which rhetorical skills predominated over the dogmatics of law.[15] This statement indeed encompasses an implicit, yet apposite warning for the historians of law and points out to the fact that "the literal reading of texts that cite laws"[16] might result in very spurious conclusions. Certainly the fatwas can be righteously treated as legal texts, and likewise they contained both rhetorical skills and the dogmatics of law, with varying doses of each. Bearing in mind Macrides' warning, in this thesis I will try to test whether the compilations of the Ottoman *şeyhülislam* fatwas can shed light on the particular forms that Ottoman legal thought had taken on one aspect of social life -deviant behaviour- a customary item on the agendas of both law makers and implementers. Furthermore, I will claim that *şeyhülislam* fatwas, especially in their compiled form, did in fact actively partake in shaping the parameters of social control in the Ottoman society contrary to the general view that when compiled in manuals, legal statements become dead letter. The primary sources I have employed in my analysis are five fatwa compilations, *Fetava-yı Feyziye me'an-nukul*, *Fetava-yı Ali Efendi*, *Behçetü'-l fetava*, *Fetava-yı Abdurrahim*, and *Neticetü'l-fetava me'an-nukul* which assembled the fatwas the Ottoman chief muftis -*şeyhülislam*s- issued back in the late seventeenth and eighteenth centuries.[17] Among

[15] R. J. Macrides, "Bad Historian and Good Lawyer? Demetrios Chomatenos and Novel 131", in *Kinship and Justice in Byzantium, 11th-15th centuries*, Aldershot: Ashgate: Variorum, 1999, p. 187

[16] Ibid., p. 187

[17] There are other collections of fatwas issued by the seventeenth and eighteenth century Ottoman *şeyhülislam*s: *Fetava-yı Yahya Efendi* (1053/1643) of Yahya Efendi, *Minzanü'l-Fetava* (1069/1658) of Balizade Mustafa Efendi, *Fetava-yı Ankaravi* (1099/1687) of Muhammed Emin Efendi Ankaravi, *Fetava-yı Minkarizade* (1088/1677) of Minkarizade Yahya Efendi, *Fetava-yı Numaniyye* (1114/1702) of Debbağzade Numan Efendi, *Fetava* (1124/1712) of Paşmakçızade Ali Efendi, *Fetava-yı Ataiyye* (1127/1715) of Mehmed Ataullah Efendi, *Fetava-yı Vessaf* (1175/1761) of Abdullah Vessaf Efendi, *Fetava-yı Şerifzade* (1193/1779) of Şerifzade Muhammed Efendi.

other fatwa collections, these manuals I have chosen to analyze had circulated extensively with their reprints until the very beginnings of the twentieth century as the most accredited and popular collections of this period.

The Ottoman fatwa collections have previously been studied for their regulative functions in the administration of land, in creating gender hierarchies, and in the regulation of markets and economy.[18] An analysis of the manifestations of deviant behaviour and social control in the fatwa compilations would on the other hand accentuate their normative characteristics. Like other belief systems, Islam devised a punitive mechanism to control different kinds of criminal behaviour ranging from theft to fornication and simultaneously imposed "a complex and expensive framework for the public expression of religious belief and conformity".[19] By inspecting the fatwas on different acts and behaviours which were legally branded as criminal or deviant, this thesis first aims at showing that the Ottoman fatwas were indeed part of a legal mechanism that warned, reprimanded or punished the ones who went out of this pre-determined framework. Then an equal emphasis will accordingly be put on the historical insight revealed by these fatwas. Hence, apart from detecting the changes taking place in the Ottoman legal culture, this study will also try to capture some essential aspects of the post-Suleimanic Ottoman social life. A final point about our research question concerns the periodic scope of this study. As crucial sources for the social history of the Ottoman Empire, the fatwa compilations used here entail an unusual chronological framework. In this study I have used the nineteenth century printed editions of the seventeenth and eighteenth century manuscript fatwa collections.[20] Although there has not been a truly critical analysis testing the

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[18] See Gökçen Art , *Through the fetvas of Çatalcalı Ali Efendi the relations between women, children and men in the seventeenth century*, MA Thesis, Boğaziçi University, 1995; Kürşat Urungu Akpınar, *İltizam in the Fetvas of Ottoman Şeyhülislams*, MA Thesis, Bilkent University, 2000; Tahsin Özcan, *Fetvalar Işığında Osmanlı Esnafi*, İstanbul : Kitabevi, 2003

[19] John Edwards, "The Conversos: A theological approach", in *Religion and Society in Spain, c. 1492*, Aldershot, Gt. Brit.; Brookfield, Vt.: Variorum, 1996, p.43

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

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

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

authenticity of these later editions, the five collections used and the fatwas selected from these collections for a detailed perusal are well-nigh identical with the earlier versions with respect to their organization and content.[21] In any case, this seeming disparity between the periodic content of our primary sources and the date of their formal inception can only demonstrate the fact that the life terms of the compilations signify their endurance as depositories of a certain legal culture. Therefore, the legal attitudes towards deviance which this work sets out to analyze should not be taken as peculiar to individual instances occurring in the seventeenth and eighteenth centuries. For they seem to have continued providing legal and moral guidance until the early 1900s, these fatwa collections can also offer considerable insight to the socio-legal aura of the following centuries.

The first chapter of this thesis, "The Ottoman Fatwa", will focus on the legal characteristics of *şeyhülislam* fatwas with special attention to the place of "the Ottoman fatwa" within Islamic legal literature. The structural characteristics of the Ottoman fatwa; the import the office of şeyhülislamate -*meşihat makamı*- carried in Ottoman administrative and legal culture; the fatwa compilations as a peculiar legal genre and their various uses in the Ottoman legal system will be the main titles to be discussed. The second chapter, "Deviance and Social Control in *Şeyhülislam* Fatwas", will establish the thematic framework of this study. The concept of deviance and the question of how deviant ways could be detected in fatwa collections will be the first issues to be raised, followed by two key sections on deviance and deviant behaviour in the compilations. Initially, the legal treatment of various crimes and criminals in

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Behçetü'l-fetava me'an nukul, [originally dated 1156/1743], İstanbul: Matbaa-i Amire

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

[21] I have compared the nineteenth century printed versions of the fatwa collections with their earlier manuscript copies listed below:

Fetava-yı Ali Efendi, müst. Salih b. Ahmed el-Kefevi, 1178/1764, İstanbul Belediye Kütüphanesi, Belediye, nr. 000200

Fetava-yı Feyziyye, 1124/1712, İstanbul Müftülüğü Kütüphanesi, nr. 316

Behçetü'l-fetava, 1753, yazma, çev. Mehmed Fıkhi El Ayni; müst. Müftüzade Abdullah El Mağnisi, Süleymaniye Library, Fatih, nr. 297.55

Fetava-yı Abdurrahim, müst. Mahmud b. Mustafa Çelebi, 1151, 1738, İstanbul Müftülüğü Kütüphanesi, nr.76

Neticetü'l-fetava, müst. Seyyid Hayrullah, 1253/1837, Süleymaniye Kütüphanesi, Esad Efendi, nr. 297.5

şeyhülislam fatwas will be reviewed, whereas in the following part, the appearance of crimes and offences of religious nature in these collections will be problematized.

On the whole, the structure of the Ottoman legal discourse with its format and language; and the historical viability of the fatwas and the fatwa manuals as indices of the moral priorities rampant in the early modern Ottoman society will be the main reference points in this thesis. However, the periodic scope of this study is no less crucial since the picture of Ottoman law that will be presented here can extensively inform us about the historical dynamics of the period in question. The late seventeenth and eighteenth centuries have hitherto offered the most favourite setting for those who hunted for the manifestations of the "Ottoman decline". As it is an undeniable fact that these centuries hosted the disappearance of many institutions and features associated with the Ottoman "classical" age, this decline perspective has been incrementally replaced by a more insightful perception of the changing dynamics of the post-sixteenth century Ottoman world. In the realm of law-making too there were similar alterations taking place concerning the Ottoman administration of justice. The shading influence of the secular and non-shar'i sources of law and the gradual disappereance of the Ottoman *kannunname*s are among such features which similarly signalled a shifting of grounds in the seventeenth and eighteenth centuries. The role of *şeyhülislam*s and their fatwas in readjusting the legal dimensions of Ottoman public life therefore becomes a crucial theme in the discussion of the Ottoman post-classical centuries.

One of the claims I will make at the end of the examination of the *şeyhülislam* fatwas is that the şeyhülislamate offered quite a viable arena for the legal treatment of deviant behaviour in the early modern Ottoman society. Moreover, by means of the collections of the *şeyhülislam* fatwas, the Ottoman şeyhülislamate broadcasted its knowledge on the legal supervision of wayward tracks and individual escapades, and asserted its position as the ultimate repository of the legal tools required to control them. When reconsidered in the aforementioned historical context, these conclusions will open the way for a future discussion of the meaning and the function of *şeyhülislam* fatwas as possible subtexts of an age where the changing parameters of morality and legality were renegotiated in.

I. THE OTTOMAN FATWA

I.1. The Ottoman *fetva*

> By force of a sultanic *berat* (diploma) in his hand, Zeyd demanded the payment of *salyane akçesi* from certain preachers of a mosque. In order to stave off the payment Amr presented the fatwa he had, to Zeyd who told in a disparaging manner [of the angels] that "even if you were the angle descending from the skies; I would extract the salyane from you". What happens to Zeyd for his utterance? Answer: Renewal of faith and the contract of marriage.[22]

The fatwa above taken from the *Fetava-yı Abdurrahim*, the compilation of Şeyhülislam Abdurrahim Efendi's fatwas, is a typical illustration of what, back in 1969 Uriel Heyd called "the Ottoman fetwa". This fatwa dissembles the contextual details of the case at hand by means of the stylized employment of aliases; yet at the same time it accommodates facts and details of a very "Ottomanesque" socio-economic world such as the *salyane akçesi* and the sultanic *berat*. The antagonism between different breeds of the Ottoman society, the sultanic certificate and the fatwa; the state official and the mosque preacher, is conspicuously revealed in this fatwa. Yet, a close reading of the fatwa would bring out more arcane implications. A basically economic dispute on the payment of a particular tax floats on the surface of the text blocking our perception of a much deeper cultural clash between the parties of the dispute: Belonging to the sublunary world of sultanic diplomas and coercion, the secular official belittles not only the legal and but also the cultural pedestal that the world of the preacher stood on, the fatwa and the angels. Only such an approach which is eager to read between the lines of

[22] Zeyd beratla bir camide hatib olanlardan salyane akçesi taleb itdikde Amr alınmamak içün elinde olan fetvayı Zeyd'e gösterdikde Zeyd ben ol fetvaya amil itmeyub melaikeyi istihfafen gökden inmiş melaike dahi olursun senden salyane alurum dise böyle didiği içün Zeyd'e ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Abdurrahim*

a fatwa can help us to discover in the fatwas, the heteroglossia of the common questioners, the fatwa clerks, and the muftis. In spite of being more concise than its Syrian, Maghribi or Yemenite counterparts, a fatwa composed in eighteenth century Ottoman Istanbul is not short of "a dense intertextuality that is mediated and controlled by the mufti".[23] In this chapter, the assessment of the structural features of the Ottoman fatwa, its functions and various uses within the Ottoman legal system, its quasi-academic nature and finally a glimpse at its content matter will better reify the particular place the Ottoman *ifta* occupied in the general history of Islamic law.

As explained in the introduction, the fatwa as a literary-legal category is actually the result of the concatenation of two different acts: *istifta*, request for a fatwa; and *ifta*, fatwa giving. Uriel Heyd's seminal article on the evolution of the Ottoman fatwa giving practices, still provides the best contemporary analysis of how these activities culminated in the Ottoman setting to produce the very peculiar Ottoman fatwa. At the core of the various fatwa giving practices in the early modern Ottoman lands, there lied the same legal code, the *futya*, legal consultation.[24] Any attempt at elaborating the very origins of the activity of legal consultation would ineluctably tie us to the formation of the Sharia, and to a good portion of early Islamic history, hence it would severely defer the discussion of our main topic. However at this point we can note how B. Messick, M.K. Masud and D. Powers have succinctly located *futya* within this general framework. In their words, "while the more theoretical aspect of the Sharia is embodied in the literature dealing with the 'branches' of substantive law (*furu' al-fiqh*) and with the 'roots' of legal methodology and jurisprudence (*usul al-fiqh*), its more practical aspect is embodied in the fatwas used by muftis in response to questions posed by individuals in connection with ongoing human affairs."[25] Obviously, the idiosyncrasy of the *ifta* activity in the Ottoman period owes much to this practical aspect. Along with the numerous provincial muftis in different parts of the Empire, the

[23] David S. Powers, "The art of legal opinion: al-Wansharisi on *Tawlij*", in Muhammed Khalid Massud, Brinkley Messick, David S. Powers, *Islamic Legal Interpretation: Muftis and their Fatwas*, Harvard University Press, Cambridge, 1996, p. 113

[24] The root f-t-y in Arabic stands for the actions related to asking question and responding to them. Messick, Masud, Powers, p. 5

[25] Messick, Masud, Powers, "Muftis, Fatwas and Islamic Legal Interpretation", in *Islamic Legal Interpretation*, p. 4

chief muftis in the capital, the "Zenbilli", basket-swinger Ali Cemali[26] and the famous Ebu Su'ud of the sixteenth century[27], could not keep pace with the increasing number of questioners (*mustafti*s) and their questions about their ordinary affairs. The process of fatwa giving was thus incrementally bureaucratized and eventually came to be run by the office of the *fetvahane*, or the *fetva kalemi* set up during Suleyman the Lawgiver's reign. As a result the questions drafted by the lesser clerks in this office started to become standardized, and the replies issued by the *şeyhülislam*s often included either merely affirmative statements, or laconic answers stipulating the verdicts [e.g. punishment]. This brevity more and more rendered the *illa*, "the *ratio legis* of a case of law"[28], unfathomable in the answers. At the first sight this dearth of legal reasoning in the *şeyhülislam* fatwas makes the investigation of "the discursive changes, shifts in authorial voice, and new rhetorical forms"[29] in the Ottoman fatwa a futile attempt. However, the interpretation of the meticulously fabricated *mes'ele*, made at the very beginning of this chapter does not really vindicate this view. Moreover, from the sixteenth century onwards the Ottomans started to hail the Islamic tradition of collecting the *şeyhülislam* fatwas in manuals, therefore preserving their place as a distinct genre in the *usul al-fiqh* literature. Therefore the appraisal of the Ottoman muftis as faqihs (*fukaha*) will definitely require the study of their legal statements as insiders to one of the controversial fields of Islamic legal thought, where "the gates of ijtihad" debates are still hot on the scholarly agenda.[30]

In Islamic legal studies, there is a theoretical tendency to compare, if not contrast the activity of *kaza* (legislation) with that of the *ifta* (legal consultation), especially to describe the latter. The observation that "the fatwas and judgements

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[26] The şeyhülislam of the first quarter of the sixteenth century had a small basket hung from his window in which the questions were placed, that is why he was called "Zenbilli", Zenbilli Ali Efendi. Heyd, p. 46

[27] On at least two occasions he is reported to have replied to more than 1,400 fetvas on a single day. Heyd, p. 46

[28] Wael Hallaq, "Ifta' and Ijtihad in Sunni Legal Theory: A Developmental Account", in Messick, Masud, Powers, p. 34

[29] Brinkley Messick, *The Calligraphic State-Textual Domination and History in a Muslim Society*, University of California Press, Berkeley: 1996, p. 6

[30] The closing of the gates of ijtihad refers to the fact that in the eyes of some Muslim thinkers the interpretation of Islam and its doctrines was completed in the 10th century. From this time onwards the scholars and the jurists only emulated what had been produced by their predecessors. The capacity of introducing new interpretations was hindered by this technique of *taklid*.

represent different orientations to the relationship of law and fact"[31] has been frequently underscored by scholars to the extent that the institution of ifta and the practice of fatwa giving are always defined negatively, in contrast to that of *kaza* and qadis. The arguments about the different working principles of the qadis and the muftis notwithstanding,[32] the symbiosis between the Ottoman qadis and muftis should not be bypassed. The muftis and the qadis, bandying opinions and verdicts, jointly demarcated a legal zone whereby the populace sought to be incessantly supplied with legal and moral parameters that would define what was legitimate, appropriate and permissible in their lives. Both the fatwas and the qadi court records abound with textual connections between the qadi courts and the *fetvahane*. Thus, the treatment of the Ottoman fatwas should neither be an excursus on some fine points of juridical exegesis, nor become a trial testing the concurrence between the qadi court records and the fatwa manuals.

One specific distinction made between the activity of *kaza* and that of *ifta*, nevertheless, can be useful for delineating the pedantic character of the fatwas belonging to the Ottoman chief muftis, along with their aforementioned judiciary aspects. It is what Messick, Masud and Powers call the "informational" (khabari) or communicative nature of the fatwa as opposed to the "creative" (insha'i) quality of the *kaza*.[33] Apart from being the head of the whole *ulema* corps, through the fatwas they issued, the Ottoman muftis and *şeyhülislam*s tied the professional world of the religio-legal academics to the world of the commoners. As Messick, Masud and Powers contend in their analysis of the Islamic ifta institution, "the institution of *ifta* and its practitioner, the mufti, were central to that part of legal theory that dealt with the modalities of transmitting the outcome of *ijtihad* from the domain of the legal profession down to the public".[34] It can be concluded that either as moral declarations or as proclamations of law, the fatwas belonging to the Ottoman muftis and *şeyhülislam*s connected the world of the law-makers, and the specialists to that of the laymen since "it was chiefly in their capacity as muftis that the jurists of Islam could communicate the mundane results of their legal constructions to the *mukallafun*, those

[31] Messick, Masud, Powers, p. 18

[32] "…whereas the mufti's interpretative work follows *adilla*, that is, indications in textual sources such as Qur'an and hadith; that of the judge follows evidential *hijaj*, which include testimony, acknowledgement and oath" from Messick, Masud, Powers, p. 18

[33] Messick, Masud, Powers, p. 19

[34] Ibid., p. 22

on whom the observation of the law was incumbent, and without whom the law would have had no existential purpose".[35] Nonetheless, the functioning of the Ottoman fatwa within the judiciary system and its popular or informative aspects should not blind us to the fact that this was a legal genre, which, not only in the Ottoman milieu, but also in other parts of the early-modern Islamic world, was reproduced and disseminated within an academic context. This seeming duality is perhaps most evident in the structural features of the Ottoman fatwa. One of the first things that have been noted about the Ottoman fatwa text is its lucidity as opposed to other euphuistic products of Ottoman diplomatics like sultanic diplomas, or international treaties.[36] This feature has been explained with reference to the intended audience of the fatwas, which was primarily composed of ordinary questioners who solicited for easily penetrable texts. However, the fatwa texts were eloquently drafted by the fatwa clerks and the manipulation of the Islamic legal nomenclature by the fatwa clerks obviously addressed the legally conversant implementers of Islamic law. Moreover the mentality behind collecting the *şeyhülislam* fatwas in manuals and collating the manuals themselves also brings the double-barrelled nature of the fatwa structure to our attention.

In terms of their content, there is a longstanding categorization of the Ottoman fatwas which has first been pronounced in the works of İsmail Hakkı Uzunçarşılı and Uriel Heyd. The fatwas of the Ottoman muftis and the *şeyhülislam*s are replete with ordinary cases of private nature. These fatwas enclose a wide range of mundane issues from transactions, and the settlement of disputes to catechistic instructions on the principles of Islamic piety, and generally did not refer to the authoritative canonical texts.[37] Apart from the questions on religious and legal riddles posed often by ordinary people; the chief muftis also issued replies to questions coming from the Sultan, the Grand Vizier, and other members of the Ottoman State on decisions and policies concerning politics, diplomacy, administrative issues and economy. In both of these cases most of the Ottoman fatwas correspond to real-life situations.

The question of whether the Ottoman fatwa deserves to be treated as a generic category within the history of Islamic fiqh requires further inquiry on the intellectual

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[35] Ibid., p. 22

[36] Ali Yaycıoğlu, *Ottoman Fatwa: An Essay on Legal Consultation in the Ottoman Juridical Culture, 1500-1700*, MA Thesis, Bilkent University, 1997, p. 93

[37] Heyd, 1969, p. 44

and academic capacity of the Ottoman *ulema* corps, thus stretching the subject matter to cover the production by the Ottoman *ulema* in other Islamic sciences as well.[38] However, the presentation of the fatwas issued in the early modern Ottoman polity as a generic category will help us locate the actual source material that this thesis is going to deal with into a clear perspective. Thus, only after getting acquainted with the basic traits of the Ottoman fatwas, our primary sources, the fatwa compilations of the Ottoman *şeyhülislam*s could have been meaningfully deconstructed.

I.2. The *şeyhülislam* fatwas

Although the historiography of the Ottoman legal order has been flourishing very rapidly in the last decades, there is still an aura of uncertainty over the acts, either in the public or the private domain, which were deemed legally legible and therefore "justiciable" by the Ottomans prior to their confrontation with the Western positivist attitudes towards law and legality. As mentioned in the previous section, the conceptual boundaries of the term -the Ottoman fatwa- can to a great extent be demarcated. Yet the Ottoman şeyhülislamate, when coupled with the eccentricity of the office which defies all the religio-political categories in the history of Islamic polities, remains considerably nebulous with respect to its role in the jurisprudential functioning of justice in the Ottoman Empire.

When compared to other branches of the Ottoman *ilmiye* class, there is a fairly extensive bibliography dealing with the development of the office of the chief mufti, the *şeyhülislam*. Some explanations depict the Ottoman *şeyhülislam*s as the Ottoman version of the Abbasid caliph.[39] However both the Ottoman theory of Islamic caliphate and the political treatment that the Islamic institution of caliphate was consigned in the hands of the Ottoman overrule, will definitely impugn such a resemblance.[40] Other

[38] See Recep Cici, *Osmanlı dönemi İslam hukuku çalışmaları: kuruluştan Fatih devrinin sonuna kadar*, Bursa: Arasta Yayınları, 2001

[39] Michael M. Pixley, "The Development and Role of the Seyhülislam in Early Ottoman History", Journal of the American Oriental Society, Vol. 96, No. 1 (Jan.-March 1976), p. 93

[40] See Colin Imber, *Ebu's- su'ud: the Islamic Legal Tradition*

accounts give credit to the Greek patriarchate as a backcloth for the development of the *şeyhülislamate*, representing a notion which has been largely dismissed too. Unlike the Greek patriarch who was entrusted solely with the administration of ecclesiastical affairs, "the Ottoman *şeyhülislam* carried with him the idea of the unity of "church-state" interests along with the necessity for moral/legal guidance in imperial affairs".[41] In terms of the administrative framework of the Ottoman Empire, there has not been any detailed study conducted on the relative position of the Ottoman *şeyhülislam* vis a vis the Ottoman viziers, the *kadıasker*s and other high-ranking plenipotentiaries, except for several comments on the early rivalry between the *şeyhülislam*s and the *kadıasker*s before the former was assigned a superior status in the imperial bureaucracy.[42] This lack of interest was perhaps due to the fact that the Ottoman *şeyhülislam*s had not formally been incorporated into the main administrative body of the Empire, the *Divan-i Hümayun* until the nineteenth century. From a different perspective R. Repp, in his study on the fifteenth and sixteenth century Ottoman *şeyhülislam*s, proposes that the office of the şeyhülislamate should be gauged as the result of the uneasiness that the Ottoman must have felt on account of their extremely imperialist deeds and policies which were devoid of the aura of Islamic piety and spirituality which embellished other Islamic courts at the end of the fifteenth century.[43] These alternative accounts can be multiplied, but the most plausible evidence that stands for the ultimate position of the *şeyhülislam*s emanates from their role as the primary legal consulter of the *Devlet-i Aliyye*. It is known that at its early stages, the Ottoman state depended considerably on the Cairene *ulema* for the issuance of fatwas required for any legitimate state action.[44] The gradual infiltration of the "Ottoman" personnel into the ranks of the state from the sixteenth century onwards was to take place also in the realm of the royal monopolization of justice, as in other socio-political domains. Hence the increasing production, organization and dissemination of the *şeyhüslislam* fatwas account for the bureaucratization of legal affairs at the top of which sat the Ottoman *şeyhülislam*s. Similarly Haim Gerber investigates "whether the function of issuing fatwas had anything to do with this rise to greatness [of the *şeyhülislam*s]" and asserts that this was

[41] Pixley, p. 94
[42] Pixley, p. 95
[43] Haim Gerber, *State, society, and law in Islam*, 1994, p. 92
[44] Pixley, p. 92

what actually made the fatwa a frequently resorted tool "not only on the level of the humble provincial qadi but also on the level of the state itself".[45]

Perhaps the second way to contextualize the *şeyhülislam* fatwas within the general framework of the Ottoman fatwa manufacture is by assessing the relationship between the chief mufti of Istanbul and the provincial muftis. In this respect, one methodological difficulty emanates from the spatial absence of the provincial muftis who practiced in the core regions of the Ottoman Empire, namely in the Anatolian peninsula and in the strongholds of Rumeli. The muftis settled in the Ottoman Middle East and North Africa are somehow luckier since the historiography of the legal orders in today's Egypt, Palestine and Syria is quite dynamic and benefiting from the revised scholarly interest on the *ifta* mechanics operating within different Islamic *mezheb*s, the borders of which ranged from the Atlantic shores of Africa to the Indian subcontinent. Conversely, the *fatwa*s of many regional muftis have been treated as the artefacts of a peripheral legal zone. Nevertheless, though the legal activities of the provincial muftis in the Ottoman Empire can not be easily detected, the limits of the *şeyhülislam*s' area of jurisdiction over the rest of the Empire can be implored. The *şeyhülislam* in Istanbul was the head of the entire learned establishment and it can be legitimately surmised whether this political superiority transformed into a jurisprudential predominance[46] or whether the Ottomans had at one point envisaged an *ifta* network bureaucratizing the entire fatwa giving activities within the Empire. The compilations of the fatwas issued by the *şeyhülislam*s and the extent of their circulation patently denotes the fact that the legal opinions of the *şeyhülislam*s, no matter which real life situation they corresponded to, set precedents for men of law, including the qadis and the muftis practising in provincial settings.

Accordingly, the unavailability of any positive evidence on both the early evolution of the office of the şeyhülislamate and the existence of the organic links between the central and provincial *ifta* structures in the Ottoman Empire makes it redundant to mull further over the place of the *şeyhülislam* within the graduated corpus of the Ottoman fatwa making. One imperative point, however, should not be omitted at this juncture. As Haim Gerber precisely states "analyzing the intellectual product of the Ottoman [chief] muftis is the closest we can get to a semi-official statement of the law

[45] Gerber, 1994, p. 81
[46] Yaycıoğlu, p. 48

in this polity".[47] The shar'i verdicts of the Ottoman *şeyhülislam*s fabricated in their fatwas, should not be treated as a pool of merely non-coercive and non-authoritative legal opinions, particularly in an era where Sharia knowledge was an "essential cultural capital"[48] steering the relations of power and domination.

I.3. The fatwa compilations

Studying the fatwa compilations for their own sake, a method which is quite distinct from the examination of a single *şeyhülislam* fatwa, will more overtly publicize the main research question of this thesis, the legal appearance of deviance and deviants in the Ottoman fatwa literature. As Colin Imber affirms fatwa giving is something, the compilation of original fatwas is another thing.[49] Hence we are interested not only in the content of the single fatwas dealing with various forms of deviant behaviour but also in the meaningful sequence and the arrangement of these fatwas in these manuals. Therefore before the detailed perusal of these five different fatwa compilations, a brief section will be spared for highlighting the mentality behind the organization of the fatwa codices. In the diagnosis of the main research problem of this study, the formal vertebrate of the fatwa compilations carries a considerable weight.

Despite the lack of a grand collection of fatwas like the *Kitab al-Miyar* which subsumes approximately 6,000 Maliki fatwas issued by hundreds of muftis who lived between 1000 and 1496, in the Ottoman context between the sixteenth and the eighteenth centuries we can spot the presence of nineteen fatwa compilations and their numerous copies, suggesting an Empire-wide circulation of fatwa manuals. The comparison of the indices of the manuscript fatwa compilations with their either manuscript or printed copies reveals that the content of the fatwa collections could be manipulated and reorganized according to the legal taste of the compiler.[50]

The template on which the fatwas were compiled and organized belongs to the classical *furu'* and fiqh manuals. The fatwa collections involve sections (*kitab*), and

[47] Gerber, 1994, p. 79-80; see R.C: Repp, *The Mufti of Istanbul*.
[48] Messick, Masud, Powers, p. 21
[49] Imber, p. 57
[50] Yaycıoğlu, p. 104

sub-sections (*bab*), which are thematically distinguished from each other. Accordingly there is a table of contents in every fatwa collection that lists these themes in Arabic. In these collections guidelines for worship; matters related to family and marriage; problems about the legal status of individuals; economic and commercial regulations; issues about the administration of religious endowments; judicial process; ownership problems for money, property and slaves; and land tenure and criminal law feature predominantly as the universal themes of the Islamic fiqh lexicon.[51] The professional compilations which were used at the courts or by other muftis and *şeyhüslislam*s usually hewed to this outline. Yet, there are in the Ottoman fatwa collections, some very peculiar themes that remind us the historical context the Ottoman *şeyhülislam*s were operating in. The chapters on the law of states (*siyar*), covering subsections of the subjugation of the unbelievers (*istila*) and the breaking of international treaties,[52] the sections dealing with various sects of the Persian Shiites,[53] and the authoritativeness of the orders and whims of the sultan testify to the legal priorities of the Ottoman State and clearly distinguish the Ottoman fatwa manuals from the politically moribund collections of classical fiqh literature.

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[51] The standard chapters in a fetva manual are as follows: *kitabü't-taharet* (cleanliness), *kitabü's-salat* (worship), *kitabü'z-zekat* (alms), *kitabü's-savm* (fasting), *kitabü'l-hac* (pligrimage), *kitabü'n-nikah* (marriage contract), *kitabü'r-rıza'* (consent), *kitabü't-talak* (divorce), *kitabü'l-i'tak* (manumission of slaves), *kitabü'l-iman* (piety), *kitabü'l-hudud* (hadd crimes), *kitabü's-sirkat* (theft), *kitabü'l-cihad* (about non-Muslims), *kitabü'l-abik* (escaping slaves), *kitabü'l-mefkud (the lost), kitabü'ş-şirket* (commercial enterprise), *kitabü'l-evkaf* (waqfs), *kitabü'l-bey'* (sale), *kitabü's-sarf* (barter), *kitabü'l-kefalet* (bail), *kitabü'l-havale (assignment, cession), kitabü'ş-şehade* (testimony), *kitabü'l-vekalet (*deputyship in the court), *kitabü'd-da'va* (legal proceedings), *kitabü's-sulh* (settlement of dispute), *kitabü'l-munaraba* (silent partnership), *kitabü'l-'ariyet* (loan), *kitabü'l-hibe* (donation), *kitabü'l-lakit* (foundling), *kitabü'l-vesa* (entrusting), *kitabü'l-icaret* (rent), *kitabü'l-vela* (about the relationships between former masters and freed slaves), *kitabü'l-ikrah* (abominableness), *kitabü'l-me'zun* (about slaves with limited legal rights), *kitabü'l-gasb* (usurpation), *kitabü'l-maksime* (sharing, participation), *kitabü'l-müzara'a* (sharecroping), *kitabü'l-cinayet* (capital offense), *kitabü'd-diyet* (blood indemnity). Besides these general categories, there are different chapters such as *kitabü'ş-şüfe'a* (advocacy), *kitabü'z-zebayia* (about slaughter animal), *kitabü'ş-eşribe* (about drink and alcohol), *kitabü's-sayd (*about hunting), *kitabü'l-hünsa* (about homosexuality). Yaycıoğlu, p. 103-104

[52] Under the title of *Kitab-ı Siyar*, there exists minor sections called "*Fi istila...*" or "*Nakz el-ahd*".

[53] In Yenişehirli's compilation, there is a separate section on *Acem Rafızi*s, who were deemed as Shiites and infidels in the eyes of the Ottomans.

In the fatwa collections there are literarily thousands of fatwas on issues that the Ottoman populace chose to problematize and present on a legal stage, before the mufti. The same non-figurative legal language that disguises the real context permeates the compilations as the fatwas themselves, inducing the historian to ferret out different methodological and conceptual tools for her inquiries. When it comes to the legal tone of the collections, we see that while various sections such as those on worship and rituals were thoroughly catechistic in nature, others on legal procedures were not more than the reconstruction, and the rewording of the judicial records in the fiqh language. As mentioned above, the format of the fatwa manuals were well-nigh standard, but in terms of the content of the fatwas, the tone of the replies may not always be in tune with the legal character of the sections. One reply in the transaction section can turn out to be strictly normative and deserve to be deemed a punitive verdict, whereas another under the discretionary punishment (*ta'zir*) category may be simply regulative and reconciliatory.

In terms of their legal functions, the first point about the fatwa compilations is that they were very practical legal handbooks for the qadis in their judiciary performances.[54] Certainly not in the context of this study, but as a prospective research issue, the estates -*tereke*s of the Ottoman legal personnel can be spanned so as to see whether the Ottoman qadis, or lesser muftis had kept fatwa manuals in their libraries. In any case it is known that numerous studies which delve simultaneously into the *şeriye sicil*s and the fatwa manuals have discovered many points of convergence between the "theory" and the "practice" of Islamic law. Apart from their practical and pedagogic purposes, in Islamic tradition the fatwa compilations have always been part of an epistemological world which operated on a cross-referential basis by intertwined chains of transmission.[55] Hence, the compilation of the fatwas must have been a venerated enterprise, the fulfilment of which would give a sense of vocation to the compiler. Accordingly, in the Ottoman dominions too, these collections began to occupy a significant place not only in the practical world of the Ottoman qadis but also in the mental map of the Ottoman *ulema*, the academia, to be used for academic and cerebral

[54] Yaycıoğlu, p. 32

[55] "W. A. Graham (1993) calls the 'isnad paradigm', which places a high value on the human element in the process of transmitting knowledge from one generation over the next, with the result that Muslims of subsequent generations could experience a sense of personal connection with both the Quran and the hadith.", in Messick, Masud, Powers, p. 7

purposes. Many of the works cited in the corpuses of the members of the Ottoman ilmiye class were actually the compiled versions of the fatwas belonging to the *şeyhülislam*s, the masters of Islamic fiqh.[56] After all, in the late nineteenth and early twentieth centuries, one of the main reasons for the deficient working of the Ottoman legal system was to be seen as stemming from the failure of the *fetvahane* to register and collect the fatwas it had been issuing for centuries. According to a commentator of the period the country should have been filled with the works of the Ottoman faqihs, the muftis, the qadis and the *müderris*es.[57]

I.4. The Ottoman *fetva* in the 17th and 18th centuries

The discussion of the structural and the functional features of the Ottoman fatwa compilations at the outset should not imply a hidebound legal corpus which essentially remained unchanged through out centuries. In terms of the historiography of the Ottoman legal order we see that most of the few fatwa collections which have been critically edited or at least studied are from what is called the classical period of the Ottoman Empire leaving the compilations dating from the seventeenth and eighteenth centuries in abeyance. However, the fatwas of the post-Ebu Su'ud generation of the Ottoman *şeyhülislam*s should be treated distinctively since in this period the jurisprudential motives of the individual "muftis of Istanbul" were incrementally superseded by a legal bureaucracy operating under the rubric of the *fetva eminliği*. With respect to the fatwa compilations too, Haim Gerber reminds us that it was not only the collection of the illustrious Ebu-Su'ud that was published but also those of the much more pedestrian Ali Efendi or Abdullah Efendi, muftis from the so-called period of decline.[58] So, a brief analysis of the legal milieu of this era, along with its practitioners, its institutions, and the legal sources which directed the administration of law and justice will assist us in further historicizing our research question.

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[56] A.Fikri Yavuz ve İsmail Özen, (eds), *Osmanlı müellifleri, Bursalı Mehmed Tahir,* İstanbul: Meral Yayınevi, 1972-75

[57] Esra Yakut, *Şeyhülislamlık Yenileşme Döneminde Devlet ve Din*, Kitap Yayınevi, İstanbul, 2005, p. 60

[58] Gerber, 1994, p. 96

Before advancing on the systematic changes or trends that were introduced into the post-classical *ulema* corps of the seventeenth and eighteenth centuries, it will be more tenable to ponder over the relationship between the Ottoman court and the *meşihat makamı* and to suspect whether each sultan appointed a new *şeyhülislam* upon his accession to the throne. As much as the şeyhülislamate was a highly venerated position within the Ottoman state apparatus, it was also a political office, and moreover unlike the rest of the *ilmiye* ranks not subject to seniority rule.[59] Sabra Melsey Follet inspects this relation by presenting the changes in the post of the şeyhülislamate brought by the alternation of sultans.[60] She ends her inquiry by conceding that in the seventeenth century long tenure of the office of *şeyhülislam*s catches general calm and long tenure of other offices as well; short tenure and rapid turnover come at times of general unrest.[61] Madeline Zilfi's study on the post-classical Ottoman *ulema* presents a more sophisticated analysis than Follet's categorical observations. Zilfi calls the latter part of the seventeenth and the eighteenth centuries as the *mollazade* period when the leading members of the *ulema* dynasties, like Şeyhülislam Feyzullah Efendi, forced the hereditary tendencies in the system so as to make the *meşihat makamı* an inherited post.[62] Another important turning point in the post-Suleimanic era is detected by Ismail Hakkı Uzunçarşılı, who in his seminal study on the structure of Ottoman *ilmiye*

[59] Madeline Zilfi, *The politics of piety: the Ottoman ulema in the Postclassical Age (1600-1800),* Minneapolis, MN, U.S.A.: Bibliotheca Islamica, c1988, p. 155

[60] "Through Mehmed III every new sultan kept the şeyhülislam of his predecessor until the şeyh's death or voluntary retirement. Then, in the troubled times of the early eleventh (seventeenth, A.D.) century, there was a more rapid turnover, with five successive şeyhs being appointed by two successive sultans, from Mehmed III to Murad IV. There is no evidence that these sultans, although permitting the rapid turnover, were unwilling to have the şeyhülislams of their predecessors. Mehmed IV, however, was a boy of seven when he came to the throne, and his advisors dismissed the şeyh from the previous reign. Thereafter, for a period of fourteen years while Mehmed was too young to control events and palace factions tried to control them, eleven şeyhülislams were appointed. when he was older, Mehmed IV found a şeyhülislam whom he trusted and who was strong enough to maintain himself in office; he was Minkarizade Yahya (d. 1088 a.H., 1677 A.D.), who kept the post for an unusual eleven years. His successor, Çatalcalı Ali, kept the post for thirteen years, in two tenures, indicating that the rapid turnover of the early days of Mehmed's reign was not yet at least the development of a new system. Thereafter, the rapid turnover continues again until Feyzullah Efendi, whose second tenure lasted for eight years." in Sabra Follet Meservey, *Feyzullah Efendi: an Ottoman Şeyhülislam*, Ann Arbor: University of Michigan, 1965, p. 23

[61] Follet Meservey, p. 24

[62] Zilfi, 1988

organization, noted the increasing pace with which *şeyhülislam*s issued fatwas to punish rebels, dethrone sultans, proclaim reforms, wage wars, and conclude and break agreements, particularly from the eighteenth century onwards. The dynamics behind the increase in the public roles and political functions of the *şeyhülislam*s have not yet been extensively studied, and its discussion is well beyond the scope of this study. Yet this constitutes a significant phenomenal change which cannot be condoned in this study for it manifests a strong public aspect in the fatwas that we scrutinize.

If we were to look for something in the sphere of legal thought that would make the seventeenth and the eighteenth centuries the Ottoman *longue durée*, it would be the transformations in the order of the legal sources that the Ottoman law-makers abided by. In the classical era, we know that the legendary *şeyhülislam* Ebu Su'ud had achieved the reconciliation of the two "contradictory" dynamics of the Ottoman legal space, the Islamic Sharia and the body of royal law -the *kanun*- which draws its main inspiration from age-old customary practices. Yet this masterful synthesis was to be dismantled since following the last *Kanunname-i cedid-i Sultani*, the latest *ferman* of which dates from 1673, the imperial initiative in enacting new law codes slackened, if not totally ebbed. From this moment on, decisions and policies regulating land tenure, taxation, administrative reforms, diplomacy, and certain questions on criminal law were increasingly formulated and implemented by recourse to the shar'i principles heralded by the office of the chief mufti. The whys and hows of this change will be problematized in the following sections of this thesis. Yet at this juncture we can say that on account of many similar dynamics, the seventeenth and the eighteenth centuries seem to have witnessed an increasing formalization of law where the shar'i legal tools dominated the reproduction of legality at the expense of the free hand of sultanic initiative.

The studies on the sixteenth century Ottoman *şeyhülislam*s like Kemalpaşazade and Ebu-Su'ud have manifested that "the eminent Ottoman religious leaders in the sixteenth century were not primarily detached religious theoreticians, but men of state with public and societal responsibilities and commitments".[63] Recent studies, like Haim Gerber's, have made salient contributions to this matter by considering how the *şeyhülislam*s of the seventeenth and eighteenth centuries would have carried the same

[63] Gerber, 1994, p. 104

responsibilities and commitments.[64] This study on the seventeenth and eighteenth century Ottoman fatwas will hopefully provide a partial answer to this question by examining the extent to which the *şeyhülislam*s through their legal descriptions, tried to maintain the prevailing parameters of social control.

I.5. Sources - *Fetava-yı Feyziye me'an-nukul, Fetava-yı Ali Efendi, Behçetü'-l fetava, Fetava-yı Abdurrahim, Neticetü'l-fetava me'an- nukul*

In this section the primary sources of our study -the fatwa compilations- will be explored with respect to the eminent *ilmiye* dignitaries that the fatwas are ascribed to, together with some of their structural features. One aspect to be noted here is that the main material we are dealing with should be redefined not merely as *şeyhülislam* fatwas, but also as the fatwas of a highly bureaucratized office where along with the *şeyhülislam*s, the *fetva emin*s played a role in the corporate manufacture of the Ottoman fatwas. So the bibliographic information on the lives of the *şeyhülislam*s is provided mainly with respect to their tenure in the office, because their personal involvement in the drafting of each and every fatwa cannot be substantiated historically.

The earliest of the fatwa compilations analysed here is the *Fetava-yı Ali Efendi*. The fatwas in this collection belongs to Çatalcalı Ali Efendi, who was the *şeyhülislam* of Mehmed IV between 1674 and 1686. The date of the original compilation being 1103/1692, our copy was published by the Matbaa-i Amire, in Istanbul, in 1310/1893.

When his mentor Şeyhülislam Minkarizade was released from the office of *şeyhülislam* due to illness and age, Çatalcalı Ali Efendi was appointed as *şeyhülislam* in 1674. Until his dismissal from the office in 1686, he served for thirteen years. In 1686, Ankaravi Mehmed Efendi replaced him as *şeyhülislam*. After being exiled to Bursa, Çatalcalı was permitted to return to Istanbul only in 1690. In 1692 he became *şeyhülislam* for the second time but his tenure was destined to last for slightly more than two months. On April 19, 1692, he died at Edirne.[65]

The fatwa collection of Çatalcalı Ali Efendi has more than four thousand fatwas in 427 chapters. There are two manuscripts, dated 1100/1689 and 1102/1691 of the

[64] Ibid., p. 104
[65] Mehmet İpşirli, "Çatalcalı Ali", DİA, 1993, Vol. 8, p. 234-235

compilation, prepared during the lifetime of Çatalcalı, in the Süleymaniye collection.[66] Besides, in order to delineate the sources that these fatwas were based on, Ahıskalı Ahmed Efendi wrote a treatise called *Nukulu Fetava-yı Ali Efendi* and Gedizli Ahmed who was a fatwa clerk also wrote a treatise bearing the same name.[67] Salih b. Kefevi, by making most of these sources, edited the collection and published the two volume *Fetava-yı Ali Efendi me'an nukul*, which came to be known as *Kefevi tertibi*, or *tertib-i cedid* (new edition).[68] In this most widely circulated edition Kefevi simply inserted the Arabic quotations below each fatwa, and reorganized the material. *Fetava-yı Ali Efendi* was published more than ten times in the nineteenth and early twentieth centuries, in the years 1245/1829, 1258/1842, 1266/1849, 1272/1855, 1278/1861, 1283/1866, 1286/1869 1289/1872, 1311/1893, 1322/1904 and 1324-5/1906-07.[69]

The second collection, the *Fetava-yı feyziye me'an-nukul*, is composed of the fatwas of the Şeyhülislam Seyyid Feyzullah Efendi. The initial date of the compilation is indicated as 1115/1703, the copy we depend on is a *Darü't-Tıbaati'l-Amire* version, printed in 1266/1850 in Istanbul. It has 571 chapters.

Feyzullah Efendi was born in Erzurum in 1639. There he attended the lectures of Vani Mehmed Efendi (d.1685) who was to become a leading religious mentor of the Ottoman court in the following decades as the last promulgator of the fundamentalist Kadızadeli epoch that swept the second half of the seventeenth century. When Vani Mehmed Efendi became the *hoca*, mentor, of Sultan Mehmed IV in 1662, he called up Feyzullah Efendi to Istanbul, took him under his protection, and then married to his daughter.[70] Feyzullah Efendi then became the preceptor of Şehzade Mustafa in 1669. He was appointed as *şeyhülislam* shortly after the dethronement of Mehmed IV by the new sultan, Suleyman II, in 1688. Nevertheless, Feyzullah Efendi's first tenure as *şeyhülislam* ended after only seventeen days in a military rebellion. After his dismissal he was exiled to his hometown Erzurum to remain there for seven years. Upon the

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[66] İzmirli, nr. 251; Serez, nr. 1113; nr. 1074, DİA, *Fetava-yı Ali Efendi*, Vol. 12, p. 438

[67] Murat Akgündüz indicates the location of these sources as Süleymaniye Library, Pertev Paşa, nr. 218; Diyanet İşleri Başkanlığı Kütüphanesi, Yazmalar, nr. 3883, in *XIX. asır başlarına kadar Osmanlı devletinde şeyhülislamlık*, Ph. D. Thesis, Marmara University, 1999, p. 59

[68] The earliest Kefevi version I was able to find in Istanbul libraries, is dated 1178/1764. (İstanbul Belediye Kütüphanesi, Belediye, nr. 000200)

[69] DİA, *Fetava-yı Ali Efendi*, Vol. 12, p. 438

[70] Altunsu, p. 98

enthronement of Mustafa II on February 6, 1695, he was recalled to the office of *meşihat* and remained there for eight years between 1695 and 1703, until the end of Mustafa II's reign. Feyzullah Efendi was notorious for intervening in government affairs which allegedly cost him his life. During the infamous Edirne Incident of 1703 he became one of the first victims of the new establishment that overthrew his patron, Sultan Mustafa II.

Feyzullah Efendi's fatwa collection is the briefest of these four collections. It has been published twice in the nineteenth century, the first one, being a standalone publication, in 1266/1850, and the second one in the *derkenar*, margins of *Fetava-yi Ali*, in 1324-25/1906-1907.[71]

The next compilation is called the *Behçetü'l-feteva*, the "jubilant" fatwas of Yenişehirli Abdullah Efendi who was born in Yenişehir of Morea. He had served both as a religious teacher, *müderris* and a judge, *kadı* before matriculating into the *ifta* career. After serving as qadi of Aleppo in 1704, and of Bursa in 1711, he became a fatwa clerk in the *fetvahane*. He served as military judge (*ordu kadısı*) during the Morea campaign in 1715. Following the posts of the *kadıasker* of Anadolu, then that of Rumeli, under the aegis of Damad Ibrahim Paşa he was bestowed the white robe (*hi'lat-ı beyza*) of *şeyhülislam* by Sultan Ahmed III in 1718. Abdullah Efendi served as his *şeyhülislam* for twelve years.[72] Towards the end of Ahmed III's reign, he became critical of Ibrahim Paşa to such a degree that during the Patrona Halil Rebellion, Abdullah Efendi turned against the grand vizier. Afraid of being turned over to the rebels he switched ranks and supported the dethronement of Ahmed III. He was dismissed by Ahmed III on September 30, 1730 and sent to Bozcaada. He died in 1743 in exile.[73]

Although the fatwas of Abdullah Efendi had been brought together in a collection during his life time, a later edition, named *Behçetü'l-Fetava* had become the most widely circulated version. The historian Şemdanizade narrated that another *şeyhülislam* Dürrizade Mustafa Efendi wrote an addex in 1168/1754 to the fatwa collection of Yenişehirli Abdullah Efendi. Şemdanizade told that Dürrizade composed also a handy index for the collection and added that he would like to do the same for

[71] DİA, *Fetava-yı Feyziyye*, Vol. 12, p. 443
[72] Altunsu, p. 117
[73] Altunsu, p. 117

the fatwas of Çatalcalı Ali Efendi.[74] Nevertheless it was the *Behçetü'l-Fetava* which was prepared and organized by Mehmed Fıkhi El-Ayni, who had served under Abdullah Efendi as *fetva emini*, which came to be the most reknown version. As in the case of Çatalcalı's collection, in the later editions the fatwa texts are followed by *delil*s, supporting arguments from the classical sources, in Arabic. Another minor edition which contains only the Arabic quotations was composed under the title of Nuqul al-Bahjat al-fatawa bi'l-Arabiyya, possibly in order to prevent the copyists from making mistakes in Arabic passages by indicating the chapters and the sections from which the quotations were extracted.[75] The *Behçetü'l-Fetava* was published twice in the nineteenth century in Istanbul, in 1266/1850, and in 1289/1872.[76] The 1872 edition we have possesses 640 chapters indicated in its index.

Another collection is consisted of the fatwas belonging to Şeyhülislam Menteşizade Abdurrahim Efendi and compiled under the title of *Fetava-yı Abdurrahim*. The edition this study has taken into consideration is a *Darü't-Tıbaati'l-Ma'mure* version printed in Istanbul, in 1242/1827. It indicates more than 950 entries in its index as its chapters.

Menteşizade Abdurrahim Bursevi Efendi was born in Bursa. After his primary education in Bursa, Abdurrahim Efendi came to Istanbul to enter the retinue of Minkarizade Yahya Efendi. Like Yenişehirli Abdullah, he had experiences as both *müderris* and qadi. He became *kadıasker* of Anadolu in 1708 and the *kadıasker* of Rumeli three times, in 1711, 1713, 1715. On June 26, 1715, he was elevated to the office of *şeyhülislam*. While on this post, he died on December 4, 1716.[77]

Even though Abdurrahim Efendi served as *şeyhülislam* for a mere seventeen months, his fatwa collection is a monumental work that includes more than eleven thousand fatwas. It has been published in 1242/1827 in two volumes.

The last compilation is the *Neticetü'l-fetava me'an-nukul* of Dürrizade Mehmed Arif Efendi, whose original date of compilation is denoted as 1215/1800. Different from the previous compilations, this collection is not composed of the fatwas issued by Şeyhülislam Dürrizade Mehmed Arif Efendi himself, but includes miscellaneous fatwas of nine former *şeyhülislam*s. It seems that during his tenure in office, Dürrizade

[74] Akgündüz, p. 171
[75] Yaycıoğlu, p. 98-102
[76] DİA, *Behçetü'l-Fetava*, Vol. 5, p. 346
[77] Altunsu, p. 115

Mehmed Arif Efendi collected the fatwas issued by Mirzazade Şeyh Mehmed Efendi (1730-1731)*, Paşmakcızade Esseyid Abdullah Efendi (1731-32), Damadzade Ebu el Hayr Efendi (1755-56), Karaismail Efendizade İshak Efendi (1733-34), Dürri Mehmed Efendi (1734-36), Feyzullah Efendizade Esseyyid Mustafa Efendi (1736-45), Akmahmudzade Esseyyid Mehmed Zeynü'l-Abidin il Hüseyni Efendi (1746-48), Karaismail Efendizade Mehmed Es'ad Efendi (1749-50), and Karahalil Efendizade Mehmed Said Efendi (1749-50), who all served as *şeyhülislam*s in the course of the eighteenth century. As in the previous cases, the fatwas of these nine *şeyhülislam*s were not quoted verbatim by Dürrizade, since in the introduction of his compilation, the names of the nine clerks (*katib*s) who had edited these fatwas are also indicated.[78] Two printed versions of the *Neticetü'l-fetava* are dated 1237/1821 and 1265/1848.[79] The version used here is a *Matbaa-ı Amire* one, printed in Istanbul, in 1265/1848; and has 641 chapters.

Providing synopses on the biographies of all these eighteenth century *şeyhülislam*s would cast as a break for our analysis, yet few words on Dürrizade Mehmed Arif Efendi who collected their legal opinions would help us imagine the stereotypical career track of an eighteenth century *şeyhülislam*. Dürrizade Mehmed Arif Efendi was born around 1740 and reached the post of *kadıasker* of Rumeli in 1784. On August, 23, 1785 he was appointed *şeyhülislam*, but dismissed from the office on February, 20, 1786 because of his political activities, and after being ordered to go on pilgrimage, he was forced to live in exile in Kütahya. He was permitted to return to Istanbul in 1790-1 when his enemy the Şeyhülislam Hamidizade Mustafa Efendi was discharged from office, in 1792. He was again appointed to the *meşihat makamı*. Being held in some way responsible for the state of unpreparedness of Egypt when Napoleon launched his invasion, he was replaced in office in 1798, and after a few months of exile in Bursa, he returned to Istanbul where he died on October, 9, 1800.

The chains of manuscript and printed versions that are indicated above suffice to prove that the fatwa compilations had lives of their own. Edited and brought together by the clerks during the lifetimes of the *şeyhülislam*s or posthumously, the *şeyhülislam*

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* dates of their tenure as *şeyhülislam*

[78] Emin Vessaf Abdullah Efendi (Mirzazade, Paşmakcızade, Karaismail Efendizade); Emin Fakihi Mehmed Efendi (Damadzade, Akmahmudzade, Karaismail Efendizade); Emin Şalgamcızade Halil Efendi (Dürri Mehmed)

[79] DİA, Vol. 10, p. 37

fatwas continued to be moulded after their conception. This continuous transformation may serve to negate the argument that in their compiled forms the *şeyhülislam* fatwas hindered the creation of novel legal rationales and ossified the Ottoman *ifta* organization. Since the *şeyhülislam*s, different from the provincial muftis, were not required to render the legal bases of their opinions in their fatwas, it was these editors and copyists (*müstensih*s) who appended the rationale in Arabic below each fatwa. One of the most plausible ways to appraise the authenticity of the nineteenth century printed versions we have, is to check the historical background that culminated behind these recent editions. The Süleymaniye Library and the Istanbul Müftülük Archives are the two places to ferret out in this case, on account of the abundant fatwa collections they host. A computerized search in the Süleymaniye Library has resulted in 58 different manuscript and printed collections of Çatalcalı Ali's fatwas; 40 of those issued by Yenişehirli Abdullah Efendi; 14 copies of Feyzullah Efendi's fatwa collection; 6 of the *Netice* collection Dürrizade Mehmed Arif had brought about; and only one copy of the fatwas that Menteşevi Abdurrahim had issued. In the archives of the Istanbul Müftülüğü, there are 16 collections under the banner of *Behçetü'l-Fetava*; 10 collections called *Fetava-yı Ali Efendi*; 10 *Neticetü'l Fetava*s; 7 *Fetava-yı Abdurrahim*s and 3 *Fetava-yı Feyziyye*s. Based on this picture, making a popularity search for these fatwa collections would not be an arduous job. However finding out the degree of editorial amendments that the fatwa clerks made on the original fatwas seems more than arduous. Whether they made any further changes pertaining to both the structure and the contents of the *şeyhülislam* fatwas has still not been inquired for a critical overview of the dozens of fatwa manuals in manuscript and printed forms has not been carried out yet. Apart from the printed versions we have mentioned in passing, these numerous manuscripts mentioned above were edited and reprinted by clerks whose names are inscribed in the collections.[80] It is impossible to detect who had added what

[80] *Behçetü'l-fetava* of Yenişehirli Abdullah was edited by Abdurrahman b. Mustafa Medhi in 1743, Hüseyin b. Muhammed in 1742, Müftüzade Abdullah El Mağnisi in 1753, Mehmed Fıkhi El Ayni in 1759, Şeyhzade Mahmud (n.d.), Muhammed Salih b. Muhammed (n.d.), İbrahim b. Muhammed (n.d.), Abdullah b. Fadlullah in Balıkesir (n.d.), Elçizade Mustafa (n.d.), Abdullah b. İbrahim (n.d.), Süleyman Edip b. Muhammed Neci, Himmetzade Muhammed in 1739, Muhammed b. Mehmed Kankıravi (n.d.), Ali Rıza b. Abdullah (n.d.), Üsküdari Mehmed Sadık b. Ahmed in 1740, Mehlaza Muhammed b. Ahmed (n.d.), Şakir b. Ahmed in 1810, Hafız Osman Mesud in 1810, Mehmed Emin bin Mehmed in 1755 and Ömer Taşlıcalı in 1867; Çatalcalı's fatwas were arranged by Seyyid

and after which point these collections had become *me'an nukul*s, that is transmissions. Nevertheless, these dynasties of different fatwa compilations certainly imply that what is being examined in this thesis actually enfolds a process stretching two centuries at most, and does not replicate snapshots of legal reasoning. The fatwas which will be presented in the following pages were issued by or at least ascribed to Ottoman *şeyhülislam*s who served during the late seventeenth and eighteenth centuries. However, contrary to being archaic legal sources, these fatwas and the legal categories apparently continued to be disseminated in the Empire until the very beginnings of the twentieth century.

I.6. Conclusion

The purpose of the first chapter of this study has been to expose the basic composition of our main primary sources by deconstructing them into meaningful fragments -the fatwa, the *şeyhülislam*, the compilations- and by presenting the socio-legal environment in which these fatwas were produced it also aimed at historicizing these collections. However, the task of pulling the compilations down from the shelves constitutes only a small portion of this research. The question of whether the legal character of the fatwa compilations permits the hunt for forms of deviant behaviour in these collections still looms large over us. One of the basic arguments of this research is that in spite of their oft-quoted dogmatic character, the fatwas and the fatwa compilations facilitate, albeit in a limited fashion, the reconstruction of Ottoman social life as it existed before the modernization currents. Thus before focusing on the legal

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Ahmed b. Abdurrahim in 1728, Seyyid Halil in 1738, Durmuş Mustafa Muhammed Şakir in 1789, Hafız Osman in 1805, Ömer b. Osman el-Veternevi (n.d.), Mustafa (n.d.), Abdülkadir b. Muhammed (n.d.), Rize Müftüsü Ali b. Selim (n.d.), Muhammed b. Abdullah (n.d.), Muhammed b. Abdurrahman Vaniza (n.d.), Hasan b. Hair (n.d.), Mikdad b. Muhamme Erzurumi (n.d.), Şeyh Muhammed b. Ali in 1714, H. Mehmed Tahir b. Mehmed in 1776, Mustafa b. Recep in 1714; Feyzullah's fatwas by Ahmed bin Osman in 1745, Hatibzade Muhammed (n.d.), Andalib Hüseyin b. El-Hac (n.d.), Muhammed b. Ahmed el Yahyavi in İstrova (n.d.), Abdurrahman b. Ahmed Vanizade; and *Fetava-yı Abdurrahim* by Mahmud bin Mustafa Çelebi in 1738

appearances of deviance, we should inquire how the status of the fatwas and their compilations in the overall functioning of the Ottoman society might be relevant for the discussion of our research question.

The simplest way to check whether a piece of legal document, involving an edict, an order, or merely a directive is legally binding or at least legally alive is to appraise its relationship to its intended audience. The treatment of the collections of the Ottoman *şeyhülislam* fatwas must have provided at least a slight idea on "how these compilations were read, for whom they may have been written, and what particular function they may have served in the Ottoman legal culture".[81] What has been left aside as yet, is the search for the interaction between the muftis, plus their legal statements and the actual consumers of law, implicating in other words, the plaintiffs, the suspects, the criminals, the enforcers and the other executors of law into our discussion. In the Ottoman setting, the most widespread method resorted for locating such meeting grounds between "the law in theory and the law as actual process"[82] has indeed an empirical one, based upon the Ottoman qadi *sicil*s and the fatwas. As a result of such studies, many researchers ended in doubting the influence of the fatwas issued by a mufti or by the *şeyhülislam* on the variants of legality and justice, juridical or administrative, circulating in the Ottoman Empire. In this respect two main perspectives that corroborate such an influence emerge out of these studies.

Haim Gerber, being conversant on the qadi records of the eighteenth century Istanbul, Bursa, Kayseri and Ankara, as the major urban localities of the Ottoman Empire in this period, provides a spatial explanation, emphasizing the ultimate boundaries of the *şeyhülislam*s' jurisdiction in which their fatwas were upheld. Gerber underscores the fact that the judicial records of Ankara and Kayseri he inspected did not bear any reference to any of the *şeyhülislam* fatwas, as opposed to those of Istanbul and Edirne which are rife with such allusions, and asks "whether the fatwa collections composed by *şeyhülislam*s contain questions sent only from the Turkish cultural area of the state, or from an even more limited area such as between Bursa an Edirne".[83] This remark should be deemed as an important admonition for us in historicizing the specifications stated in the fatwa compilations.

[81] See Yaycıoğlu.
[82] Gerber, 1994, p. 80
[83] Gerber, 1994, p. 83-84

The second item that presides over the relationship of the theory of *ifta* to its practice pertains to the *şeyhülislam*s themselves. In their brief biographies, we have seen that two of our five *şeyhülislam*s at one point in their lives made shifts in their career tracks from the office of *kaza* to that of *ifta*. By the seventeenth century it seems that it had already become a general trend that during most of their professional lives such *şeyhülislam*s served actually as qadis, not muftis.[84] How the internal structuration of the Ottoman ilmiye organization stipulated this path remains another question to be resolved, however we should ask whether the Ottoman *şeyhülislam*s who had served for many years as qadis, did live through a rupture in their legal consciousness. At this point it is worth back-pedalling to one of our earlier discussions. It is the theoretical lacuna that is believed to have existed between the process of *kaza* and *ifta* that creates such a misconception. In stead, such a shift in their career track should rather suggest us that the *ifta* activity of the Ottoman *şeyhülislam*s had never ostracized the non-shar'i sources of law and the practical immediacies of the judicial process. The Ottoman *şeyhülislam*s had always been the alter egos of the Ottoman qadis, yet the provisions of the classical fiqh theories that their fatwas promulgated must have also been blended with the actualities of living law that the qadis stood for.

Consequently, it can be argued that not only in discovering the modes of legally reprimanded social behaviour, but also about many other points concerning early modern Ottoman society, the fatwa collections of the Ottoman *şeyhülislam*s can be utilized as primary sources on their own and not some kind of decorative trivia in the backdrop of the more momentous events that they set out to legalize in the first place. Even if we agree with the unyielding structure of the Ottoman fatwas and advocate the analysis of their doctrinal aspects, we should also adhere to their "actual status and function in the process of law-making"[85] in order to see the practical facet of law. Just like the Maliki *Miyar* collection that has been a cause for yearning for social historians of the Ottoman Empire; the Ottoman fatwa compilations can be regarded as "a moment in the ongoing process whereby legal theory is actualized".[86] Finally, the *fetva mecmua*s as units of analysis on their own should be appreciated as well, since they in fact emulated "a pattern of textual authority, which figures in state legitimacy, the

[84] Gerber, 1994, p. 85, Pixley, p. 90
[85] Yaycıoğlu, p. 24
[86] Messick, Masud, Powers, p. 18

communication of cultural capital, relations of social hierarchy, and the control of productive resources."[87]

[87] Brinkley Messick, *The Calligraphic State,* p. 6

II. DEVIANCE AND SOCIAL CONTROL IN *ŞEYHÜLİSLAM* FATWAS

II.1. Sociology of deviance, history of deviants?

One of the problems endemic to any kind of historical research is that of definition. The language of the Ottoman fatwa does not directly lead the researcher to Ottoman deviants and to different kinds of deviant behaviour in Ottoman society. In order to surmount the legal screen before this purportedly nebulous material, the conceptual ground, on the basis of which the legal discourse of the compilations will be translated into socio-historical categories, should first be clarified. The sociological treatment of deviance, deviants, and types of "abnormal" behaviour constitutes a literature of an extensive scale. Even though the skilful reconciliation of the categories of this sociological literature and those imposed by the legal language of the Sharia is not without problems, it is from this literature that the concepts and approaches that will help us better elucidate our main research problem, will be gleaned.

Sociology of deviance has been an active area for sociological research, loaded with the study of criminals, patterns of delinquency, and many other types of digressive identities. The main axis of these various hypotheses usually passes through the identification of the hither side of the matter-that is the mechanisms and the agents of social control who not only served to suppress but also created the phenomenon of deviance and deviants.[88] However, within the last decade or so, some researches began to proclaim the sociology of deviance obsolete, "since it cannot speak to a society whose moral relativism has rendered naked the agents of social control".[89] In spite of this scholarly pessimism that came with the Foucaultian understanding of the diffusiveness and the omnipresence of authority and domination, theories on deviance

[88] See Howard S. Becker, *Outsiders; studies in the sociology of deviance*, London: Free Press of Glencoe, 1963

[89] Colin Sumner, *Sociology of deviance an obituary*, New York: Continuum, 1994

and social control have preserved some very cogent arguments about how deviance had been labelled through out history, together with novel prospects for further research. The new interpretations of the labelling scheme which regard legislation, and consequentially persecution as reflecting "the vigour not of heresy, but of the legislator",[90] have shifted the focus onto the internal dynamics of the authorities and challenged the Durkheimian equation of "authority and persecution are equal to the collective beliefs and sentiments of society as a whole".[91] In European history, the systematization of the inquisitorial network beginning from the early thirteenth century, and "the formation of a persecuting society" are now largely attributed to the formation of the modern state, and interpreted as one of its early symptoms, not merely as the institutionalized reflections of a particular social commotion.[92] Such a change in the perceptions of the historical categories of deviance should be kept in mind lest the fatwa compilations be lumped as direct indices of Ottoman deviants. These assemblies of *şeyhülislam* fatwas should be regarded as one of the legal expressions among other Ottoman regulations which, according to Leslie Peirce, "be read as a map that locates punishment in the architecture of imperial justice and that highlights a central feature in the constitution of sultanic sovereignty",[93] rather than the direct replies and reactions the main legal arm of the central administration gave against an all-pervasive situation. Hence apart from being depositories of shar'i dicta, the fatwa collections should be explored in order to see how, within the legitimate legal sphere connoted by the *kanun* and the Sharia, the Ottoman *şeyhülislam*s concocted a strategic post to monitor and to purge the deviant suspects or heretical insiders that the Ottoman state envisaged as perilous. In other words, we should discern whether the fatwa collections allow us to detect the waves of "penalization" or "decriminalization" rampant in the seventeenth and eighteenth century Ottoman society.

When it comes to detecting motivations for and tracks of deviance in an early modern society, the problems of definition get further complicated. Although the advocates of the labelling theory of deviance are criticized for being remiss in not

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[90] R.I. Moore, *The formation of a persecuting society: power and deviance in Western Europe*, *950-1250*, Oxford, UK; New York, NY, USA: B. Blackwell, 1990, p. 111

[91] Moore, p. 107

[92] Moore, p. 110

[93] Leslie Peirce, *Morality tales: Law and Gender in the Ottoman Court of Aintab*, Berkeley, CA: University of California Press, 2003, p. 312

problematizing the objects of the process of labelling, they nevertheless developed a sequential model for deviant behaviour, a very useful conceptual tool in searching for deviants in the legal map of the compilations. The discussion of what actually lead these subjects into "ever-increasing deviance" aside, the notion of "deviant careers"[94] best demonstrates "the continuity between deviance and non-deviance".[95] Reconstructing deviant behaviour from the fatwa compilations requires such a conceptual reference point. The behaviours and acts, which can be conceptualized as deviant within the behavioural and moral codes of the seventeenth and eighteenth centuries can be placed on a similar continuum where different variations of deviancy or various steps in a deviant career are aligned. The categories of Islamic law and the relevant fiqh terminology reproduced within Sharia likewise accommodates the gradation of various acts and behaviours on such a scale ranging from the immoral to the licentious, and from the impious to the criminal. Not only the five point scale of Islam's ethical-legal evaluation of acts,[96] but also the classical bifurcation of criminal behaviour into hadd crimes and crimes breaching the rights of men, refers to the graduated conceptualization of the acts and manners which are placed within the orbit of deviancy. Accordingly, the first item in our agenda will be the enumeration of different types of criminal behaviour ranging from theft to fornication. The superimposition of the behaviours that the Sharia criminalizes like wine drinking, but not necessarily homicide[97] and the ones proscribed by the sultanic prerogative like counterfeiting within the same legal genre, the variations between the arrangement of these categories in the fatwa compilations, the formulation of these crimes within the structure of a single fatwa, and the expressions of how Ottoman law, with its qadis and muftis adjudicated and processed these criminalized forms of deviance in the *şeyhülislam* fatwas are the questions to be enumerated in the following sections. The

[94] Becker, p. 24-25

[95] Julian B. Roebuck, "Deviants and Deviancy", *Contemporary Sociology*, Vol. 12, No.1 (Jan, 1983), p. 39

[96] wajib-obligatory; recommended-sunna & mustahabb; indifferent-mubah; reprehensible-makruh; and forbiden-haram. Baber Johansen, "The Muslim Fıqh as a sacred law", in *Contigency in a Sacred Law,* p. 69

[97] Hence the discussion of the favourite topic of contemporary criminal law -murder- will be excluded from this analysis since the categories of offence, delicts and usurpation, belong under the heading of tort rather than crime. "They are technically claims of men, meaning that it is the injured party or, in the case of homicide, his heirs who bring the claim the penalties which they incur are not, strictly speaking, punishments…", Imber, p. 211

second major theme encapsulates what is today called "crimes without victims", the behaviours and acts which involve simple offences like defamation or cursing, and more complex ones such as accusations of religious misconduct or heresy. The majority of the statutes in Islamic law, which are what would contemporarily be called as criminal and labelled as crimes and torts or offences against the person, are regulated by a compensatory notion of justice "by way of the socially approved means of redress". The victimless crimes on the other hand are fabricated as "offences against abstractions such as 'the ruler', 'the state', 'society' or 'morality'".[98] The fatwas stipulated in connection with such cases tend to reveal the mechanics of the Ottoman legal system more since there had not been any standardized legal theory consigned to these forms of misbehaviour or malpractices entirely making their criminalization a historical phenomenon. The discussion of the victimless crimes will start with the fatwas on the forms of improper behaviour or conspicuous expressions of impiety which were chastised within the ambiguous zone of religion. Following this, the conducts like pro-Shiite affiliations, and non-Sunni performances, which were considered as more serious transgressions by the Ottoman faqihs, and for which there stood a more cohesive, if not systemic body of normative and legal instruments, will be elaborated.

As to the categories imposed by the collections themselves, the fatwas germane both to the more or less vague implications of deviance and its religio-legally prohibited forms, are dispersed in the various sections of the fatwa collections. The chart in the next page delineates the way the fatwa collections accommodate the contemporary conceptualizations of deviant behaviour. The entries in the indices of the fatwa collections (italicisized) will give an idea about the legal configuration of deviance and social control in the seventeenth and eighteenth century Ottoman Empire.

[98] Moore, p. 110

Categories of deviant acts and criminal offences	***Feyziyye***	***Ali***	***Abdurrahim***	***Abdullah***	***Neticetü'l-Fetava***
Theft	Book of theft (Kitab al sariqa)	Book of hadd crimes (Kitab al hudud: bab al sariqa)	Book of hadd crimes	Book of hadd crimes (Kitab al hudud: bab al sariqa)	Book of theft
Intoxicants (Drinking of wine)	Book of hadd crimes (Kitab al hudud: bab-ı hadd al shurb)	On the hadd crime of wine drinking (fi hadd al shurb)	Book of hadd crimes (Kitab al hudud: fi hadd al shurb)	Book of hadd crimes (Kitab al hudud: bab al shurb)	Book of piety (Kitab al iman)
Crimes of sex (Sodomy, bestiality, necrophilia, rape & murder, homosexual intercourse, anal sex…etc.)	Section on discretionary punishment (bab al ta'zir)	Book of hadd crimes (Kitab al hudud: bab al zina)	Book of hadd crimes (Kitab al hudud: fi al livata; fi zina al dhimmi ve'l livata)	Book of hadd crimes (Kitab al hudud: fi hadd al zina); Section on discretionary punishment	Book of piety
Fornication	Book of hadd crimes	Book of hadd crimes (Kitab al hudud: fi hudud al zina)	Book of hadd crimes (Kitab al hudud: fi hadd-i zina)	Book of hadd crimes; Section on discretionary punishment	Book of hadd crimes
Collective crimes (Usurpation, plunder, kidnap…etc.)	Book of hadd crimes (Kitab al hudud: bab-ı qat al tarik)	Book of hadd crimes (Kitab al hudud: bab-ı qat al tarik; fasl fi al sa'at ve'l zulmet)	Section on discretionary punishment	Book of hadd crimes (Kitab al hudud: bab-ı qat al tarik); Section on discretionary punishment	Book of hadd crimes (Kitab al hudud: bab-ı qat al tarik)
Crimes of economy (forgery, tax evasion…etc.)	Section on discretionary punishment	-	-	Section on discretionary punishment	Section on discretionary punishment (Fasl fi al ta'zir)
Defamation cases	Section on discretionary punishment	Section on discretionary punishment	Section on discretionary punishment	Section on discretionary punishment	Section on discretionary punishment
Other	Section on discretionary punishment	Section on discretionary punishment	Section on discretionary punishment	Section on discretionary punishment	Section on discretionary punishment
Acts of disbelief & religious misconduct	Book of piety	Book of piety (Kitab al iman:nev-i ahir fi el sebb)	Section concerning the renovation of faith and marriage (Bab ma yata''laqu tecdid al iman ve'l nikah)	Book of piety; Section on discretionary punishment (Bab al ta'zir: nev ahir fi ta'zir bi'l-katl)	Book of piety
Acts of heresy	Book of the conduct between states (Kitab-ı siyar: bab al murtadd)	Book of the conduct between states (Kitab-ı siyar: bab al murtadd)	Book of the conduct between states (Kitab-ı siyar: fi al murtadd); Section on discretionary punishment (bab al ta'zir:fi el raks ve'l sema)	Book of the conduct between states (Kitab-ı siyar: nev fi ahkam al murteddin ve'l zanadeqat; fasl fi ahkam al rafidi al acem ve hukm-ı diyarhum ve fi nev ahir); Section on discretionary punishment	Book of the conduct between states (Kitab-ı siyar: fasl fi sair-i ahval-i ehl-i dhimmet ve'l murtaddin)

Table 1: Types of social misdemeanours & crimes and the classifications charted in the fatwa indices

Although the way deviance is catalogued in the fatwa compilations is relatively uniform, the existence of peculiar subsections like *Acem Rafizileri* and *Raks and Sema* in some of these collections is unprecedented within the Islamic legal genre. Moreover the analysis of the post-sixteenth century fatwa compilations will demarcate the legal aura of this period by introducing comparisons to the earlier fatwa collections, such as that of *şeyhülislam*s Kemalpaşazade and Ebu-Su'ud. In view of that, the structure, the framework, and the mindset that cut, copied and pasted the deviating statuses of the Ottomans in the early modern era, will be primarily noted.

Consequently, it can be discussed whether the Ottoman *şeyhülislam*s "labelled"; arbitrated or judged deviant behaviour, or if their fatwas were based on the Islamic absolutes, reproducing the legal categories of the age-old Hanafi jurisprudence or whether they were very idiosyncratic renditions of legal artisanship. The fatwas at hand cannot answer all these questions, yet they provide an additional perspective to help us perceive the breath of different tracks which deviated from the established patterns of social behaviour and the usual suspects on these tracks who were stalked by the agents of social control in the Ottoman society. Not only the changing character of the *şeyhülislam* fatwas, but also these nameless Zeyds and Hinds appearing as the subjects of the fatwas will urge us to reconsider the treatment of the Ottoman fatwas as dogmatic and dead material.

II.2. Crime and punishment in the fatwa collections

Unlike its European counterpart, the field of Ottoman studies has not yet produced any grand edition on the history of crime and punishment, to be named for instance as *the history of crime in the early modern Ottoman Empire*. Nevertheless the place of the Ottoman delinquents, be they murderers, gangs of robbers, or rapists in the Ottoman society of the post-Suleimanic era has been practically established by means of the qadis' records of provincial cities, the Registers of Important Affairs and the

Complaints Registers containing references to criminal cases.[99] Suraiya Faroqhi, in her article on the outlaws of the seventeenth century Çorum area, however, mentions the incompleteness of this picture and claims that even the qadis' records contain significant gaps: Not only rarely were the crimes recorded here committed in the countryside, but also among the townsmen, the crimes which found their way into the judges' registers were surprisingly few in number.[100] Although, the fatwa compilations did not explicitly have penal sections as the Ottoman *kanunname*s (mostly due to the legal ambiguity that the concept of criminal law carried in the Sharia), there are many fatwas concerning the cases which either the Islamic law or the imperial law of the Ottoman Empire wished to penalize. Yet, we are still in no position to "equate criminal records with crime itself".[101]

In this section three major points will be highlighted: The types of crimes appearing in the fatwa compilations and the categories which they were accorded to; the structure and the wording of the questions in the fatwas as the keys for entering into the Ottoman realities of the seventeenth and eighteenth centuries and related to this the extent of their historical transparency; and finally the legal essence of replies the *şeyhülislam*s gave, in another word the source(s) of their normativeness. Other points which could have been of utmost interest to a legal historian, like the place of the *şeyhülislam*s' verdict or statements within the theory of Islamic law, their jurisprudential value when tested before the tradition of legal precedents, the implementation of the *şeyhülislam*s' sentence and the procedures of punishment can rarely be detected in the fatwas. However it might be the actual functioning of the *ifta* mechanism that limits this kind of anticipation based on the "outcomes" of the legal process, the fatwa in our case: There has been a recent interest in the realm of legal history that underlines the formal articulation of complaint and conflict, rather than the judicial decision, since the historians believe that even during the cases which went directly to the court what litigants had actually expected was the narratives of litigation themselves, which carried the real weight of dispute rather than a final sentence decided

[99] Suraiya Faroqhi, "The life and death of outlaws in Çorum", in *Coping with the state: political conflict and crime in the Ottoman Empire 1550-1720*, İstanbul: Isis, 1995, p. 146
[100] Ibid., p. 146
[101] Ibid., p. 163

from them.[102] In the world of the Ottomans too, the muftis or the *fetvahane* were regarded as alternative routes for conflict resolution as opposed to the courts. Thus, rather than being a legally binding verdict per se, the fatwa structure can be deemed as replicating a legal process. Before delving into the fatwas on Ottoman culprits, the historical development of what is called Ottoman penal law will be presented in order to provide a prelude to the legal choices and the distinctions the Ottoman *şeyhülislam*s made in their fatwas.

II.2.1. The development of Ottoman penal law

The development of Ottoman criminal law has been explained by various transhistoric models about law the earliest articulation of which goes back to the Durkhemian and Weberian sociologies. Researchers have shown the incoherence and the multiplicity of authorities and sources of law in fifteenth century Anatolia and attributed the replacement of this dishevelled legal environment with "a more legalistically ordered law" to the enactment of the sixteenth century penal kanun.[103] It is evident that the history of Ottoman law has room for such progressive notions of criminal justice. Yet such an account would repeat a universal observation capturing the "increasing" regulations of all kinds, both *kanuni* and *şer'i*. It is obvious that alongside increasing bureaucratization, the regulatory role of the state in legal affairs had considerably increased. What should be traced is the dynamics within this role triggered by the cohabitation of two major sources of law, the Sharia versus the *kanun*.

Depicting at least two centuries of the Ottoman legal system before the seventeenth century would be a laborious business that would inflate the content of this thesis. However, the plight of these two competing sources of law after the sixteenth century deserves some attention for the fatwa compilations of the Ottoman *şeyhülislam*s are seen as amongst the main incubators of the shar'i dominance in this period. Uriel Heyd, while discussing the later corrections to the criminal code of Mehmed II, stated

[102] Laura Gowing, *Domestic danger: women, words, and sex in early modern London*, Oxford, England: Clarendon Press, 1998, c1996, p. 43

[103] That is the criminal code of Sultan Suleyman the Magnificent, Gerber, 1994, p. 181

that almost all the statutes which were abrogated as being contrary to the Sharia, like the classical "the injunction of the holy law is valid; there is no kanun (in this matter)" (*emr-i şer' mu'teberdir, kanun (ı) yokdur*), were regulations not found in the criminal codes prior to that of Suleyman the Magnificent. Apart from the incremental infiltration of the legal rationale of the fiqh works into the kanun texts,[104] Uriel Heyd refers to a *ferman* addressed by Sultan Mustafa II to the Deputy Grand Vizier in 1107/1696 as an even stronger rejection of the *kanun*.

> Apart from the penalties ordained by Allah and the penalites ordained by the Prophet no penalites are to be laid down and chosen, and interference by anyone else in the commands of the illustrious Sharia is null and is rejected. However, in some decrees which have the character of kanun [the term] noble Sharia is followed by and connected with [the term] kanun. Not only is [the Sharia thus] quoted in a place unbefitting it. It is also highly perilous and most sinful to juxtapose the [terms] Sharia and kanun. Therefore in firmans and decrees all matters shall henceforth be based on the firm support of the noble Sharia only…and warnings are given against the coupling of the [terms] noble Sharia and kanun…[105]

> Zeyd when invited to the Sharia [the qadi court] for a case says that "I do not have anything to do with the Sharia; I sort my affairs out by *kanun*". What is due for Zeyd? Answer: Renovation of faith and marriage.[106]

Whether reprimanded for snubbing the law of Allah, a simple expression of impiety, or scolded for disregarding an equally or even a more valid source of law at the expense of the *kanun*, the fatwa above taken from the collection of Çatalcalı Ali's fatwas testifies a patent antagonism and complements Mustafa II's *ferman* in spirit. Uriel Heyd lists some reasons for the decline of *kanun*, including the increasing

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[104] "It is significant that in the margin of the latest, i.e. seventeenth-century, version of the code, compiled by the clerk of a Sharia law-court, relevant fetvas and quotations from authoritative fıkh works were added, often contradicting the kanun regulations of the text", in Uriel Heyd, *Studies in old Ottoman criminal law*, edited by V. L. Ménage, Oxford: Clarendon Press, 1973, p. 150

[105] Heyd states that the published text of these quotations, to which attention has been drawn by Barkan, is to be corrected and completed by the version found in an undated *buyuruldu* sent to the Defterdar and ordering him to see to it that his department acts accordingly. Heyd, 1973, p. 154-5

[106] Zeyd bir hususla ilgili davası için şeriata davet edildiğinde "Benim şeriatla işim yok, işimi kanunla görürürüm" diyen Amr'a ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Ali Efendi*

influence and power the pro-Sharia qadis and other *ulema* gained during the seventeenth and eighteenth centuries; the resentment that the new economic winners of the day -the governors, fief-holders, and their subordinates- felt towards the inflexibility of the economic stipulations of the *kanun*; and the neglect of the provincial *kanunname*s, which regulated both feudal and some criminal affairs, on account of the degeneration of the timar system.[107]

The question of whether the decline of *kanun* resulted in the reassertion of the Sharia in the field of criminal law remains as an unresolved issue. However the role of the *şeyhülislam* fatwas in this shift can be further questioned, if not totally explained. Haim Gerber in his discussion of the relation of the *şeyhülislam*s to the penal law prevalent in the central area of the empire in the seventeenth and eighteenth centuries, asserts that while it is true that the term *kanun* is not a frequent reference in penal contexts "-an omission that unquestionably expresses some resentment toward the kanun", the *şeyhülislam* fatwas subsume many cases which are explicitly beyond the scope of the Sharia.[108] In this thesis, while dealing with the criminalized forms of deviance, the issue of the shar'i and the non-shar'i sources of law that the *şeyhülislam*s applied in penal cases will constitute a major point to observe in the compilations.

There are two concepts specific to the Ottoman legal lexicon which best manifest how the cohabitation of the secular *kanun* and the shar'i law was accommodated and mirrored by the fatwas the Ottoman *şeyhülislam*s issued: the *ta'zir* punishment and the concept of *sa'i bi'l-fesad*. The term *ta'zir* denotes a kind of discretionary punishment, and the authority of its implementation rests with the public authorities, specifically the qadi. Its purposes are twofold, deterrence (*zecr*) and disciplinary correction (*te'dib*).[109] This term is not strictly associated with one single form of punitive action, and often different classes of persons deserve differentiated treatment under *ta'zir*.[110] Historically *ta'zir*, though used almost synonymously with the concept of *siyasa* since the twelfth century, can be viewed as its legal offshoot, a legal

[107] Heyd, 1973, p. 156
[108] Gerber, 1994, p. 96-97
[109] Johansen, p. 353, 395
[110] There is a glossary of different implementations of *ta'zir* or *te'dib*, which involved chatisement such as caning, flogging, or bastinado as well as imprisonment, compulsory servitude at the oars of galleys, monetary fines, and exposure top public ridicule (*teşhir*). See Walter G. Andrews and Mehmet Kalpaklı, *The age of the beloveds: love and the beloved in early modern Ottoman and European culture and society*, Durham: Duke University Press, 2005, p. 273

tool of the sultanic prerogative to rule, to execute and to punish. Conceptually the term *ta'zir* is most redolent of what Michel Foucault called "the juridico-political function" of public execution.[111] Foucault asserted that in the "classical age" besides its immediate victim, the crime attacked the sovereign.[112] Therefore punishment, in Foucault's words "cannot be identified with or even measured by the redress of injury; in punishment, there must always be a portion that belongs to the prince, and, even when it is combined with the redress laid down, it constitutes the most important element in the penal liquidation of the crime."[113] As the following sections will disclose in more detail, within the compilations, even some of the fatwas which carry shar'i tones the most, proclaims *ta'zir* as a sentence. The concept of *sa'i bi'l fesad*, habitually criminality, on the other hand, seems to have been elaborated with respect to the nature of the crime.[114]

> If it is evident [according to the Sharia] that Zeyd is a magician and a habitual offender, is it legitimate to execute Zeyd? Answer: It is legitimate.[115]

This fatwa which was issued by *şeyhülislam* Feyzullah Efendi seemed to have concocted a very categorical definition stipulating that culprits of every kind, in the case any sign of recidivism, had to be consigned with more grave punishments which usually turned out to be death penalty on the order of the sultan.[116]

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[111] M. Foucault, *Discipline and Punish. The Birth of the Prison*, translated from the French by Alan Sheridan, New York: Vintage Books, 1979, c1977, p. 48

[112] "It attacks him personnally, since the law presents the will of the sovereign; it attacks him physically, since the force of the law is the force of the prince", Foucault, p. 47

[113] Foucault, p. 48

[114] "*zulm adet-i müstemirresi olduğu şer'an sabit olıcak*", *Behçetü'l-Fetava*.

[115] Zeyd'in sahir olub sai bi'l-fesad olduğu şer'an sabit olsa Zeyd'in katli meşru mudur? El-cevab: Meşrudur. *Fetava-yı Abdurrahim*

[116] In Gerber's words "declaring a culprit sai bi'l fesad invariably entailed the death penalty, even for relatively light offences".Gerber, 1994, p. 98-99

II.2.2. Hadd crimes

> "The penalties envisaged by Islamic law consist of two disparate groups which correspond to the two sources from which all penal law is commonly derived, private vengeance and punishment of crimes against religion and military discipline. The first has survived in Islamic law without modification. The second group is represented only by crimes against religion, and that in a particular sense; certain acts which have been forbidden or sanctioned by punishments in the Koran have thereby become crimes against religion. These are unlawful intercourse (zina); its counterpart, false accusation of unlawful intercourse (kadhf); drinking wine (shrub al-khamr); theft (sarika); and highway robbery (kat' al-tarik). The punishments laid down for them are called hadd (plural hudud), Allah's restrictive ordinances par excellance; they are: the death penalty, either by stoning (the more severe punishment for unlawful intercourse) or by crucifixion or with the sword (for highway robbery with homicide); cutting off hand and/or foot (for highway robbery without homicide and for theft); and in the other cases, flogging with various numbers of lashes."[117]

The definition above made by Joseph Schacht forty years after its elaboration still provides us the main vertebrate of what is called "Islamic penal law", branched off into claims of men, acts to be compensated and claims of God, those to be punished. It is argued that the latter is more in tune with our modern understanding of criminal law, since it is more loaded with the sense of punishment and coercion than the *hakk-i adami*, claims of men which put an accent on "putting the Muslims back on the negotiating track".[118] Yet the disquisition of the Islamic legal sources reveals that the implementation of law actually gainsaid the aforementioned categories. The procedural impediments set before the exact establishment of the crime emaciate the penal law analogy and seldom were hadd crimes punished in accordance with the shar'i verdicts. In terms of both the overall organization of the fatwa material in the compilations and the content of the replies, the Ottoman fatwa manuals strictly hewed to the shar'i line when dealing with hudud matters. Yet, in some instances the legal niceties built within the case at hand seemed to have given the replies a non-shar'i twist. Certain hudud penalties, especially the ones which breach public security like highway robbery contain such imperial sensitivities. Nevertheless the fatwa manuals, probably due to their pedagogic function, preserved the theoretical precision of the Sharia. Hence with

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[117] Joseph Schacht, *Introduction to Islamic Law*, Oxford: Clarendon Press, 1964, p. 175

[118] Lawrence Rosen, *The Anthropology of Justice – Law as culture in Islamic society*, Cambridge University Press, Cambridge, 1989

respect to the fixed penalties, the only visible trend detectable in the fatwa compilations of the seventeenth and eighteenth centuries is the increasing systematization of criminal offences under the rubric of hadd crimes, especially when compared with the fatwas given by the sixteenth century *şeyhülislam* Ebu Su'ud. The fatwas taken from such earlier collections and the five post-classical compilations at hand will manifest the legal construction of both the hadd offences and illegal acts which defy the hadd category.

Thieves

One of the stock categories of the Islamic hadd crimes is theft –*serika*, which was accorded a much stricter definition in the seventeenth and eighteenth century compilations. Ebu Su'ud, like all the other acts and realms of public life he regulated, provided legal definitions and procedures for theft cases.[119] In general, the treatment of theft and the illegal displacement of property both in Ebu Su'udian fatwas and in the fatwas of his successors accord with the classical version of Islamic law which deems it as an act which required "a form of compensation restoring the status quo between the perpetrator of the act and his victim, who also has the option of pardoning the offender or of composing with him for an agreed sum".[120] However, some of the Ottoman fatwas on theft remains atypical, for both the cases questioned and the replies given went further beyond the shar'i application of compensatory punishments which require either monetary compensation -*diyet*, or amputation -*kısas*.

> When Zeyd the thief had to be punished by amputating one of his hands and feet, Amr the naib ordered the *ehl-i örf* (the secular authorities) to implement this sentence. However the *ehl-i örf* demanded some kind of a payment, *temessuk*, but Amr declined their demand, and claiming that his order had not been realized, he did not authorize the performance of the Friday prayer in the village and though he is not capable of doing so, Amr attempted to cut the thief's hand and foot himself which resulted in the death of the thief. In this case what happens to Amr? Answer: As a result of only one act [of theft], amputation is not legitimate. It is justified only when [the thief] steals again even after his hand and foot are amputated. Amputation implies the unjust trespassing of the limits of his [the *naib*'s] jurisdiction. Compensation [of the illegitimate amputation] is required.[121]

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[119] For instance, in the *Fetava-yı Ebu Su'ud Efendi* there is a question « Sürrak ne keyfiyet ile, dikkat ile teftiş olur?" and a long answer that enumerates the contextual requirements for theft to be framed as a crime.

[120] Imber, p. 211

[121] Zeyd-i sarikin şer'an bir eli ve bir ayağı kesmek lazım oldukda, Amr-ı naib ehl-i örfe kesmek emr edip, ehl-i örf temessük taleb edib, Amr vermicek, naib emrim tutulmadı deyu kasabada cuma namazın kıldırmayub, kendi bi-nefsihi

> If it has been legally established that Zeyd stole a certain amount of valuable goods from the house of Amr, then that of Beşr, then that of Bekr and that of Halid, is the execution of Zeyd by the order of the sultan legitimate? Answer: It is legitimate.[122]

The first fatwa issued by Ebu Su'ud Efendi and the latter given by Yenişehirli Abdullah Efendi both relocate the regulation of the act of theft and the procedures of its punishment to the realm of imperial justice. In the first fatwa, Ebu Su'ud clearly exposes the procedural flaws in the punishment of a certain thief and rebuts them as *te'addi*, the unjust trespassing of the limits of the *naib*'s jurisdiction. The imperial realm of justice obviously imposed a certain division of labour in the distribution of justice and the ones who foundered to abide by this division seem to have become the subjects of the fatwas themselves. In none of the post-Ebu Su'udian fatwa collections we have examined, such erroneous applications characteristic of the earlier times, arise as the subjects of the *ifta* filter. The second fatwa issued by Yenişehirli implies the *sa'i bi'l fesad* category to be punished by the sultanic initiative, equally entailing the imperial facet of Ottoman criminal law as Ebu Su'ud. One explanation for this transfer states that "the unreality of the fixed penalties had an important effect on practise, by removing the punishment of fornication and theft from the domain of the Sharia into the realms respectively of private and royal justice".[123] Different from Ebu Su'ud's fatwas, the fatwa compilations of his successors, in stead of merely making jurisprudential definitions, dealt with theft predominantly in court cases most probably to finalize the verdict of the qadis.[124] This point also suggests that in the seventeenth

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kat'ın ehli değil iken, sarik-i merkumun bir elin ve bir ayağın kesdikde sarik helak olsa, şer'an Amr-ı naibe ne lazım olur? El-cevab: Bir sirkat ile kat' meşru değildir. Ayağı kesmek eli kesmek ile uslanmayub tekrar sirkat ittiği vakit meşrudur. Ma' bile kesmekle te'addi etmiş olur. Diyet lazımdır. *Fetava-yı Ebu Su'ud Efendi*

[122] Zeyd bir defa Amr'ın badehu Beşr'in badehu Bekr'in badehu Halid'in mekan-ı muhrezlerinden kıymetleri nisab-ı sirkaya baliğe herbirinin şu kadar eşyaların sirke eylediği şer'an sabit olsa Zeyd'in emr-i veliyyü'emr ile katli meşru mudur? El-cevab: Meşrudur. *Behçetü'l-fetava*

[123] Imber, p. 211

[124] Evimde bin akçe kıymetinde mal çaldın diye dava ettiği Amr'ın inkar etmesi üzerine iddasını ispat eden Zeyd Amr'ın elini kestirmeye kadir olur mu? El-cevab: Olur. *Fetava-yı Ali Efendi*

Zeyd Amr'dan mekan-ı muhrezimden şu makule şu kadar benim akçe-i kıymetli eşyamı serika iyledin deyu dava ve Amr inkar eylese Zeyd müdaasını vech-i şer'i üzere isbat idicek Amr'a kat-ı yed lazım olur mu? El-cevab: Şera'it-i kat mevcud ise olur. *Fetava-yı Feyziye*

and eighteenth centuries, the adjudication of theft became thoroughly incorporated into the imperial judicial structure.

Wine addicts

The consumption of alcoholic beverages, specifically in the form of wine drinking (hamr al shurb) features as another act which is handled in slightly different ways in the classical and postclassical fatwa collections. In Ebu Su'ud's posthumously compiled fatwa collection, it does not seem to be granted a strictly hadd-crime status. The act of wine drinking is located amidst other public acts, which Ebu Su'ud had regulated and criminalized like the drinking of *boza*-a traditional beverage, hashish, coffee and other opium-related products.[125] Ebu Su'ud, when questioned about the addiction to such intoxicants, often imputed the status of infidel (*kafir*) or even apostate (*mürtedd*) to the addicts. In the 1590s, the jurisprudential stance would change in the opposite direction when Şeyhülislam Bostanzade Mehmed Efendi ruled out that coffee was not religiously illicit.[126] However in the seventeenth and eighteenth century fatwas the act of wine drinking and its corollaries like launching or participating in gatherings where wine was drunk and the rules of gender segregation were transgressed, were more overtly treated as hadd crimes, in special hadd sections under the "*hadd-i şarab*" type of headings.[127] The discussions of the earlier times seem to have been settled and the replies do not say anything more than the necessity of hadd punishment, "*hadd-i*

[125] Bir şehre, esrar ve mahlut olan akıl zail eyler, macunlar bey olunmak dükkanlar olup, aşikare bey' ü şira olunup, merhum Kemalpaşa-zade (rahmetulllahi teala) hazretlerinin fetva-yı şeriflerinde "keyfiyet için yemek helaldir diyene, tevbe ve istiğfar lazımdır" deyu cevap verip, "küfür lazım değildir" demesiyle, avamın ekseri helal i'tikad ettiklerinden gari aşikare bey' olunmak ile, ve yiyenler aşikare yiyip ve yerken hurmetin hatıra getirmeyip, istihlal tarikiyle, kimseden havf etmeksizin yiyenlere şer'an ne lazım olur? El-cevab: Mürteddir, dahi tevbe ve istiğfar lazımdır. Keyfiyet için yiyende ve içende haram olmaz nesne yoktur. Taife-i mezbur yevm-i cezaya mu'terifler ise, Hak te'ala hazretlerinden havf edip, ehl-i İslamdan haya etmek lazımdır. *Fetava-yı Ebu Su'ud Efendi*

[126] Vejdi Bilgin, *Fakih ve toplum : Osmanlı'da sosyal yapı ve fıkıh*, İstanbul : İz Yayıncılık, 2003, p. 100

[127] An example for the most recurrent type of fetvas on the consumption of alcoholic beverages is as follows: "Zeyd menziline hamr getirib meclis kurub zevcesi Hind'in yanına Hind'e namahrem olan kimesneler getürüb Hind'e sakilik itdirüb kendi ve ol kimesneler şurb hamr iyleseler Zeyd'e ve ol kimesnelere şer'an ne lazım olur? El-cevab: Hadd-ı şarab ve ta'zir-i şedid ve habs lazım olur istihlal tariki ile iderlerse kafir olurlar. *Fetava-yı Abdurrahim*

şarab gerekdir". The fatwas which can give the historian a much clearer picture of social life in this period rarely arise in the collections. Nonetheless in one of the fatwas issued by Şeyhülislam Feyzullah Efendi we see the case of a Muslim woman, who was consigned to the standard hadd punishment for wine drinking for having allegedly drunk wine with a Christian woman.[128] Still, in this situation the context of the allegation remains unknown.

Sexual criminals: fornicators, rapists, pederasts

In the fatwa compilations not only adulterous acts but also other forms of exorbitant sexual behaviour, are indexed under the category of *zina*. *Zina*, namely illicit sexual intercourse figures as a hadd crime within the Islamic legal framework. As with other crimes which are believed to transgress the rights of God, the legal configuration of *zina* prior to the verdict, required high procedural standards such as the presence of four witnesses each testifying to the act itself. The opportunity to repent before the law - *rücu*, suspended the shar'i punishments as well. The singular example of the execution of *hadd* punishment of *recm* whereby the parties that committed *zina*, a Muslim woman and a Jew were punished in 1680 vindicates the reluctance on behalf of the Ottoman authorities to implement the canonical provisions of the Sharia.[129]

Mute about their real legal effects, the fatwa compilations can only be treated as the indices of legally chastened sexual acts in the early modern Ottoman society. Categorically, in Ebu Su'ud's collection all the following crimes of sexual "perversions" (fornication, rape,[130] adultery/rape involving murder, prostitution,[131]

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[128] Hind-i müslime Zeyneb-i nasraniye ile meclis kurub şarab humr iylese Hind'e ne lazım olur? El-cevab: Hadd-ı şarab. *Fetava-yı Feyziye*

[129] Andrews, Kalpaklı, p. 273

[130] "Islamic law does not recognize rape per se as an offence. It is treated as fornication and, in theory, the woman is as culpable as her attacker. However, assuming that the rapist and his victim do not suffer the fixed penalty for fornication which in practice is impossible to inflict the law gives the victim two claims. She may claim blood money for any physical injury that she has suffered, and she may claim a "fair dower" (mahr al-mithl) for the man's possession of her vulva. In the case of the fair dower, the man must pay the same as he would if he were her husband", Imber, p. 172

[131] Bir taife, karyeye karye gezip avretlerine ve kızlarına ve cariyelerine zina ettirmeye adet edinseler şer'an ne lazım olur? El-cevab: Cumhuru ile fevk-al-had darb-ı şedidden sonra salahları zahir oluncaya dek zindandan çıkarılmayıp, zinası sabit olan avretler cemi'an recm olunmak lazımdır. *Fetava-yı Ebu Su'ud Efendi*

bestiality, necrophilia,[132] sodomy, incest, anal sex) are indeed lumped into the category of *zina*. The specialization and more delicate legal distinctions made between various sexual crimes await the seventeenth and the eighteenth centuries. In either case, the traces of the socio-cultural codes of sexual behaviour the Ottomans constructed are visible in the Ottoman fatwas, alongside the more Sharia minded notions of sexual criminality.

> Zeyd the district commander sends Amr and Bekr to bring the juvenile Beşr. The aforementioned [Bekr and Bekr] hardly get Beşr out of his neighbour Halid's house and hand him over to Zeyd. Zeyd takes the juvenile Beşr to a mountainous place and –God forbids- sodomizes him forcibly, what happens to Zeyd according to the Sharia? Answer: Even when he is not married, Zeyd should be executed. If not, darb-ı şedid and long term imprisonment are due for him. The ones who complied with the orders of Zeyd cannot have any excuse. They should be consigned severe discretion and long term imprisonment.[133]
>
> What is due for Zeyd a member of the hairdressers' guild, if he has detained and sodomized his apprentice Amr, in his shop? Answer: After exposed to severe chastise and imprisonment, upon repentance he should be released. If he is a habitual criminal even execution is legitimate.[134]
>
> Zeyd who is a preacher in a mosque and serves as a teacher in a school, sodomizes the juvenile Amr who is practising the Qur'an in that school, what is due for him? Answer: After exposed to severe chastisement, pending repentance he must be imprisoned.[135]

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[132] Zeyd Amr'ın fevt olan kızkardeşini zina edip dururum" deyu ikrar eylese, şer'an ne lazım olur? El-cevab: Dört mecliste dört kere ikrar üzerine ısrar edip, mahiyet-i zinayı ve keyfiyetini ve ayinini ne ise beyan ederse, ikamet-i had olunur. *Fetava-yı Ebu Su'ud Efendi*

[133] Alaybeyi olan Zeyd, Amr ile Bekr'i, Beşr-i emrede "getiriverin" deyu gönderip, mezburlar dahi Beşr'i kaçıp saklandığı komşusu Halid evinden güçle çıkarıp, Zeyd'e iledіverip, Zeyd, Beşr-i emredi bir dağa alıp gidip -haşa- güçle livata eylese, şer'an ne lazım olur? El-cevab: Zeyd katl olunmak meşrudur, müteehil değil ise dahi. Katl olunmaz ise darb-ı şedid ve habs-i medid lazımdır, ve azl edilmesi lazımdır. Bu emirde müsahele iden erbab-ı hükmün ind-allahi teala özürleri yoktur, cevapları yoktur. Amr ile Bekr'e ta'zir-i şedid ve habs-i medid lazımdır. *Fetava-yı Ebu Su'ud Efendi*

[134] Berber taifesinden Zeyd tokuz yaşında şakirdi Amr-ı sagiri dükkana kapayub cebren Amr'a livata eylese Zeyd'e ne lazım olur? El-cevab: Darb-ı şedid ile darb olunduktan sonra zindanın ahbes muvazasında habs olunub tövbe-yi sahihe ve salahı zahir olunca ihrac olunmak lazımdır, müteadi ise katl olunmak dahi meşrudur. *Fetava-yı Abdurrahim*

[135] Bir camide imam olub muallim hanesinin muallimi olan Zeyd ol mektebde talim-i ku'ran azimü'ş-şan iden Amr-ı emrede cebren livata eylese Zeyd'e ne lazım olur? El-cevab: Ta'zir-i şedidden sonra zindanın ahbes muvazasında oluncaya tövbe-yi sahihe ve salahı zahir olunca habs olunur. *Fetava-yı Abdurrahim*

The fatwas above, quoted respectively from the fatwa compilations of Ebu Su'ud and Abdurrahim, rather than being denunciations of homosexual intercourse, are directly on the infringement of social hierarchies in the realm of sexual relations and have actually a counterpart in the Ottoman realities such as *gulamperestlik*, a strictly Ottoman notion chastening the usurpation of one's rank and status to have sex with his subordinates, albeit condoning other kinds of homosexual or "unnatural" sexual acts taking place between Ottoman men.

> Zeyd sued four people for sodomizing him. While the accused denied this, Zeyd proved his case. Hence the judge sentenced these four people to severe discretion. However in the course of the discretionary punishment, it turned out to be that they did not do it habitually so their execution was withheld, instead they were imprisoned pending their repentance and then released. In this case can Zeyd have them executed for sodomy by judicial verdict? Answer: He cannot.[136]

> Zeyd the Jew purchases and acquires the concubine of Amr, Hind the Christian in return for a certain amount, and after having sexual intercourse with her, the Muslims Bekr and Beşr attested to the fact that Hind has become a Muslim while in the ownership of Amr. Then if in this case it is decided that Hind has become a Muslim, then should Zeyd be sentenced for having sexual intercourse with Hind? Answer: He should not.[137]

These fatwas issued respectively by Yenişehirli Abdullah and Feyzullah Efendi include cases where many different legal problematics, that is, a complex judicial process, a discussion on the right of appeal, transactions involving slaves, the legal niceties that the act of conversion brings about, and the establishment of the legal sequence of events are superimposed on each other. Even in cases involving the damage to virginity for the resolution of which the Sharia offers very straightforward legal tools such as *diya*- a form of monetary compensation, the Ottoman *şeyhülislam*s chose to impose *siyaseten katl*, a kind of death penalty disposed by the "administrative

[136] Zeyd beni zorla livata ettiniz diye dava ettiği dört kişi inkar ederken iddiasını isbat etmesi üzerine hakim bu dört kişiyi ta'zir-i şedid ile ta'zir ederken mutad üzere bu işi yapmadıkları anlaşıldığında katl edilmeyip tövbe ve salahları zahir oluncaya kadar zindanda hapis ettikten sonra tahliye etse, Zeyd livata ettikleri için katledilmeleri lazımdır diye hakim kararıyla öldürtmeye kadir olur mu? El-cevab: Olmaz. *Behçetü'l-fetava*

[137] Zeyd-i yehudi Amr'ın cariyesi Hind-i nasraniye olmak üzere Amr'dan semn-i maluma iştira ve kabz idüb Hindi vatı itdikden sonra Bekr ve Beşr-i müslümler Hind Amr'ın yeddinde iken şeref-i islamla müşerrefe olmuşdı deyu şehadet edip Hind'in islamına hükm olunsa Zeyd'in vech-i muharrer üzere Hind'i vati içün Zeyd'e nesne lazım olur mu? El-cevab: Olmaz. *Fetava-yı Feyziye*

justice of the sovereign",[138] verifying in turn Foucault's observation that "in every offence there was a *crimen majestatis* and in the least criminal a potential regicide".[139]

Gangsters

The last strictly hadd category appearing in the fatwa compilations is the one pertaining to the *kutta-i tarik*- the highway brigands.[140] When compared to the punishments allotted to other hadd crimes by the Ottoman legal authorities, it has been claimed that only highway robbery corresponded to the notion of criminal offence, due to the resolution demonstrated in their punishment.[141] On account of the notoriety of the gangs of quasi-bandit soldiers or of the peripatetic student dwellers in Ottoman history, the legal elaboration of their crime and the punishments consigned to them could not have remained only at the theoretical level. However, the same development of the Ottoman legal language from the primordial definitions that Ebu Su'ud provided in his fatwas[142] towards the standardization of the fatwa format can also be detected in the case of highway banditry. What is striking in the fatwas on *kat-i tarik* is the recurring triumvirate of the bandits, the *vali* and the sultanic orders, which is nothing but the legal abstraction of what was going on in reality. The poetic fatwa below, taken from

[138] Zeyd Amr'ın kızı Hind'i hamama giderken cebren menziline götürüb beş altı gün tasarruf ve bekaretini izale iylediği şer'an sabit olıncak Zeyd'e şer'an ne lazım olur? El-cevab: Siyaseten katli meşrudur. *Fetava-yı Abdurrahim;* Gerber, 1994, p. 110

[139] Foucault, p. 53-54

[140] The fatwa compilers did not prefer the Islamic label -*hibaya*- used for highway robbery.

[141] Imber, p. 211

[142] Bir livada "suhte" namında ba'zı haramiler olup, ba'zı müslümanların oğulların çekip alıp gidip, evliyası varıp taleb ettiklerinde vermeyip, ve ba'zının akçaların alıp oğulların verip, ve ba'zı müslimanların gasben koyunların alıp, ba'zı müslümanları dahi tutup kollarından asıp darb-ı şedid ve sikence edip, nice akçaların alıp, mabeynlerinde taksim eyleyip zulm ü te'addileri hadden mütecaviz olsa mezburlara ne lazım olur? El-cevab: Mazburlar iki karye ve iki mısır mabeynlerinde olmayıp, mısra mesire-i seferce ba'id mağarada müctemi' olan, kuvvet ve şevket sahipleri kıvam olup yola çıkıp müslümanlardan malların alıp, mabeynlerinde her birine onar dirhem-i şer'i düştüyse, elleri ve ayakları sağ olanların, sağ elleri ve sol ayakları kat' olunur. Eğer yola çıkıp adam katl ettiler ise imam anları hadden katl eder. Verese-i maktulun afvına i'tibar olunmaz. Eğer hem nisab miktarı mal alıp hem katl-i nef eylediler ise, muhtadır, dilerse sağ ellerin ve sol ayakların kat' edip badehu salb eder, ya ibtida katl eder. Dilerse salb eder böğrünü süngü ile şakkeder. Bade'l-had, aldıkları mal baki ise ashabına verilir, zayi' olduysa tazmin olunmaz. Eğer yola çıkmayup gasbla mal aldılar ise, tazmin olunup ta'zir-i şedid ve habs-i medid olnurular. *Fetava-yı Ebu Su'ud*

the compilation of Yenişehirli Abdullah Efendi, in addition to being a typical Ottoman *kat-i tarik* fatwa, also shows us the fact that fatwa genre was not held hostage by the prosaic question and answer format.

O honourable office of *iftâ*	The leadership of the company of the erudite
You are the pure ocean of knowledge and grace	You are the rose garden of the *fukaha* [and] the stream of excellence
I have a question o the glorious graceful	Please bestow me an answer
Zeyd forcibly entered a village	And deliberately attacked village houses
Murdered one innocent individual	And also usurped numerous animals
Two pregnant women due to fear and trepidation	At that moment had miscarriages
Two male fetuses whose birth is Undisputed	One is alive and the other is dead
But if Zeyd were not single and alone	And accompanied by numerous scoundrels
If they would carry the burden of being witnesses	Possessor of property and companion of the murdered person
Let's suppose two persons from the village	Would their testimony be valid according to the Sharia?
How would be the verdict of the correct Sharia	O the Beautiful Natured Lord of Grace?

The answer: God, may he be exalted, knows the best

O the decent and honourable questioner	Direct your listening ear to my words
Zeyd and his accompanying scoundrels	Merciless enemies of the poor people
Men of humility who have suffered oppression and are complaining	If that group is among the [village] population
If they have attacked and robbed openly	The property of the people in an arrogant manner
The book of prohibition concerning the issue of banditry	Writes the true answer of this question
The verdict on banditry pertaining to this shameless way [of life]	Is executed by the judges
If the owner finds his property	He gets it back from their hands
No room remains for familiarity and observation	Forgiving them is not incumbent

They are to be executed according to *hadd*

Thus they really cannot be forgiven

The population of this village cannot be [legally] counted as witnesses

They are all relatives without any doubt

This pearl is a necessity of the lofty

A word to be recorded to the page of your mind[143]

As evident in the couplets above, Şeyhülislam Yenişehirli Abdullah Efendi opines on how to judicially process the case of a gang of bandits who seemed to have simultaneously committed murder, ransack and aborticide. Here, Abdullah deals with two specific aspects of the crime, the compensation of property and the terms of testimony, and he basically leaves the rest to be judged by the judicial authorities. Another main type of *kat-i tarik* fatwas, include the *şeyhülislam*s' opinions about the dispensation of justice. The most common type of fatwa featuring in the compilations

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Ey şerefbahş mesned-ifta
Kaid-i rüküb cümle fuzala
İlm ü fazl içre bahr-i raiksin
Gülşen-i fukaha nehr-i faiksin
Bir sualim var ey kerimü'ş-şan
N'ola etsen cevab ile ihsan
Zeyd bir karyeye varub tegallüben
Bassa ol karye evlerin amden
Katl edüb bi- günah bir insanı
Dahi gasb etse nice hayvanı
İki hamil hıras u havfından
Etse ilka o demde cevfinden
Halkı beyyin iki cenin-i zeker
Biri hayy biri meyyit-i bi-fer
Lik Zeyd olmasa tek ü tenha
Olsa yanınada bir nice süfeha
Etseler bu şehadeti tahmil
Mal eshabı hem veli-i katil
İki kimseye karyeden farza
Tutulur mu şehadeti Şer'an
Nice der bunda hükm-i şer'i kavim
Ey cemilu'ş-şiyem hıdiv-i kerim

El-cevab Allahu te'ala a'lam bi's-sevab

Eyle ey sail-i zeki-nebih
Guş-ı ısgayı kavlime tevcih
Zeyd ve tabi'leri olan süfeha
Merhametsiz düşmanan-ı ehl-i şeka
Sahib-i imtina'-i kahr ü şukve
İse beyne'l-enam o guruh
Aldılarsa basub mücahareten
Halkın emvalini mukabereten
Bab-i kutta'da kitabı men'
Bu su'ale yazar cevab-ı esahh
Hükm-i kutta'-i tarik-i bi-perva
Hakkında kuzat eder icra
Malını sahibi bulursa eğer
Aynını yedlerinden ahz eyler
Te'ellüf ve müteellife zaman olmaz
Bunlara afv ile aman olmaz
Vacibü'l-katlidir bu[n]lar hadden
Aff olunmaz anun için cidden
Şahid olmaz ahali-i karye
Husemadır bu[n]lar bila mirye
Bu dürer-i mukteza-yi Şer'-i hatir
Nusha-i hatırında kıl tahrir

Behçetü'l-fetava 'ü-l fetava

pertains to the highway brigands, who, in spite of the warrant issued by the district governor for their detention and punishment, do not abide by the order of the glorious Sultan. In such cases the *şeyhülislam*s seem to have been consulted by the executive officials who inquire about whether it would be legal to put these bandits to death.[144] Yet it should not be assumed that the *şeyhülislam* fatwas were always manipulated by the administrative authorities for their own purposes. For instance Şeyhülislam Çatalcalı Ali decides in favour of Zeyd who after having accompanied the highway bandits for some period, repented and returned to his village but could not escape the wrath of the district governor who wanted to punish him for the crimes he had committed prior to his repentance. In his reply, Çatalcalı denies the governor the legal competence to punish Zeyd by *hadd-i kat-i tarik*.[145] From the fatwas cited above it can be deduced that in most of the Ottoman fatwas on the *kutta-i tarik*, either the judicial structure, that is the *kaza* process, or the imperial networks for the execution of justice intervene in the course of *ifta*. Yet another typical case which is frequently encountered in the compilations implies a slightly different way of juridical presence in the *şeyhülislam* fatwas.

> Zeyd, who is from among the merciless and the bandits, becomes the *mütevelli* (tax collector) of a couple of villages and he unjustly extracts [the villagers'] money, and he curses certain people and their wives. When the judge, Bekr sends an emissary to invite him to the Sharia, Zeyd does not abide [by the invitation], and following this with several other bandits he raids the court and casts a heavy blow to Bekr's head with his boot, what is due for him? Answer: What he has extracted is seized and he is executed by the order of the Sultan.[146]

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[144] Bazı müslümanın mallarını zorla alıp ekinlerini telef eden ve eşkiyayı yanlarına alıp zülum ve fesadı alışkanlık haline getiren kimselerin şerrinden müslümanları korumaya memur olan vali Zeyd yakalamak istediği bu kimseler şer'i şerife ve sultan emrine itaat etmeyip karşı gelseler Zeyd'in emriyle katledilmeleri caiz olur mu? El-cevab: Olur. *Fetava-yı Ali Efendi*

[145] Bir belde ahalisinden Zeyd, bir müddet yol kesenlerle gezdikten sonra tövbe ve istiğfar edip beldesine gelse kadı veya vali sırf daha önce bunlarla gezdin diye kendisine yol kesme hükmünü icraya kadir olurlar mı? El-cevab: Olmazlar. *Fetava-yı Ali Efendi*

[146] Zulema ve eşkiyadan olan Zeyd bir kaç karyelere mütevelli olub zalimen akçelerini alub bazı kimesnelerin ağızlarına ve avratlarına cema'-i lafzi ile şetm idüb hakimü'ş-şeri olan Bekr adam gönderib şer'e dav'et iyledikde Zeyd ita'at itmeyüb badehu bir kaç eşkiya ile mahkemeyi basub cizme ile Bekr'in başına mahkemesinde darb-ı şedid ile darb eylese Zeyd'e ne lazım olur? El-cevab: Aldığı alıverilub emr-i veliyyü'l-emr ile katl olunur. *Fetava-yı Abdurrahim*

In the seventeenth and eighteenth century fatwa compilations one can easily examine a distinct cluster of fatwas on the beatings of the Ottoman qadis by the brigands and other kinds of "debauched" people (*sufeha*). The fatwas, when gauged on their own, may not count as sources displaying an anti-religious establishment attitude among these unruly gangsters who freely wandered in the Ottoman lands in this period. In the meantime, the qadi court records, starting from the sixteenth century on, contain similar cases where the qadis were disparaged as both the members of the *ulema* and state officials and then battered by these bandit gangsters.[147] It is hard to prove whether these fatwas are associated with the seventeenth and eighteenth century remnants of the *celali*s, an infamous category of the seditious gangs pestering the Ottomans since the sixteenth century. However, it can be safely asserted that the majority of the *şeyhülislam* fatwas under the *kat-i tarik* category were issued upon the inquiries coming directly or indirectly from the Ottoman State. In the eighteenth century, the fatwa clerks working for Şeyhülislam Feyzullah Efendizade Esseyid Mustafa Efendi, formulated a question which explicitly referred to a "*Sarı bey oğlı dimekle ma'ruf Mustafa nam şaki*", a bandit called Mustafa, also known as Sarı bey oğlı, who lead a gang of bandits and united with them to loot people's property and even rallied in a castle to fight with Muslims. The fatwa clerk established in the question the fact that upon these acts they had become *bagi*s, a shar'i term used to denote rebels and inquires Mustafa Efendi about their execution.[148] In another case in the *Neticetü'l-Fetava* the execution of "*Memalik-i mahrusada kapusuz tabir olunur levendat eşkiyası*" was sanctioned for they attacked the merchant convoys on their way. Occasionally, so as to appeal to the imperial aspect of the crime and its punishment, the fatwas issued on the *kutta-i tarik*s,

[147] For instance Faroqhi mentions such a case taking place in Çorum in the sixteenth century. The leader of a bandit gang captured in the Çorum district some time before 1003/1594-1595 for attacking the house of a qadi, Suraiya Faroqhi, "Seeking Wisdom in China", in *Coping with the state*, p. 115

[148] Sarı bey oğlı dimekle ma'ruf Mustafa nam şaki bir mikdar eşkiyayı başına cem' ve mezburlara reis olub mezburlar ile ittifak ve ittihad edüb ibadullahın zalimen malların alub ve bir kaç defa müslimin ile kıttal ve hala bir kazada vaki olan kalede kıttal içün tecemmu' ve tehiye itmeleriyle padişah-ı alem penah hazretlerinin itaatından huruc edüb bagi olsalar mezburlar mustafanın ve ana tabi olub ittifak ve ittihad idüb muayyen olanların "fekatluva el bagi ve hatta tefi ila emrullah" nas-ı kerim mantukınca kıttalleri helal olur mu? El-cevab:Olur. *Neticetü'l-fetava*

were included, most probably by the compilers not in the *kat-i tarik*, but in the *ta'zir* sections.[149]

As for the hadd crimes, it is legitimate to wonder whether the fatwas were mere reproductions of the Sharia or whether they epitomised the concerns over the regulation of social misbehaviour within the legal sphere. In the Ottoman fatwas the imperial concerns over the interruption of the merchant and pilgrim convoys and the legal statuses stemming from Islamic law like *bagi* or *şehid* and seem to have been intermingled in the legal construction of these cases. However the evasive character of the Ottoman fatwas checks the researcher in finding a clear rationale behind this intricate structure.

II.2.3. Crimes of economy: Counterfeiters, impostors, evaders

Haim Gerber in his analysis of the seventeenth and eighteenth century Ottoman law claims that *taz'ir* represents the notion most analogous to the contemporary sense of criminal law.[150] The five different fatwa compilations we have scanned all have sections on *ta'zir*, composed of fatwas on a wide range of behaviours and acts which were held accountable by the Ottoman authorities. Some of these acts such as theft, murder, fornication, and highway banditry correspond to either the rights of God or the rights of men categories of Islamic penal law which were for some reason consigned administrative punishments; others involving defamation, forms of political perversion like disobedience to sultanic orders defy the Islamic forms of criminal behaviour and

[149] Medine-i tayyibe ahalsisinden şu kadar nefer kimesneler ashab-ı vezaifin vazifelerini tegallüben ahz ve taraf-ı devlet-i aliyyeden varid olan evamir-i şer'iyenin icrasına mani ve şeri'atı mazharaya muhalif nice evza' ve atvarı olduğundan ma'ada ol havalide olan ehl-i badiye eşkiyasıyla ittifak edüb Harameyn-i muhteremeyne gelen zehayiri nehb ü garet etmeleriyle kaht ü galaya ve kahtdan nice nüfusun helakine ba'is olub hüccac-ı müsliminin yollarına inüb mallarını ahz eden kutta'-i tarik ile ittihad ve onlara mu'in ve bunun emsali nice şer' ve fesad ve zulm-i ibad adet-i müstemirreleri oldığı şer'en sabit olsa ol kimesnelere şer'an ne lazım olur? El-cevab: Sultan-ı kevneyn sallallahu teala aleyhi ve ala aliha vessellem hazretlerinden haya etmeyüb bu makule şer ve fesadı irtikab eden eşhasın katilleri meşrudur vech-i arzdan izaleleriyle ol belde-i mübarekeyi şer ve fesadlarından tathir vacibdir. *Behçetü'l-fetava*

[150] Gerber, 1994, p. 97

were chastised by *ta'zir*. However in the compilations, it is the portrayal of the criminals convicted of certain kinds of economic misconduct such as the manufacture and sale of bogus money, illegal extraction of taxes by unauthorized people and tax evasion, which best mirror the historical context that the *şeyhülislam*s were practising in.

> Zeyd makes guruş and akçe from copper and bleaches them by dousing and after printing on [them] the expressions of the *sikke-i sultaniye* (imperial coinage) he swindles the people by claiming that they are silver coins. If it is evident that he is a habitual swindler, then is it legitimate to execute him upon the order of the Sultan in order to repel his depravity? Answer: On the execution of the coin forgery issue, there is no case among the fiqh authorities, thus in their execution the process of *ifta* is not feasible, yet if the aforementioned [swindlers] are inspected and if it is evident that they are the ones who have committed this malicious act [craft], in order to repel their depravity there is no harm to issue an imperial order for their execution but if bogus akçe is found on them, but not the tools [for the making of bogus money] and if no one has informed about them, no punishments besides discretion and long term imprisonment is licit.[151]

This fatwa taken from the *Fetava-yı feyziye me'an-nukul* is a typical one on coin forgery and the fatwa collections of Yenişehirli and Dürrizade Efendi abound with its reproductions in slightly different versions. The reply given by Feyzullah Efendi to the question above basically states the authentic nature of the crime within the conventional definitions of the Islamic fiqh and sets different legal parameters to be applied in different criminal situations. Another fatwa, appearing both in *Fetava-yı feyziye me'an-nukul* and *Neticetü'l-fetava me'an-nukul* similarly sentences the forgers to discretionary punishment and long term imprisonment, besides in a supplementary question the fatwa clerks openly admit that in none of the two classical fiqh works, namely the fatwa collection of Ataiyye and that of Tatarhaniyye, there exists any reference to the issue of coin forgery.[152] However the rampancy of counterfeiting from the turn of the sixteenth

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[151] Zeyd nühasdan guruş ve akçe yapub temvihen ağardub üzerine sikke-i sultaniye elfazını tazviren yazub meskuk gümüşdür deyu ibad elli had' ile aldadub sa'i bi'l fesad oldığı zahir ve mütehakkık olsa Zeyd'in şer ve fesadını def' içün emr-i veliyyü'l-emr ile katli meşru mudur? El-cevab: Kalbazanlığın katli hususunda mu'teberat-ı fıkhiyyede mesaile görülmemeğin katllerinde ifta mümkün olmamışdır lakin mezburlar gereği gibi teftiş olunub zanaat-i habiseyi kendileri işlediği zahir ve mütehakkık olursa şerlerini def' içün katllerine ferman buyurulmada be'is yokdur ama yanlarında kalb akçe bulunup ilayim ve alat bulunmasa ahvallerini haber virur kimesneler dahi olmasa ta'zir-i şedid ve habs-i medidden gayrı ceza caiz değildir. *Fetava-yı Feyziye*

[152] Suret-i mezburede zikr olununan kalbazanlık iden kimesnelerin vech-i muharrer üzere hükm-ü şer'ileri mu'teberatı fikhiyyeden fetava-yı ataiyye ve fetava-yı tatarhaniyyedende mestur iken mukaddemaen bazı fehulden istifta

century onwards seemed to have hastened the formulation of a jurisprudential position on this issue. The imperial *kanun* concerning minting and mints which dated back to the reign of Mehmed the Conqueror decreed that counterfeiters were to be executed and Sureiya Faroqhi informs us that in the late seventeenth and early eighteenth centuries, counterfeiters were sometimes imprisoned in a fortress.[153] Yet along with these, the fatwa compilations of Feyzullah, Yenişehirli and Dürrizade attest to the proliferation of economic crimes by embracing numerous fatwas not only on counterfeiting, but also on manipulated silver coins, fake tax collectors, and tax evasion[154] which were largely triggered by the high demand for money and by the resulting depreciation of the value of the Ottoman currency. Therefore it is reasonable to question the extent to which the *şeyhülislam* fatwas were used to determine the margins of admissible economic behaviour and to inculpate the outsiders during this period which is associated with the most traumatic socio-economic changes taking place in the Ottoman Empire.

A similar analysis of the crimes of economic nature made by Eduardo Grendi, who investigated counterfeiting cases from Genoa between 1580 and 1650, can help us to situate their Ottoman counterparts not merely in legal terms, but also as acts of deviance per se. In his analysis Grendi, notes the commonalities between legal market

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olundukta cevablarında kalbazanların katlleri hususunda mu'teberat-ı fıkhiyyede mesail görülmeyin katlerine ifta mümkün olmamışdır lakin mezburların gereği gibi teftiş olunub zana'at-i habiseyi kendileri işlediği zahir ve mütehakkik olursa şerlerini def' emr-i veliyyü'l-emr ile katlleri meşrudur deyu tahrir etmeğin ol zana'ati işlediklerinden nice kimesneler ahz olunmuş olsa cevab-ı mezkure i'tibar olunub mezkurların katllerine şer'an müsade olunur mu? El-cevab: Olunmaz. *Fetava-yı Feyziye*

[153] Suraiya Farqohi, "Counterfeiting in Ankara", in *Coping with the state…,* p. 142-143

[154] There are similar questions involving tax evasion and imposture:

"Zımmi taifesinin üzerine nas-ı kati ile lazım gelen cizyeleri beyt-i malü'l-müslimin içün vech-i şer'i üzere taleb olundukda müsliminden bazı kimesneler mezbur zımmileri himayet idüb cizyelerini idaya mani ol kimesnelere ne lazım olur?" *Fetava-yı Feyziye*

"Zeyd bir karyeye varub ben cizyedarım deyu bir mikdar sahte cizye evrakını karye-yi mezbure ahalisinden ba'zı zımmilere verub şu kadar akçelerin alsa mezburlar meblağ-ı merkumu Zeyd'den istirdada kadir olurlar mı?" *Behçetü'l-fetava*

"Padişah-ı din-i İslam halledallahu te'ala hila fetihi ila yevmü'l-kıyam hazretleri tarafından fi zamanina rayic olan altunlar ve sair akçeden herbiri birer mikdar-ı muayyen üzerine rayic olub ziyadeye ahz ve i'ta olunmaya deyu emr-i ali sadır olmuş iken bazı kimesneler itaat-i emr-i ali itmeyub hilafına ziyade ve noksana ahz ve i'ta eyleseler ol kimesnelere ne lazım olur?" *Behçetü'l-fetava*

transactions and the illegal monetary activities in terms of their extensiveness and economic rationale, and propounds that monetary crimes cannot be treated as manifestations of deviance, because in early modern Italy, everybody in one way or another kept tangent with this illegitimate economic realm.[155] According to Grendi, the fact that "the 'prince' may have set a denomination on a coin" did not necessarily charge market economy with a moral climate, thus he does not regard the actions taking place outside this princely determined economic space as subversive. However in the Ottoman case the moral overtones that the legitimate sphere of economic actions carried can be more patently reified by the sacrosanct quality of the Sultanic coinage and the centrality of the Sultanic treasury within the *daire-i adale*, the circle of justice. Hence it can be assumed that the fatwas issued by the Ottoman *şeyhülislam*s on monetary offences served to overcome the moral paucity in the ways that these offences were criminalized that Grendi claims for the Genoan setting.

II.2.4. "Not so grave" crimes

In the fatwa collections there exists a blurred zone where other forms of social conduct are criminalized by the Ottoman faqihs in a less unequivocal fashion when compared to those banished by the imperial *kanun* and the Sharia. In the collections, these social manners and deeds appear in the form of petty offences, under the banner of *şetm*, *sebb*, and *tahkir* which exist on the vague frontier between major felonies and social misconduct/misbehaviour. Depending on the patterns of criminalization in a society, which might be steered by a host of factors including the fears of victimization or of unwanted social change[156], these "borderline deviant acts"[157] can oscillate between the jurisdictions of criminal law and the less formal networks that regulate them merely as venial transgressions. In the Ottoman fatwa collections there are many

[155] Review- Trevor Dean and K.J.P. Lowe (eds), *Crime, society, and the law in Renaissance Italy*, Cambridge [England]; New York, NY, USA: Cambridge University Press, 1994
[156] Graeme Newman, *Comparative deviance: perception and law in six cultures,* New York: Elsevier Scientific Pub. Co., c1976, p. 42
[157] Ibid., p. 292

examples for socially harmful and disruptive conduct ranging from verbal misconduct to sexual misdemeanours, implying "a set of imprecise charges in which a person was said to be of bad governance, suspicious life, or evil reputation".[158] In her account of misbehaviour in the late fourteenth and the fifteenth century England, Kenitson-McIntosh tries to explain the legal import of these "not so grave crimes" and asserts that "because they were not expressly against the law or at least were not assigned to the lesser public courts for correction", the freedom of the jurors in dealing with such issues can be more easily detected.[159] Likewise the reading of the particular fatwas on these acts will not only picture the fatwa as "part of a complex network designed to resolve conflict and curtail behaviours deemed socially harmful",[160] but also reveal the more idiosyncratic and ad hoc legal creations and inventions residing in the fatwa compilations.

> If Zeyd, having quarrelled with Amr, a member of the askeri corps, exclaims that "killing the askeris is better than killing the *harbi* infidels" during the quarrel, what is due to Zeyd according to the Sharia? Answer: If he meant to disparage the Muslim renovation of faith and marriage is required.[161]
>
> When Zeyd exclaimed that "if I become the vizier, I swear that I will execute all of the *ulema*, beginning from the mufti to the scholar", Amr warns him not to incriminate the *ulema*, and tells him to recant, yet Zeyd refuses to recant, what happens to Zeyd? Answer: If he defames religion [Islam], he is an infidel. If he does not recant and repent, he is to be executed.[162]
>
> If Zeyd disparages Amr who is an upright member of the *suleha* and who is not of the gypsy kind by calling him "O, the gypsy" what is due for Zeyd? Answer: Discretion[163]
>
> If Amr says to Zeyd who is a member of the *ulema* and a master of Qur'an that "you do not equal filth for me, excrement is better than you", what is due for Amr? Answer: Discretion[164]

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[158] Marjorie Keniston McIntosh, *Controlling Misbehavior in England, 1370-1600*, Cambridge, UK ; New York : Cambridge University Press, 2002, 1998, p. 9

[159] Ibid., p. 10

[160] Ibid., p. 7

[161] Zeyd askeri taifesinden Amr ile çekişdikde esna-yı müşacerede Amr'a harbi kafir katl itmekden askeri taifesini katl itmek evvaldır dise böyle dimekle Zeyd'e şer'an ne lazım olur? El-cevab: İbaha-yı dem-i müslim iylediyse tecdid-i iman ve nikah lazım olur. *Fetava-yı Abdurrahim*

[162] "Vezir olursam vallahi ve billahi bütün ulemayı katl ederim, müftüden başlayarak alime varıncaya kadar hepsini katlederim" dediğinde Amr ulemayı karıştışma niyetinden dön demesine niyetimden dönmem diyen Zeyd'e ne lazım olur? El-cevab: Dini tahkir ederse kafirdir. Tövbe ve rücu etmezse katl olunur. *Fetava-yı Ali Efendi*

[163] Zeyd sulehadan ehl-i ırz olub çingene cinsinden olmayan Amr'a bre çingene deyu şetm iylese Zeyd'e ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Abdurrahim*

> While some bandits assemble in a place and play *saz*, Zeyd, a member of the *suleha*, claiming that they were contrary to the Sharia, tears their *saz*s into pieces, then some bandits exclaim that "it is not your job to do such a thing", what is due for them? Answer: Repentance and renunciation[165]

The fatwas on mutual cursing and cases of defamation make up a significant branch of the fatwa compilations featuring mainly in the *ta'zir* sections. In her study on the court cases involving sexual insults in early modern London, Laura Gowing states that in this period the church courts superseded their secular counterparts "as the principal forum for disputes over words and reputation".[166] There is not enough material evidence to associate what is done in the Ottoman *fetvahane* to "the ecclesiastical jurisdiction over defamatory words" taking place in the church courts of early modern London, yet the fatwas above confirm that the *şeyhülislam*s and their fatwas constituted an important part of the mechanisms that processed social wrongdoings and the conflicts over social hierarchies. In the cases above, the verbal attacks cast on the members of different social groups, especially on the *ulema* and the military-administrative elite seem to be verbalized by insinuating different ethnic stereotypes–the gypsy, the turk, the *fellah*- or by making clear legal analogies –the *harbi* infidel. The cultural antagonism between the *saz* playing bandits and the religious scholar who frowned upon their acts is replicated in many other fatwas where janissaries,[167] timariots,[168] descendants of the Prophet –the *seyyid*s,[169] were in one way disparaged and harassed. The *şeyhülislam*s sentenced these wrongdoers who defied the

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[164] Ulemadan olub ehl-i Kur'an olan Zeyd'e sen benim yanımda necaset kadar değilsin ve necaset senden yeğdir dise Amr'a ne lazım olur? El-cevab: Ta'zir olunur. *Fetava-yı Abdurrahim*

[165] Bir karyede eşkiyadan bir kaç kimesneler bir yere cem olub saz çalurlar iken sulehadan Zeyd mezburların sazlarını hilaf-ı şer'idir deyu kesr itdikde bazı kimesneler Zeyd'e senin nene lazımdır böyle itmek diseler mezburlara bir nesne lazım olur mu? El-cevab: İstiğfar ve rücu. *Fetava-yı Abdurrahim*

[166] Gowing, p. 60

[167] Zeyd sulehadan olan Amr'a sen yeniçeri olmağla bir azim bok mu oldun akıbet-ı hınzır gibi mürd olsan gerekdir dise Zeyd'e ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Abdurrahim*

[168] Zeyd-i sipahi reayasından Amr'ı tabanca ile darb idub Amr dahi Zeyd'in arkasından taşla ursa mezburlara ne lazım olur? El-cevab: Hallerince ta'zir olunurlar. *Fetava-yı Abdurrahim*

[169] Zeyd sadat-ı kiramdan Amr ile çekişdikde ben senin babandan bennak alurum bre terek deyub Amr'a ar lahık olsa Zeyd'e ne lazım olur? El-cevab: Ta'zir. *Behçetü'l-fetava*

social distinctions prevalent in the Ottoman society either to discretionary punishment or to a kind of linguistic discipline chastising their verbal indiscretion which seems to have been directly quoted in the inquiries by the fatwa clerks.[170]

The ordinary suspects of the Ottoman history, the *celali*s, the bandits –*eşkiya*s, and the Turcomans are repeatedly evoked either as the perpetrators of the verbal offences or as the metaphors of these libellous analogies. Furthermore, there are social controversies materializing around various groups which surface more evidently in the fatwa compilations as the subjects of various social conflicts. One particular example for these groups can be the popular preachers, the *hatip*s. For instance in the *ta'zir* section of Yenişehirli Abdullah's fatwa collection, one inquiry is about a preacher, who "climbs up the pulpit and tells that in one's throat, underneath his uvula there exists a hollow, when he smokes tobacco, the tar assembles in that hollow" and goes onto give an account on how to clean the throat of the smoker. For this "ignorant" medical exegesis, the *şeyhülislam* in his answer sentences the preacher to severe discretion.[171] The tension between these popular self-made preachers and the religious scholars sanctioned by the *medrese* system seems to have been rampant during the seventeenth and eighteenth centuries and the preachers were "frequently accused of misconstruing the teachings of scripture through their imperfect command of religious texts".[172]

As opposed to the rare occurrence of defamation cases brought before the earlier *şeyhülislam*s, the seventeenth and eighteenth centuries saw a rise in the variety of secular slanders that became the subject of the *şeyhülislam* fatwas, with a total of 91 fatwas dispersed in these five compilations. At this point we are by no means well-equipped to speculate over the reasons for this rise, yet the fatwa collections highlight the limits brought to the expression of the Ottoman popular opinion and the circumstances under which the actions testing these limits were presented to the attention of legal bodies. The weight that relationship between law and words carries as

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[170] *lisanı pak itmekle say-ı beliğ lazım olur*, and *tathir-i lisan* are the terms used to denote these punishments.

[171] Va'iz namında olan Zeyd kürsüye çıkub insanın boğazında küçük dil altında bir çukur vardır tütün içildikde zifiri ol çukuruda müctemi' olur ve tütün içenlere cinayetden gasl lazım oldukda ol çukuru ayıtlayub tathir etmeğe muhtacdır tathir olunub zifir ihrac olunmadıkca anların cinayetden halas olmaları muhal-i nazardır dese Zeyd'in bu kavli mutabık-ı şer' midir? El-cevab: Değildir bu makule hilaf-ı şer söyleyen cahil ta'zir-i şedid ile men' olunmak hükkama vacibdir. *Behçetü'l-fetava*

[172] Peirce, p. 265

the yardsticks of class, honour, status, and reputation in the pre-modern society is marked by these fatwas.

Another borderline manifestation of deviance is exemplified by the acts of sexual transgression which neither the Ottoman *şeyhülislam*s nor the compilers of the fatwa collections labelled as *zina*. These offences are piled up in the *ta'zir* sections since they do not meet the shar'i requirement for the realization of sexual intercourse taking place between the parties so as to be named as fornication. Instead, this panoply of various acts entails the infringement of gender hierarchies and roles that the Ottoman society set for its members.

> If Hind declares that she has become the disciple of Zeyd who is known as a sheikh and tells her husband Amr that "you are not bound to God, do not count on me", then if without taking permission from Amr, she goes out at various times by saying that she is going to visit her sheikh, what is due for her? Answer: She is punished and avoided by severe discretion.[173]
>
> If Hind forcibly grasps Zeyneb the virgin, by claiming that "you are not a girl", and then without having any right to do so makes her lie down and prunes her vagina, what is due for Hind? Answer: Discretion[174]
>
> What if Zeyd has her wife Hind play the *tanbur* before him, and stands by, what is due for Zeyd? Answer: He is punished and avoided by severe discretion.[175]

It is evident that these replies given by Abdurrahim on the first and the third problem, and by Yenişehirli on the second one aimed at admonishing men and women who were said to have gone outside the legitimate framework of sexual morality which regulated appropriate conducts between a husband and his wife, or a sheikh and his disciple, and determined the rights of a senior woman on the body of a junior female. The fatwa compilations host many such cases where the ways in which some Ottoman subjects discredited the norms of gender segregation becomes most visible. In one instance, Şeyhülislam Yenişehirli Abdullah is asked about an anecdote where the inhabitants of a Muslim village had a festival and picnic one day and there young and

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[173] Hind şeyh namında olan Zeyd'den inabet itdim deyu zevci Amr'a sen beyatlı değilsin bana kurban olma deyub zevci Zeyd'en izinsiz ekser evkatde çıkıb şeyhime giderim deyu gitse Hind'e ne lazım olur? El-cevab: Ta'zir-i şedid ile zecr ve men olunur. *Fetava-yı Abdurrahim*

[174] Hind Zeyneb-i bikri ahz edüb sen kız değilmişsin deyu bi-gayr-i hakkin şer'i cebren yaturdub fercine baksa Hind'e ne lazım olur? El-cevab: Ta'zir-i şedid. *Behçetü'l-fetava*

[175] Zeyd karşısında zevcesi Hind'e tanbur çaldurub dikilse Zeyd'e ne lazım olur? El-cevab: Ta'zir-i şedid ile zecr ve men olunur. *Fetava-yı Abdurrahim*

unmarried men and adorned young women gathered and ate together and exchanged looks and laughter.[176] What was more intolerable is the case of the preacher of that village who seemed to be quite complacent on this issue to the extent that he joined the aforementioned group as the supplementary inquiry informs of.[177] In Yenişehirli's words the youngsters were to be chastened by severe discretion and the *imam* permanently dismissed. The actual implementation of the punishments aside, the question that can be propounded for further research is whether these fatwas were the products of a moralist advocacy that the *fetvahane* stood for or whether they aimed at setting merely legal measuring sticks for appropriate behaviour. Accordingly, the main problem becomes the extent to which the *şeyhülislam* fatwas reflect what Laura Gowing calls "the symbiosis between the practice of ecclesiastical justice and popular morals"[178] that is the interaction between the artificial legal world of the Ottoman faqihs (legality) and the reality outside (morality). Thus, especially with respect to the non-shar'i offences, the treatment of the fatwa compilations of particular "moral" crimes can be taken "an index of the acceptance of the moral vision they [these crimes] purveyed, and hence of their popularity".[179]

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[176] Bir karyede sakin ehl-i İslam taifesinin ricali her sene bir yevm-i mahsusda elbise-yi nefiselerini giyüb ve düzünüb şabbe kızların ve avratların enva'i ziynetler ile yevm-i ıyddaki gibi tezyin edüb karye kurbuda bir mevzi-yi mu'ayyende cümlesi ma'an cem olub cümle nisa mekşufetü'l-vucuh oldukları halde şab ve emred yiğitlerle ma'an oturub mukaleme ve müzah edüb tarafeynden bir birine bila-mesuğ-ı şer' nazar edüb ve tehiyye etdikleri et'immeyi muhtaliten oturub ekl etmeyi adet etseler mezburalara ne lazım olur? El-cevab: Ta'zir-i şedid ve zecr ü men'. *Behçetü'l-fetava*

[177] Suret-i mezburede karye-i mezburenin imamı da Zeyd dahi cem'iyet-i mezbureye varmağa müteheyyi oldukda ulemadan Amr Zeyd'e sen bunları men' etmediğinden ma'ada kendin dahi anlar ile ma'an gitmen imam olmağı muhaldir deyu nush ve neyhi ani münker etdikde Zeyd ısga etmeyüb nisvanı ile ma'an ol cemiyete varub ke'l-evvel anlar ile otursa Zeyd'e ne lazım olur? El-cevab: Ta'zir-i şedid ve azl-i ebed. *Behçetü'l-fetava*

[178] Gowing, p. 10

[179] Ibid., p. 10

II.2.5. Conclusion

As seen in the fatwas above the fatwa clerks of the fatwa department managed to translate new kinds of social behaviour into the legal rhetoric of the fiqh in their inquiries. While the viewpoint of the complainants or the plaintiffs were maintained in the inquiries, the fatwa clerks quite meticulously set the objective terms of the offence and the status of the deviant person. To indicate the legal competence of a convicted person the terms "*akil ve baliğ (olan)*", to denote persons who have not previously been convicted and who represent the inoffensive party in the case, the term "*kendi halinde olan*", to underscore the unjust nature of the action, the phareses "*bi-gayri hakkin*", to indicate habitual criminals expressions like "*zulm ü te'addileri hadden mütecaviz olsa...*", "*sai bi'l fesadda ısrar eylesler...*", "*zulüm ve fesadı alışkanlık haline getiren*", and to often convey the unlawfulness of the suspects the criterion of not abiding by the imperial orders and Islamic law -"*şer'i şerife ve sultan emrine itaat etmeyip...*"- are used by the fatwa clerks to fashion out a sense of legal neutrality by means of this new criminal discourse. Where they could not translate the essence of the offence into a legal language, they directly quoted from the accounts of their clients. Although it is not easy to deduce from such a structure what exactly the Ottoman law considered immoral and reprehensible, the fatwas at least reveal the legal tools, such as *ta'zir* and *siyasa* that the Ottoman faqihs used to promulgate these different forms of social decadence as criminal.

As a concluding remark for this section on criminal deviance, it can be noted that at many points the Ottoman conception of criminality as exposed in the *şeyhülislam* fatwas corresponds to the continuum that stretches from delinquency to minor felonies. Yet when considered on their own, the fatwa compilations do not give a systematic and complete account of how and why certain forms of social behaviour were castigated and penalized by the Ottoman law makers. Leslie Peirce explains the fact that "the Ottoman regime, jurists, and ordinary individuals – all perhaps had an interest in maintaining a range of punitive options and in stating them with a degree of

ambiguity"[180] by referring to more anthropological perceptions of criminal law. According to such interpretations, criminal law is doomed to appear as incoherent to the researcher "because its alleged purposes – deterrence, retribution, incapacitation, and rehabilitation – are not compatible with one another."[181] On the basis of the limited picture drawn by the historical sources available at hand, the Ottoman attitude towards crime and criminals can be perceived as merely hypothetical. Yet, it turns out to be that other legal systems of the corresponding periods are conceived in the same way. For instance both in the Namierite and Whig historiography, the eighteenth century English legal system is presented as "corrupt, ineffective, illogical, asystematic, arbitrary, antithetic to the ends of justice, and therefore in need of drastic reform" as opposed to the following Victorian era.[182] However, new research on this period gainsaid such a depiction by asserting that the major goal of eighteenth-century criminal law was deterrence, which "demands not hundreds of hangings, but instead a relatively few terrifying examples of the awe-inspiring power of the law" leaving the judges a wide area of discretion.[183] In the wake of the eighteenth century, the Ottoman Empire had already seen a twenty four year long siege by the Venetian navy that made the capital one of the most dangerous places to live; a sultan who absconded to Edirne not to turn back for almost half a century; an epidemic of religious fanaticism that lasted for nearly three generations; and sporadic occurrences of mutiny in the infamous *At Meydanı*. Whether the succeeding Tulip Age can be regarded simply as a temporal cessation of disorder or as the stabilization/reconciliation of fortunes is open to debate but the end of it was no less bloody than the seventeenth century. Within this context, the *şeyhülislam* fatwas with their bookish approach to crime and criminals might aim to meet what M. Zilfi calls "the theoretical demand for Sultan-centred order" on the face of "the operative disobedience to such order".[184]

[180] Peirce, p. 332
[181] Ibid., p. 332
[182] Norma Landau, *Law, crime, and English society, 1660-1830*, Cambridge, U.K.; New York, NY: Cambridge University Press, 2002, p. 2
[183] Ibid., p. 4
[184] Zilfi, 1998, p. 201

II.3. Victimless crimes: Religious deviance or political subversion?

> *Strange flowers have often appeared in the garden of the faith – doctrines and practices that were aberrant, discordant, and incongruous.*[185]

In this section the inquiries the *mustafti*s made concerning the behaviours and acts which were deemed as contravening the social formulation of religiosity will be highlighted. The curiosities, and anxieties which Ottomans had about the parameters of proper religious behaviour, and moreover the charges of religious misconduct that they put against certain cliques in the Ottoman society had been the subject of a number of fatwas and were issued in the fatwa compilations mainly under the *kitab-ı iman*, and *kitab-ı siyar* titles, and in their subsections. Such religiously defined forms of deviant behaviour range from simple statements of religious ignorance and impiety to coarse verbalizations that were stamped as blasphemy and at the end of the spectrum to explicit indictments of heresy. The replies issued by the *fetvahane* in the name of the *şeyhülislam*s accordingly subsumed preliminary forms of chastisement like the refinement of one's language and capital execution for heretical digressions like *zendeka* and *ilhad*. Hence the investigation of how the Ottoman *ifta* institution problematized these victimless offences becomes significant when we bear in mind that in the Ottoman Empire, religion (in its Sunni-orthodox form) also constituted a political posture and deviations from the established religion automatically raised questions about political loyalties.[186] Selim Deringil in his concise exploration of the late Ottoman policies towards apostasy compares the Holy Synod of the post-Petrine Russia and the post-Mahmudian incorporation of the şeyhülislamate into the government machinery and concludes that in both polities it is possible to refer to an

[185] Bernard Lewis, "Some observations on the significance of heresy in the history of Islam", *Studia Islamica*, 1953, vol. 1, p. 57
[186] Zilfi, 1988, p. 33

institutionalizing (of) piety.[187] Respectively, whether the office of the şeyhülislamate, apart from revealing the interplay of popular and scholarly pieties, had functioned as such by means of the fatwas it issued will be a tenable question to pose.

Ahmet Yaşar Ocak, in his study on the heterodox and non-Sunni socio-religious movements in the fifteenth and sixteenth century Ottoman Empire duly called them the egressors from the circle.[188] However the boundaries of this circle were by no means fixed and Ottoman popular culture subsumed many forms of acts, expressions, beliefs, and practices that hovered on this fine line separating belief from disbelief. Thus the first part of this section on religious deviance will be about the concentric circles of (dis)belief where people of various origins and the acts they committed were located in the fatwa compilations. These men and women were not outright heretics, neither were they condemned as such in the fatwas. Yet, on the legal and moral map of the *şeyhülislam*s they were located on the continuum that stretches to more stern accusations of blasphemy and heresy. Hence the first topic to be examined will be the words, appearances, and other preferences that the Ottoman individuals made, which do not automatically fit in the legal grammar that Islamic law had concocted for religious disbelief. The second theme under the banner of victimless crimes, however, target a more well-known issue, heretical acts and groups and the way the Ottoman faqihs dealt with them in their fatwas. In the Ottoman Empire, from the sixteenth century onwards there began to accumulate a grand corpus of legal works on the problem of *ridda* (apostasy), *zendeka* and *ilhad* (two distinct terms denoting heretical behaviour) where the Ottoman faqihs, most of whom served also as *şeyhülislam*s such as Ibn-i Kemal and Ebu Su'ud produced variations on the theme of heresy especially when faced with the ideological threat posed by the neighbouring Shiite Safavid dynasty. Another major foothold of early Ottoman heresiography was the pervasiveness of the heterodox and more specifically Sufi religious networks throughout the Ottoman Empire which was then promoting itself as the flagbearer of Sunnite Islam. The seventeenth and eighteenth century Ottoman *şeyhülislam*s issued fatwas on the same problems but within a totally

[187] Selim Deringil, "'There is no compulsion in religion': on conversion and apostasy in the late Ottoman Empire: 1839-1856", *Comparative Studies in Society and History,* 42-3 (2000), p. 553

[188] Ahmet Yaşar Ocak, *Osmanlı toplumunda zındıklar ve mülhidler: yahut dairenin dışına çıkanlar (15.-17. yüzyıllar)*, İstanbul: Tarih Vakfı Yurt Yayınları, 1998

different context when compared to their predecessors. The legal devices and concepts used by the fatwa officers in problematizing and cataloguing heretical behaviour; the contextual details inherent in the fatwas and fatwa compilations of this particular period; and the main types of legal problems on heresy recurring in the compilations will be presented in the second part of this section.

II.3.1. Concentric cycles of disbelief – disbelief & blasphemy

The studies on popular forms of religion or to express it differently, religion as part of the Ottoman popular culture have predominantly put the accent on antagonisms prevailing between dogmatic religion and popular piety; the Sunni Islam and the heterodox and non-Sunni practices which "filled the unlegislated crevices of Ottoman religious life".[189] This conceptualization of popular religion explicitly points out the "rival" camps, the Sunni *ulema* representing the official dogma and the Sufi dervishes as in Bernard Lewis' words "the buried embers of discontent".[190] However the *şeyhülislam* fatwas, unrevealing as they are, give a more universal understanding of pre-modern piety that featured in the words of the Inquisition victims such as the self-educated miller Mennochio as well as many Hinds and Zeyds of the Ottoman society. The verbal expressions of disbelief uttered by ordinary Muslims; the legal attention given to the contacts and the boundaries between different religious communities; and the moral and religious import of keeping one's oaths frequently became the subject of the *şeyhülislam* fatwas. So before enumerating the unorthodox Sufi practices or the different Shiite groups that the Ottoman religious establishment counteracted, the articulation of both the more implicit, yet much more widespread anxieties about public identities, and the uncertainties over legitimate beliefs and practices should be detected in order to appraise the forms of religious deviance as part of the popular mood of the time.

[189] Zilfi, 1988, p. 32
[190] Lewis, p. 50

"*there is nothing except being born and dying, and having a nice girls-friend (gentil amiga) and plenty to eat.*" (told by a cleric, Diego Mexias, in Aranda about 1485)[191]

A preacher in a *mescid*, Zeyd says that "*haşa* [!] There is no heaven and hell, man sprouts like an herb and shrinks like an herb", what is due for Zeyd according to the Sharia? Answer: Executed before being apprehended.[192]

Amr, from whom Zeyd demands his debt, says that "I am not God so I do not shit money, it is God who shits money", what is due for Amr? Answer: Renovation of faith and marriage.[193]

Juan Lagarto who, serving at the parish mass one Sunday in Valdecuendes, after the singing of the gospel words "*Dixit Jesus discipulis suis, 'Pax vobis' (Jesus said to his disciples, 'peace unto you')",* piped up*, "As the ass said to the cabbages*".[194]

These two statements quoted respectively in Şeyhülislam Çatalcalı Ali and Menteşevi Abdurrahim's fatwas are in perfect harmony with those taken from a "book of declarations" which contains 444 statements made by individuals to the Inquisitors of Soria and Osma diocese, in north-east Castile, mostly in 1486 and 1502. So as to introduce a comparative perspective to our analysis of impiety and disbelief, I have chosen this material from Spain where 247 men and 71 women are accused of various offences, which were thought by the witnesses to be of interest to the Inquisition.[195] The fatwa compilations and the book of declarations are comparable as legal documents because both present and frame the religious offences at stake, before and outside the courtroom, prior to their adjudication by the qadi or by the Inquisition. Just like the fatwa compilations, the Castillian registers involve a variety of statements implying crypto-Judaism, materialistic attitudes, and blasphemy; and incriminate specific groups in society, the Conversos in this case, for their religiously deviant

[191] John Edwards, "Religious Faith and Doubt in Late Medieval Spain: Soria circa 1450-1500", in *Religion and Society in Spain*, p. 153

[192] Bir mescidde imam olan Zeyd haşa cennet ve cehennem yokdur beni adem ot gibi biter ot gibi yatar dise Zeyd'e şer'an ne lazım olur? El-cevab: Bila tevkif katl olunur. *Fetava-yı Abdurrahim*

[193] Zeyd, zımmetinde olan şu kadar alacağını istediği Amr "ben Tanrı değilim ki akçeyi sıçayım akçeyi Tanrı sıçar dese Amr'a ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Ali Efendi*

[194] Edwards, p. 19

[195] Edwards, p. 5

conducts. Based on this material these malicious statements can be interpreted either as a pre-modern form of atheism, disbelief or at least scepticism, or it can be argued that they merely embodied a form of anticlericalism, in other words an opposition to the religious establishment expressed again in religious terms in the dearth of the modern secularist discourses.[196] Nonetheless, it can be proposed that through the fatwas it issued, the Ottoman religious establishment functioned to regulate the area of not only communal but also individual convictions, hence epitomizing a very universal concern endemic to the pre-modern world.

> Hind tells Zeyneb whom she argues with, that "I will defecate in your mouth", then when Zeyneb says that "I will not let this happen [because] I read the Qur'an, what is due for Hind if she says that "I will defecate in what you read too"? Answer: Renovation of faith and marriage.[197]

> Zeyd the magician (*sahir*), maliciously puts the papers where the Quranic verses are written under the millstone and if its is certain by recourse to the Sharia that he is accustomed to grinding the grand verses under the millstone saying that "I wrenched one's had to this direction and I turned another's heart to that direction" and if he is apprehended before repentance, is it legitimate to execute Zeyd by *siyaset*? Answer: It is legitimate.[198]

> Zeyd litigates Amr and tells him that "I will sort this case with you by recourse to the Sharia, I have a fatwa from the *şeyhülislam* at hand" and when he shows the fatwa to Amr, Amr tells him to squeeze the fatwa and drink its juice, what is due for Amr? Answer: Renovation of religion.[199]

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[196] See the discussion between J. Edwards and C. J. Sommerville in Edwards, "Debate-Religious faith, Doubt and Atheism", in *Religion and Society in Spain,* p.154

[197] Kavga ettiği Zeyneb'e "ağzına yapayım" dediğinde Zeyneb kabul itmem, ben Kur'an okurum demesi üzerine okuduğuna da yapayım diyen Hind'e ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Ali Efendi*

[198] Zeyd-i sahir ayat-ı Kur'aniye mektub olan mushaf-ı şerif kağıdlarını ihaneten değirmen taşı altına koyub filanın başını çevirdim ve filanın kalbibi filan tarafa çevirdim deyu bu vech ile ayat-ı izam taşlar altında çevirmek ve sihr etmek adeti olduğu şer'an sabit olub kable't-tevbe ahz olunda Zeyd'in siyaseten katli meşru mudur? El-cevab: Meşru' olur. *Behçetü'l-fetava*

[199] Zeydin Amr ile davası olub Zeyd Amr'a seninle davamı şer'le görürüm yeddimde şeyhü'l-islamdan fetvam vardır deyub fetva-yı şerifeyi Amr'a gösterdikde fetvayı ez de suyunu iç dise Amr'a ne lazım olur?" El-cevab: Tecdid-i din. *Fetava-yı Feyziye*

Many such fatwas like the ones above manufactured in Çatalcalı Ali, Feyzullah and Yenişehirli Abdullah's fatwa offices mainly include blasphemous utterances which according to Gauri Viswanathan's definition of blasphemy "commit verbal offence in shocking, vile, and crude language or imagery but without necessarily attacking points of doctrine". Other versions might vary from declaring oneself as God,[200] and making magical performances including voodoo acts like the one above or calling jinns and contacting the dead in the cemeteries.[201] The şeyhülislamate not only gave a legal framework to forms of religious deviance as a legal authority, but it also partook in the resolution of conflicts emanating from religiously inappropriate manners. As an example, Şeyhülislam Yenişehirli Abdullah is asked whether a woman could avoid her husband from having sexual intercourse with her by claiming that he has uttered blasphemy by saying that he believed in magic.[202] The last fatwa above on the other hand, features one of the most "Ottoman" concerns registered in the fatwa compilations, which is the protection of not only the legal validity but also the sanctity of the religio-legal documents. Either under the *kitab-ı iman* category or along the defamation cases, the cursing of the *şeyhülislam* fatwas or the reports (*müraseles*) that the qadis got down, with an obscene and coarse language, occupies a significant part of the offences in the fatwa collections which mostly required repentance and the restatement of one's piety and religious convictions.

Subsequently, as the Castillian Inquisition notaries did not bypass recording such "streams of invective containing expletives"[203] before the actual trial, the fatwa clerks who formulated the questions or who later organized their senior's fatwas in collections, might have felt the necessity to give a legal riposte to these deviant acts or utterances. Another interpretation of such a concern may be put forward to emphasize not so much the religious sensitivities but the class distinctions that the fatwa personnel

[200] Zeyd-i müslim bir kaç kimesnelere ben sizin tanrınızım dise Zeyd'e tecdid-i iman ve nikah lazım olur mu? El-cevab: Olur. *Neticetü'l-fetava*

[201] Zeyd bir kabr üzerine varub bazı kimesnelere gelin size kabirden haber alıvereyim kabre secde idüb yüz kez sürün deyub nice kimesnelere ol kabire secde itdirüb ve yüzlerin sürdürse Zeyd'e ne lazım olur? El-cevab: Ta'zir ve zecr ve men olunur. *Fetava-yı Abdurrahim*

[202] Hind zevci Zeyd'le sen ne sahirlerin sahrına inanırsın dedikde Zeyd sahrın vuku'u vardır inanırım dise Hind Zeyd'e sen böyle demekle küfr söylemiş olub ben senden mübane olmuş olurum deyub Zeydi kendi ile izva' mu'amelesinden men'e kadir olur mu? El-cevab: Olmaz. *Behçetü'l-fetava*

[203] "I reject the whore of God!" "I reject the fucking Jewish whore of God!", in Edwards, p.14

was keen to maintain. For instance in nineteenth century London, a newspaper protested against the prevailing laws of blasphemy by declaring that "there must be something wrong in a law of blasphemy which punished the vulgar man for saying in coarse language what it never thinks of punishing the refined man for saying keen, sarcastic language".[204] Whether the Ottoman legal authorities had developed such a conception of blasphemy that the London gazette would later question is impossible to answer, yet it opens a different perspective on the meeting grounds for legal regulations and socio-cultural hierarchies. In one of the fatwas in the *Fetava-yı Abdurrahim*, there is the case of Zeyd, "the ignorant" (*cahil*), who called a member of the *ulema* as pimp. When warned and reminded by others of the prestigious status of the *alim* he cursed, Zeyd told that his *ilm* did not mean anything for him.[205] In his answer to what should be done with this guy, Abdurrahim interprets the case both as a social antagonism occurring between the *alim* and the deviant *cahil* who defamated him; and as an act of religious deviance where the *cahil* violated the sanctity of this social hierarchy in the Ottoman society. Such claims on social and religious deviance notwithstanding, it can be stated that, different from the doctrinal approach of Islamic law to the concept of *küfr*, in the fatwas dealing with the transgressions of the Ottoman individuals the concepts of *kafir* and *küfr* do not always appear as marking the legal status of persons and their legal rights, but as defining such blasphemous escapades taking place in the Ottoman society.

> If Zeyd commits an act and then denies that he has committed it, and swears that "if I committed it, then I would be among the ones who call the God Almighty dual", what is due for him? Answer: If he did it with the intention of pledging, repentance; if he did it with the intention of blasphemy renovation of faith and marriage [are due].[206]

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[204] Gauri Viswanathan, "Blasphemy and Heresy: The Modernist Challenge", Comparative *Studies in Society and History*, Vol. 37, No.2 (APR. 1995), p. 405

[205] Zeyd-i cahil Amr-ı alime herzek yersin bre pezveng deyu şetm itdikde bazı kimesneler Amr bir ehl-i ulemadır niçin şetm idersin didiklerinde Zeyd dahi Amr'a senin ilmin bir şey değildir kulağıma girmez dise Zeyd'e ne lazım olur? El-cevab: Ta'zir olunur Amr'ın ilmi ulum-ı diniyyeden olub Zeyd tahkir itdiyse tecdid-i iman ve nikah lazım olur. *Fetava-yı Abdurrahim*

[206] Zeyd bir fiili işleyub bade'hu ol fiili işlemedim eğer işledim ise Hak tealaya iki diyenlerden olayım dise Zeyd'e ne lazım olur? El-cevab: Yemin itikadıyla dediyse tövbe ve istiğfar küfr itikadıyla dediyse tecdid-i iman ve nikah. *Behçetü'l-fetava*

Making pledges by calling the name of Allah and not keeping with its terms is another theme that figures in the fatwa compilations. Oaths, *nezr*s in the fatwa language, apart from creating contractual liabilities, also impose a religious burden on the liable person specifically if she or he happened to take an oath by mentioning the name of the God.[207] Therefore, the *nezr* issue occupy a significant place in the *kitab-ı iman* sections. In addition to testifying to the status of dualism as an erroneous or even a sacrilegious belief system, the legal distinction made in the *şeyhülislam*'s reply above, between retreat from a simple verbal error and repentance from blasphemy verifies how easily the first act might shade into the latter in the eyes of the *ifta* authorities.

> Zeyd, the mimic, who considers himself a Muslim, while performing during the *helva* chats at night, wears a *sarık* on his head and takes a stick in his hand just like a religious instructor, and in front of certain comrades, he teaches them to repeat some platitude and beats the ones who can not repeat, and he goes on doing such foolery and scorns *ilm*, meanwhile the Muslims who are present in the gathering, cannot help themselves and laugh at Zeyd, in this case what is due for Zeyd? Answer: They are all infidels, renovation of faith and marriage and discretionary punishment is required.[208]

> While Zeyd the preacher preaches upon the *minaret*, Amr tells the people besides him with the intention of disparagement that "this guy yells like a lover, let's stand up and leave", what happens to Amr? Answer: If it is with the intention of disparagement renovation of faith and marriage.[209]

On the whole, religion in seventeenth and eighteenth century Istanbul was an important aspect of popular culture and at the popular level there had been many

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[207] Hülya Canbakal has kindly provided me her unpublished research paper "Moral Obligation, Legality and Liability in Ottoman Public Life (17th-18th cc)", presented in the Middle East Studies Association's 2003 Annual Meeting held in Anchorage, Alaska from November 6-9.

[208] Müslim geçinen Zeyd-i mukallid gece ile helva sohbetinde taklid ederken başına sarık sarub ve mekteb hocası gibi eline bir çubuk alub ve birkaç uşakları önüne oturtub mala ya'ni türrehat söylemeyi talim idüb söylemeye kadir olmayanları falakaya koyub bunun emsali masharalık ile istihza'yı ilm idüb ve meclisde bulunan müslimanlar dahi safalanub bi'l-ihtiyaren zihk eyleseler Zeyd'e ve ol Müslümanlara ne lazım olur? El-cevab: Cümlesi kafir olurlar tecdid-i iman ve nikah ve ta'zir lazım olur. *Behçetü'l-fetava*

[209] Zeyd-i müzezzin minarede ezan okurken Amr yanında bulunan kimesnelere tahfif-i kasd ile şu herif aşık gibi bağırır kalkın gidelim dise Amr-ı mezbura ne lazım olur? El-cevab: Tahfif-i kasd ile ise tecdid-i iman ve nikah. *Fetava-yı Abdurrahim*

digressions from the academic parameters of proper Islamic conduct. The fatwa issued by Yenişehirli Abdullah above actually depicts a very familiar situation in the Ottoman social life, yet at the same time it points out the extent to which this "not so serious" disparagement of the sanctity and the social status of *ilm* and its practitioners could be legally problematized. The latter fatwa issued by Abdurrahim situates the case it deals with on the boundary between defamation (*tahfif*) and blasphemy like many similar fatwas ordered in the compilations arraying less grave or more offensive violations of the practice of *ilm*. On the other hand, the insiders to the *ulema* corps were not immune to legal scrutiny when it comes to the rightful practicing of religion. Şeyhülislam Abdurrahim Efendi seems to have dealt with a certain Zeyd who is not able to understand Arabic idioms, but climbs up the culprit of his village's mosque and reads some hadiths of the Prophet and tells the attending flock their Turkish meaning.[210] When asked whether the preacher was accountable (*asım*) for what he has done, Abdurrahim stipulates that should he make no mistake than he will not be guilty but he should enrol into the *ilmiye* education afterwards, thus specifying an educational problem within the Ottoman *ilmiye* cadre. Yet according to Abdurrahim, if he errs in his transmission, he should be avoided from preaching. The late seventeenth century *Risale-i Garibe*, the book of curses, complements this picture by reflecting parallel concerns over the exploitation of the popular facet of religion, albeit not in the legally eloquent language of the fatwa compilations. The author of the *Risale-i Garibe*, in line with the tune of the text, curses not only the people who went to soothsayers and false prayers but also "the ignorant" that filled up the *ilmiye* ranks.[211]

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[210] 'Arabi terkib istihracına kadir olunmayan Zeyd kasabasında olan cami-i şerifin kürsisine çıkub türkiye tercüme olunan ahadis-i nübüviyyeden bazısını ol camide olan halka okuyub ve türki manasını anlara ifade iylese Zeyd böyle itmekle asım olur mu? El-cevab: Tercüme-yi şuruh-u ahadis-i şerifede tahrir oluna murafık olub Zeyd naklde hata itmezse olmaz ama min ba'd tahsil-i 'alime sa'y ve akdem itmek gerekdir valla isti'dadı olmadığına binaen kürsiye çıkmadan men' olunur. *Fetava-yı Abdurrahim*

[211] "ve 'Ehlim, 'ayalim hastadur!' deyüp tabibdür, deyü ne kadar kafir ve cühüd ve kızılbaş ve Firenk var ise göndürüp kolunı sıkdıran püzevengler; ve: 'benümkiler ma'sumcaları Kara Ahmed Cehavir Hace'ye getürdiler, okudılar, eyü oldı!' deyen müşrikler; ve 'Üzerimde ağarlık vardur, kurşun döktireyin!' deyen çölmek şerrine uğrayanlar..." in Hayati Develi, *XVIII. yy. İstanbul'a dair Risale-i Garibe*, Kitabevi Yayınları, 1998, Istanbul, p. 28

"ve Şahzadebaşı'nda kış ahşamı çehresinde cünüb çingane karısına fal açtıran şaşkunlar", ibid., p. 36

The same legal mentality which insinuates deviation from the appropriate forms of religiosity is evident in the fatwas dealing with the relations with non-Muslims. The fatwa collections are important historical materials portraying the relationship between the Muslim and the non-Muslim folks of the Ottoman Empire, since they regulated many issues such as the legal terms of the latter's subjugation (*istila*) by the Ottoman State, or the annulment of the *zımmi* status by one of the parties of the contract (*nakzü'l-ahd*). However in between these two legal themes, the fatwas of the Ottoman *şeyhülislam*s clearly announced that the ones who violated the boundaries between these communities as idealized by the Sharia, were to immediately become suspects in the legal realm. The same *Risale-i Garibe* adds to the legal perception of the time by anathematizing "the confused people, who dress up (fancy) during festive days and, imitating the infidels during their festivals; the filthy people who talk with the infidels in the infidel language although they know Turkish; those (who should be taken by the devil) who say 'My darling' while trading with the infidels; those who go to the house of the infidels and greet in the infidel way; and those greet back when greeted by the infidels".[212] The following fatwas belonging to Şeyhülislam Çatalcalı Ali, Yenişehirli Abdullah and Menteşevi Abdurrahim illustrate how a question over the proper Muslim identity might open the way for a variety of excommunicating mechanisms ranging from being chastised with recourse to the Sharia to being stigmatized as infidels.

"ve ilim marifetden bi-haber olup da alim geçinen Türkler; ve her gün kürsi diplerinden ayrılmayup meşayihun sözlerini hıfz edüp 'amel etmeyüp ayaklı tevarih olanlar; ve şarab meclisinde izhar fazilet edüp musahhibet ilmiyye eden zarifler", ibid., p. 34

Hayali Develi, in addition to the observations made in the Risale-i Garibe, points out to the sixteenth century commentary *Hırzü'l-mülük* which had also been filled with similar complaints: "…şimdiki halde ulema ahvali dahi muhtel olup, mesela sarf ve nahiv görmemiş ve muhtasarat okumamış bir cahil ya mal kuvvetiyle ve yahud bir tarikle üç dört yıla değin danişmend olup, uğradığı medreselerden ders okumayıp, her biri cahil idiğin bilip bir tarikle üzerinden savıp, ol cahil bu vechile hareket edip ve mülazim dahi olup ba'de ya rüşvet ile yahud şefaat ile bir kadılık alup…", ibid., p. 81

[212] "ve bayram güni geyinip kuşanup mihaneye varup şarab içen ve kefere taklid eden müşevvişlere, ve keferenün küfri güni kefere ile 'işret eden dinsizler, ve kefere gördükte Türkçe bilürken kefere lisanı ile söyleşen pelidler, ve kafir ile alış veriş iderken: "Canım!" deyen canı çıkasılar, ve kafir evine varup keferece selam verenler, ve kafir gelüp selam verdükte selam alanlar". Develi, p. 69

> What is due for Zeyd who for the sake of making foolery wears a hat on his head? Answer: Renovation of faith and marriage.[213]
>
> Zeyd, the Muslim when he sees the beautiful Hind the Christian, says that "I wish I were an infidel, and then I could marry Hind", what is due for Zeyd? Answer: Severe discretion and renovation of faith and marriage.[214]
>
> Zeyd who is the mufti of a certain village indeliberately speaks with the people in his presence in the infidel language, what is due for Zeyd and those people according to the Sharia? Answer: They are to be punished and avoided by discretion.
>
> In the case above, when the governor of that village Bekr asks Zeyd and those people "why do you indeliberately speak in the infidel language" and tells them that this is wrong, they replied that this is the language of our ancestors speaking it is due for us. What is due for Zeyd and those people? Answer: Discretionary punishment and penitence and purification of language.[215]

Another *mes'ele* redolent of this strife over language, reports the case of some Muslims who participated in the dances of the non-Muslims and who, when warned by means of a fatwa that declared their actions as requiring renovation of faith and marriage, declined to comply with it by referring to the ancestral origins of their acts.[216] Either conveying the tension between local identities and the imperial framework or

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[213] Maskaralık olsun diye başına şapka giyen müslüman Zeyd'e ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Ali Efendi*

[214] Zeyd-i müslim cemile olan Hind-i nasraniyyeyi gördükde ne olaydı kafir olaydım Hind'i tezevvüc ederdim dese Zeyd'e ne lazım olur? El-cevab: Ta'zir-i şedid ve tecdid-i iman ve nikah. *Behçetü'l-fetava*

[215] Bir kasabanın müftüsü olan Zeyd meclisinde olan müslimin ile billa zaruret kefere lisanı üzere tekellüm ider olsalar Zeyd'e ve ol kimesnelere şer'an ne lazım olur? El-cevab: Ta'zir ile zecr ve men olunurlar. *Fetava-yı Abdurrahim*
Suret-i mezbureda ol kasabanın hakimi olan Bekr Zeyd'e ve ol kimesnelere bila zaruret kefere lisanı üzere niçin tekellüm idersiniz hatadır didikde Zeyd ve ol kimesneler ecdadımızın lisanıdır bize helaldir diseler Zeyd ve ol kimesnelere şer'an ne lazım olur? El-cevab: Ta'zir ve istiğfar ile tathir-i lisan. *Fetava-yı Abdurrahim*

[216] Müsliminden bir kaç kimesneler kefer ile horon dibdiklerinden Zeyd şeyhü'l-islam hazretlerinden ol kimesnelerin bu vech üzere olan ifallerini istifta eyledikde cevab ba-sevablarında tecdid-i iman ve nikah buyurulmağla Zeyd ol fetvayı şerifeyi ol kimesnelere gösterüb min ba'd böyle itmek size tecdid-i iman ve nikah lazım gelür didikde ol kimesneler Zeyd'e yabana söyleme biz ata ve dedelerimizden böyle gördük böyle ideriz diseler ol kimesnelere şer'an ne lazım olur? El-cevab: Katleri meşrudur. *Fetava-yı Abdurrahim*

providing a legal diagnosis of a symptom of infidelity - speaking the infidel language and dancing non-Muslim dances in these cases, the *şeyhülislam* fatwas manifest how the Ottoman religious culture maintained its hold over the Ottoman subjects and how it banished the outsiders in religio-legal terms. Even so, the socio-cultural functions of the fatwas continue to feature behind the religious didactics of the Sharia. Although blasphemy has retained currency primarily as a religious offence, it also had a functional use in calling forth regulative measures of constraint before the "deregulation market of religious belief" by the secularization trends was completed.[217] This versatile employment of the Islamic legal concepts - primarily *küfr* - for the purposes of both religious discipline and social banishment, might account for the seemingly nebulous nature of the fatwa jargon. The concepts of *küfr* and *kafir* used in these fatwas, seem to be related to the idea of *hakk al'-abd*, in other words the infringement of one's limits within society rather than *hakk Allah* - the offences that cannot be punished by anyone, but God; thus implying a social menace rather than a doctrinal contortion.[218]

Consequently, many of the fatwas in the *kitab-ı iman* sections give us the portrayal of the Ottoman individuals who cursed, blundered, blustered or ridiculed calling the reader to surmise over either "the fragility of the religious beliefs of some"[219] or an earlier yet unnoticed secularization of popular life expressed in the words of the Ottoman commoners. In the next section, our attention will be switched from these individual nuisances to the doctrinal and political deviations of communities and a more formalistic legal discourse will be underlined by focusing on the legal statuses and rights of these deviant groups.

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[217] "…for it cannot be gainsaid that blasphemy has retained currency as religious offense, though as a much looser concept, its verbal excesses having a functional use in calling forth regulative measures of constraint in an environment best described by Robert Pattison as a 'deregulation market of religious belief'", in Viswanathan, "Blasphemy and Heresy…", p. 407

[218] See İsmail Safa Üstün, *Heresy and legitimacy in the Ottoman Empire in the sixteenth century*, PhD Thesis, University of Manchester, 1991, p. 8; for this distinction between *küfr* as rights of men and rights of God.

[219] Edwards, p. 18

II.3.2. Heresy

The discussion of heresy within the Ottoman context requires the investigation of a wide spectrum of different concepts that connoted both practical and doctrinal forms of religious deviation. The Islamic lexicon of religious deviance has many concepts of diverse origins to define religious subversion such as *kafir* a general term to represent incredulity, *müşrik* meaning a polytheist, *münafık* which in the Qur'an is described as a liar, and obstructer, in another words an open or secret dissenter within the umma;[220] *mürtedd* comprising the apostates[221] or *dehri* who believed in the eternity of the world when in the past or in the future, denying resumption and a future life in another world.[222] The theological and philological distinctions between these terms notwithstanding, the Ottomans used these concepts in diverse contexts to denote various individuals and communities. In the previous section we have seen that the *şeyhülislam*s mainly referred to the terms *küfr* and *kafir* to denote blasphemy in their fatwas while developing different legal attitudes towards the manifestations of popular religious practices in the Ottoman society. However the Ottoman *şeyhülislam*s seemed to have preserved the semantic boundary between heresy and other blasphemous conducts belonging to the realm of popular culture, and they concurred with the definition of heresy as "a the site of competing interests and doctrines the conflict of which, when not resolved by expulsion and excommunication of the offending heretic, produces nothing short of the paradigm shifts that create new structures of knowledge".[223] Thus, different from the religiously sanctioned reprimands of various

[220] EI, Vol. VII, p. 561
[221] EI, Vol. VII, p. 635
Apostasy—irtidad or ridda
[222] EI, *Dahriyya*, Vol. II, p. 95
In the Qur'an Dahriyya dives the name to sura LXXVI, generally called the sura of man, but its use in XLV, 24 where it occurs in connection with the infidels, or rather the ingodly, erring and blinded, appears to have had a decisive influence on its semantic evolution which has given it a philosophical meaning far removed from its original sense. Gazali regards them as another of philosophers just like the zanadika, a kind of naturalist order.
[223] Viswanathan, p. 401

social misdemeanours adjoining the semantic territory of *küfr*, a significant part of the fatwa compilations was spared for more rigorous legal definitions and attitudes that would match this doctrinal tenet of heresy which is in fact primarily a political matter.[224] This section discusses the acts, beliefs and the various communities which crossed the legal threshold between heterodox or blasphemous social conducts and heresy as illustrated in the *şeyhülislam* fatwas.

Bernard Lewis in his seminal article on heresy in Islam, finds it surprising that in Arabic heresy is expressed as hartaqa, and heretic as hurtaqi (or hartaqi), patently loan words of European or Christian origin and asks "whether Islam with its 72 and more named heresies, has no name for heresy, and is thus in the position of the Red Indian tribe which, we are told, has a score of verbs for different ways of cutting, but no verb to cut".[225] Lewis gives a detailed account of the terms that can be associated with the concept of heresy in Islamic law and theology ranging from "ghuluww" to "kufr", yet we will suffice by emphasizing the most recurrent ones that left their stamp in Ottoman usage, namely *zendeka*, *ilhad* and *irtidad*. The Islamic legal texts have one common characteristic which makes it hard to distinguish between the ahkam al-khawarij and al-bugha; ahkam al-hiraba; ahkam al-ridda and al-zandaqa, in other words between the orders about heresy, treason, sedition, revolt, or acts of political opposition.[226] In line with this conceptual convergence, the terms *zındık* and *mülhid* expanded to absorb many other meanings and implications. Hence, in order to surmount this imprecision, the sociological and legal definitions of the terms that the Ottomans had employed in defining heresy will first be explored; to be followed by a discussion of how heresy and the legal status it entailed were formulated in the Ottoman jurisprudential tradition starting from the sixteenth century onwards; and finally before such a background, which behaviours, acts and groups were designated to

[224] "A heretic, by canonical definition, was one whose views were "chosen by human perception, contrary to holy scripture, publicly avowed and obstinately defended"…Heresy (unlike Judaism or leprosy) can only arise in the context of the assertion of authority, which the heretic resists, and is therefore by definition a political matter. Heterodox belief, however, is not… Variety of religious opinion exists at many times and places, and becomes heresy when authority declares it intolerable", Lester Kurtz, 1986, in Viswanathan, p. 69; "Orthodoxy meant the acceptance of the existing order, heresy and apostasy, its criticism or rejection", Lewis, p. 62

[225] Lewis, p. 51-52

[226] Khaled Abou El Fadl, *Rebellion and violence in Islamic law*, Cambridge: Cambridge University Press, c2001, p. 6

be heretics in the late seventeenth and eighteenth century fatwas will be reviewed. Within this framework, the main accent will be on the peculiarities that these five different fatwa collections had with respect to the terminology used to define and classify heretical acts, persons, and statuses in the formulation of the questions and in the solutions expressed in their answers. While doing this, the positive enactments or legal principles that Ottoman jurists argued should apply to various kinds of heretics and the organization of these principles within the compilations are equally important for our analysis.[227]

In his account of deviant movements in the history of Islam, Ahmet Yaşar Ocak provides a sociological classification of the various *zendeka* and *ilhad* movements. According to Ocak, when categorized with reference to the doctrinal and social nature of their offence, these movements had four major variations starting with the ones which aimed at "creating parallel Islams" by moulding their pre-Islamic belief systems such as Manicheanism with the Islamic canons; to be followed by messianic movements which attempted at subverting the central authoritites not only with resurrectional claims but also by socio-economic demands; then the ones which intellectually challenged Islam's canonical premises like the unity of God (*tevhid*), the final day of judgement (*kıyamet*), resurrection (*haşr*), the uniqueness of Qur'an, the institution of prophecy (*nübüvvet* and *risalet*), and of worship by giving reference to some ancient or predecessor belief systems or cultures; and lastly the not so philosophical currents involving deviant ways of life or manners which were stigmatized with more moral overtones such as libertinage.[228] I will not discuss Ocak's installation of the *zendeka* and *ilhad* movements within the framework of Ottoman history but just like in the history of Islamic law, the Ottoman legal system had converted the social and philosophical aspects of the problem of disbelief into a legal question, like slavery and freedom, to be determined by legal rules and processes, and involving legal consequences. For this reason, the adherents of Sufi brotherhoods,

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[227] One of the major sources of inspiration of this thesis is Khaled Abou el-Fadl's work on rebellion and violence in Islamic law that has shown me the merits of avoiding too much emphasis on the positivist and legalistic stipulations of Islamic legal texts which has become an important reminder in terms of methodology in my analysis.

[228] Ahmet Yaşar Ocak, *Osmanlı toplumunda zındıklar ve mülhidler: yahut dairenin dışına çıkanlar (15.-17. yüzyıllar)*, İstanbul: Tarih Vakfı Yurt Yayınları, 1998, p. 69

Mevlevi communities, and other Sunni tariqats; a political entity like the Shiite Safavid State taken as a legal persona on its own; and many other Muslim or non-Muslim groups remained on the verge being indicted as heretics and apostates. However, before dealing with how the Ottoman legal authorities formulated the problem of disbelief as a legal question, the three most frequent terms, *zendeka*, *ilhad* and *irtidad* that were cited by the Ottomans in their fatwas will be elaborated.

Within the classical Islamic jargon, the idioms denoting the phenomenon of heresy are numerous such as *küfr* (infidelity), *irtidad* (apostasy) and *nifak* (crpyto-infidelity). In the history of Islamic fiqh, these legal terms had erratic lives of their own and had acquired many different senses commensurate with the historical contexts they were used in. When compared with these concepts, *zendeka* and *ilhad*, which came to be the domineering terms defining heresy in the Ottoman milieu, appear as more recent usages standing for specific crimes, rather than corresponding to heresy in the legal arena as purely Islamic legal categories. The first terms to begin with, are *küfr* and *kafir* which are perhaps the most ubiquitous terms suggesting incredulity in Islamic law. One of the ways the stigma of *kafir* was used by the Ottoman fatwas with a relatively inconsequential weight mainly to chastise minor religious misconducts taking place in public has been elucidated by the previous section. On the other hand, there are many fatwas where the verdict of *kafir* carried a more austere legal import which is systematized by the classical fiqh works as a legal status, specifically showing the status of the inhabitants of the *darü'l-harb*, the enemy land. The Ottomans both back in the sixteenth century and during the period in question chose to vilify their arch-enemy the Safavids of Iran and their Shiite sympathizers as *kafir*s. In Islamic legal history the terms *irtidad*, and *mürtedd* feature as another fundamental legal category upon which a prospective legal terminology was instaurated. In spite of bearing many discrepancies among or within the Islamic schools of law, *irtidad* merely connotes apostasy the legal consequences of which are imprisonment (*habs*) pending the disavowal of the act (*rücu*), and death penalty in case of resilience. Although the main currents of Islamic fiqh disagree over the terms of the punishments awaiting the male and the female apostates, or the renegades who were born into Islam or converted to Islam, the civil consequences of *irtidad* are more or less congruent. Rights of ownership; the property of the murtadd; marriage; manumission; endowments; testament; sale are subject to

suspension (mawkuf).[229] As *küfr* and *irtidad* became conceptual prerequisites for expressing the accusation of heresy, the Ottoman fatwas too, made the most of these terms. Yet the Ottomans were also quite familiar with *zendeka* and *ilhad*. The concepts of *zendeka* and *ilhad* each have their own epistemological sphere, but when taken as legal categories they have many conjunctions and overlaps not only with each other but also with the idioms listed above. The term *zendeka* and its subject form *zındık* did not necessarily develop as legal expressions. The first meaning of *zındık* as stated in the Encyclopaedia of Islam is that of a Manichean (manawi) which is not part of the *zımmi*s.[230] The word *zendeka* is possibly Syriac, more probably Persian in origin which later in Sasanid times and in early Islamic period seems to have been applied to Manichaeans, and more generally to followers of ascetic and unorthodox forms of Iranian religion.[231] The term had an intricate history of its own until it came to cover all that was unorthodox, unpopular and suspect like materialism, atheistism, or agnosticism. On the other hand, Bernard Lewis contrasts "the etymological obscurity and semantic vagueness" of the word *zındık* with its "horrible precision" in the legal realm. In the Islamic legal jargon, *zındık* implies being a criminal dissident thus legally equating the offender to renegade and infidel status. In time its legal consequence has become a secondary meaning on its own signifying being a *mülhid*, *mürtedd* or *kafir*.[232] In classical fiqh sources the definition of *zendeka* also covers the acts of "*ibtanü'l-küfr*" and "*izharü'l-iman*",[233] concealing one's disbelief and pretending to be faithful, thus converges with the concept of *nifak*, another canonical term implying religious hypocrisy and dissidence with the Islamic community. Conversely, the term *ilhad* and its subject form *mülhid* had more specific origins in the Qur'an insinuating the ones who "deviate".[234] Only after the ninth century the term *ilhad* entered into the polemicist literature of the Islamic theologians to be used in slightly different meanings by the Ummayads and the Abbasids.[235] Therefore it is not easy to claim that both *zendeka* and

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[229] EI, *Murtadd*, Vol. VII, p. 635
[230] EI, *Zındık*, Vol. XI, p. 510
[231] Lewis, p. 54
[232] EI, *Zındık*, Vol. XI, p. 510
[233] Ocak, p. 63
[234] EI, *Mulhid*, Vol. VII, p. 546
-the root *l-h-d* denotes to incline, to deviate
Qur'anic verses VII, 180; XLI, 40; XXII, 25
[235] In the Umayyad age, the terms mulhid and ilhad were used to denote desertion of the community of the faithful and rebellion against legitimate caliphs, thus

ilhad are terms endemic to the Islamic fiqh literature. Instead, the primordial reference point of these clauses lies in the Quranic and Prophetic concepts.[236] Speculating further on the legal distinctions between all these aforementioned terms would ineluctably draw us into the depths of not only Islamic fiqh but also the Ottoman intellectual world which was no less tenuous than the classical Islamic literature. Nevertheless, while studying the legal attitude of the post-classical Ottoman *fetvahane* towards the question of heresy, we should at least bear in mind that the Ottoman faqihs had attempted to elaborate on such legal niceties and there is an extensive legal treatise (risala) tradition going back to the *Şakayık-ı Numaniyye* of most probably Molla Ahaveyn which discussed the case of the famous Ottoman deviant Molla Lutfi, and Kemalpaşazade 's "Risala fi bayani al-firali al-dallat" where almost every heretical act and belief in Islam was described and discussed in detail.[237] So far we have tried to sketch the legal genealogy of the terms that tallied with the notion of heresy in Islamic societies. Next we are going to dwell on how the Ottoman jurists carved their own understanding of heresy from the same stock which embrace parent terms like *küfr, irtidad,* and *nifak* and the forthcoming legal offshoots of *zendeka* and *ilhad* alike.

There had been groups and socio-religious movements that were openly declared as heretics and heretical in the Ottoman Empire. The syncretic myticisim of the Hurufis which started to sweep many tariqats in late fifteenth century Anatolia like the Bayrami Melamis, the Kalenderis and the Halvetis; the "Kızılbaş" Shiite proselytisation movements of the sixteenth century; even ironically the palace of the heretic hunter Murad III which was sheltering many soothsayers (*remmal*s) and royal astrologers; and the Sufi circles targeted by the fundamentalist currents of the seventeenth century were all exposed to the accusation of heresy, verbalized as *zendeka*, *rafizi*[238] or *bid'a*[239]. Whether the Ottoman authorities carried these reproachful declarations to the legal arena and gave legal definitions every time they were

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appearing as synonymous with baghi, rebel, and shakk al-'asa (splitter of the ranks of the faithful). In the early Abbasid age, the kalam theologians began to use the term mulhid in the meaning of "heretic, deviator in religious beliefs", signifying not so much more adherence to false religious doctrine as rejection of religion as such, materialist scepticism and atheism. EI, *mülhid*, Vol. VII, p. 546

[236] Ocak, p. 61

[237] Ocak, p. 218

[238] Although the term *Rafizi* originally refers to the Shiites, the Ottomans used this term pejoratively to imply the *Kızılbaş*s and the *Kalenderi*s.

[239] tainting innovations

confronted with such cases is dubious, yet it is certain that the Ottoman religious scholars attempted at formulating an adequate definition of heresy. There is a wide repertoire of pejorative terms associated with the acts, beliefs and the groups that held them which were considered as deviating either from the *silk-i ilmiye* signifying the professional clique of the Ottoman *ulema* that defined the parameters of orthopraxy, or from the *ehl-i sunna*, which in Kemal Paşazade's "Risala fi dalla" appears as the raison d'etre of the Ottoman house[240] as a part of the Ottoman dynastic legitimacy. Though essentially not being a legal document, the letters in Feridun Bey's (991/1583) *Münşe'atu'l-Selatin* (1575) concerning the Safavids are among the first of the kind in terms of exposing the panoply of the concepts used to anathematize a particular form of heresy, Shiism in this case.[241] We cannot speak about a great disparity between this pool of sixteenth century terms and the legal terminology of the contemporaries of Feridun Bey like Ebu Su'ud. İsmail Sefa Üstün in his analysis of the sixteenth century Ottoman attitudes towards heresy argues that the Ottomans envisaged Safavid heresy as a combination of all the earlier heresies of Islamic history from the Dahriyya to the Kawarij.[242] Nevertheless the legal opinions of the Ottoman *şeyhülislam*s demonstrated some variations that enable us to follow the historical development behind this seemingly haphazard character of the Ottoman legal jargon. İsmail Sefa Üstün in his aforementioned work, studies the fatwas of the sixteenth century Ottoman muftis and *şeyhülislam*s like Hamza, Ibn-i Kemal and Ebu Su'ud and one of the conclusions he draws from this material is that although it is certain that it was Ibn-i Kemal who first officially established the word *zındık* in Ottoman legal usage, this concept was still

[240] Üstün, p. 16

[241] The following is a selection of the phrases used to describe the Safawids in these letters: "Guruh-u dale, haydariyye, erbab-i dalal, evbaş-ı kızılbaş, taife-i bağiyye-i kızılbaşiyye, dallat al-kizilbaş, ahl al-bid'a wa'l-dalal, ashab al-shar wa'l-shakawat, rawafid, mala'in, melahide, firak-i dale, ehl-i bagi ve'l-aduvv, zenadika-ı evbaş ve melahide-i kızılbaş, firak-i dale, zandaka, ilhad, ibahatun furuju muharrama (making illicit sexual relationship legal), tahribe'l-mesacid ve ihrake'l-merakid ve mekabir ve ihanet-i ulema ve saadat ve ilka-ı musahif-ı kerime ve sebbu seyheyn-ı kerimeyn radiyallahu anhuma (destruction of mosques, burning the tombs and graves, killing the ulema and the descendants of the Prophet, abolishing the Qur'an, cursing Abu Bakr and Umar), mefasid (corruptions), şer, taife-i melahide-i kizilbaş, kavm-i zenadika ve melahide, muşrikan, kuffar, mulhidan-i bi din, zenadika-i kafir", in Üstün, p. 29-32

[242] Ibid., p. 29

embryonic and lacked a legal precision that is usually sought in these fatwas.[243] For instance, the mufti Hamza in a fatwa he issued around 1511-1512 did not use the term *zındık*; instead he deployed the terms "*kafir*", "*mülhid*" and "*ehl-i fesad*".[244] The main focus of Hamza's fatwas against the Safavids seems to be derived from the laws of jihad and apostasy.[245] Ibn-i Kemal, unlike Hamza, used the term *zındık* in the text itself, yet the accusation of *zendeka* was not the domineering theme and emphasis was placed rather on the "ahkam al-murtaddin", the rules pertaining to apostates against whom war was already declared.[246] Alternatively, in one of Ebu Su'ud's fatwa on the *kızılbaş*, the *kızılbaş*s are promulgated as both *bagi* (rebel) and *kafir* (infidel), a contradictory cohabitation because a *bagi* is a Muslim rebel and theoretically can not be non-Muslim.[247] The main axis that comes out from the analysis of these earlier fatwas seems to be the distinction between the usual suspects within the Ottoman society which the term *zendeka* refers to as enemies within Islam and the external enemies of the Ottoman State which the laws regulating warfare (jihad) deals with. The issue of heresy was processed in these fatwas as part of the Ottoman laws of war making against an apostate and infidel state, rather than underscoring heretical practices as a social malady. Sufism was another major issue which the theological and legal controversies revolved around beginning with the sixteenth century. The main thing that was vexing the orthodox circles was the ecstatic state aroused by the constant recollection of God's name (*zikr*) practised in different ways, *darb-ı esma* of the Halvetis, *devran* of the Kadiris and *sema* of the Mevlevis.[248] In the same tune with the problem of the Kızılbaş Safavids, the early Ottoman jurists were verbalizing different legal concerns about the Sufi practices. While Zenbilli Ali Efendi stated that if it was not for the sake of pleasure, but solely for pious purposes then devran was not religiously forbidden; Ibn-i Kemal had produced a large corpus of fatwas and risalas on this issue. Yet, large as it is, Ibn-i Kemal's works are not tune with each other in terms of the reasoning used in sanctioning various Sufi practices. Both Ibn-i Kemal and his successor Ebu-Su'ud

[243] Ibid., p. 41
[244] Ibid., p. 40
[245] Ibid., p. 49
[246] Ibid., p. 54
[247] Ibid., p. 62
[248] Bilgin, p. 132

issued fatwas which stamped the practitioners of *devran*, *raks* and *sema* as *fasık*s and *mürtedd*s.[249]

With regard to the question of heresy, pursuing the changes that Ottoman legal thought had underwent between the sixteenth and the late seventeenth centuries would require the examination of the changing historical contexts, the varying sources of law and the internal dynamics within the official Sunni dogma. Yet, before delving into the analysis of these changing times along with the *şeyhülislam* fatwas, a general statement on the structure of the fatwa discourse can be made. The same dichotomy that existed between the legal attitudes towards the heretics within and the external enemies is evident also in the compilations of the late seventeenth and eighteenth century where there are fatwas in the *kitabü'l-iman* sections on the Ottomans who considerably advanced on the track of disbelief to be deemed as heretics, on the other hand the *kitab-ı siyar* divisions regulated the politics of heresy by constructing the ideological grounds of Ottoman diplomacy as the encounter between two antagonistic belief systems, the Sunni Ottomans versus the Iranian *Rafızi*s.

> Is the offspring of the *müşrik* (polytheist) assigned to heaven or hell? Answer: When this issue was asked to Imam Azam, he did not tell which one is from heaven and which one is from hell; he told that some were assigned to heaven, and some to hell.[250]
>
> Is the repentance of Zeyd, the zındık, following his apprehension accepted? Answer: It is not.[251]

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[249] "Sufi adına olan Zeyd zikr ederken devran idüb itdüği devranı ibadet add idüb eylese nikahı sahih ve zebihası helal olur mu? El-cevab: Devranı ibadet add idicek mürteddir müslimeden ve zımmiyeden avret nikahlamak mümkin değildür zebihası meyyitedir ekli mümkin degildir amma ibadet add itmeyüb mübah itikad idüb devran itikad iderse mürtedd değildür itaattan haric fasıkdır sair feseka gibidir…menkuhası tefrik olunmaz zebihası yenir", quoted in Bilgin, *Fakih ve toplum*, p. 133
"Tarik-ı tasavvuf sahih tarik değil midir? El-cevab: Tarik-ı tasavvuf sahih tarikdir na-meşru emre itikad itmeyicek. Amma idicek fetava ve kelimat-i 'ulemayı dinlemeyip şeyhim böyle dedi diyicek ilhad olur tasavvuf olmaz" in Kemal Ökten, *Ottoman Society and State in the light of the fatwas of İbn-i Kemal*, MA Thesis, Bilkent University, 1996, p. 34

[250] Müşrik çocukları ehl-i cennet midir, ehl-i ateş midirler? El-cevab: Bu husus İmam Azam hazretlerinden sorulduğunda durup cennet ve ateşten hangisinin olduğunu söylememiş, bazıları ehl-i cennet bazıları ehl-i ateş olur demiştir. *Fetava-yı Ali Efendi*

[251] Zındık olan Zeyd'in badel ahz tövbesi makbule olur mu? El-cevab: Olmaz. *Fetava-yı Abdurrahim*

The first fatwa of Şeyhülislam Çatalcalı Ali where he attaches his main legal references to the answer, is from the *kitabü'l-iman* section of his compilation while the following fatwa by Menteşevi Abdurrahim is posted under the *mürtedd* category which is the subsection of the *kitab-ı siyar*. Both of these fatwas seem to have been given for the sake of theoretical precision, most probably to assist other law makers, by defining the religious content and the legal implications of two deviating statuses. The fatwa of Menteşevi Abdurrahim emphasizes the criminal status of the *zındık* and *zendeka* as an offence that is to be framed and apprehended rather than explicating it as a legal category, affirming Bernard Lewis' contention that the charge of zandaqa carries with it a a more constabulary sense and implies "being taken by a policeman to prison, to interrogation, perhaps to execution".[252] The difference between these two fatwas - the first discussing a theologic aspect of the religious dogma and the latter focusing on the legal procedures assigned for the charge of heresy - is actually rampant through out all of the five compilations we have scanned. More attention to the legal arrangement of the problem of heresy within the fatwa compilations will underline this difference between the formalistic/doctrinal and the more practical/criminal conceptualizations of heretical behaviour circulating in the Ottoman Empire starting from the late seventeenth century. The 1893 edition of the Çatalcalı Ali's fatwa compilation and the 1850 print of Feyzullah Efendi's do not depart from the classical organization of the fatwa material where the clauses pertaining to heresy and heretics can be found either under the *kitab-ı iman* title or in the form of apostasy (*irtidad* and *mürtedd*) under the *kitab-ı siyar* category along with the clauses regulating the other non-muslim, especially *zımmi* statuses. In the 1872 version of the *Behçetü'l-Feteva*, along with the fatwas in the iman section, the siyar category contains additional sub-sections regulating religously deviant behaviour. The Muslim and the non-Muslim infidels ; the clauses on the *mürtedd*s and the *zındık*s; the section (*fasıl*) on the *Acem Rafizi*s and their lands; the *Acem Rafizi*s who are originally infidels; the things that a Muslim does which are regarded as infidelity (*küfr*); and defaming the Prophet Muhammed constitute these extra sections as part of the *kitab-ı siyar*. The 1827 edition of Abdurrahim's fatwa book can be regarded as deviant in itself since it seems to have created categories unprecedented in the classical fiqh manuals. The fact that it does not have any iman section (*kitab-ı iman*) enumerated in its index does not mean that there is not any single fatwa given by Şeyhülislam

[252] Lewis, p. 55

Abdurrahim on the standards of religious impiety. The 19 sub-titles of the *siyar* section specified in its index as ranging from *irtidad* to participating to the dinners and the ceremonies of the infidels cover the almost all types of religious deviance that we have placed on the continuum of disbelief. Moreover, the *ta'zir* section of Abdurrahim's fatwa collection, apart from subsuming criminal cases like defamation and murder, also has a very innovative category, "fi al raks ve'l sema" handling two questions posed to the *şeyhülislam* about the ritual practices of the Sufis tarikats. Lastly in terms of its categorization Dürrizade Efendi's collection hews to the classical format with the *kitab-ı iman* and the *zımmet ve'l mürteddin* sections it has. Not only the analysis of the profile of the fatwa compilations, but also the comparison between their content might give us an idea about the ways in which the acts and behaviours that fit into the Ottoman definition of heresy were transformed into the formal statuses of Islamic law.

Infidel postures, apostate identities

> What is due for Zeyd the Muslim if he willingly takes on the cap which is peculiar to the *Kızılbaş* (Redhat) community? Answer: Renovation of faith and marriage.[253]
>
> When Zeyd the Muslim utters some blasphemous words then when he is recommended to recant and repent, he tells that "I will not recant" and insists on this infidelity. Is the statute of apostate implemented to him? Answer: It is.[254]
>
> If it is legally established that Zeyd the *zımmi* has blatantly disparaged the Prophet (S.A.V.) with dissolute and salacious expressions, what is due for him? Answer: In fact the Hanafi imams confined him to discretion and long term imprisonment but some subsequent [*imam*s] issued fatwas for his execution but apart from [these], the Shafi and Maliki Imams generally stood for his execution and [the now deceased] Ebu el Suud issued fatwas for his execution and it is among the issues that Sultan Suleyman

[253] Zeyd-i müslim kızılbaş keferesine mahsus olan kalbağı rızasıyla başına giyse ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Behçetü'l-fetava*

[254] Zeyd-i müslim kelime-i küfr söyleyub Zeyd'e rücu ve tövbe ile dinledikde rücu itmem deyub küfr üzerine musırr olsa Zeyd üzerine ahkam-ı mürtedd icra olunur mu? El-cevab: Olunur. *Behçetü'l-fetava*
Müslim namında olan Zeyd ba'zı müfesada cür'et eder olmağla Zeyd'e niçün böyle idersin didiklerinde Zeyd ol müslüman idim şimdi kafir oldum deyub sözden rücu itmeyub musırr olsa Zeyd'e ne lazım olur? El-cevab: Ahkam-ı mürtedd icra olunur. *Behçetü'l-fetava*

Han was asked about, still the Sultan should be resorted and then he should be executed.[255]

The fatwas found in the collections of Yenişehirli Abdullah and Feyzullah Efendi are actually no more than variations of the fatwas dealing with the acts and beliefs that the previous section has located in the "concentric zones of disbelief". The most distinctive trait of such fatwas however, is not that they imply overt accusations of heresy but that they contain references to where exactly socially reprimanded religious misconduct ends and heresy starts. The first fatwa which discusses salutary measures, presents the association between the *Kızılbaş* habits and a religiously erroneous act that needs to be retracted by the formulaic "*tecdid-i iman ve nikah*". When it comes to cases of verbal anathema and blasphemy that the previous sections have discussed, in the second fatwa we see that the legal status of apostasy, *ahkamü'l-mürteddin* is used as a tool to monitor a basic manifestation of religious misconduct where the lesser forms of correction did not work. A similar example of a more serious violation again appears among the fatwas of Yenişehirli Abdullah where a Muslim Zeyd, who was promoting himself as a sheikh, instructed people not to perform their daily prayers, and not to fast. The fatwa clerks openly framed the crime as a habitual act of heresy, including charges of *ilhad* and *zendeka*, requiring execution by *siyaset*, which the *şeyhülislam* approved in his answer.[256] The answer given to the last case of defaming the Prophet Muhammed which is considered as a typical manifestation of infidelity in Islamic law highlights the border the Ottomans drew between blasphemy and heresy. Although Feyzullah stated in his answer that the Hanafi School imposed lesser penalties for the accused, he does not seem to have sufficed with a simple *ta'zir* penalty and preferred much stricter

[255] Zeyd-i zımmi alanen haşa semm haşa rusul-u ekrem sallahu teala aliyeyi vesellam hazretlerine ta'bir ve tazrih-i şeni ve müstehcen lafzi ile sebb ve şetm itdiği şer'an sabit olsa Zeyd'e şer'an ne lazım olur? El-cevab: Gerçi eimme-i hanefi ta'zir ve habs-i medid ile iktifa iylemişler lakin bazı müt'ehirin katline ifta iylediklerinden ma'da eimme-i şafiyye ve malikiyye umumen katline zahib olub ebu el-suud aliyye-i rahmetü'l-vudud hazretleri katline ifta edüb Sultan Süleyman han aliyyü'l-rahmet ve'l gufran hazretlerine maruz olan mevaddandır hala padişah-i islama arz olunub katl olunmak gerekdir. *Fetava-yı Feyziye*

[256] Müslim namında olan Zeyd meşihat iddasında olub bazı Müslimine sana salat-ı mefruzayı bağışladım kılma ve bazılarına savm-ı mefruzayı bağışladım tutma deyub bunun emsali ilhad ve zındıka itikadında olduğunu izhar ve bu vech üzere sa'y-ı bi'l-fesad oldugu şer'an sabit olsa Zeyd'in emr-i veliyyü'l-umerayla siyaseten katli meşrumudur? El-cevab: Vacibdir. *Behçetü'l-fetava*

interpretations of the offence. Although the fatwa does not include any explicit references to *küfr*, *zendeka* or *ilhad*, the last prerequisite Feyzullah added to his answer, that is consulting the sultan, stands there as an imperial admonition reminding the reader of the fatwa manual of the political make up of the charge of heresy.

> Zeyd converts to Islam and is named as Mustafa, but some people scornfully keeps calling him Dimur, what is due for those people? Answer: Discretion.[257]
>
> When Zeyd the *zımmi* who sells rosary was criticized by asking "why do you sell rosary?", he tells that "I performed the ritual prayer fifty times" but declines to state that he did so within the congregation, then is his conversion to Islam ratified? Answer: It is not.[258]
>
> If Zeyd the Christian after converting to Islam before the Muslims, dies and her father Zeyd despite knowing that she has converted buries her to the infidel cemetery, what is due for Zeyd? Answer: Severe discretion.[259]
>
> Zeyd the *zımmi* who converts to Islam but then becomes an apostate, is dressed as a *zımmi* and then arrives to a different place, Amr the Muslim though knowing his apostasy, hires Zeyd as a servant and does not asked him to recant and convert back to Islam, and concurs with his *küfr*, what happens to Amr? Answer: Renovation of faith and marriage.[260]

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[257] Sonradan şeref-i islamla müşerref olub ismi Mustafa olan Zeyd'e bazı kimesneler ismi ile çağırmayub istihzaen daima Dimur deyu çağırsalar mezburlara şer'an ne lazım olur? El-cevab: Ta'zir. *Fetava-yı Abdurrahim*

[258] Tesbih bey' iden Zeyd-i zımmiye sen niçün tesbih bey edersin deyu itiraz olundukda ben elli kere namaz kıldım deyüb lakin cemaatle demese mücerred böyle demekle Zeyd'in İslamına hükm olunur mu? El-cevab: Olunmaz. *Behçetü'l-fetava*

[259] Hıristiyan Hind, müslimanların huzurunda müslüman olduktan sonra vefat etse onun müslüman olduğunu bile bile kefer mezarına defneden babası Zeyd'e ne lazım olur? El-cevab: Ta'zir-i şedid. *Fetava-yı Ali Efendi*

[260] Zeyd-i zımmi İslama geldikden sonra mürtedd olub badehu zımmı zıyyine girub ahir diyara vardıkda Amr-ı müslim irtidadını bilurken Zeyd'i hizmetkar idinüb Zeyd'e islam 'arz itmeyub ol hal üzere yanında alıkoyub küfrüne razı olsa Amr'a ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Abdurrahim*
Müslim olduktan sonra dininden döndüğünü bildiği zımmi Zeyd-i İslama davet eden hizmetkar alıp çalıştırarak küfrüne razı olan müslüman Amra ne lazım olur? El-cevab: Tecdid-i iman ve nikah. *Fetava-yı Ali Efendi*

The question of *irtidad*, apostasy occupies a very crucial place in the Islamic legal literature as seen in the fatwas above. The legal niceties of the issue of conversion to Islam and from Islam, when coupled with the idiosyncrasy of the issue in the Ottoman context complicate the issue further. There are many fatwas in these five compilations that provide legal solutions to the situation of "legal twilight" that the apostates are in.[261] However before focusing on these more formalistic fatwas that regulated the legal status of apostasy in the Ottoman Empire, we shall heed to the fatwas that shed light on the social implications of shifts in one's piety. As Selim Deringil states in his article on the late Ottoman policies of conversion, to convert also means to change worlds, and the Ottoman fatwa office regulated not only the legal consequences of conversion and apostasy but also "that grey area, the small insults of everyday life" [262] that one's religious conviction brought along. The fatwas above show that the question of conversion to or from Islam was not simply a matter of converting or not. As seen in these fatwas, mockingly revoking the past identities of the converts, suspicions expressed about the validity of one's conversion which seems to have been made to sustain his livelihood, denying one's conversion to Islam or enduring the apostasy of a person frequently became the subjects of fatwas. Şeyhülislam Abdurrahim Efendi, for instance, ruled out in another fatwa that two men Bekr and Bişr who had previously witnessed the conversion of a female *zımmi* into Islam, committed blasphemy and needed to reaffirm their faith for they remained reticent about their testaments, thus endured the woman's sin when she later apostated.[263] These cases problematized in the *şeyhülislam* fatwas impugn the severely ostracized portrait of apostasy drawn by Islamic legal theory and purport that apostates or false converts were not total outsiders to the community they lived in. Besides, the Ottomans seem to have thought that the acts and beliefs that resulted in the status of apostasy needed not only condemnation and punishment but also a certain degree of legal regulation. Otherwise very complex cases like the statuses of the grandson and the grand grandson of a convert (to Islam) whose son had apostatized (to Christianity) when he reached

[261] The term belongs to Colin Imber, 1997.

[262] Deringil, p. 547

[263] Hind şeref-i islamla müşerref olub badehu islamı inkar edüb mürtedd oldukda islamına şahidler olan Bekr ve Beşr şehadet kendilerine muhasıre iken şehadet itmeyüb ketm iyleseler Bekr ve Beşre ne lazım olur? El-cevab: Küfrü istihsan tariki ile ketm-i şehadet iylediler ise tecdid-i iman ve nikah lazım olur. *Fetava-yı Abdurrahim*

maturity would not have been seriously questioned.[264] However this statement does not necessarily mean that *mürtedd*s escaped the Ottoman conceptualization of heresy. On the contrary in the following pages it will become apparent that one of the mechanisms by which the Ottoman jurists labelled Shiite heresy was the concept of *irtidad*. These fatwas above merely serve as a purposeful introduction to the question of *irtidad* lest the precision of the Ottoman legal language blinds us to the complexities of everyday life.

The Sufi way

> Is the profligant act that is called by the contemporary Sufis as *devran* religiously permissible? Answer: If it is rhytmic turning (*raks*) it is illicit, the *fakih*s have not agreed upon any solution regarding this issue, should that mischevious act not be analogous to mentioning the name of God, even the ones who performed it could not claim that it was permissible so when even by analogy to mentioning the name of God, turpitude increases, why do they consider it permissible.[265]

> Are the acts, regular movements and the postures of the Sufis which is known as devran and the dancers (*rakkas*) and mevlevis who performs the turning called *sema* legally permissible? Answer: It is never permissible, it has many harms. The Sultan banned these perverse conventions and quashes these nefarious acts and gathers the holy benefactions and gratifications. The standing of the Sufis while mentioning the name of God causes sinful postures and turpitude and from the places they sit on they even the mevlevis should renounce the whirlings called *sema* and quit listening to the *mevlevi* [musical] instruments *def*, *kudum* and *ney*, instead they should maturely

[264] Zeyd-i zımmi şeref-i islamla müşerref oldukda sekiz yaşında olan oğlı Amr tabiyet ile müslim olub badehu mürtedd baliğ olub mürtedd oldığı halde tezevvüc idüb evladı olub evladının dahi evladı olsa hala Amr'ın islamına hüküm olunub islama geldikde irtidadı halinde tezevvüc itdiği ehlinden evlad kibarının ve evlad-ı evladının dahi İslamına hüküm olunur mu? El-cevab: Olunmaz. *Fetava-yı Abdurrahim*

[265] Zamane mutassavıfasının hareket-i daire namıyla itdikleri fi'ili şeni' helal olur mu? El-cevab: Raks olmağla haramdır fukehadan halline zahib yokdur ol fi'il şeni' zikrü'l-allaha mukarin olmasa işleyenler dahi helal deyümezler böyle olucak zikrü'l-allaha mukarenetle şena'at dahi ziyade olurken niçün helaldir deyu bilurler. *Fetava-yı Abdurrahim*

respect the purified ethics of the Sharia and the transmission of the prophetic hadiths and similar sermons and comments.[266]

Madeline Zilfi in her study of the post-sixteenth century Ottoman *ilmiye* environment makes an aphoristic statement summarizing the current dynamics of the period: "If the sacred law was a doctrinal heartland for Sunni Islam, Sufism was its frontier". Such an assertion will inevitably manipulate one's expectations about the legal problematization of heresy in the Ottoman Empire. Moreover in the aftermath of an era which accommodated very serious controversies germane to the rightful practices of Islam, one can easily expect dozens of fatwas on the issue of Sufis and their religious conducts. Intriguingly, the two fatwas above issued by Şeyhülislam Abdurrahim Efendi are the only ones in these five fatwa compilations pertaining to the Sufis. Such an absence in the compilations might be taken as denoting something either about the historical context and the plight of Islamic heterodoxy in the post-Kadızadeli period, or about the very nature of the compilations which left out the fatwas issued on similar controversies such the dethronement of the Ottoman sultans. When we look at the fatwa corpus of the classical period, the fatwas of all these earlier *şeyhülislam*s had one point in common, that is the deed (*niyet*) behind these doubtful performances. The common argument had been that if the aforementioned Sufi practices like *raks* and *sema* were carried out only for devout aims to recollect the name of God, which Abdurrahim Efendi puts as "*zikrü'l-allaha mukarin*", that is contiguous to such a recollection; then the *tarik-i tasavvuf*, the Sufi way was licit. This sense of contingency rampant in the fatwas of Ebu-Su'ud and Ibn-i Kemal seems to have been problematized and even protested in the first fatwa of Abdurrahim Efendi where he asserts that if raks

[266] Sofyanın if'al ve hareket-i muntazame-i mevzua ve evza'-i mütenasibe-i mevzua ile devran namında olan rakkasları ve mevlevileri sema namında olan dönmeleri ve def ve kudum ve ney çalmalarına müsağ-ı şeri' var mıdır? El-cevab: Asla yokdur mefasidi gayet çokdur mahiyü'l-münkir ve'l-haram hami-yi beyzetü'l-islam beyzü'l-samsam padişah sahibü'l-ham huldet-i hilafet ila sa'tü'l-kıyam hazretleri bu mukavele-i if'al-i şen'iyi men' ve if'al-i faziyeyi kam' ile bedayi' meberrat ve revay' mesubati cem' buyururlar taife-i sofyanun zikrü'l-allah iderlerken kıyamları evza'-i kabiha ve şeni'eye mü'eddi olmağla kıyamları dahi olmayub oturdukları yerden kan ala ru'ushümü'l tayr-ı salimin an cem'ü'l-ısr ve'l zayr-ı adab-ı şeriat-ı şerifeyi kemal ri'ayet ile zikrullah idüb taifeyi mevleviye dahi sema namında olan devranların alat-ı melahiden olan def ve kudum ve ney isti'malların bilkülliyen terk idüb adab-ı şeriat-i mutahereyi kemal-i riayet ile mesnevi havanın şurutuyla hadis-i şerifin naklin ve sair vaaz ve tezkireyn isti'ma itmek gerekdir. *Fetava-yı Abdurrahim*

did not embrace the mentioning of God's name, even the ones who practiced it could not claim that it was licit; and then expresses his dismay over why it (*raks*) was still known as *helal*. Here, Abdurrahim struggles to nullify the basic argument sanctioning the devran which averred that it actually entailed a divine exercise, *zikrü'l-allah*, so it was not illicit where this deed was present. The dearth of any jurisprudential agreement on this issue as also noted by Abdurrahim must have caused him to issue such critical opinions. The second fatwa of Abdurrahim Efendi is even more direct in refuting the Sufi *devran* and the Mevlevi *sema*. The fatwa urges the abandonment of not only the ritual practices but also the accompanying musical instruments and strongly advocates the substitution of these malicious routines by the recital of the orthodox sources of the Sharia. In both fatwas Abdurrahim chose to employ secular arguments at the expense of the shar'i discourse that the fiqh rationale promoted. The immediate reasoning in the second fatwa which is based on the imperial prohibition of the *devran* by the Sultan appears completely at odds with the rhetorical style of Ibn-i Kemal who discussed not only the acceptability of such practices but also the monist philosophy of Sufism by reference to the Shar'i standards of Islamic piety. The Sufis in this case however, were pilloried not by means of Islamic vocabulary of heresy, including terms like *zındık*, *ilhad* or *mürtedd*; but instead by adjectives like *fesad*, *şen'i* and *haram* implying worldly misbehaviours rather than dogmatic errors. In the face of the lack of any legal discussion on the religious dogmas in these fatwas, situating the Sufi deviance into a historical context may help us to better to understand Abdurrahim's replies. Moreover the contextualization of this legal material concerning the Sufi practices of the early eighteenth century, will prevent us to make easy conclusions about Abdurrahim's fatwas and might trigger doubts over the apparently intransigent attitude articulated in his answers.

The apparent contradiction between the religion of the Sufis and that of the vaizans in the last fatwa of Abdurrahim Efendi in fact recapitulates the dynamics of the Ottoman seventeenth and eighteenth centuries. The Kadızadeli epoch between 1630 and 1680 covering three successive phases lead by the popular preachers of the time, Kadızade Mehmed Efendi of Balıkesir (d.1635), Üstüvani Mehmed Efendi of Damascus (d.1661) and Vani Mehmed Efendi (d.1685) can be best described in R.I. Moore's words as a "campaign of moral repression directed not only against recognized forms of moral laxity, like sexual pleasure or conspicuous consumption, but also

against stereotypical public enemies who may serve as the focus of rhetoric and the object of attack".[267] The Sufi tariqats were the stereotypical public enemies of the Kadızadelis who condemned their chantings, music, dancing, whirling and similar rhytmic movements during their ceremonies along with many other sinful innovations (*bid'a*) such as coffee, tobacco; grasping hands and bowing down before social superiors; pilgrimages to the tombs of alleged saints; invocations of blessings upon the Prophet and his companions upon each mention of their names; collective supererogatory prayers and rituals of post-patriarchal origins; and vilification of the Umayyad Caliph Yazid, who Shiite Islam holds responsible for the killing of Husayn b. Ali.[268] The preachings of the Kadızadeli vaizans in the most popular mosques of Istanbul has been read as the uncoiling of not only the popular tension in the city but also the increasing professional ossification taking place in the Ottoman *ulema* posts which were only open for the *mollazade*s.[269] The fatwas of the Ottoman *şeyhülislam*s of this period played a crucial role in the "inquisitional activism"[270] of the Kadızadelis and gave the Kadızadeli efforts to extirpate heresy some very critical twists. The Kadızadelis leaders managed to manipulate the *meşihat makamı* at certain critical junctures and obtained from the *şeyhülislam*s fatwas endorsing their point of view. For instance Şeyhülislam Bahai Mehmed Efendi (d. 1654) who was asked to issue a fatwa regarding the Sufi music and rhythmic turning, in spite of not being strictly opposed to the Sufis or their rituals, issued a pro-Kadızadeli fatwa which was used to bully many tariqat members and sheiks. However when reminded of his long familial ties with the Sufi environment, Bahai Efendi offset his own fatwa by issuing another one this time against the Kadızadeli preachers who terrorized the Sufis.[271] The first anti-Sufi fatwa issued by Şeyhülislam Bahai Efendi in the first half of the seventeenth century must have been identical with the fatwas above in terms of the message that it conveyed. The politicized nature of the conflict resulting in the doctrinal lacuna in the seventeenth century charges of heresy seems to have been resuscitated in the fatwas Abdurrahim gave in 1716 during his seventeen month tenure. Madeline Zilfi's interpretation of the attitude of the *şeyhülislam*s towards the religious rectitude of the Sufis might help us in

[267] Moore, p. 135
[268] Madeline Zilfi, "The Qadizadelis: Discordant Revivalism in Seventeenth-Century Istanbul", *Journal of Near Eastern Studies,* 45 (1986), p. 254, 255
[269] Ibid.
[270] Ibid., p. 269
[271] Ibid., p. 259

understanding the structure of Abdurrahim's fatwas above. Zilfi repeats the fact that the legal impact of the fatwa is always contingent on the constabulatory forces - the Grand Vizier, chief justices, judges and the like - behind its implementation.[272] The main implication of Zilfi's arguments is that as long as Sufism remained incorporated into the Ottoman *nizam-ı alem*, albeit with varying doses, the canonical bases for such critical opinions will remain merely at the rhetorical level. Thus, it can be concluded that as Ibn-i Kemal or Ebu-Su'ud temporized their verdicts by dwelling excessively on the presence of good deeds in the actions of the Sufis, our eighteenth century figure Abdurrahim might have chosen to treat the issue almost as a mundane problem, turning his fatwa into a politicized one with the touch of the Sultanic imperative that "ordered the collection of all the benefactions and gratifications". The austerity of the legal discourses in the fatwas above might be signifying no more than groundless decibels, when, as Zilfi argues, the *şeyhülislam*s as one of the key stakeholders in the Ottoman state pursued many tactics, including their fatwas, to temper the existing antagonisms between these two camps. Again in Zilfi's words "the demand for the living authority's opinion reflected the need to reaffirm legal norms in the face of popular religious forms which, though condemned time and again, survived and even thrived",[273] yet the *şeyhülislam* fatwas should not be read too literally mainly due to the equivocal nature of the office of *meşihat*. After all as Ahmet Yaşar Ocak reminds us it was the epitome of Sunni Ottoman law, Ebu Su'ud who, in the case of the infamous Gülşeni tariqats, opined that "*...Şeyh İbrahimlüdür dimekle anlara dahl ve taaruz caiz değildir*".[274]

The Acem Rafizis

The concept of heretic as employed as a political instrument reveals itself the most in the fatwas on the *Acem Rafizi*s. It seems that Şeyhülislam Yenişehirli Abdullah's fatwa office issued numerous fatwas on this question since the nineteenth century collection of his fatwa compilation has 36 of fatwas on the *Acem Rafizi*s. The fatwa collections of Feyzullah Efendi and Dürrizade abound with similar fatwas too, whereas Çatalcalı Ali Efendi and Abdurahim appear to have been reticent on the Safavid Shiites, with the exception of few fatwas alluding to the Shiites as a pejorative

[272] Zilfi, 1988, p. 210
[273] Zilfi, 1986, p. 260
[274] Ocak, p. 316

term. Except for Yenişehirli Abdullah Efendi's collection where the fatwas on the heretical acts of the *Acem Rafizi*s are collected under a separate subsection ("fasl fi ahkam al rafızi ve diyarhüm", the decrees on the *Rafizi*s and their lands), this issue belongs to the *kitab-ı siyar* category and treated in the subsection on the apostates (*mürteddin*). While this location notifies that the main legal referance according to which the heretical status of the Safavid Shiites was gauged, has become *irtidad*, it also means that the legal context of the discussion of the Safavi heretics remained the same in the post-sixteenth century Ottoman setting- jihad on the enemy land. It is obvious that Abdullah Efendi inherited the obdurate stance that the former *şeyhülislam*s had towards the Safavid heresy since we know that he issued a fatwa which denied the idea promoted by the Iranian *ulema* that two imams, that is the Ottoman Sultan and its Safavid counterpart could coexist and sent it to Iran by an envoy.[275]

The seventeenth and eighteenth century fatwas dealing with the Iranian Shiites have rather an unchanging structure in contrast with the sixteenth century fatwas that were rife with many open-ended legal discussions. The *Behçetü'l Feteva* has many such fatwas facilitating the detection of how a typical Ottoman fatwa on the Shiite heresy would look like. The accusations of defaming Ebu Bekir, Ömer and Osman, and disparaging the sanctity of the prophets except for Ali; accusing Ayşe for fornication; claiming that the execution of the Sunni population is licit and many such "*küfrü mucib itikad-ı ile batıla*", that is habits denoting infidelity, are usually followed by the real case that has become the subject of the fatwa, usually a fight between these infidels who attacked the *darü'l-islam* - the Ottoman lands - and the governor appointed by the Sultan to quash them. The rest of the fatwas do not directly concern our discussion of the legal problematization of heresy since, though it is at this stage that the main questions posed to the *şeyhülislam*s appear, these questions are mainly procedural in nature, interrogating about whether the wives and daughters of the *Rafizi*s could be married and their siblings enslaved; whether the Muslims fighting against these communities could be accorded the veteran (*gazi*) and martyr (*şehid*) status or what should be done with the property that was left aside after these infidels were conquered and killed by the Ottoman forces. When these politicized definitions of the cases are left out of consideration, it is the description of the heretical acts of the *Acem Rafizi*s which can give us some hints about the contemporary conceptualization of the Safavid

[275] M. Akgündüz, p. 64

Shiites as heretics rather than as enemies. For instance along with the aforementioned standard accusations imputed on the Shiites, one particular fatwa of Yenişehirli Abdullah Efendi speaks about "their seditious opinions implying *zenadika*; attributing the Quranic verses meanings other than those given by rules of Arabic; the fatwas issued by their perverted *ulema* who sanctioned the execution of and permitted to have sexual intercourse with the members of the *ehl-i sünnet* whom they enslaved; and their rulers' announcing such deviant acts as just". [276] Another *mes'ele* inquires the verdict that should be given in the case of an *Acem* mufti who issued fatwas that ruled out all the measures and actions that were sanctioned by the *şeyhülislam* -"*verilen fetva-yı şerifenin mantuku üzere*" and were carried out by the Ottomans against the *Rafizi*s.[277] These fatwas besides reiterating the conceptualization of the *Rafizi*s as apostates and their lands as the enemy land manifested the existence of another legal world, one which is created not only by ordinary heretics but also by deviant fatwas and perverted *ulema*.

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[276] Şah İsmail evladının taht hükmünde olan diyar-ı Acem'de mütemekkin revafız Allahu Teala Ebubekr ve Ömer ve Osman rıdvan allahu teala aleyhüm hulefa-i ala'l-hakk olduklarını ikrar edeni ikfar idüb ve hazret-i Ali'den ma'da ekser ashab rıdvan allahu teala aleyhüm ecma'in hazeratına ve Ayşe Sıdıka radi allahu Teala anha hazretlerine mürtedlerdir ve münafıklardır deyu alenen sebb ve la'anı ve Ayşe Sıdıka radiallahu Teala anha hazretlerine zina ile kazfı kendülere ibadet bilüb ve Kur'an- azimü'ş-şandan nice ayat-ı kerimeye kavaid-i Arabiyyeden haric ve de'b-i zenadika üzere re'y-i fasidleriyle manalar virub kefere ve münafıklar haklarında olan ayat-ı Kur'aniyyeti ashab-ı kiram-ı mezkur haklarındadır deyub ehl-i sünnetden olan müslimin katilleri mübah ve sairlerinden esir etdiklerinin bila nikah ve vatilerini helal bilüb ulema-yı dallesi bu vech üzere fetvalar virüb re'isleri olan şah ve sa'ir hükkam-ı gümrahları ve sa'ir samileri bu akval-ı kaside ve ef'al-i fasideyi hakk-ı itikad eyleseler bu makule akval ve ef'ali hakk-ı itikad eden mula'inin üzerlerine ve kendüleri temekkün erdikleri diyarları dar-ı harb olur mu? El-cevab: Diyarları dar-ı harbdir ahkam-ı mürteddin icra olunub ve üzerlerine ahkam-ı mürteddin icra olunur. *Behçetü'l-fetava*

[277] Diyarları dar-ı harb ve ahalisi mürteddin hükmünde olan revafız-ı acem üzerine seyyidü'l-selatin Sultanü'l-Müslimin Padişahımız hazretlerinin taraf-ı bahirü'ş-şereflerinden cihad içün ta'yin olunan asakir-i İslam o diyar üzerine hücum edip mukaddema verilen fetvay-ı şerifenin mantuku üzere revafız-ı mezkurenin ricallerini katl ve nisa ve sıbyanlarını seby ve istirkak ve mallarını ganimet idüb dar-ı İslam'a gelenleri malik olan kimseler mülk yemin ile vatı etdiklerinde müslüm olan Zeyd revafız-ı mezkurenin üzerlerine cihad ve ricallerini katl haramdır ve nisa ve sıbyanlarını seby ve istirkak ve mallarını ganimet meşru değildir ve nisalarını ba'de'l-İslam vatı zinadır deyüb bu vech üzere itikad eylese Zeyd'e ne lazım olur? El-cevab: Tecdid-i iman ve nikah musırr olursa katl olunur. *Behçetü'l-fetava*

> A Kurdish community inhabiting within the boundaries of the Ottoman land, prevaricates, commits some defamatory acts and is used to committing similar acts peculiar to the practices of the *Acem Rafizi*s, which are acts of infidelity. Their women are prone to such fallacious habits, they capture and enslave the dependants of many Muslims and give them to the *Acem Rafizi*s and are habitually involved in the murder of civilians and usurp their goods, yet they do not have a political overlord like the *Acem Rafizi*s did, and their settlement is surrounded by Muslim territory where they cannot perform and publicize infidel acts. Then is their territory considered as infidel land and is the statute of apostate imputed on these aforementioned people? Answer: Their land is not dar al harb but the statute of apostate is imputed on the aforementioned community.[278]

This fatwa issued by Damadzade Ebu el Hayr Efendi, albeit not directly on the favourite topic of the Ottoman heresiography – the *Acem Rafizi*s, better fashions out how the stigma of the *Acem Rafizi* amounted to heretic status even after the seventeenth century. The wars against the Safavids continued until the eighteenth century, though not with the same ideological vigour on account of the transformation of the Safavid monarchy into a stabilized state under Shah Abbas who marginalized the *Kızılbaş* tribes under the aegis of a growing central bureaucracy in Isfahan.[279] The successors of the early Ottoman *şeyhülislam*s like Şeyhülislam Kadızade Ahmed Şemseddin of the sixteenth century who emulated the opinion of Ebu Su'ud,[280] kept issuing such propaganda fatwas against the Safavids. Some researches argue that the main legal tenet the earlier *şeyhülislam* fatwas had created did not undergo major changes throughout these centuries, and that the discussions and definitions that hovered on who is a *zındık*, who is a *mülhid* became stabilized around the legal diognosis of apostasy, *irtidad* which does not say much on the socio-religious deviations of these heretics as

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[278] Hudud-u memleket-i osmaniyye dahilinde ekraddan bir taife afik-i sadika ve sebb sadik ve sebb-i şeyhin ve bazı ashab idub ve bunu emsali küfr-i mucib-i revafiz-i acem itikad ile mu'tekad olub nisvanları zikr olunan itikadat-i batıla ile mu'tekadat olub ve ehl-i islamdan nice kimesnelerin iyallerini ahz ve esir olmak üzere revafiz-i aceme virub katl-i nüfus ve nehb-i emval-i müslimin adet-i müstemirreleri olub lakin taife-i acem gibi sahib-i men' olmayub dar ittihaz itdikleri mevzinin etrafı mevzi'-yi islam olmağla ol mevzi'de ahkam-i küfri sebilü'l-iştihar icra idemeseler mevzi'-yi mezbur diyar-i harb olmuş olur mu ve mezburların üzerine ahkam-i mürteddin icra olunur mu? El-cevab: Diyarları darü'l-harb olmaz lakin taife-i mezbure üzerlerine ahkam-i mürteddin icra olunur. *Neticetü'l-fetava (abu el hayr)*

[279] Suraiya Faroqhi, "Seeking Wisdom in China", in *Coping with the state,* p. 115

[280] Bilgin, p. 129

much as it does on their political status as the inhabitants of an enemy land. In general it can be concluded that in the fatwas about the *Acem Rafizi*s the cultural fabric of the Shiite heresy is concealed by a formulaic legal discourse which aimed at dichotomizing the world - the *darü'l-islam* of the Ottomans versus the *darü'l-harb* of the infidels. Thus, except for the defamation cases we have discussed earlier where "the *Kızılbaş* label slipped into a popular repertoire of indiscriminate slander";[281] the legal implications of a socio-cultural allegiance to a heretical community are rarely discussed in these five compilations.

The impression the fatwas have hitherto given may be that the discussion of *zendeka*, *ilhad* and *irtidad* within the context of heresy is well-nigh redundant since these concepts were often used in a legalistic manner curtailing the social function (at the expense of the political ones) that the *şeyhülislam* fatwas might have served in dealing with the extreme forms of religiously deviant behaviour. Two fatwas of Yenişehirli Abdullah Efendi located in his compilation under the "*bab-ı ahkamü'l-mürteddin ve'l-zendeka*" might amend this impression for they openly reproach two communities -one from Baghdad the other from Albania- for their profane practices and discuss their legal status.[282] The first community from Baghdad and its environs

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[281] Peirce, p. 268

[282] Bağdat havalisinde olan tavaifeden bir taife İslam iddiasında olub lakin hürmeti kat'iyyü'l-subut olan nice mahremanı ihlal ve güneşe tapub ve iblis-i laini zikr bi'l-hayr ile ta'zim ve reisler ile ita'at-i emr-i veliyyü'l-emrden huruc ve istila ve temekkün ve tahassun itdikleri cebelde ahkam-ı küfrü icar idüb ol mevza' şer'an dar-ı harb olmakla Bağdad valisi asker ile mukteza-yı şer'-i şerif üzere sadır olan emr-i ali mucibince üzerlerine sefer ve muharebe idüb taife-i mezburenin ricali hakkında amma's-seyf ve amma'l-İslam manasını icra ve nisvan ve zerarilerini seby ve istirkak eylese ol nisvana malik olanlar mezburları istihdam ve istifraş etmeleri meşru mudur? El-cevab: Eğer nisvanı irtidaddan rücuyla kabul-ı İslam ederler ise mülk yemin ile vatileri helaldir ba'de'z-zuhur kabul-ı İslam ederlerse rıkkdan halaslarına sebeb olmaz eğer kabul etmezler ise ne mülk yemin ile ne mülk nikahla vati etmek helal olmaz bi gayr-i'l-katl habs ve darbla İslama cebr olunurlar eğer malikleri nisvanın hizmetlerine muhtaz olurlar ise İslam'a cebr ederk istihdam ederler. *Behçetü'l-fetava*
Arnavudluk'da vaki bir nahiyenin ahalileri isimlerini ehl-i İslam isimleriyle tesmiye idüb müslüman ile görüşdüklerinde biz kafir değiliz müslümanız deyu İslam iddasında olurlar iken karyelerinde istihlalen hınzır eti yiyüb ve kenise papaslar ile kefere gibi ibadet ve beyne'n-nesari mutebere olan eyyam-ı ma'rufelerinde ayin-i küfri icra eder olmalarıyla Sultan-ı İslam hallede hilafetehu ila yevmi'l-kıyam hazretleri velat enamdan Zeyd'i asker-i İslam ile üzerlerine ta'yin buyursalar ahali-i mezbure ile muharebe ve katl ve esir eylediği rical ve nisvanların bey' ve şiraları hakkında hükm-i şeriat seyyidü'l-enam aleyhi's-

claimed to be Muslims, yet infringed many sacred things, worshipped the Sun instead, and venerated the devil. When this community breached the Sultanic order and established these infidel practices wherever they occupied and settled, the governor of Baghdad seized upon them, executed their men and enslaved their women and siblings. The question asked to the *şeyhülislam* is whether the locals could accommodate and marry these captures. The *mes'ele* combined two separate charges, heretical conduct and rebellion. The latter accusation is more explicitly stated in the question where the fatwa clerks established that according to the Sharia the district these people settled has been accorded the *darü'l-harb* status, while the paganistic beliefs of the Arab tribes are not clearly specified by a shar'i label in the question. Another fatwa deals with a clearer concept- *nifak* meaning secret adherence to an infidel religion. In this case the residents of a region in Albania adopted Muslim names and when they meet Muslims they claimed that they were not infidels and professed that they were Muslims, but in their villages they kept on eating pork, worshipping in their church with priests and performing the infidel rituals in their sacred days. The problem is similarly posed as the legality of accommodating and employing the captures when the Ottoman forces fought and defeated them.

II.3.3. Conclusion

These fatwas which can give us an idea about the real content of religiously deviant acts that the Ottoman jurists regarded as heresy seldom arise in the

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salatu's-selamındır. El-cevab: Taife-yi mezbure eğer oldukları yere istila ve tahassun ve itaat veliyyü'l-umeradan bi'l-külliye huruc etdiler ise ricahi hususunda amma's-seyf ve amma'l-İslam manası icra olunur istirkak olunmazlar malları gazat-ı müslimine kısmet olunur. Ve nisvan ve zerarisi seby ve istirkak olunurlar nisvanı kanun-i İslam ederse mülk yemin ile vatileri helaldir ama ba'de'z-zuhur kabul-ı İslamları rıkkdan halaslarına sebeb olmaz bi gayr'i-katl habs ve darbla İslam'a geliniz deyu nisvan ve zerariye cebr ederk istihdam ederler eğer taife-i mezbure istila ve tahassün etmüyüb itaat-ı veliyyü'l-emrden huruc etmiş değiller ise ahz olunub ricali hakkında amma's-seyf ve amma'l-İslam hükmü icra olunur lakin nisvan ve zerarisi katl ve seby olunmaz habs ve darb ile İslam'a cebr olunur. *Behçetü'l-fetava*

compilations. The perusal of these different compilations has initially given us some very routine definitions of the heresy in the replies. Then, as in the case of the Sufis, where religiously deviants acts and behaviours are depicted in detail in the questions, and legal attitudes stated patently in the answers, the historical context that the *şeyhülislam*s functioned in has come as a caveat for not reading the *şeyhülislam* fatwas too literally. Finally, we have been confronted with a political discourse smearing behind the legal surface which automatically stamped the etiquette of heretic to the inhabitants of a rival territory thus transforming the legal content of these accusations from the realm of religious crimes and punishments to that of international law and diplomacy. However, these qualifications do not render the examination of heresy and its manifestations in the fatwa compilations a futile attempt. The evolution of the Ottoman legal terminology and the stability it acquired in time; the flexible use of the Islamic legal lexicon by the Ottoman jurists, the historical details that can be identified and extracted from these cases all convey the legal processes behind the attribution of the stigma of heresy to certain communities within or outside the Ottoman society. Moreover, the Ottoman fatwas testify to the clothes, names, words, dances, and religious practices of the Ottomans which did not fit into the Islamic formulations of heresy, yet became the subjects of moral and religious anxieties that were brought before one of the mechanisms of Ottoman law, the *meşihat* office.

CONCLUSION: THE OTTOMAN INDIVIDUAL BEFORE THE LAW

The main concern of this thesis has been to introduce a thematic perspective into one of the primary devices of Ottoman law, the fatwa and the fatwa compilations. The aim in propounding such an analysis is to raise some doubts over one very common characterization pattern used to define first the fatwa as merely a consultation device for practitioners of law and then the compilations as pedagogic guides for the *kaza* and *ifta* novices in the Ottoman Empire. It is no doubt that these depictions carry a considerable degree of historical accuracy and provide a significant insight to the history of Ottoman law. However the standard perspective formed on the basis of these qualities of the Ottoman fatwa needs to be enhanced, if not complemented by novel questions. The primary reason of implanting a thematic framework -deviance- in the analysis of the fatwa collections is to unearth the instances where the legal opinions of the Ottoman *fetvahane* carried normative values. Hence my priority has become the examination of the fatwas on various types of social misconduct including crimes, minor transgressions or merely inappropriate behaviours, where the fatwa office might have served as a moral or even a legal authority and done something about the questions brought before the fatwa clerks in order to parry the socio-religious digressions that were recapped in these questions. It is true that the majority of fatwas, particularly in compilations, aimed at proclaiming the legal routines and principles imposed by Ottoman law on a variety of social issues from transactions to marriage. Yet apart from the daily affairs of the flawless Ottomans, the criminals, the recidivists, and the suspects living in the Ottoman society frequently became the subjects of the *şeyhülislam* fatwas. These fatwas not only inform us about these deviant people and what they did but also convey different legal tools employed in diagnosing these digressive cases along with the legal rationale used to reprimand and stave them off. In

this respect, the big question waiting in the end of our analysis turns out to be the function of the office of *meşihat* and the fatwas it issued in the eyes of the Ottoman populace. If the *şeyhülislam* fatwas were really non-binding, what were the Ottomans who expressed their anxieties and complaints about such malevolencies doing in the *fetvahane*? This chapter, in addition to summing up the main tenets of our study, will also try to induce some discussion on this question.

The analysis of deviance in the fatwa collections has not only treated this concept as a concentric zone constituted by varying levels of criminal activity, but also broken the discussion into the analysis of the deviancies of secular nature followed by the perusal of fatwas on the religiously formulated crimes and misconducts. In both ways, the subjects of the Ottoman fatwas were the Ottoman women as either victims or as offenders; and the Ottoman men appearing in different denominational, ethnic and social guises -as an ignorant layman; a member of the *ulema*; a religious functionary of lesser eminence like a *hoca* and an *imam*; a qadi, *naib*, or a mufti; a *vali*; a member of the *ehl-i örf*; a criminal. The Ottoman individuals who were deemed outside the text book formulation of Islam like the *zımmi*s; the malpractising Muslims like the Sufis; and the archenemy -the Safavids- complement this portrait as well. The solecisms they uttered and other offences they committed implying disbelief, impiety and even heresy were brought before the *şeyhülislam* because they were considered as defying the social and religious decorum of the Ottoman society. Filled with similar cases the Ottoman fatwa collections elucidate "different orders of moral action"[283] prevalent in the post-sixteenth century Ottoman society. Another point is that while dealing with the manifestations of these different versions of socio-religious deviance, this thesis has repeatedly emphasized the cases that did not match with the severely criminalized formulations of deviance offered by religious or secular law. Both the *ta'zir* and the *iman* sections in the fatwa collections hosted such quasi-crimes, in other words the acts that existed on the borderline of deviance and non-deviance, suggesting that the Ottoman legal mentality was sensitive to and preserved room for forms of misbehaviour which cannot be automatically judged against the Shar'i ordering of socio-religious offences which the legal genre of fatwa claimed to endorse. The classifications imposed by social hierarchies inherent in the Ottoman society (*alim* versus *cahil*), and distinctions emanating from the Ottoman perception of the prevailing

[283] Newman, p. 285

world order (the Safavid *Rafizi*s versus the *ehl-i Sünnet*) can always be detected in the fatwas and they had created outsiders whose extralegal statuses were approbated by the *şeyhülislam* fatwas.

On the other hand the attention paid to the content of the fatwa collections has been reserved also for their formal structure disclosing many aspects about Ottoman law and its silhouette. The terms used in the fatwas, like *zendeka, ilhad, küfr, irtidad, nifak, dallalet, fırak-ı dalle, lehv ü lu'b*,[284] *fısk u fücur, gamz,*[285] *sahirlik,*[286] *mürdar*,[287] *dehri,* and *revafiz* denoted various manifestations of deviance and tallied with its multifarious nature. In the case of the Ottoman fatwas, it is mainly through the *mes'ele* section rather than the one-sentence legal solution proposed in the *cevab* that we are able to comprehend the legal construction of deviancy. The degree of legal stylization achieved by the fatwa personnel in their formulation of the questions is remarkably high. Bearing in mind the fact that these collections were in circulation until the 1900s, it can be concluded that the *ifta* office had acquired an unprecedented stability as a source of law in the Ottoman Empire and the legal nomenclature of the seventeenth century was continuously being reproduced in the following periods. However both the legal categories employed in the fatwa collections and the legal jargon of the fatwa clerks who formulated the questions brought to the *fetvahane* do not allow the same degree of access to the Ottoman colloquial when compared with other genres of Ottoman diplomatics.[288] In spite of this standardisation, we have seen that the fatwas issued in the late seventeenth and eighteenth centuries and their compilations arranged

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[284] *Lehv ü lu'b* means amusement and diversion.

[285] *Gamz* implies doing acts of nifak.

[286] *Sahirlik* denotes magic.

[287] *Mürdar* means someone who is canonically unclean.

[288] Dror Ze'evi, in his "The Use of Ottoman Sharia Court Records as a Source for Middle Eastern Social History: a Reappraisal" used the observations he made in the contemporary shar'iyya courts in Palestine to reconstruct the colloquial language the plaintiffs and the defendants might have used in past in the qadi court rooms. Similarly in order to envision the questions posed by the ordinary Ottomans before they were reformulated by the fatwa clerks, I used the records of the contemporary Diyanet İşleri Başkanlığı. The following question is a typical petition format: "Pek kıymetli diyanet işleri reisi kusura bakmayın isminizi bilmediğim için çok müteessirim siz benim büyüğümsünüz kabahat küçüğün af ise büyüğün şanından ben kendim için söylüyorum diyanet işleri reisinin ismini bilmiyorum benim için en utanılacak şey budur daha bilmediğim neler var saymakla bitmez …" and the questioner goes on asking about the acceptability of interest taking in monetary transactions.

in the following period are very different not only from their sixteenth century predecessors but also from each other as for instance the *Fetava-yı Abdurrahim* strikes us with its affluent content and lavish organization. Behind the legal rhetoric of the fatwas there lied the sources of law with respect to which the Ottoman legal culture reproduced itself. While in most of the fatwas dealing with criminal cases, the well-known duality of the Sharia and secular origins of *kanun* are evident; in the fatwas we have seen on the crimes of religion, the Islamic jargon seemed to have lost its legal precision and served as terminological cover on top of the imperial conceptualization of heresy as primarily a political crime. However we shall not push this assertion further so as to make generalizations on the legal formulation of heresy in the post-classical sources of Ottoman law since the fatwa collections can reconstruct the Ottoman legal world only partially.

In the face of all these findings, the last critical question that I aim to pose in this thesis concerns the function of the *şeyhülislam* fatwas. In the chapter on criminalized forms of deviant behaviour the verdicts of the fatwas have been examined as part of the royal discourses of justice. Leslie Peirce on her account of the formation of the Ottoman legal system in sixteenth century Aintab has stated that by the sixteenth century, the right and duty of sultans to keep order by punishing crime and civil disorder had already been well elaborated in theory and practise.[289] The imperial prerogative of *siyaset* was assigned to the sovereign for him to inflict severe corporal or capital punishment on "rebels, enemies, apostates and schismatics, and others who, though they might merit a lesser punishment under Sharia, were constructed as threatening the commonwealth".[290] In spite of the absolute nature of the sultanic capacity of *siyaset*, this was a legal right which was not canonical in essence and had to be bolstered by ancillary legal mechanisms. At this juncture the function of the *şeyhülislam* fatwas comes into the spotlight. It has been argued that acquiring a fatwa from the *şeyhülislam* had become a strong legal tradition in executions carried out by *siyaset*.[291] In the fatwa manuals we have scanned, it is in the sections on the highway brigands (*kat-i tarik*) who had obviously imperilled the public order that the legitimizing function of the fatwas can be observed. Ahmet Mumcu in his study

[289] Peirce, p. 313
[290] Ibid.
[291] Ahmet Mumcu, *Osmanlı devletinde siyaseten katl*, Ankara: Ankara Üniversitesi, 1963

exemplifies this aspect of the *şeyhülislam* fatwas by a seventeenth century anecdote quoted from İsmail Hakkı Uzunçarşılı. While Köprülü Mehmed Paşa was campaigning for the execution Deli Hüseyin Paşa, the conqueror of Crete, the party that opposed this verdict asserted that if the aforementioned vizier had committed something for which should be rebuked by execution, then a fatwa should be obtained and added that executing him with such trivial accusations would agitate the populace.[292]

Another interpretation this time for less politicized and more mundane cases that the ordinary Ottomans carried to the *fetvahane*, is that this institution became a place where people could take their most private experiences, faults, offences without worrying about being judged or being exposed to the punishment by the state.[293] The same view however, goes on to argue that the state was watching the "bedroom of society" through the office that at the first glance served as a non-coercive clearing sheet for the misdemeanours of the Ottoman masses.[294] In spite of making some preliminary suggestions on the social control functions of the şeyhülislamate, this perspective portrays the fatwa office as a tool of an oriental despotic state and misses the legal dynamics within the *şeyhülislamate* and its autonomous capacity to discipline misdemeanours.

At this stage we can only partially envision the place of the *şeyhülislam* fatwas in the legal consciousness of the Ottoman populace. According to the sociologists Patricia Ewick and Susan S. Silbey, one of the dimensions of legal consciousness is the dimension of normativity which in fact pertains to the moral bases of legality. In the fatwa compilations both the variety of different *mes'ele*s and the legal attitude of the fatwas towards these problems expose the fact that "the normative understandings of law both inform and are revealed by individuals' decisions to mobilize the law, their evaluations of legal processes and actors, and finally their own invocations and uses of

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[292] "Buna engel olmak isteyenler, Girit gibi bir cezirede hizmeti sebk eden bir vezir ne töhmet ile kıtal olunsun? Katli mucip bir töhmeti varsa fetva alınıp öyle hakkından gelinsin, şikayetçileri yok, böyle hafif sebeplerle öldürülürse halk gareze hamlederler. Hakkında söylenen sözler ispat olunmak lazım olup, sabit olursa fetva alınmak icap eder' demişlerdir" in Mumcu, p.107.

[293] Gökçen Havva Art, *Through the fetvas of Çatalcalı Ali Efendi the relations between women, children and men in the seventeenth century*, MA Thesis, Boğaziçi University, 1995.

[294] Art, p.12

law outside of formal settings."[295] The reason why I have chosen to examine the fatwas on deviant behaviour, as crimes or as other misdemeanours, is that in those fatwas one can more easily sense the normative rhetoric of the *şeyhülislam*s with relatively higher and clearer moral overtones when compared to fatwas on other issues. Moreover the scope of different cases, criminal or not, which were put forward to the *fetvahane* either by ordinary people or by qadis, reveals that the *fetvahane* was expected to issue normative statements which would eventually take part in the disciplining and the punishment of the offender. I argue that it is this dimension of normativity coated by the moral rhetoric of the fatwas that brought the Ottoman individuals before the *fetvahane*. Therefore the judgement that the *şeyhülislam* fatwas did not make up a true part of the Ottoman law because of their non-binding and consultative character does not sound that convincing when the fatwa giving process is envisaged as a moral encounter between the respective moral positions of the *mustafti* and the mufti where the latter acted not only as a legal but also as a moral authority. Especially in the case of secular and religious crimes and wrongdoings, the moral bases of the *şeyhülislam*'s legal verdicts becomes more apparent since the ascription of deviance to another is often conceived as resulting in an intrinsically moral encounter.[296] By promulgating the legal criteria according to which behaviours should be gauged, the *şeyhülislam* fatwas merged the arena of morality/ethics with the realm of legality/law. Alternatively, there might have been practical considerations that served to facilitate this moral encounter. As Uriel Heyd notes, to obtain authoritative written information from the office of the Nişancı, "the mufti of the kanun", or from any other department of the government, the citizen had to come to Istanbul and submit a petition, probably expensive, to the Sultan. However it was much easier to ask the local mufti or even the Şeyhülislam at Istanbul for a fatwa.[297] This sense of practicality and the quick and easy access the *fetvahane* offered to law, had certainly an impact on the place of the *meşihat* in the legal consciousness of the Ottomans. After all it was the sixteenth century *şeyhülislam* Ibn-i Kemal who in his *Mühimmatu'l-Mufti fi furui'l-hanafiyye*, which was a book of savoir faire for the Hanafi muftis, averred that a mufti had to give his fatwa by the easiest of

[295] Patricia Ewick and Susan S. Silbey (eds), *The Common Place of Law*: *Stories from Everyday Life*, Series: (CSLS) Chicago Series in Law and Society, 1998, p. 83

[296] Newman, p. 13

[297] Heyd, 1973, p. 189

the available means and make life easier for the people.[298] What is more important from these different motives is the fact that *şeyhülislam* fatwas bound the Ottoman individual to the realm of the state, and personal morals to imperial law, therefore presenting the historian one of the rarest instances whereby the Ottoman state met the Ottoman individual.

Consequently, it is certain that the fatwa office in the şeyhülislamate promulgated the legal ideology required to sustain mechanisms of social control in the Ottoman Empire. Towards the end of the seventeenth century, the Ottoman şeyhülislamate had grown into a highly institutionalized, yet an equally politicized office. In the post-classical Ottoman centuries, *şeyhülislam*s not only permeated the religious and administrative institutions of the state but also firmly grounded themselves in the Ottoman court through the dynasties and alliances they formed. Accordingly their words sufficed to make and demake sultans; and they started to enact imperial laws at the expense of the *nişancı*s who once were the lords of Ottoman *kanun* making. This thesis cannot claim to substantiate the increasing eminence of the şeyhülislamate solely on the basis of fatwa collections. Nevertheless, by means of the *şeyhülislam* fatwas analyzed here, one of the aspects of this increasing dominance has been reconstructed. Through the fatwas issued in their *fetvahane*, *şeyhülislam*s put their spell on the current definitions of (non-)deviance in the Ottoman society and drafted a moral constitution which established the appropriate zones of religiosity, morality, and legality. As the most patent articles of this constitution, *şeyhülislam* fatwas must have complemented and corroborated the new tasks and the increasing standing that the office şeyhülislamate had assumed in the post-classical Ottoman world.

[298] "Bir müftinin, insanlara en kolay gelecek yolda fetva vermesi gerekmektedir. Bunu el-Pezdevi, el-Camiu's-Sahin şerhinde anlatmış, 'bir müftinin başkaları hakkında en kolay olanı alması, zayıflar hakkında Hz. Ali ve Muaz'ı Yemen'e gönderirken "kolaylaştırın, zorlaştırmayın' şeklindeki buyruğuna göre hareket etmesi gerekir demiştir" quoted in Esat Kılıçer, "Fıkıhcı Olarak İbn-i Kemal", p. 194, in *Şeyhülislam İbn-i Kemal Sempozyumu – Tebliğler ve Tartışmalar*, Türkiye Diyanet Vakfı Yayınları No. 36, Ankara 1986, Hayri Bolay, Bahaeddin Yediyıldız, et. *al*.

PRIMARY SOURCES

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

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

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

Behçet'ü-l feteva me'an nukul, [originally dated 1156/1743], İstanbul: Matbaa-i Amire,

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

SECONDARY SOURCES

Abou El Fadl, Khaled, *Rebellion and violence in Islamic law*, Cambridge: Cambridge University Press, c2001.

Altunsu, Abdülkadir, *Osmanlı Şeyhülislamları*, Ayyıldız Matbaası A.Ş., Ankara, 1972.

Amussen, Susan Dwyer, *An ordered society: gender and class in early modern England*, New York: Columbia University Press, 1993.

Andrews, Walter G. and Mehmet Kalpaklı, *The age of the beloveds: love and the beloved in early modern Ottoman and European culture and society*, Durham: Duke University Press, 2005.

Becker, Howard S., *Outsiders; studies in the sociology of deviance*, London: Free Press of Glencoe, 1963.

Becker, Howard S. (ed), *The other side: perspectives on deviance*, New York: Free Press of Glencoe, 1964.

Bilgin, Vejdi, *Fakih ve toplum: Osmanlı'da sosyal yapı ve fıkıh*, İstanbul: İz Yayıncılık, 2003.

Bolay, Hayri and Bahaeddin Yediyıldız et al, *Şeyhülislam İbn-i Kemal Sempozyumu – Tebliğler ve Tartışmalar*, Türkiye Diyanet Vakfı Yayınları, No. 36, Ankara 1986.

Cici, Recep, *Osmanlı dönemi İslam hukuku çalışmaları : kuruluştan Fatih devrinin sonuna kadar*, Bursa : Arasta Yayınları, 2001.

Crawford, Patricia and Laura Gowing (eds), *Women's worlds in Seventeenth-Century England*, London; New York: Routledge, 2000.

Dean, Trevor and K.J.P. Lowe (eds), *Crime, society, and the law in Renaissance Italy*, Cambridge [England]; New York, NY, USA: Cambridge University Press, 1994.

Develi, Hayati (ed*), XVIII. yüzyıl İstanbul hayatına dair Risâle-i garibe*, Cağaloğlu, İstanbul : Kitabevi, 1998.

Deringil, Selim, "'There is no compulsion in religion': on conversion and apostasy in the late Ottoman Empire: 1839-1856", *Comparative studies in society and history,* 42-3 (2000), pp. 547-575.

Düzdağ, Mehmet Ertuğrul, *Şeyhulislam Ebussuud Efendi'nin fetvalarına göre Kanuni devrinde Osmanlı hayatı : Fetava-yı Ebussu'ud Efendi* , İstanbul: Şule yayınları, 1998.

Edwards, John, *Religion and society in Spain, c. 1492*, Aldershot, Gt. Brit.; Brookfield, Vt.: Variorum, 1996.

Ertan, Veli, *Tarihte Meşihat Makamı-İlmiye Sınıfı ve Meşhur Şeyhülislamlar*, İstanbul, 1969.

Ewick, Patricia and Susan S. Silbey (eds), *The Common Place of Law*: *Stories from Everyday Life*, Series: (CSLS) Chicago Series in Law and Society, 1998.

Faroqhi, Suraiya, *Coping with the state: political conflict and crime in the Ottoman Empire 1550-1720*, İstanbul: Isis, 1995

Febvre, Lucien, *Le Probleme de l'incroyance au 16e siecle-La religion de Rabelais*, Paris: Editions Albin Michel, 1974.

Follet Meservey, Sabra, *Feyzullah Efendi: an Ottoman Şeyhülislam*, Ann Arbor: University of Michigan, 1965.

Foucault M., *Discipline and Punish. The Birth of the Prison*, translated from the French by Alan Sheridan, New York : Vintage Books, 1979, c1977.

Gerber, Haim, *State, society, and law in Islam: Ottoman law in comparative perspective*, Albany: State University of New York Press, c1994.

_____ *Islamic Law and Culture 1600-1840*, Brill, Leiden, Boston, Köln, 1999.

Gowing, Laura, *Domestic danger: women, words, and sex in early modern London*, Oxford, England : Clarendon Press, 1998, c1996.

Heyd, Uriel, "Some Aspects of the Ottoman Fetwa", BSOAS, 32, 1969, pp.35-56.

_____ *Studies in old Ottoman criminal law*, edited by V. L. Ménage, Oxford: Clarendon Press, 1973.

Imber, Colin, *Ebu's-su'ud: the Islamic Legal Tradition*, (Jurists-Profiles in Legal Theory), Edinburgh: Edinburgh University Press, 1997.

Johansen, Baber, *Contigency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, Brill, Leiden, Boston, Köln, 1999.

Keniston McIntosh, Marjorie, *Controlling Misbehavior in England, 1370-1600*, Cambridge, UK; New York: Cambridge University Press, 2002, c1998.

Landau, Norma (ed), *Law, crime, and English society, 1660-1830*, Cambridge, U.K.; New York, NY: Cambridge University Press, 2002.

Lewis, Bernard, "Some observations on the significance of heresy in the history of Islam", *Studia Islamica*, 1953, Vol. 1, pp. 43-63.

Llewellyn, Karl and Adamson E. Hoebel, *The Cheyenne Way: conflict and Case law in Primitive Jurisprudence*, University of Oklahoma Press, 1941.

Massud, Muhammed Khalid, Brinkley Messick, David S. Powers (eds), *Islamic Legal Interpretation: Muftis and their Fatwas*, Harvard University Press, Cambridge, 1996.

Messick, Brinkley, *The Calligraphic State-Textual Domination and History in a Muslim Society*, University of California Press, Berkeley: 1996.

Moore, R.I., *The formation of a persecuting society: power and deviance in Western Europe*, 950-1250, Oxford, UK; New York, NY, USA: B. Blackwell, 1990.

Mumcu, Ahmet, *Osmanlı devletinde siyaseten katl*, Ankara: Ankara Üniversitesi, 1963.

Newman, Graeme, *Comparative deviance: perception and law in six cultures,* New York: Elsevier Scientific Pub. Co., 1976.

Ocak, Ahmet Yaşar, *Osmanlı toplumunda zındıklar ve mülhidler: yahut dairenin dışına çıkanlar (15.-17. yüzyıllar)*, İstanbul: Tarih Vakfı Yurt Yayınları, 1998.

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

Peirce, Leslie, *Morality tales: Law and Gender in the Ottoman Court of Aintab*, Berkeley, CA: University of California Press, 2003.

Pixley, Michael M., "The Development and Role of the Seyhülislam in Early Ottoman History", Journal of the American Oriental Society, Vol. 96, No. 1 (Jan.-Mar.,1976), pp. 89-76.

Repp, R. C., *The Mufti of Istanbul*, Oxford Oriental Institute Monographs-Ithaca Press, 1986.

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

Sumner, Colin, *Sociology of Deviance an Obituary*, New York, Continuum, 1994.

Roebuck, Julian B., "Deviants and Deviancy", *Contemporary Sociology*, Vol. 12, No.1 (Jan., 1983), pp. 38-40.

Rosen, Lawrence, *The Anthropology of Justice – Law as culture in Islamic society*, Cambridge University Press, Cambridge, 1989.

Uzunçarşılı, İsmail Hakkı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, Türk Tarih Kurumu Basımevi, Ankara, 1988.

Viswanathan, Gauri, "Blasphemy and Heresy: The Modernist Challenge", Comparative *Studies in Society and History*, Vol. 37, No.2 (Apr., 1995), pp. 399-412.

Yakut, Esra, *Şeyhülislamlık Yenileşme Döneminde Devlet ve Din*, Kitap Yayınevi, İstanbul, 2005.

Yavuz, A.Fikri ve İsmail Özen (eds), *Osmanlı müellifleri*/Bursalı Mehmed Tahir, İstanbul: Meral Yayınevi, 1972-75.

Ze'evi, Dror, "The Use of Ottoman Sharia Court Records as a Source for Middle Eastern Social History: a Reappraisal", *Islamic Law and Society*, 1998, Vol. 5-1, pp.35-56.

Zilfi, Madeline, "The Kadizadelis: Discordant Revivalism in Seventeenth-Century Istanbul", *Journal of Near Eastern Studies,* 45 (1986): 251-74

_____ *The politics of piety: the Ottoman ulema in the Postclassical Age (1600-1800),* Minneapolis, MN, U.S.A. : Bibliotheca Islamica, 1988.

UNPUBLISHED SOURCES

Akgündüz, Murat, *XIX. asır başlarına kadar Osmanlı devletinde şeyhülislamlık*, PhD Dissertation, Marmara Üniversitesi, 1999.

Akpınar, Kürşat Urungu, *İltizam in the Fetvas of Ottoman Şeyhülislams*, MA Thesis, Bilkent University, 2000.

Art, Gökçen Havva, *Through the fetvas of Çatalcalı Ali Efendi the relations between women, children and men in the seventeenth century*, MA Thesis, Boğaziçi University, 1995.

Canbakal, Hülya, "Moral Obligation, Legality and Liability in Ottoman Public Life (17th-18th cc)", from the Middle East Studies Association's 2003 Annual Meeting held in Anchorage, Alaska from November 6-9.

Eren, Selim, *Günümüzde sorular ve cevapların ışığında dini hayata sosyolojik bir bakış*, MA Thesis, Ankara Üniversitesi, 1994.

Ökten, Ertuğrul, *Ottoman Society and State in the light of the fatwas of Ibn-i Kemal*, MA Thesis, Bilkent University, 1996.

Salgırlı, Saygın, *Manners and Identity in Late Seventeenth Century Istanbul*, MA Thesis, Sabanci University, 2003.

Üstün, İsmail Safa, *Heresy and legitimacy in the Ottoman Empire in the sixteenth century*, Ph.D. Dissertation, University of Manchester, 1991.

Yaycıoğlu, Ali, *Ottoman Fatwa: An Essay on Legal Consultation in the Ottoman Juridical Culture, 1500-1700*, MA Thesis, Bilkent University, 1997.