ABDUCTION OF WOMEN AND ELOPEMENT IN THE NINETEENTH CENTURY OTTOMAN NIZAMIYE COURTS

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"Abduction of Women and Elopement in the 19th Century Ottoman Nizamiye Courts," a thesis prepared by Gamze İlaslan in partial fulfillment of the requirements for the Master of Arts in History degree from the Atatürk Institute for Modern Turkish History at Bogaziçi University approved by:

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Title: Abduction of Women and Elopement in the Nineteenth Century Ottoman Nizamiye Courts

This study examines the court cases involving the abduction of women and elopement in nineteenth century Ottoman Anatolia and Rumelia provinces. It examines the relation between the law and ordinary Ottoman subjects, their perception and usage of law. Nineteenth century of the Ottoman Empire with its projects focusing on population, security and honor was studied by means of the court cases of abduction and elopement since the abduction of women and elopement generally lead to turnoil, security problems, and damages to honor because these crimes generally involved the rape or seduction of women.

Although the Ottomans criminalized the abduction of women in the Penal Code of 1851 with the article of 206, their effort didnot stop the abduction of women or elopement. It led to a battle against the customary tradition of wedding rituals and the standardization of some of the sharia rules. Within this thesis, the modernization of customs and standardization of sharia law, the general view of Ottomans about the abduction of woman and elopement indicates how and in what way a “proper” marriage should be arranged and defined.

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Başlık: Ondokuzuncu Yüzyıl Osmanlı Nizamiye Mahkemelerinde Gönüllü Kocaya Kaçma ve Kız Kaçırma

Bu çalışma 19.yy Osmanlı Anadolu ve Rumeli vilayetlerindeki kız kaçırma ve kaçışma ile ilgili mahkeme davalarını incelemektedir. Osmanlı tebaasının hukukla girdiği ilişki ve hukuku kullanma mekanizmalarına değinmektedir. Zorla kadın kaçırma ve gönüllü kaçışma davaları, bu vakaların genellikle asayiş ve "ahlak" sorununa yol açması sebebiyle 19.yy Osmanlı'sının nüfus, güvenlik ve namus politikaları üzerinden izlenebilmektedir.

Osmanlı İmparatorluğu, 1851 Ceza Kanunnamesi'nin 206.maddesinde kadın kaçırmayı bir suç olarak tanımlamasına karşın bu çabaları ne kız kaçırma ne de kızların gönüllü kocaya kaçmalarını engelleyemedi. Bu durum örfi evlenme ritüelleri ve bazı şeri kuralların standarize edilmesine karşı bir savaşa sebebiyet verdi.Bu tezle beraber, geleneklerin "modernleştirilmesi", şeri hukukun standarize edilmesi ve Osmanlının kız kaçırma ve gönüllü kaçışmayı algılama biçimleri doğru evliliğin nasıl ve hangi yollarla olacağı hakkında bir gösterimde bulunur.

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To family, my parents Suna and Nazir, and my sisters and elder brother Barış, I dedicate my thesis to my great family since they unconditionally supported me and I apologize to them since I was absent in their good times and bad times.

For sure, all the faults and deficits of this study are mine only.

CONTENTS

CHAPTER ONE

INTRODUCTION

This thesis examines the everyday practices of Ottoman subjects of the nineteenth century in the light of court records. Focusing on two key concepts, namely the abduction of women and elopement, this study describes the matter of daily practices, marriage, and honor in the reformation period.

From the perspective of Ottoman governors, the abduction of women and elopement were problems of security, population, and property. However, according to the voices of ordinary subjects from the interrogation reports, they were also issues of honor and body. The story is read with the eyes of a Tanzimat state that was expanding its financial power and human sources in order to penetrate into its subjects' daily lives, and from the perspective of from the bottom to the top.

The aim of this study is to exemplify the active role of ordinary subjects in the reformation period, and see them as other than as passive or recipient, as in the general tendency of Ottoman historiography. State and society had an intermingled relationship. Court records present rich resource with which to trace the agency of subjects especially in rural area.

Since the abduction of women and elopement has not been studied before, this thesis is a comparative work. It makes use of anthropology. Such a work offers an understanding and portrayal of male- female relationships, courting habits, engagement, wedding rituals, parental roles, and the response of daughters and sons

to the pressure from guardians regarding on marriage preferences. Apart from these, how the litigants and accused positioned themselves in the courts and their understanding of women, honor and proper marriage are the focuses of the thesis.

Although abduction of women and elopement have not been studied from the nineteenth century records, Leslie Peirce, with her precious and outstanding book *Morality Tales,* and her article "Abduction with (Dis) honor: Sovereigns, Brigands, and Heroes in the Ottoman World"[1] motivated me in many respects. First, her evaulation on the transformation of the abduction of women from a heroic act to a criminal issue during sixteenth and seventeenth centuries was enriched with the usage of private letters, chronicals and legends.[2]

In describing the way from heroic and royal abduction to its criminalization in the reign of Bayezid II, Peirce make a great effort both in describing honor in relation to abduction and the function and multiple meaning of abduction. Therefore, I owe much in the writing and constructing of this thesis to her and her method of researching the issue of abduction.

The second inspiring reference for this thesis was surely belongs to Başak Tuğ. Her Ph.D. dissertation focusing on the mid-eighteenth century provided me

[1] Leslie Peirce, "Honor, Reputation, and Reciprocity," *European Journal of Turkish Studies* 18 (2014), pp. 2-11, retrieved from URL: http://ejts.revues.org/4850.; Leslie Peirce, "Abduction with (Dis)honor: Sovereigns, Brigands, and Heroes in the Ottoman World," *Journal of Early Modern History* 15 (4), (2011), pp. 311-29, retrieved fromURL:http://dx.doi.org/10.1163/157006511X577005.

[2] During the war against Safavids, Suleiman's wife Hürrem wrote a letter and said "Neither the son of the heretic nor his wife has been captured." Çağatay Uluçay, *Osmanlı Sultanlarına Aşk Mektupları,"* (İstanbul: Şaka Matbaası, 1950), pp. 42-43; Leslie Peirce, "Abduction with (Dis)honor," p. 313. As Leslie Peirce writes not only a militaristic victory but also insulting enemies through their honor, their (shah tahmasb's) woman's capture was seen as crucial to winning a decisive victory.

with insight into how some concepts such as gender and honor may be defined in every-day life practices and court records.[3]

The Judicial Amendments of 19th Century: Nizamiye Courts and Local Councils

Akarlı expostulates "the dichotomy" of state and society; state "as an engine of modernization, or the efforts to 'catch up with the age' and society, meaning 'the people" appears as the object of modernization"[4] defining society as periphery and state as the center with the binary oppositions such as literate-illiterate, religious-nonreligious, educated- uneducated leads scholars to a blind spot. Defining state as rational and vice versa the society is a result of "long imperialist era, and certain world views and academic paradigms."[5]

For instance, Roderic Davison supports that the Tanzimat was an elitist project "from the top down and from the inside in."[6] His elaboration of the Tanzimat as a state-governing project was with the exclusion of common people from the system, who were silent and invisible. Although many scholars accept a meta-narrative view, it is still a challenging question whether the Ottoman state with its

[3][3] Başak Tuğ, "Politics of Honor: The Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia," (Ph.D. diss., New York University, 2009).

[4] Engin Deniz Akarlı, *"Stately Narratives on Turkey's Ottoman Past,"* paper presented at the 115th Annual Meeting of the American Historical Association, Boston, 4-7 January 2001, p. 7.

[5] Ibid., p. 8.

[6] Roderic Davison, *Reform in the Ottoman Empire 1856-1876,* (New Jersey: Princeton University Press, 1963), p. 406.

newly founded institutions and state apparatus was capable of transforming its citizens' ideas and attitudes for its benefits.

To testify this argument, specialized research should be done, rather than oversimplication and the generalization of the Ottoman Empire to all provinces. Some qualified examples are Milen Petrov's study "Tanzimat for the Countryside, Midhat Paşa and the Vilayet of Danube, 1864-1868," in addition to Ebru Aykut Türker's great work on poisonous wives.[7]

The reconciliation of state and society and their intertwined relationship should be taken into consideration for pluralist and multilayered history writing. At that point, Türker's choice of word in the title, "alternative" is a rejection of state-centered diplomatic historiography and the consent of the common people as historical agencies, especially women and peasants. In addition to that, her investigation of domestic crime, female criminality and rural crime at the level of daily lives will surely be a tremendous model and win a victory over the studies focusing on the time periods such as war and crises.

Changing notions about criminality, the state monopoly on exercising justice, and the use of violence are relevant to control over the local elites and common people. The former is connected to supremacy of the state over the local elites and power holders; the latter is regarded with the creation of docile and obedient citizens.

Covering these issues, my arguments are shaped by Foucaldian terminology, such as "governmentality" which is to design societies at every level by administrative and political institutions. The new penal codes, a complex court

[7] Ebru Aykut Türker, "Alternative Claims on Justice and Law: Rural Arson and Poison Murder in the Nineteenth Century Ottoman Empire," (Ph.D. diss., Boğaziçi University, 2011); Milen V. Petrov, "Tanzimat for the Countryside: Midhat Paşa and the *Vilayet* of Danube (1864- 1868)," (Ph.D. diss., Princeton University, 2006).

system with certainly defined rights that accompanied with jurisdiction methods and prohibition of any kind of arbitrariness during the implementation of justice are the traces of monopoly on justice by the state. Because of the fact that the Proclamation of Tanzimat guaranteed security of life and property, the state with its techniques attempted to provide this guarantee in return for acceptance its authority as the only source.

Although capital punishment was not abolished due to the prevalence of serious crimes such as banditry, highway robbery, Supreme Council of Judicial Ordinances (*Meclis-i Vâlâ-i Ahkâm-ı Adliye* henceforth Supreme Council) could only measure the ultimate decision of death penalty. Neither the courts in provinces or the qadis had the right to deciding on capital punishment without informing the center.

Rather than constituting a dichotomy, I prefer to stress the discourse invented by the state. Body control and life security became crucial tasks of the state in the codifications and regulations of the nineteenth century Ottoman Empire. Even when the victim did not present a case, the state had to follow the rights of its citizens. The amendment in homicide cases was a public claim on the body of the citizens.[8] Either blood money or execution was the options of the plaintiff. Sharia or nizamî jurisdiction or extrajudicial methods were the available avenues for claiming one's rights.

A note on that issue is "forum shopping"[9] used by Avi Rubin. Forum shopping means attempting to have a lawsuit file moved to another court to obtain

[8] Petrov, "Tanzimat for the Countryside," p. 289.

[9] Avi Rubin, "Ottoman Modernity: The Nizamiye Courts in the Late Nineteenth Century," (Ph.D. diss., Harvard University, 2006), p. 68.

results that are more favorable. In conclusion, a sharia court might rule a case of homicide; however, the absence of complaint by the sufferer or peace settlement between two parties could be obtained with no official punishment. Concerning this fact, there may be no documentation of such events in sharia records, since the parties might have resolved their problems by their own means.

Türker claims that protecting people from the "tyrannical behaviors of pashas and governors"[10] was a substantial motive in the legal reforms. The prevention of excessive corporal punishment and arbitrariness by local governors were the focus of the reformers. Furthermore, "a fair and impartial treatment of all subjects before law supposedly would deliver the expected obedience since jurisdiction was a crucial element of community life"[11] could be evaluated in the expectations of the state towards its citizens.

From this, it can be concluded that the government's ultimate goal did not work for the sake of the common person. State interest was grounded on the acceptance of its power as the authority on the side of the local notables and anxieties about the population. Petrov also argues that the interest of state was superior to individual rights in the eyes of the state. The protection of individual rights was a method to sustain public order, and to prohibit the interference of other states in the internal affairs of the Empire. In addition to that, a healthy public order means a well-functioning tax system, which was obligatory for state's existence. Before going into more detail and commentary, an introduction of the Ottoman law system is necessary.

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[10] Türker, p. 67.

[11] Ibid., p. 73.

The Ottoman law system can be divided into two sections, shari'a law and customary law. Shari'a derives from four basic sources, the Quran, the Sunna, the consensus of sect leaders, and analogical deductions from all religious literature. The Hanafi School was the official sect of the Ottoman Empire. These two types of law systems were not contradictory; on the contrary, they complemented each other. Furthermore, it could be asserted that the sultan's law had to follow shar'ia; in other words, it could not be against religious law, which limitated the sultanic power. The Ottoman legal system derived from the interactions between the Ottoman Hanafite jurists and the state officials. [12]

As the Hanafite legal discourse was embodied within law, (*kanûn*) qadis were responsible for jurisdiction and criminal proceedings while the executive officers tried cases involving qadi in cases of bribery, injustice, and expulsion. That is to say, the qadis and the local governors worked together to secure justice and to check their wrongdoings. Rudolph Peters includes the everyday people into the system with their act of writing petitions, which in many cases were concluded with the assignment of commission of the center. It cannot be denied that petitions, as a way to form a view from complacence to disgruntlement, had a symbolic and practical importance.

The laws in the Ottoman Empire were shaped by necessities. For instance; a court's decision on a case that could not have been resolved by the Shari'a law, could have been resolved by the jurists whose views derived from the Quranic resources thus whose results could have been added to the existing shari'a law. However, the essence of Shari'a courts and their structure necessitated gaining the sultan's consent. Whenever a sultan came to power, the law needed to be reviewed and approved by

[12] Rudolph Peters, *Crime and Punishment in Islamic Law, Theory and Practice from the Sixteenth to the Twenty-first Century* (New York: Cambridge Press, 2005), p. 35.

his authority. Acts, which were not mentioned in the qanun or sharia, could be also a reason to punish the accused. The absence of fixed penalty is a noteworthy issue; however, Nizami law did not clearly define all the crimes and punishments. There was also generalization, crimes involving the bureaucratic elites were addressed more those of the individuals in the penal code of 1840. For instance, one of the discoveries of this thesis is the punishment of eloped ones, though none of the Ottoman Penal Codes of the nineteenth century included the act of elopement as a "crime".

The Tanzimat period from 1839 to 1876 was a movement of modernizing reforms from the military service, judicial system and administration and government. Until Tanzimat, the State's emphasis on justice had been significant; however, the promises with the Tanzimat Edict made justice an irreplaceable legitimacy source for penetration into the daily lives of everyday people. Law as an invention and changeable character based upon time, place and actors is an area of conflict. For instance, Cengiz Kırlı illustrates how the "gift economy"[13] was turned into an illegimate act. In addition, Gülhan Balsoy[14] studied the issue of abortion (*ıskat-i cenin*), which became an immoral act after the 1858 Ottoman Penal Code. Similarly, Ebru Aykut Türker's work on poisonous wives is a great and inspiring work focusing on clandestine crime. On the other hand, bending rules and

[13] See Cengiz Kırlı, "Yolsuzluğun İcadı: 1840 Ceza Kanunu, İktidar ve Bürokrasi," *Tarih ve Toplum*, no. 4 (Güz 2006), pp. 108 and 116-118. ; Cengiz Kırlı, "İvranyalılar, Hüseyin Paşa ve Tasvir-i Zulüm," *Toplumsal Tarih*, no. 195 (March 2010), pp. 12-21.

[14] See Gülhan Balsoy, "Gender and the Politics of the Female Body: Midwifery, Abortion, and Pregnancy in Ottoman Society (1838-1890s)" (Ph.D. diss., Binghamton University, 2009).

negotiation with authorities by local people are the untouched or muted part of the story that deserves further attention.

The Ottoman Penal Code was enacted in 1840: The most striking point of the new code was its stress on the principle of equality.[15] A notice to control bureaucratic elites and acceptance of state legislative organs as the only source of authority were the messages of the new code.

Avi Rubin argues that the establishment of the Supreme Council of Judicial Ordinances (*Meclis-i Vâlâ-yı Ahkâm-ı Adliye*) was a "challenge the judicial monopoly of the Şeriat courts."[16] As the first judicial reform in 1838, the Supreme Council *(Meclis-i Vâlâ)* served as a high court for trial of prominent political actors and as a tribunal court, but also it was also responsible for legislation on elaborate issues.

Mehmet Seyitdanlıoğlu forwards the idea that both the success and failure of the Tanzimat reforms belonged to *Meclis-i Vâlâ*, since this institution became a laboratory for the reforms,[17] that is, it controlled the practices of regulation and amendments that Tanzimat State had ordered. It also detected violators.

Roderic Davison explains the importance of this legal amendment of the Supreme Council, which follows as:

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[15] Ahmed Lütfi, *Osmanlı Adalet Düzeni-Mir'at-ı Adalet yahut Tarihçe-i Adliye-i Devlet-i Aliyye* (1887) (İstanbul: Marifet Yayınları, 1997), p. 16. " (...) *Devlet-i Aliyye memurlarından veya sair eşhastan hiçbir kimse diğer bir kimsenin canına kast edemeyeceğinden, bir vezir ile bir çobanın adalet önünde farkı yoktur."*

[16] Rubin, p. 24.

[17] Mehmed Seyitdanlıoğlu, *Tanzimat Devrinde Meclis-i Vâlâ (1838-1868),* (Ankara: Türk Tarih Kurumu Basımevi, 1999), p. 1.

> (…) was charged with the thorough discussion and preparations of new regulations. It was this council which, going through a series of transformations in the next thirty years, was to be the first organ of central government to embody the representative principle by including selected individuals from the non-Muslim minorities.[18]

Moreover, Standford Shaw states that the establishment of *Meclis-i Vâlâ*, "the purpose of creating an "ordered and established" state by means of "beneficent reorderings" (*Tanzimat-ı hayriye*) of state and society".[19]

The reforms in the Tanzimat focusing on especially legal, social, and economic amendments resulted with the establishment of new councils. High or collection councils (*muhassıllık meclisleri*) were the preliminary attempt to secure a well functioning tax system. However, their sphere of influence not only included financial matters, but also executing justice pursuant to the 1840 Ottoman Penal Code. Ortaylı underlines their importance in that the high councils were the first example of local administrative bodies.[20] In the first place, the high councils were composed of appointed tax collectors, a local judge, mufti, top military commander, religious leader, and six local notables.[21] In the cases of non-Muslim population, which was also taken into account by Meclis-i Vâlâ, Jews and Christians were also represented in the councils.

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[18] Davison, p. 28.

[19] Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey Vol.II* (Cambridge, New York: Cambridge University Press, 1988), p. 38.

[20] İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahallî İdareleri (1840-1880),* (Ankara: Türk Tarih Kurumu, 2000), p. 33.

[21]Omri Paz, "Crime and Criminals, and the Ottoman State: Anatolia between the late 1830s and the late 1860s," (Ph.D. diss., Tel Aviv University, 2010), p. 81.

İlber Ortaylı writes that the appointment of the candidates in the council did not work properly as it was supposed in the documents.[22] While the domination of local elites and executives shaped its structure, the underlying point should be on its civil participation as a difference. That is to say, it was the first time civilians, even though they were elites, had the chance to participate in the justice and tax collection mechanisms in a legal way. The intent of the state was to eliminate the power of the local notables and to replace them in a legal context under its authority. Moreover, the goal in the establishment of the local council was associated with administrative issues. Another equally important aspect is that these councils represented a mechanism that both included the judiciary and executive organs together.

Apart from above, the decisions given by councils had to be reported to the Sublime Porte (*Bab-ı Ali*) at the end of the each month including detailed interrogations and testimonies plus the punishments. Having said that, both *meclis-i kebir* (great council) and *meclis-i cinayet* (criminal council) could not exercise their authority in serious crimes such as homicide, arson, filicide, and the sexual abuse of children etc.[23] Despite that, the investigation of local neighbors, listening and registering of the testimonies, defendant and plaintiff's statements were in the local council's responsibility.

Meclis-i Vâlâ was located in İstanbul and as part of it, in the countryside new local councils were constituted such as upper councils (*muhassıl meclisleri*) in provinces by tax collectors (*muhassıls),* and in cases when a tax collector was absent,

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[22] İlber Ortaylı, "From the Ottoman Experiment in Local Government to the First Constitutional Parliament of 1876-7," in *Studies on Ottoman Transformation*, (İstanbul: Isis, 1994), p. 3.

[23] For detailed examples, see Sedat Bingöl, "Tanzimat Sonrası Taşra ve Merkezde Yargı Reformu," *Yeni Türkiye* 31, no.31 (January- February 2000), pp. 535-545.

lower councils (*küçük meclisler*) would be set up.[24] That is, in places where a muhassıl was not appointed in an administrative unit, the lower councils would be set in the sub-districts, as the representative of *muhassıl,* he determined the person as the head of council. These councils were charged with tax collection and judicial affairs. However, the small councils were abolished at the end of September 1841 because of their burden on the treasury, since the salaries of council members had to be paid.[25]

After the abolition of the new tax system in 1841, the names of the councils were changed to Provincial Councils (*memleket meclisleri*). In addition to their judicial districts, their functioning remained almost unchanged.[26] On 15 January 1849, with the provision of a regulation book (*talimatname*), they were called provincial councils (*eyalet meclisleri*) or great councils (*meclis-i kebir*) and the councils in the sanjaks were named as small councils (*küçük meclisler*).[27] In addition, under the title of great council, a new council called a criminal council (*meclis-i cinayet*) was established to deal with only criminal cases.[28] Work load of great council and their occupation with long lasting and increasing court files brought about a division of council, a special council on criminal cases. Most particularly regarding petty crimes, as the duration of judgment extended, the criminals were imprisoned for longer than their expected or probable punishment.

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[24] Türker, p. 47.

[25] Musa Çadırcı, *Tanzimat Döneminde Anadolu Kentlerinin Sosyal ve Ekonomik Yapısı,* (Ankara: Türk Tarih Kurumu, 2013), p. 212.

[26] Bingöl, "Tanzimat Sonrası Taşra ve Merkezde Yargı Reformu," p. 537.

[27] Seyitdanlıoğlu, *Meclis-i Vala,* pp. 212-218.

[28] Paz, p. 18.

Between 1840 and 1850 there were many judicial reforms regarding councils, such as the Gendarmerie Council (*zaptiye meclisi*), the High Council of the Gendarmerie (*divan-ı zaptiye*), the Council of Investigation (*meclis-i tahkik)* all of these practiced the new criminal codes of Empire.[29] While the other mentioned councils operated, as both a judiciary and administrative duties, in 1854, the Council of Investigation was constituted to handle only criminal cases.[30]

Overall, scholars have a tendency to appraise the Nizamiye Courts apart from these councils because of their complicated governance and judiciary system. It is necessary to consider these councils as bound to the Nizamiye Courts in many respects, structural and operational, as Jun Akiba argues and evaluates as a process.[31]

Regarding these two bodies, this transformation in legal structure might turn historians' approach into a comparative and comprehensive point, that is the way from local councils to the Nizamiye Courts. As Türker criticized that, the council of investigation and the criminal council operated for only judicial cases, so the councils created a ground for the Nizamiye Courts.[32] Although the members in the councils and the Nizamiye Court were not the same, their methods and principle were similar, such as in the use of interrogation reports. On the other hand, the local bodies were called "councils" even they were judicial units so instead of focusing on differences, which were natural and expectable, the continuity and transformation

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[29] Rubin, p. 24.

[30] Paz, p. 18.

[31] Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies: State, Province, and the West*, ed., Colin Imber and K.Kiyotaki (London: I.B.Tauris, 2005) pp. 43-60.

[32] Türker, p. 49.

from local councils to Nizamiye Court may give us a more colorful and detailed picture.

Under the new Provincial Law of 1864, administrative units were divided into provinces (*vilayet*) headed by the provincial governors; district (*kaza, sancak, kaymakamlık*) headed by district governors (*mutasarrıf)*, sub-districts (*kaza, müdürlük*) headed by head officials of a district and villages (*köy, kariye*) directed by directors or the headman (*muhtar*).[33] In this new system, judicial and administrative organs were separated from each other, and Nizamiye Courts, which inspired by the French examples, would hear the cases of criminal prosecutions.

Apart from that, in villages, the council of elders (*ihtiyar meclisleri*) was authorized as peacemakers for petty crimes. Apart from council of elders in villages, the court of first instance (*deavi meclisleri*) in sub-districts, the court of appeals (*meclis-i temyiz)* in districts, and the provincial court of appeals (*divan-ı temyiz*) in provinces were established.[34] While the local councils ruled cases of petty crimes, for serious crimes they had to deliver the case to the upper councils.

In 1868, Supreme Council was divided into two as legislative and judicial bodies, namely, the Council of State (*Şura-yı Devlet*) and the Council of Judicial Ordinances (*Divan-ı Ahkam-ı Adliye*).[35] Furthermore, based on the court system, three distinct law were enacted in 1879, the law of the Nizamiye Judicial Organizations (*Mehakim-i Nizamiye'nin Teşkilat Kanunu*), the Code of Criminal

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[33] Rubin, p. 28.

[34] Ekrem Buğra Ekinci, *Osmanlı Hukuku Adalet ve Mülk* (İstanbul: Arı-Sanat Yayınları, 2012), p. 579.

[35] Stanford J. Shaw, "The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement Before 1876," *International Journal of Middle East Studies* 1, no. 1 (January 1970), p. 73.

Procedure (*Usul-ı Muhakemat-ı Cezaiye Kanunu*), and the Code of Civil Procedure (*Usul-ı Muhakemat-ı Hukukiye*).[36] At that point, the blended translation of Nizamiye courts as secular court[37] is misleading. Nizamiye court had traces of both sharia and customary law. The installation of Nizamiye courts could not be regarded as a rupture but a transformation and continuity might be possible.

While Rubin supports the idea that there was a shared modernity and borrowing between the French Penal Code and the Ottoman Penal Code, the Ottomans codification was not a simple imitation. Rubin evaluates the coexistence of sharia, and nizamiye courts as a judicial hybrid with flexible and pragmatic results. Similarly to Miller, Şerif Mardin regards nizamiye courts as having had a solely secularist view.

Thanks to the contributions of Ebru Aykut Türker and Milen Petrov, the arguments surrounding with secularism and traditionality have lost their effectiveness. From its structure to the methods of scrutiny and protection of culprit from torture, Nizami law was a continuation of both sharia law and customary law. At that point, referring to Rubin, at that point might be meaningful. He claims that ulema did not lose its authority, but gained a new position. Türker writes, "Nizami law did not have an immediate or homogenous effect on the population on every occasion as soon as it started to be enforced."[38]

The underlying reasons for not resorting to the law among the peasants cannot be explained only with indifference to the law. Some of the villagers were

[36] Paz, p. 92.

[37] Ruth Miller prefers to translate and serve nizamiye courts as "secular courts" in *Legislating Authority, Sin and Crime in the Ottoman Empire and Turkey* (New York: Routledge, 2013).

[38] Türker, p.74.

aware of the new legal reforms; however, there were other factors shaping their attitude and perception. Honor killings by the fathers of eloped daughters were the result of restoring honor, and state law could not compensate for this. Differently from the sharia courts, non-Muslims also became equal witnesses in Nizamiye courts, on paper though. However the good reputation of a witness could convince the court rather than a common person; village elders or notables, the headman and the imam were the "natural" witnesses of the cases.

Court Records as a Source of Socio-Legal History

Court clerks or court reporters created laws record. A record includes the procedures, transcripts of witnesses, statements of defendant, evidences, and complaint and last the final decision of the judge along with the reasons and punishment. Claudia Verhoeven adds that,

> They may hold official memoranda, and communiqués, legal briefs, procedural protocols, stenographic transcripts, supplications, and evidence, which in the modern period can mean criminal statistics and physiognomic "facts", psychiatric profiles, telltale letters, smoking guns, bloody bullets, pharmaceutical samples, clothing, cloths of hair, and so on.[39]

Furthermore, Verhoeven says that the number of court files in a case could rapidly alter depending upon the identity of the litigant or culprit. That is to say, the type of the crime or victim's identity might increase the significance of the case such as a homicide or the assassination of a king.

[39] Claudia Verhoeven, "Court Files," in *Reading Primary Sources the Interpretation of Texts from Nineteenth and Twentieth Century History*, ed. Miriam Dobson, Benjamin Ziemann (London: Routledge, 2009), p. 91.

Most of the court records have specific procedures differed depending on the court type and the law it applied. However, oral proceedings did not exist in all court records; sometimes they cannot be found or were not included. It is common that the court reporter paraphrased the transcripts, so it is difficult to hear the voice of voiceless, in other words, the common people. Court records were generally regarded as public records. They were preserved at the state and local level in addition to private institutions.[40] Hiller B. Zobel defines legal history, a history of dispute solution. The Court records show the conflict between both man and man or man and government.[41] For an ordinary citizen, the courts were the places to face the state's authority, the embodiment of justice with the state.

In the light of the points previously mentioned, court records are described as "the best sources relatively uninterrupted narrative from the lips of the lower order"[42] because traditional macro-history writing ignores the common people, preferring macro-institutions and state-centered historiography. In detail, the interrogation reports can reveal first person narrative voice without any interference by the judicial authority. On the other side, if the interrogator paraphrases the statements of opposite parties, the document cannot reflect the reality but serve the event with the terms of law.

More than that, Verhoeven documents the problems deriving from the interrogator. The questions and the discourse within themselves could slightly direct

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[40] Edward Dumbauld, "Legal Records in English and American Courts," *The American Archivist* 36, no.1 (Jan., 1973), pp.15-32.

[41] Hiller B. Zobel. "The Joys and Uses of Legal History," *Proceedings Of The Massachusetts Historical Society*, Third Series, Vol. 84, (1972) , p. 54.

[42] Claudia Verhoeven, p. 93.

the answers or the socio-cultural filters could hinder the message of the testimonies, victims or culprits. So it is similar to the Rashomon effect: the historian has to put the puzzle of the story together according to his intentions and using documents as "real" sources because the language in the court files creates this opportunity, too. Overall, I tried to shed some light on how court records have been regarded and on the change in historiography. Apart from above, it is necessary to show how these records can be used in history, their potential and limits.

> The nature and extent of useful historical information obtainable from legal records depend, of course, upon recordkeeping practices of the tribunal in which the litigation occurs. The volume and character of available records thus vary greatly in accordance with the habits of the particular court, as affected by time and place.[43]

In addition to time and place, the subject of the case, the victim or perpetrator becomes a prominent factor in the adjudication. Serious crimes such as homicide and rape occupy more place than petty crimes. I should add that the criterion of what is a serious crime or petty crime is a changeable, just as law. Court material offers vivid insight into the daily life of an age. Controlling or checking official history with judicial court texts gives historian an alternative approach. Over and above macro history in a larger context, judicial records can be used in the study of micro history.

Through focusing on law records, a researcher might obtain information about what it means to be a judge with its limits as a profession, and how the conduct of being a judge in time had changed. In addition, the interpretation of law by the judges, the language of law, and legal literature enable prosopography studies.

In terms of social the life and the daily experiences of the common people, judicial records inform the historian about land disputes, births, marriages, deaths,

[43] Dumbauld, p. 16.

their ages, the places in which they live, illegitimate children and marriages and the genealogy of families. Ze'evi writes, "These records contain invaluable material on diverse subjects such as economic consumption, agrarian relations, personal status, social stratification, crime and local politics."[44] Court records reserve information on economy, civil disputes, gender and urban issues, and legal history. It is helpful to examine the court studies in Ottoman historiography, ranging from Sharia to the Nizami courts.

The official records of Ottoman Islamic courts are called Sharia records. Dating from sixteenth century to twentieth, these sources were called to mind by Halkevi periodicals of 1930s.[45] İsmail Hakkı Uzunçarşılı and T.Mümtaz Yaman emphasized the significance of these documents and colled for further attention to them by scholars. [46] Uzunçarşılı supports the idea that, Sharia records have representative information and evidences about Turkey's social, economic and political history. Comparing them with church records, he announces them as more reliable and noteworthy.

By quoting from Halil İnalcık, Yunus Uğur claims that heritage records (*tereke)* in Sharia documents can be utilized to analyze such things as wealth distribution, social classes, product rates, and occupations. In fact, court records offer a great deal of details and they are like a big sack, from which historian can pick data that in some cases can be very surprising. Yunus Uğur writes that even though a

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44 Dror Ze'evi, "The Use of Ottoman Sharīʿa Court Records as a Source for Middle Eastern Social History: A Reappraisal*" Islamic Law and Society* 5, no. 1 (1998), p. 35.

45 Yunus, Uğur, "*The Ottoman Court Records and the Making of 'Urban History' with Special Reference to Mudanya Sicils (1645-1800),*"(M.A thesis, Boğaziçi University, 2001), p. 9.

46 Fethi Gedikli, "Osmanlı Hukuk Tarihi Kaynağı Olarak Şer'iyye Sicilleri*," Türkiye Araştırmaları Literatür Dergisi* 3, no. 5 (2005), p. 380.

large number of studies have been done, questioning these sources in terms of representation and reality necessary.

Uğur recommends scrutinizing Sharia court records especially with the question of how much they represent society. Reading between the lines and textual criticism are also an obligation in his framework. Rather than describing court records as information storage, he considers it necessary to criticize the sources with other secondary and primary materials. Furthermore, to be aware of micro history and use this datum from that perspective is another step. To attach the original transcripts of the documents, benefiting from language theories and to be informed about law culture are the other points he says are necessary.[47]

Dror Ze'evi warns historians to be cautious about these records, not to accept everything and to avoid the generalizations that the documents served. Ze'evi defends the opinion that there were different practices in Anatolia and the Balkans, and each requires attention.

Neither the system and nor the symbols and codes have similar meanings in different geographies. It also discusses judges whose motives, modifications, jurisprudence and differed in time and place. "They are still naively regarded as a single, homogenous source, with the same documentary value, the same literary conventions, and the same legal codes in all places at all times. "[48] The plurality in court practices and jurisprudence area are vital issue. According to Ze'evi, none of

[47] For further information see: Yunus Uğur, "Mahkeme Kayıtları (Şer'iyye Sicilleri): Literatür Değerlendirimesi ve Bibliyografya," *Türkiye Araştırmaları Literatür Dergisi* 1, no. 1 (2003) pp. 307-309. This article is a broadened version of his thesis, grounding on the pages between 9-25.

[48] Ze'evi, p. 37.

the records solely reflects the reality. They are not simple mirrors and historians must face this challenge in order to create a comprehensive and plural history.

He writes "What takes place in court therefore may be regarded as a game, albeit sometimes a dangerous one, played by a set of rules according to which all participants try to maximize their interests."[49] He speaks of the significance of knowing who came to the courts, because it is generally a power contest. A quick example comes from the studies of Avi Rubin and Boğaç Ergene, who note that court fees were burden for the peasants and kept them from litigation.

Moreover, historians need to keep more than the information within documents, but also assessment of the absence of the information one in the record in minds. Ze'evi criticizes some historians for adapting irrelevant samples. Apart from the realities embedded in the court records, the historian should search for the results: that is to say, whether the court decisions were applied or not should be taken into consideration. Further, the human effect must be addressed. That qadi was partial or had further ideology and authority should be taken into account.

Ze'evi points out that the court's procedures and process are different in Anatolia and Arab lands. Even the meaning of legal technical terms changed over time and from one judge to another. To analyse the events and meanings with the realm of its context is a prerequisite in that sense. At that point, he suggests utilizing from "double translation*"* which means historical, anthropological, cultural and the legal context is offered.[50]

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[49] Ibid., p. 43.

[50] Ibid., p. 52.

Jon E. Mandaville claims that the studies focusing on provincial archives have the power to alter traditional history. He says, "standard judicial procedure for the courts of every Islamic government that had some established form of administration- and perhaps a few did not."[51] He criticizes Turkish historians, who deal with institutional changes and neglect the rural. His prediction on the usage of these records by different perspectives and aims could result in a comprehensive new history, especially for Near Eastern history.

Also, Mandaville divides the issues that a historian might face with such areas as family, marriage, dowry agreements, divorce, alimony, inheritance and orphans; commerce, bankruptcy, sale, credit, loans, land and building, land registers, property, waqfs and on tax collection, land, market, road, and poll tax (*cizye*), criminal, murder, assault, theft, drinking wine and on religion, and changing religion.[52] This long list is good evidence of how court records have the potential to represent daily lives and represent an alternative source to the state-centered documents.

An alternative study of Iris Agmon and Ido Shahar examines the demand on court records after the 1990s. The question of what leads a shift was discussed in relation to the historiographic trends of the twenteeth century. They discuss the perception of court records by Western scholars,

> Western observers ranging from the perceived strangeness and incomprehensibility of the judicial procedure to the seemingly unlimited authority of the qadi and the apparently arbitrary nature of Islamic justice. In

[51] Jon E. Mandaville, "The Ottoman Courts Records of Syria and Jordan," *American Oriental Society* 86, no.3 (Jul.-Sep., 1966), p. 311.

[52] Mandaville, p. 134.

> short, Western observers tend to view the sharia court as an exotic institution, fascinating and repelling at the same time.[53]

In addition to that, Weber describes Sharia law as irrational form of law. Agmon and Shahar stress how the qadi was seen in Western academia. In that sense, qadi was represented as "the embodiment of oriental despotism" and the legal technicians. According to them, the reason behind this conclusion and biases was that, Western scholars did not check the practices and real world, but they stuck in the legal texts. This is a familiar mistake that Turkish scholars have fallen into, too.

Until the 1990s, the tendency was to evaluate court documents as "hard evidence" and scholars applied descriptive methods and calculations. The missing point was changed to their relations with the local, social interactions and particular context. In the 1990s, the cultural turn facilitated the criticism on orientalist scholarly tradition and gave the chance to study what was going on in the rural or local areas. In the words of these authors, a *"*more localized, practice-oriented texts such as branches of applied law and legal opinions*"*[54] was the reason for shifting themes and perspectives toward sharia court records.

Interrogation reports were not newly introduced by Nizami law, Sharia court sijills also applied this method but in a different way. Sharia records paraphrase the accused and witnesses' statements. On the other hand, interrogation reports include first person narrative and provide an opportunity to access the "voice of voiceless" in terms of grand histories. Agmon and Shabar argue that,

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[53] Iris Agmon and Ido Shabar, "Theme Issue: Shifting Perspectives in the Study of "Shar'ia" Courts: Methodologies and Paradigms," *Islamic Law and Society* 15, no.1 (2008), p. 2.

[54] Ibid., p. 10.

> By giving evidence about the character and reputation of a person, these communities had far reaching powers over their members: their testimonies to the effect that the accused was a habitual offender be the deciding factor for passing a death sentence or for a sentence banishing him from the neighbourhood or village where he lived.[55]

Similar to Nizami law, the cooperation of people was needed, but not as determining in the examples of Nizami cases. First, in Sharia court documents, the case is documented after the trial. That means the historian cannot see the overall picture and the ongoing process, the challenges, and the motives of the qadi. With the new penal codes and institutions introduced by Tanzimat resulted with a different procedure in Nizami courts, which was to document the process, the underlying reasons of the judicial authority when they made a decision.

Furthermore, qadis were also affected by this practice and they had to show their reason and referring clause in shaping their decisions. Moreover, detailed procedural documents were obligatory. The goal of the state was to unify the practices and lessen the effects of jurisprudence, customary law, and judicial discretion in the law. For this reason, with the help of printing technology, the central judicial administration distributed a sample document to the judicial units.[56] Not only this, but also the registration of each investigation and routine reports had to be classified and sent to the center. This documentation had to be in numeric order.[57]

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[55] Ibid., p. 70.

[56] Rubin, p. 88.

[57] Ibid., p. 89.

Interrogation reports were not newly introduced by Nizami law, Sharia court sijills also applied this method but in a different way. Sharia records paraphrase the accused and the witnesses' statements, on the other hand, interrogation reports includes first person narrative provides an opportunity to access the "voice of voiceless"[58]. "By giving evidence about the character and reputation of a person, these communities had far reaching powers over their members: their testimonies to the effect that the accused was a habitual offender be the deciding factor for passing a death sentence or for a sentence banishing him from the neighborhood or village where he lived."[59] Similary to nizami law, the cooperation of people was needed.

[58] Türker, p.14.
[59] Ibid. , p. 70.

CHAPTER TWO

LITERATURE SURVEY OF THE CONCEPTS OF ABDUCTION AND ELOPEMENT

In order to contextualize abduction and elopement, it is necessary to discuss the meaning of marriage, its function, symbols and constituents. Although not all the cases of abduction and elopement resulted in marriage, a high proportion of these two acts target marriage, so in the beginning of this discussion what marriage provides its subjects will be discussed. After then, in this part, the underlying reasons for abduction and elopement with references to literature, but also with coherent examples from Ottoman court records, will be argued. In addition, the problems faced doing this research will be discussed in the latter parts.

> For centuries, marriage did much of the work that markets and governments do today. It organized the production and distribution of goods and people. It set up political, economic, and military alliances. It coordinated the division of labor by gender and age. It orchestrated people's personal rights and obligations in everything from sexual relations to the inheritance of property. Most societies had very specific rules about how people should arrange their marriages to accomplish these tasks.[60]

As Coontz writes there are multiple dimensions and meanings for marriage at the societal and economic levels. Marriage is not only a contract between two

[60] Stephanie Coontz, *Marriage, A History: How Love Conquered Marriage (*England: Penguin, 2006), p.31.

individuals, but at the same time, it generates kinship between families and has the power to provide the couple and family a social status or disgrace. Borbieva writes that an institution, marriage is a "system of social relations, economic arrangements, political processes, cultural categories, norms, values, ideals, emotional patterns, and so on and on."[61]

Besides, study of marriage yields to reconsideration so the gendered roles of marriage, and the three basic elements shaping the concept of marriage, which are culture, religios and state law. While a marriage loyal to religious and customary law, which can be considered as the "ideal," produces socio-economical kinship ties between the two parties. On the other hand, abduction and elopement are regarded as inimical to social norms and deviation from order, so that a bride's family not only loses their daughter, but also the chance to develop relationship by affinity if reconciliation is established.

As the household is the basic unit of production, marriage potentiallly leads to the extension of parental household; that is, the familial connections. Allocation of property or inheritance may alter the social and economic capital of families. For instance, an impecunious bride getting married with the son of a wealthy and prominent family may suddenly transform the economic status of her family and contribute a good reputation in their living place.

Just the contrary, an inconvenient or a morganatic marriage naturally defames and strands family members, that is, the marriage of daughters and sons is also an shared fate for the positioning of parents' in society. Through marriage, family

[61] Noor Borbieva, "Kidnapping Women: Discourses of Emotion and Social Change in the Kyrgyz Republic," *Anthropological Quarterly* 85, no.1 (Winter 2012), p. 141.

members experience the extension of their household, both economically and with non-material capital relations.

Even though Martinez-Alier describes elopement as a "deviation from the norm,"[62] and I agree with Francis Conant, Daniel G. Bates and Ayşe Kudat in calling both abduction and elopement as alternative methods to acquire a wife. More precisely, if a historian poses herself near to the judiciary and administrative mechanism, then elopement and abduction may be defined as kinds of deviation; on the other hand, for such societies where courting is not seen as permissible and control of the children's marriage preferences exists, elopement becomes an anomaly.

On the part of a lover, or an abductor, these acts are alternative to the normative and prescribed marriage systems, which may be seen as time-consuming, costly, and prescriptive. The criteria to define what is normal, ideal, or deviated something plural and needs to be dealt with its subjects. Therefore, in this part of thesis, how abduction and elopement were viewed will be documented. How men and women handled with prescriptive rules of law and the custom of marriage, while they invented alternative strategies to the problems they faced with such as parental authority, bride dowry and social inequalities should be understood within the consideration of customary and state law. Such kind of a study needs to apply anthropological studies.

Abduction and elopement are called things in different places. For example; in Irish folklore, terms related to the abduction of women are "snatching, sugan,

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[62] Verena Martinez-Alier, "Elopement And Seduction in Nineteenth-Century Cuba," *Past And Present* 55, no.1 (1972), p. 91.

fuadach and left-handed marriage."[63], In South Africa, "ukuthwalwa", in Kyrgyzstan "*ala kachu*", in Kazakhstan "*alyp qashu,*" divided into two terms as follows "*kelisimsiz alyp qashu*" for abduction and "*kelissimmen alyp qashu*" for elopement, In Azerbaijani *"qız qaçırmaq*" means capture, "qoşulup qaçmaq signifies elopement. In Hmong culture, capture is *"zij poj niam,*" in China, marriage by abduction is "qiangqin", in South America capture is *"casami ento por",* in Italy bridekidnapping is "*fuitina"*, lastly in Bosnia-Herzegovina, Croatia, Montenegro and Serbia bride kidnapping is "*otmitza."* Although these acts are called differently in various geographies and cultures, abduction and elopement as phenomena belong to social life and have pecularities and common points in general so in a comparative way, I would describe their features, and reasons, but at the same time keeping in mind the court cases of the Ottoman Empire.

In contemporary Turkey, the abduction of women and elopement are called as "*kız kaçırmak*". The Turkish language does not have any distinctive term for consensual abduction. Even though in some anthropological studies on contemporary Turkey, scholars called it "*kaçışmak*" (to elope), the Ottoman court records with which this thesis is based on, do not specify such a wording, which makes it difficult to decide whether a case was consensual or not. Facing such problems, when I decided if a case was abduction or elopement, the length and details of archival document became crucial, as the archival records are more detailed and give the opportunity to hear the voices of perpetrator and victim, then the roots of the act

[63] Maria Luddy, "Abductions in Nineteenth-Century Ireland," *New Hibernia Review*, no. 17 (2013), p.18.

come to light. The agency of women in elopement is not named precisely, since the records used "*kaçırmak*" (to kidnap) both for abduction and elopement.

To list some of the anthropological studies regarding contemporary Turkey on abduction,[64] the pioneering scholars are İbrahim Yasa, Mahmut Tezcan, and Ubeydullah Ozan. İbrahim Yasa's book, *The Tradition of Abduction in Turkey and Some İssues Regarding Administrative Matters* (Türkiye'de Kız Kaçırma Gelenekleri ve Bununla İlgili Bazı İdarî Meseleler)[65] was published in 1962 and discussed abduction with its various forms, its reasons, its occurrence and the precautions taken against to abduction. Moreover, Yasa utilized the newspapers, proverbs related to abduction and, in addition, he made use of examples from newspapers and private letters, which are very readable and attention grabbing.

Furthermore, Mahmut Tezcan's studies on bride price[66] and abduction are worthy who deals with such concepts. In the master thesis of Ubeydullah Ozan, he focused primarily the district of Kandıra, Kocaeli, and his method was constituted from questionnaires.[67]

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64 For some anthropological studies on marriage practises in contemporary Turkey, see: Yusuf Ziya Demircioğlu*, Anadolu'da Eski Düğün ve Evlenme Adetleri* (İstanbul: Burhanettin Matbaası, 1938); Sadi Yaver Ataman, *Eski Türk Düğünleri ve Evlenme Rit'leri* (Ankara: Kültür Bakanlığı, 1992); Ali Rıza Balaman*, Evlilik Akrabalık Türleri* (Ankara: Kültür Bakanlığı, 2002); Hamit Zübeyr Koşay, *Türkiye'de Türk Düğünleri Üzerine Mukayeseli Malzeme* (Ankara: Ankara Maarif Matbaası, 1944); Bozkurt Güvenç, "Geleneklerden Kalıntılar: Başlık Berdel Kız Kaçırma Kuma ve Amca-Kızı Evliliği," *Kadın Araştırmaları Dergisi,* no. 1 (1993), pp. *43-48.*

65 İbrahim Yasa, *Türkiye'de Kız Kaçırma Gelenekleri ve Bununla İlgili Bazı İdari Meseleler* (Ankara: TODAİE, 1962).

66 Mahmut Tezcan, *Türk Kültüründe Başlık Parası Geleneği: Kültürel Antropolojik Yaklaşım,* (Ankara: Kültür Bakanlığı, 1998). For abduction see: Mahmut Tezcan, "Türk Kültüründe Kız Kaçırma Geleneklerinin Antropolojik Çözümlenmesi," *Aile ve Toplum,* no. 2 (Ekim-Aralık 2003); Mahmut Tezcan, *Kan Dâvâları-Sosyal Antropolojik Yaklaşım* (Ankara: Ankara Üniversitesi Eğitim Fakültesi, 1981), pp. 26-31 (specificially refers to abduction in this part)

67 Ubeydullah Ozan, *"Kız Kaçırma Geleneğinin Sosyo-Kültürel Temelleri,"* (MA thesis, Sakarya Üniversitesi, Sosyal Bilimler Enstitüsü, Adapazarı, 1999).

In the newly published article of Fatih Öztop, he used felony schedules (*vukuat-ı cinaiye cetvelleri*) and general crimes schedules (*ceraim-i umumiye cetvelleri*) as archival sources. His study focuses on between 1908 and 1916 and specifically on the province of Aydın. Based on the statistics he produced, abduction was common in rural sides and the perpetrators were generally unmarried men and farmers.[68]

The crimes of abduction and elopement are generally linked with pre-industrial[69] societies and described as "rural crime." A Scottish traveler named Henry Inglis, in his book called as *A Journey throughout Ireland* (1835), defines elopement "sham cases of abduction" and Michael Durey interrelates consensual abduction that is elopement, with "social groups below the lesser gentry and strong farmers."[70]

On the other side, while some scholars defend that abduction in the eighteenth century belongs to a "narrow band of society," Maria Luddy argues abduction, especially after the eighteenth century, was perpetrated by "the lower elements of the society,"[71] and adds that "members of the gentry in reduced

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[68] Fatih Öztop, "Suç Cetvellerine Göre Osmanlı Devletinde "Kız Kaçırmak" Suçu Aydın Vilayeti Örneği (1908-1916)" *Türk & İslam Dünyası Sosyal Araştırmalar Dergisi,* no. 2 (2015):288-298, and see Lerna Ekmekçioğlu, "A Climate for Abduction a Climate for Redemption The Politics of Inclusion during and after the Armenian Genocide," Comparative Studies in Society and History, no. 55 (2013), pp. 522-553.

[69] Daniel G. Bates et all, "Kidnapping and Elopement as Alternative Systems of Marriage" *Anthropological Quarterly* 47, no. 3, (July 1974), p. 234.

[70]Michael Durey, "Abduction and Rape in Ireland in the era of the 1798 Rebellion," *Eighteenth-Century Ireland / Iris an dá chultúr* 21, (2006), p. 33.

[71] Luddy, p. 23.

circumstances who were attempting to improve their social status"[72] applied abduction. Furthermore, Luddy quotes from a newspaper called *Balina Impartial,* which in 1833 it commented, "In proportion as nations become more civilized, they have paid respect to the characters and feelings of a female."[73] As the quote, shows abduction and elopement are identified with countryside and lack of civilization.

Bride theft is disapproved by society and at the level of law system; the abductors were sentenced from flogging, fines, and imprisonment to castration. Abducting a woman with the intent of getting married was regarded as an act by notorious, heroic and courageous men. According to the writings of Eristov on Khevsuria from 1850: "Bride-stealing is very common among these primitive people. You are not regarded as brave unless you steal the girl you are fond of, and she was expected to come from a good family. Such an action will infallibly cause terrible quarrels, murders and feuds."[74]

Like to Khevsuria, Elle Kamm studying contemporary Georgia, writes that women were expected to be "bashful and modest, men are supposed to act bravely and assertively."[75] Luzbetak states that bride stealing of widows, divorcees and girls with the aim of getting married was very common among the people of Caucasia and " In fact, formerly the Tartars considered bride-stealing as something praiseworthy. A young man, who would capture his beloved at the risk of his life and perhaps in so

[72] Ibid., p. 22.

[73] Ibid., p. 24.

[74] Luzbetak, p. 93.

[75] Elias Kamm, "The Pride of Being Kidnapped: Women's Views on Bride Kidnapping in Tetritskaro, Georgia", *Caucasus Analytical Digest*, no. 42 (30 September, 2012), p. 10.

doing murder a brother or the father of the girl, would be envied by all his companions."[76]

Considering not only the underlying reasons for abduction but also who are the perpetrators and victims were should be taken into consideration. As I previously mentioned, abduction can be defined as the authority wars between parents and lovers or the abductor. Ignorance of the right to say about their daughters' marriage and giving their consent on the side of parents ' (especially of the father) are eliminated. So, in that sense abduction can also be read in the terminology of gendered issues and family.

Different kinds of kidnappings, from elopement to mock bride theft, with their definitions and arguments will be analyzed especially through anthropological and historical studies. Apart from bride kidnapping there are other terms used to explain this phenomenon such as bride theft, abduction of women, bride capture; however, this study chooses to use the term of abduction and elopement. This kind of study is noteworthy for the input it supplies to the analysis of what marriage means, what parental authority is in choosing a partner, women's role and voice in their marriage and the state's intervention into the daily life and customs.

To put in a different way, the relation between parents and their children, the place of sexual and social honor both in the eyes of state and society can be traced with the study of abduction. Apart from this, the attention of anthropologist to abduction and elopement is far greater than the studies of historians.[77] It is

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[76] Luzbetak, p. 93.

[77] For some selected studies of anthropology: Herzfeld, Michael "Gender Pragmatics: Agency, Speech, and Bride Theft in a Cr Rimonte, Nilda "A Question of Culture: Cultural Approval of Violence against Women in the Pacific-Asian Community and the Cultural Defense"', *Stanford Law Review*, Vol. 43, No. 6 (Jul., 1991), pp. 1311–1326.etan Mountain Village." *Anthropology* 1985, Vol.

impossible to disregard anthropological studies while arguing these two concepts. Although there are studies about the nineteenth century of Ottoman women,[78] none of them has focused on the abduction of women and elopement yet. Nevertheless, some of the studies that set place to these two issues dominantly based on the studies of "conversion"[79] illicit sex[80] and rape. The abduction of women is generally considered as an attack on the body in the text of penalty clauses; however, acquiring power, status and property via marriage with the abductee, which that is the underlying motive of the perpetrators, should be discussed since it has the potential to open Pandora's Box.

As an act of violence, there are different kinds of kidnapping that can be listed as follows: abduction, elopement, mock bride theft, raiding for wives, symbolic elopement, and ceremonial capture. The criteria of dividing the crime of kidnapping into such categories are based on whether the act consists of force or mutual consent. For instance, the distinctive feature between the abduction of women and elopement

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IX: 25-44. Stross, Brian. "Tzeltal Marriage by Capture." *Anthropological Quarterly*. 47:3 (July 1974), pp. 328–346. Light, Nathan and Damira Imanalieva. "Performing Ala Kachuu: Marriage Strategies in the Kyrgyz Republic" Barnes, R. H. "Marriage by Capture." *The Journal of the Royal Anthropological Institute*, Vol. 5, No. 1. (March 1999), pp. 57–73.

[78] See, Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine*, (Syracuse, N.Y: Syracuse University Press, 2006); Liat Kozma, *Policing Egyptian Women: Sex, Law, and Medicine in Khedival Egypt*, (Syracuse, N.Y: Syracuse University Press, 2011); Elyse Semerdjian, *Off the Straight Path Illicit Sex, Law, and Community in Ottoman Aleppo*, (Syracuse, N.Y: Syracuse University Press, 2008); Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East 1500-1900* (Berkeley: University of California Press, 2006); Madeline C. Zilfi, *Women and Slavery in the Late Ottoman Empire: The Design of Difference* (New York: Cambridge University Press, 2010).

[79] See, Selim Deringil, "There Is No Compulsion in Religion: On Conversion and Apostasy in the Later Ottoman Empire," *Comparative Studies in Society and History* 42, no.3 (Jul., 2000), pp. 547-575.

[80] Başak Tuğ, "Politics of Honor: The Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia," (Ph. D. diss., New York University, 2009).

is built according to the women's desire that is, when lovers runaway, is known as elopement. Apart from (un) willingness, the intention of act is also taken into account in this categorization.

In the simplest term, the abduction of women might be described, as taking away a woman against her will. On the one hand, Thomas M.Kiefer, an American cultural anthropologist studying The *Tausug: Violence and Law in a Philippine Moslem Society*[81]*(1972)* says,

> Abduction is a quick, relatively inexpensive, highly individual means of acquiring a particular woman who might otherwise not be available. Second, as an expression of masculinity and possible oedipal conflicts in a society in which fathers are ideally closer to their children than mothers. Abduction is seen as the symbolic taking of the mother (wife) from the father (wife's father) who controls her.[82]

On the other hand, historian Maria Luddy defines abduction "the practice of carrying off a woman with the purpose of compelling her to marry a particular man – who would then have access to the available dowry of money, land, or other property tied to the woman."[83] This kind of definition also specifies the underlying reasons of the abduction, such as getting rid of dowry money and to confiscate property of abductee.

Apart from getting rid of the financial burden of a marriage and confiscation of women property, loved man utilized abduction to convince the woman whom they

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[81] Thomas M.Kiefer, *The Tausug: Violence And Law in A Philippine Moslem Society*, (Long Grove: Waveland Pr Inc, 1986).

[82] Thomas M. Kiefer, "Bride Theft and The Abduction of Women Among The Tausug of Jolo: Some Cultural and Psychological Factors," *Philippine Quarterly of Culture and Society* 2, no.3 (September 1974), pp. 123-132.

[83] Luddy, p.18.

were rejected in 1962 by Hasan Ali from Didim abducted a girl and for 28 days, he tried to persuade her to marry him. [84] On 4 March of 1822, James Brown from Aughrim, Ireland had tried to kidnap sister of Honora and accidentally took away Honora; when he realized his big mistake, he repeatedly rapes her in order to make her acceptmarriage to him. Rape as a means of possessing a woman was exemplified in the case of Honora.

Free will is the criteria to differentiate what is an abduction and elopement. Abduction is defined as kidnapping a woman "without her foreknowledge or consent and without the knowledge or consent of her parents and guardians."[85] However, elopement involves mutual or consensual agreement. When the bride's parents disapproved of their daughter's desire to marry her lover and are closed to any kind of negotiation, it becomes a sufficient reason to elope. In general, after the elopement, the couple hides for a few days and then goes to the police, but the most crucial thing is that the woman should be deflowered. Because the default connection between a daughter's chastity and family honor get the family into a scrape, they have to accept the marriage, and sometimes in cases of false promise of marriage, the parents of deflowered girl put pressure on the kidnapper to marry her.[86]

Kathryn Sloan's book, focusing on runaway daughters in nineteenth century Mexico,[87] to illustrates how sexual intercourse of the couple was used to persuade the parents. The sexual honor of families made them admit the marriage of their

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[84] June Starr, *Disputes And Settlement In Rural Turkey*, (Leiden: Brill 1978), pp.186-188.

[85] Barbara Ayres, "Bride Theft and Raiding for Wives in Cross-Cultural Perpective," *Anthropological Quarterly* 47, no.3 (July 1974), pp. 238-252.

[86] Martinez-Alier, p. 97.

[87] Kathryn A. Sloan, *Runaway Daughters Seduction, Elopement, and Honor in Nineteenth-Century Mexico* (Albuquerque: University of New Mexico Press, 2008).

daughter. The lovers in Mexico took advantage of cultural codes and social norms of the society in which they live and seduction of the eloped woman facilitated the approval of marriage by parents.

Furthermore, even when both parties were agreed, an engaged couple might use elopement as a solution to negotiate or lessen a higher bride price.[88] Rather than calling it as elopement, Luzbetak uses the term as "bride capture by families."[89] In order to get rid of the expenses of wedding rituals and engagement, families may encourage elopement. The case of Yusuf from Ankara shows that he applied to justice to compensate his expenditures for his wedding and engagement, but also for his tarnished reputation.

Based on Yusuf's petition and claims in 1866, he was engaged to Emine for three years and after they got married, on their wedding night, a co-villager called as Ahmet from Girindos, the province of Ankara, had carried off his wife. Deriving from his "unjust suffering," in his words, he requested compensation for the expenses of the engagement and wedding, and lastly he demanded that disciplining Ahmet was necessary to restore his honor.[90]

Observers of "mock bride theft" may identify it as an abduction; however the couple definitely lovers previously organizes the act behind their parents' backs. Although the woman resists her captor, the physical opposition derives from convincing her parents that it was not her choice, so in fact mock bride theft is a sub-

[88] Kiefer, Bride Theft, p. 125.

[89] Luzbetak, p. 96.

[90] BOA.MVL 509/39 21 Ca 1283 (1 October 1866) "*mağduriyetinden bahisle ikmal-i namus ve bu yolda masrafının tahsili"*

category of elopement. While the lovers attain their desire by utilizing mock bride theft as a strategy, the theatrical performance of women in the form of unwillingness harms her familial honor lesser than elopement. Breyfogle, working on gender, sexuality, and violence in nineteenth century Caucasus defends the opinion that if the abductee shows of resistance to the kidnapper, the abducted girl was not viewed as ruined and unable to find another suitor,[91] because her resistance was thought of as the defense of familial honor.

The common feature of abduction, elopement and mock bride theft is that the two parties know each other already; however, raiding for wives[92] or, according to Edward B.Tylor, "hostile capture" involves to an unknown or foreign woman. [93] Ayres put the idea that the reconciliation of women's household and abductor in case of a marriage is harder in that type of abduction.[94]

Lastly, ceremonial capture may be discussed under the title of abduction, but as its name indicates, the abduction of women was simulated as a part of the wedding. Since abduction was linked with the bravery of the prospective groom, such a ceremony illustrates the husband's power. Moreover, if a woman kidnapped, it is a sign of that she is worth taking a risk for. Overall, ceremonial capture was applied to show a man's bravery and a woman's worthiness.

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[91] Kristin L. Collins-Breyfogle, "Negotiating Imperial Spaces: Gender, Sexuality, and Violence in the Nineteenth-Century Caucasus," (Ph.D. diss., Ohio State University, 2011), p.20.

[92] In 2004 a documentary *Bride Kidnapping in Kyrgyzstan* have been shot by Petr Lom, and it led a great deal of discussion in *Kyrgyzstan* if abduction by force and with the intent of marriage is a tradition and a part of national identity or a shame of their culture.

[93] Ayres, p. 239.

[94] Ibid., p. 239.

Elopement derives from the disapproval of bride's family, but in the form of symbolic elopement, the family of prospective groom rejects the bride to be or both of the families do not give their consent to the marriage. Its subjects are generally widowed[95] or married woman with children and the financial situation of bride does not allow arranging wedding ceremony or preparing a dowry. A woman goes to a man's house to show her intent to get marry, and the family of groom has to accept her. In Turkish, this is known as "*otura kalma*" or "*oturak alma*"[96] and common in Sivas and Kastamonu in contemporary Turkey.

The Underlying Reasons for Abduction and Elopement

A Turkish proverb says, "The luggage of the eloped woman is small" (*Kaçan kızın bohçası küçük olur*.)[97] meaning the things that are taken by the eloped girl do not include many things. She takes neither the dowry, nor her personal belongings. Apart from material things, an eloped woman is deprived of an engagement and wedding rituals, in addition to gifts and jewelry from her family, relatives and neighbors. She misses the engagement and wedding ceremonies, which are generally considered

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[95] Kiefer, *The Tausug: Violence And Law in A Philippine Moslem Society*, p. 124.

[96] Ozan, p. 62.

[97] For further examples See Aysel Günindi Ersöz, "Türk Atasözü ve Deyimlerinde Kadına Yönelik Toplumsal Cinsiyet Rolleri," *Gazi Türkiyat* 6 (2010), pp. 167-181. "On beşinde kız, ya erde ya yerde." "Bez alırsan Musul'dan, kız alırsan asilden." "Kızı serbest bırakırsan ya davulcuya ya zurnacıya varır." "Bekar gözüyle kız alınmaz." "Ergen gözüyle kız alma, gece gözüyle bez alma." "Kendinden aşağı kız al, kendinden yükseğe kız verme." "Kendinden küçükten kız al, kendinden büyüğe kız ver." "Eski pamuk bez olmaz, dul avrat kız olmaz."

important for the parents and the couple, but especially for the bride, who grew up dreaming about her "big" day.

For a young eloped girl, the driving forces leading her to run away might be parental opposition to the marriage with her lover. Another main reason may be ill treatment by her family.[98] Lovers from Trabzon in 1862, Fatma, a young Muslim Turk girl, and Kodan, son of a Greek priest, eloped. The deciding factor for her to run to was her father's opposition to her suitor. In addition to parental disapproval, her father had mistreated her because she had considered a non-Muslim man[99]. Another benefit of elopement was that it gave the opportunity to get rid of "unhappy engagements"[100] for both men and women.

In Ergili village of Gerze, Sinop, the fiancée of Karslıoğlu Mustafa was abducted by the brothers of Çömlekçizade İsmail in 1861. According to the petition of her prospective father-in- law and fiancé Mustafa, this was not the first offence committed by the perpetrators. They also abducted the daughter of Kendiroğlu İbrahim from another village.[101] Another detail about the abetting İsmail was that the co-plaintiffs said that he had been dismissed from the Palace's private quarters (*enderun-ı hümayun*) with a salary of 500-kuruş. Apart from their demand for justice and complaint, they claimed their children and dependents were in the horror of this

[98] Martinez-Alier, p. 98.

[99] Ali Mesut Birinci and Zehra Topal, *Fatma ile Kodan Yürek Burkan bir Aşkın Belgeseli*, (Trabzon: Serander Yayınları, 2011). This book is only composed of archival documents from Meclis-i Vala, and it is a case of elopement of a Muslim woman and non-Muslim man in Trabzon.

[100] Kamm, p. 10.

[101] BOA.A.MKT.DV 200/14 19 S 1278 (26 August 1861)

terrorism.[102] Although the unnamed, abducted and raped girl was later married to her abductor, İsmail, her former fiancé and father reported the case in writing to the district governor of Sinop. The bad reputation of Çömlekçizade İsmail both for dismissal from Enderun and has previous crimes, were repeated as reasons to reject him as a groom.

As an institution, marriage has the potential to offer couples to move up the social ladder. A good marriage is regarded as one that improves the socio-economic status of the family. Descended from a well-born family, being moral unstanding, and good reputation and, for cheating chastity woman, equality between the daughter and her suitor may be counted for the common wish list of the families to give their consent to a marriage. Yet, various forms of kidnapping have been discussed and although the leading factors to abduct and elope have been touched on briefly, the remote and proximate causes leading abduction and elopement needs to be discussed the through. At this point, I suggest analyzing these two topics with regard to the intention of the perpetrators. In the first category, abduction and elopement of a woman to get married will put under the scope and following this one, the second category will be the exploitation of woman in terms of sexuality and property.

First, it should be noted that abduction and elopement in order to get married is the leading factor. From religion to bride price, there are many disincentives in front of couple. In this first category, the subjects may be divided into two groups: eloping lovers, and abductee and abductor. In the way of eloping lovers who desire to marry, opposition from their parents and high bride price are the reasons. The

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[102] "*sairelerinin dahi ıyal olanları havflarından taşra çıkarmadıklarından ve bu suret-i perişanı" "kaza-i mezburede ıyal ve evladlarımız kapudan çıkmağa zarar etmekte olduklarına rıza-yı padişahi ve rıza-yı aliyaları olmayacağına mübeyyen hak-pay-i aliyelerine arzuhale cesaret kılındığı*"

question of why a father, as the head of the family, does not give his consent to his daughter's choice may totally vary according to the father's identity, or in the way, he defines an "ideal groom" and the conditions in which the family is. However, if we attempt to make a list of the issue of parental opposition, the dominant reason could be the claim on the inequality between their daughter and the suitor. Parents took into consideration of equality in financial gain, social status, religion, and ethnicity. On the other side, many records can be named as abduction by relatives, since they had disputes between each other.

In 1860, a decree to the governor of Bosnia is put down on newspaper about Abdulkadir's wife. Abdulkadir was from the village of Modanofça, which was bounded to the township of Gilan. Unfortunately, the document does not mention from Abdulkadir's wife; and some of her Albanian relatives forcefully took her from the house and in order to legitimize their act, the relatives insulted Abdulkadir. According to the decree, the wife was satisfied with her husband and did not have a way to divorce him. Abdulkadir was described as a person who did not have any behavior against religion and humankind (*mugâyir-i şerî'at ü insâniyet*). The decree ordered the investigation of the kidnappers and for them to be sentenced after that.[103]

Thomas Kieger lists "strong parental control of marriage; lack of any institutionalized public means of direct courtship, a high value on virginity for women, preferential marriage patterns, wealth differentials and the presence of bride

[103] Yonca Köksal, *Sadrazam Kıbrıslı Mehmet Emin Paşa'nın Rumeli Teftişi* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2007), p. 332. "*Abdulkadir'in zevcesi hanesinde ikamet etmekte iken akrabasından bir Arnavud tarafından birkaç adem gelip kendisini cebren aldıktan sonra bu hareketlerini kapatmak için birtakım isnadat-ı gayr-i vakı'aya dahi tasaddi ile mezbureyi tefrik ettirmek da'iyesine düşmüş olduklarından*"

wealth payments"[104] as the underlying reasons for abduction and elopement. Similarly to Kieger, Maria Luddy defends that increase in the rate of abduction cases in nineteenth century Ireland a result of opposing parental choices in marriage and "the rise of liberalism and individual freedoms".[105] Applying this comment to the all cases seems unreasonable and on the issue of strong parental control, it should be added that this pressure was imposed on daughters and quite rarely sons. The validity of a marriage may be up to the consent of guardians.

For instance, Ottomans who followed the Hanefi sect changed their mind in eighteenth century on the requirement of a legal guardian to get marry. Actually, an adult woman's consent was adequate for marriage until 1544; however, then a decree prohibiting the marriage of a woman unless presence and consent of a legal guardian was announced.[106] That is to say, a legal guardian had the right to annul a marriage. Overall, one of the main factors for the elopement of lovers derived from parental control of marriages and oppression.

That is to say, from marriage to revenge or sexual motives the underlying reasons of why an abductor forcefully took a woman is more complicated than it seems. Barbara Ayres lists the reasons for abduction as follow "polygyny, bride price, parental control of marriages, wealth differentials within the society, and high valuation of virginity." In cases when the parties' families are from different socio-economic classes and their economic gains were highly incompatible; elopement or abduction were needed to make their families to acknowledge admit the couple's

[104] Kiefer, "Bride Theft," p.128.

[105] Luddy, p. 19.

[106] Judith E. Tucker, *Women Family and Gender in Islamic Law*, (Cambridge, UK: Cambridge University Press, 2008), pp. 34-35.

choice to their families. It is related with parental control over marriages and pressure from parents. One more thing, if the girl was deflowered or widowed it could lead the opposition of the parents. Marrying a non-virgin could influence the fame and honor of the parents so in order to force to convince the parents, the lover may abduct the girl.

While Martinez-Alier says that elopement derives from the lack of freedom of marriage and religious morality that necessitates virginity for the unmarried and chastity for the married womens[107] for nineteenth century Cuba, by taking into the archival data into consideration, to become members of a different religion and the discrepancy of socio-economic status led lovers to run away in the Ottoman Empire. In Sharia law, there is a term describing the inequality and mismatch of couples, which is "*küfüv*" or *kefaet* means being equal and equivalent. A marriage of mismatched individuals was not valid. Fanny Davis writes that "that of a woman of good family having eloped with a servant"[108] was naturally annulled. According to the Hanefi sect, there are six important criteria to decide whether a couple is equal or not, and these are: religion, freedom, having equal property, their profession, and being Muslim.

Apart from opposing parental authority, to get rid of the financial burden and long rituals of a traditional marriage make elopement and abduction attractive. As was mentioned before, marriage is not bound up only the couple, but also affects family status and provides an economic gain via bride price. Since abduction and

[107] Martinez-Alier, pp. 92-96.

[108] Fanny Davis, *The Ottoman Lady: A Social History from 1718 to 1918,* (New York: Greenwood Press, 1986), p. 120.

elopement, which are cheaper and even priceless, compared to the arranged marriages, allows the suitor to avoid expenses and saving money.[109] Traditional wedding rituals, ceremonies, gift-giving may get easily put the prospective groom in debt.

Elke Kamm, focusing on bride kidnapping with its historical background and contemporary practices of Tetritskaro, Georgia, defends the idea that in the countryside, the cost of a marriage was higher than cities. In case of a bride theft, she states, the reconciliation between the family and kidnapper was done through money, cattle, or in front of a religious icon. "The contempt of the ritual could cause conflict and even blood feuds among the participants. The ritual of reconciliation was therefore performed to restore order within society."[110] Arranged marriage by negotiation referred to the parents' consent and neither the bride nor the groom's desires were involved in the process.[111] It was seen as time consuming, expensive and a ritualized marriage form.

For example, Sharia law did not necessitate bride price, but actually bride wealth (*mihr*) when solemnizing a marriage; however as a custom a bride price was also requested by families, although it had no ground in religious law. It was mentioned that the crime of abduction and elopement was identified with the poor and not surprisingly as a precaution to bride kidnapping, the Ottomans tried to

[109] Kamm, p.10.

[110] Ibid., p. 10.

[111] Kiefer, *Bride Theft,* p.124.

prohibit bride price and gift giving in 1850.[112] In 1865, Ottomans issued a writ regulating marriage and wedding[113] (*İzdivac ve Tenaküh Maddesi Hakkında Tenbihatı Havi İlamname*) and this way meant to reduce the cost of a marriage, and divided society into four groups according to their financial status and ordered to organization of marriages as they afford not more than that. Up until now, parental opposition and financial requirement of a marriage have been discussed; however there are other reasons for abduction and elopement which is in a word, inequalities such as ethnicity, religion, and then virginity of women.

Although race is not a challenging criterion in the archival court documents 1840-1870 of Ottoman that I covered, Kathryn A. Sloan from nineteenth century Mexico, and Martinez-Alier from nineteenth century Cuba say that families do not welcome marriage of white and colored women. Mother of a mulatto rejects a dark-skinned girl as her bride, and by doing that, she reproduces white discriminating policies.[114] On the other hand, instead of marriage of a white girl with a dark-skinned man, Alier shows that families preferred to live with their shame. On the other hand, the anxiety over racial coherency interested not only men but also women who were recognized as the "true perpetrators of the lineage"[115] Besides different skin tones, profession, class, financial status, and lifestyle were important. "One suitor was

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[112] Tülay Ercoşkun, "Osmanlı İmparatorluğu'nda 19. Yüzyılda Evlilik ve Nikâha Dair Düzenlemeler," (Ph.D. diss., Ankara Üniversitesi, 2010), pp. 106-114.

[113] Ibid., pp. 121-122, 242-256.

[114] Martinez-Alier, p. 108.

[115] Ibid., p. 115.

rejected for not doing anything else but "attending dances, playing billiards and going cock-fighting and molesting young girls."[116]

In Cuba, Martinez-Alier writes that "Parent was against the marriage because the young man was illegitimate, which fact made him unsuitable for "intercourse and communication with the people." An illegitimate child was not only handicapped socially but, apart from being deprived of the right to inherit from his progenitor and bear his name, he was also discriminated against in public life. By law he was a second-rate citizen to whom all offices of "distinction" as well as crafts and trades were closed."[117] Abduction was not always practiced with the intent to marry; the abductor might have forcefully taken a woman to seduce. Seduction may be between two lovers with a false promise of marriage to the woman. Not all of the cases of elopement were successful and led to marriage; in order to have sexual intercourse, abduction may be used to get out of home.

Attempted rape along with the abduction of Fatma Hanım was inhibited by intervention of a villager called Ahmed.[118] In the village of Musalar, the district of Tırhala, a woman called Fatma Hanım was abducted by three villagers Osman, Hüseyin and Zenci Hasan, in 1865. The courtesy title of Fatma Hanım and especially the word of "*hanım*" (dame) calls to mind that she was not a young woman and neither her father's, nor her husband's name were put on the court report. It was very rare to identify a woman without her relationship with a man, it can be drawn a conclusion that she might be a widow, divorced, immigrant or something else but

[116] Ibid., p.103.

[117] Ibid., p. 99.

[118] BOA.MVL 1015/48 15 S 1282 (10 July 1865)

surely a woman. After she was seized by forced-entry into her house, the four men carried her off to a forested place. A passer-by called Ahmet heard her screams, and she was able to escape the report, this case was applicable to both Article 206 on abduction and Article 198 on sexual abuse. Finally, these accused were sentenced to one-year imprisonment since their offense was remained as an attempt.

Apart from sexual desires, the seizure of property should be evaluated as an exploitation of women of fortune. In this category, the fiscal cliff between abductee and abductor was wide. A woman who had considerable fortunes was abducted in order to claim their property. A man might need to pay his debt and gain social status. or pay his debt and gain a social status.[119] Besides that, the abduction of the women, especially widow ones, within the family or by her was meant to control or secure the property; that is to keeo the property within the family.

Hostility between two families may lead to the kidnapping of a girl or woman. Harming the chastity rather than attacking the opposed party's property is defamatory and dishonorable on the part of the family. Because virginity was considered as an organ and in the examples of Ottoman Empire, compensation for virginity loss (*bikrini izale et-)* was obligatory.

The cultural connection between virginity and the honor of the family/father's honor is the target of the offender. Attack on the parental authority and their value they associated with virginity was a way of aggression against to both society and the family itself. Loss of chastity was irrevocable in the sight of the society so abductors were not tolerated because this act was also an assault targeted against the social order and honor. Their daughters and wives could be the next

[119] Luddy, p. 23.

victims and honor was not only associated with individuals and the scene of crime. The city or village could have bad reputation. Because of the pressure from collective honor, the Ottoman court members, who had a sharia background, generally encourage of the abductee to marry the kidnapper.

Brotika, daughter of Kosto was abducted one night by men who broke into her father's house in 1859. After a year about the event, the residents of Lubce village complained from abductors and demanded their arrest. In the order to the governor of Skobje the necessity of providing life, property and honor security to the citizens was again underlined.[120] The petition of villagers shows that, the honor of Brotika was identified with them, and they horrified by being the prospective targets because they might happen to their girls.

Razgrad or Hezargrad was a province of Ottoman Bulgaria. In 1860 Turhanoğlu Receb, complains about İbrahim the son of Köroğlu Hüseyin and Mehmed son of Yunus Abdallı Mustafa, who were described as dishonorable persons "*erazil güruhundan*" in the document. Even though İbrahim and Mehmed had been warned and advised by village headman, Turhanoğlu Receb claimed that they had continued day and night waiting in front of his house in order to abduct his daughter. With the intent of providing security to his house, Turhanoğlu Receb stayed at home and had been unable to work. It was evaluated as a crime against both honor and chastity. Having regard to given high importance and attention to public security,

[120] Köksal, p.128. " (...) *sunuf-ı teb'anın malen ve canen ve namusen emniyet-i daimiye halinde bulunmaları mültezem olması cihetle bu hareket kat'en caiz olmayacağından* (...)"

İbrahim and Hüseyin would be send to Hezargrad for further interrogation since they attempted to abduct a girl and harmed social order.[121]

Finally, yet importantly the abducted girls generally had to marry their abductors based upon the pressure from society because these girls were stigmatized and seen as potential prostitutes. Therefore, during the prosecution (their role as mediator) marriage between abductor and abductee was aimed to achieve peace.[122]

Parents and Girls at Court

Female abduction as a crime generally became a subject of court cases of a murder or physical injury were involved. While the parents could tolerate elopement and women abduction if there was not hate between the two families or the couple seemed equal to each other in many respects, the families or the guardians of the girls did not litigate against each other. In 1862, Andon, father of Arşi, wrote a petition to the district governor of Erdek.[123] When Andon was in İstanbul, his daughter's fiancé, Penaki, forcefully taken his daughter and murdered her with the help of his mother, and they threw her corpse into a well. When the corpse came to the surface 20- 25 days later, both the mother and Penaki were arrested for homicide. Andon and his wife stated that they were at low ebb and demanded for the security of

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[121] Ibid., p. 269. "*köy muhtarları tarafından vuku' bulan tenbihatı isga etmeyerek bir takım tahvifat ve harekat-ı na-layıkaya ictisar etmekte ve bu cihetle kendisi bir yere gidemeyerek kâr ü kisbinden mahrum olmakta olduğundan (...) emniyet-i ırz ü namus maddesinin ne derecelerde mültezem olduğu tarif-i muhtac olmadığından ve bu makule erazilin tedibiyle hakın muhafaza-i asayişi lazimeden bulunduğundan*(...)"

[122] Luddy, p. 42.

[123] BOA. MVL 372/45 28 S 1278 (4 September 1861).

justice. As the court case illustrated, in case of indictable offenses litigants applied to the court. Regarding this, it might be said that affray, stabbing, beating, homicide and rape were the related crimes during or after the act of women abduction. The more violent the abduction case, the greater the probability of going to court.

When Boyacı Dimitri kidnapped his fiancée, Kazya, he was sentenced two years imprisonment in reference to Article 206 held by the council of Crete in 1862; however, the abductors also were penalized with hard labor and later it was added his punishment.[124] Four months after his arrest, the council reviewed its criminal conviction on that case and announced that if Boyacı Dimitri married his fiancée Kazya after had violated her, he would be acquitted of his crime, but in the contrary case he would receive three years imprisonment.[125] For the protection of public morality, Kazya and Boyacı Dimitri's marriages was encouraged. It is very interesting that his sentence would be dismissed if he married his fiancée. It again shows that, even the court members tried to settle abduction and elopement cases, as a general attitude, amicably.

By relying the data served by Elke Kamm, in Tetritskaro, police officers kept the records of eight kidnapping incidents in 2009; however, none of them was judged at the court. The victim's family felt obliged to withdraw their suit and come to terms among them.

> Suliko, a 23 year-old-male, mentioned that victims of involuntary kidnapping do not report the case to the police, not just because of fears of public disgrace but also to avoid prison sentences. There is a high pressure put on the kidnapped girl and her family to marry the kidnapper.[126]

[124] BOA.AMKT.MVL 144/100 22 L 1278 (22 April 1862)

[125] BOA.MVL 803/53 9 S 1279 (6 August 1862)

[126] Kamm, p. 11.

Even in 2009, the victim's party generally hesitates to go to the courts, so it is highly sensible to define women kidnapping as a hidden or a covered up crime.

As a general attitude towards abduction, the answer to why parents and their daughter rarely demand justice and prefer to marry their daughter to her kidnapper is about protecting themselves from social stigmatization. For the incidents of elopement giving parental consent to marriage; and for women abduction seeking an out of court settlement (settlement in pais) between the victim's family and the perpetrator's party become the quick remedies. The anxiety of being labeled as "disreputable" blocks them to claim their rights.

> and the worst is that after this attack that brought tears to the eyes of the whole family, he refuses any settlement that would repair the damage done; as I did not want any lawsuit I approached this man to demand of him some solution that would prevent this event from becoming known; but with inexplicable stubbornness.. He has refused everything.[127]

Martinez writes of a deflowered woman who eloped with her lover. Although she was pregnant, the man refused to marry her. The father consistently declared his daughter's innocence and the deception by the man. It was highly probable that the man promised to marry the woman. From the quote, it can be deduced that before applying to the authorities, the father had tried to solve the pregnancy of her daughter with extrajudicial methods, which was to marry his daughter off the man. In the last resort, he came to the authorities because as his sentences approve that he was afraid of publicity, or i.e. to be disgraced before everyone. Ironically, it is the kidnapper who deflowered the victim and made her dishonorable in the eyes of public and at

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[127] Martinez-Alier, p.105.

the same if he marry her, he also would make her respectable. The insistence of the father on marriage derives from that point.

Starr writes, "Abduction and elopement stigmatizes a female, reducing her chances of marrying anyone else unless she comes from a wealthy family, which could then find her a poor man as husband."[128] There is a correlation between honor and social status. In other words, the richer the more honored, so it is possible to mention a gradational honor. In some of the cases of abduction of women, the abductee did not marry her abductor or take him to court, however it is a general tendency that in a short period time her parents married her to someone else. In return, the perpetrator tried to utilize her marriage in order to get remission of punishment; because the act of kidnapping did not make it difficult to find a husband.

As a result of man's pride and woman's sexual honor, after the abduction of an engaged or married woman, both the fiancé and husband may break up with the abductee because even if the abductor did not rape her, it is assumed that the woman was not a virgin anymore. In the case of Güllü who was a villager of Yemişli, the district Doyran, the province of Salonica, was abducted by her co-villager İbrahim son of Mahmut to the Balkans. Güllü was not the only example of a virgin but married woman in the court records.[129]

Solemnizing marriage before the wedding ceremony is a common ritual, especially in rural areas, because it prohibits the couple from committing a sin. There was a similar situation between Güllü and her husband Halil. They were married but had not had any sexual relationship. Güllü as a virgin was abducted, but

[128] Starr, p.188.

[129] BOA.MVL 955 16 18 R 1279 (13 September 1862)

when her abductor was caught, Halil accepted Güllü as his wife, which might potentially have led to rumors and bad reputation of both. In fact, Halil later remarked that his wife was a virgin when they had entered the nuptial chamber.

On the other side, Güllü's not being exposed to defloration resulted in a reduced sentence for İbrahim and, according to Article 206, for abducting a married woman he was penalized with three years hard labour in Salonika with exposition to public in accordance with Article 19.

In 1861 in Kütahya, Hasan, who was a trainee in *Asakir-i Şahane* petitioned about a bandit since he had forced Hasan's fiancée to marry him and confiscated his land.[130] Molla Ali, son of Hacı İmam, was a well-known bandit, and Ümmü Gülsüm agreed to a forced marriage with him. After that, Hasan's brother Hüseyin tried to sue him from this forced marriage, but since Molla Ali was a bandit and spread terror to the peasantry, he could not resist all the way.[131] Probably, Hasan was in the army when these events happened and after he returned, he complained about Molla Ali's terror involving his own land and fiancée.

What's more, most of his petition is related to the return of his land from Molla Ali. Hasan seems to have been resigned to this forced marriage between Molla Ali and Ümmü Gülsüm. Furthermore, this case exemplifies that fear from domineering persons could stop citizens from going to the court. Since the case occurred in a small village of the township of Altıntaş, it could be thought that if the

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130 A.MKT. UM 564 /72 14 Za 1278 (13 May 1862)

131 "*eşkıyadan Hacı İmam oğlu Molla Ali nam şahsı çakerlerine namzed bulunan Ümmü Gülsüm'ü bil-icbar kendüsüne akd ü nikah ve tezvic eylemiş ve biraderim hüseyin kulları bu hususu ancak mahallinde davaya kalkışmış ise de merkum Molla Ali karyenin ahalisini vaktiyle birer güne ızrar ve kendüsü eşkıyadan bulunması hasebiyle biraderim uhdedar olamayub*"

case had been actualized in a village, the results of the act and reaction of the injured party could have been differently.

That is, the abduction and in that case, the forced marriage of a fiancée could not be easily followed from court records because unless one of the parties takes the other to court. As Hasan's petition shows, he did not go to the court over his fiancée, but for his land. His brother Hüseyin first thought to sue Molla Ali but then he decided not to do so. From the petition, it can be said it was a forced marriage; but is there abduction in this process or not cannot be answered. Whether Ümmü Gülsüm was abducted or not could not be known from the documents that is women abduction is not a crime that always visible from the court records since family honor could be an obstacle to go to the law.

As a comparison but also with subsidiary details, in the same year with the case of Güllü and İbrahim, in 1863 of Tozucaklı Village, Maraş, a married virgin called Ayşe, daughter of Kekeç Ali, was kidnapped and raped by a co-villager Mehmet.[132] Article 200 stated as follows: "If the rape has been committed on an unmarried girl, the guilty party, in addition to the punishment of hard labour, shall be sentenced to pay compensation to her."[133]

Following the referred article, Ayşe was not evaluated as a married girl, most likely since she was still a virgin and the compensation of virginity (*bikr-i tazminat*)

[132] BOA. MVL 409/101 14 L 1279 (4 April 1863)

[133] *The Ottoman Penal Code 28 Zilhijeh 1274*. Translated from the French text *by C.G.* (London: William Clowes and Sons, 1888), p. 86. In the amendment of article 200 in 18 September 1864 (h.16 Ra 1281) it sentenced also man who have sexual affair under a promise of marriage, in case of the person refuses marriage, he have to pay compensation of virginity and sentenced with from one week to six months imprisonment. In addition, the confession or admission of man or woman's family shall be counted as a proof for the promise of marriage.

was ordered to pay Ayşe's husband, called Ali. The right to take advantage of virginity or in general terms the sexually use of wives' bodies were in the realm of husbands, who had to pay dower and sometimes bride price to bride's father, so according to the record sent to the grandviziership, Mehmet was to pay 5000 kuruş to Ali, in addition to his sentence to pranga (iron fetters) for three years. The issue of gradational honor was exemplified by Alier,

> If the challenger was, broadly speaking, his equal in honor, marriage was the appropriate solution. If he was inferior in honour, the appropriate path was the criminal's conviction. But if he was his superior in honour, the parent must put up with the shame. This last possibility emerged in cases of seduction.[134]

According to her examples from Cuba, equality in honor resolves the problems; however, if the abductor was not equal in honor to the daughter's family, the case went to court. In fact, facing stigmatization and social disgrace is relatively easier for a wealthy family. Although what Martinez-Alier describes, "the loss of sexual virtue of a daughter and the resulting loss in social worth of the family"[135] regarded as crucial, socio-economic status of daughter's family may provide them to fight against the bad rumors and possible libel both to women and her virginity. That is, social pressure about the abductee's reputation may be restored not a marriage with abductor but someone else that the family organized.

Despite the high probability of being stigmatized and defamed, the uncle of Fadime chose to invalidate the marriage of between his niece and the bandit Mustafa

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[134] Martinez-Alier, p. 111.

[135] Ibid., p. 104.

and wanted authorities' prosecution of him from his offense.[136] In 1862, in Zağferanbolu, while Fadime was grazing cattle, a well-known bandit with forestallment, abducted her, a virgin and marriageable daughter of the deceased Aksakal Ahmet from the village of Nağza. Since Fadime was a fatherless girl, the uncle's petition and relevancy was related to his relationship by affinity and guardianship. Uncle Ahmet Ağa found his niece's forced marriage unsuitable due to the Mustafa's past with banditry,[137] and as a deduction, it may be defended that Ahmet Ağa run a risk of defamation and social pressure, which says he was enough powerful, as his title landowner (*ağa*) shows.

There is a relation between family honor and individual honor. So the disrepute of an deflowered woman affects also familial honor and Alier says that,

> family integrity was preserved through the protection of the moral integrity of its women… men, in their role as the guardians of the family's women, fulfilled only the supporting function of seeing to the socially satisfactory transfer of these attributes... thus honour, conceived as a device to guarantee group integrity, delimited its boundaries.[138]

rather than announcing their humiliation into publicity, families applies to marriage.

In the petition of Rufaeli's son Panayot, his daughters Taşa and Hariklin submitted a petition about their brother Apostol and his fiancée, on 7 May 1856. While Apostol and unnamed fiancée were spending time at a excursion spot (*mesiregah*) villagers from Arslanlar called Çakır, Hacı Mehmet, and Hacı Ahmet and their helpers kidnapped the fiancée.[139] The rape of the fiancée was not described

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[136] BOA.MVL 403/47 28 R 1279 (11 December 1861)

[137] "*öteden berü eşkıya ve kat'-ı tarik güruhundan ve şedid makulesinden bulunmasından dolayı merkum ile mezburenin izdivacı gayr-i mümkün olacağına*"

[138] Martinez-Alier, p. 117.

[139] BOA.A.MKT.DV 94/85 4 Za 1272 (7 July 1856)

as a violation of virginity (*bikr-i izale*), which was as a general tendency may be traced in these records. Instead of that, both the petition by Apostol's family members and the record transmitted to the governor (*mutasarrıf*) of Karesi and they used different words, that is the delaceration of honor curtain (*hetk-i perde-i namus*) may seem to me as defloration. The mentioned of honor curtain may refer to the hymen. After the rape, the family of Apostol claimed that the abductors had brought the fiancée over to the front of the house of Apostol at night.

As a response, Apostol went to Balıkesir to file a case against the perpetrators, but on the same day, the abductors broke in Apostol's family house and stole certain belongings. Although the five men had been caught, in the petition, the family members requested the detection of the other criminals, both to establish justice but more important the mentioned fiancée was in horror and depression.[140] The issue of why Apostol did not put his name on the petition, was he badly beaten or embarrassed is not a question that can be answered from these records, but as an interesting and noteworthy thing, the fiancé of the abductee did not resort to the judgment or the family members found their crowdedness for authorities as remarkable and serious.

The main problem in dealing with the crime of abduction and act of elopement is about their categorization. In the archival data by police officers and courts, these two acts were generaly categorized, as "rape." To illustrate, Ottoman court records of between 1840 and 1860 mention rape, attack of women and forced marriage in the summary part of archival document; however, since abduction was

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140 "*kimesneleri tutub Balıkesir'e götürüb haps etmişler ise de diğerinin istihsaline muvafık olunamamış ise de nişanlu-yı mezkur kemal-i havfından pek çok keyifsiz olduğuna ve zayiat-ı mezkurun dahi istirdadı huşu şer'an ve resmen tesviye olmak marazında*"

seen as a subtle detail at the time of incident it may not touched on. Alternatively, it was referred to show the woman's unwillingness and as a proof of force. Because abduction was evaluated as a minor offense compared to other crimes against the body such as rape or homicide, the records may be disregarded in such cases.

The abduction of an engaged woman was a common criminal case and Zehra from the village of Gebon, district of Gürün, and the province of Sivas was abducted or eloped with Ali.[141] Whether it was elopement or abduction is not be easily recognized since in both cases at the language level it was described as abducted (*kaçırılmış*) unless the archival document had interrogation report and provide the voice of culprits it is hard to decide.

Moreover, the petition submitted by Zehra's father, Aşçıoğlu Mahmut, brought this case to light and on the side of an authoritarian and interfering father, elopement may be served to the authorities as a forced abduction or the father may not have the knowledge of whether his daughter gave her consent or not. Based on the plea of Aşçıoğlu Mahmut, his daughter was engaged with Osman and a few months earlier Ali had broken into their house at night and absconded with Zehra. Finally, the case was delivered to the governor of Sivas.[142]

On the other hand, there are underestimated results since successful elopements and abduction that resulted in marriage cannot be traced from police records or court documents. Maria Luddy argues that successful abductions cannot be known, however I defend the idea that portraying cases of elopement is harder

[141] BOA.A.MKT.DV 139/93 10 M 1276 (7 July 1856)

[142] "*kerimesi Zehra Osman nam kişiye nişanlı bulunduğu halde Ali nam kimesne birkaç mah mukaddem leylen hanesini basub merkumeyle beraber firar eylemiş olduğundan*"

than abduction. Successful elopement means peace and reconciliation of parents and the couple; thus, it is so rare to documentize and trace the cases of elopement. However, a case of abduction may be found in the police records whether it was resolved between families or not. The act of force for abduction is more obvious than elopement. Furthermore, the court records rarely describe the socio-economic status of perpetrator and victim so it became hard to trace the issues about property and class for the cases of the Ottoman Empire.

An abductor and housebreaker Veli, from the village of Balıklı-ı Kebir, township of Antalya, province of Antalya, and his brother Sancakdar Mehmet, offered bribe to the substitute governor of a district (*kaymakam vekili*) in response to the remission of Veli's punishment. According to the record, Veli had broken into the house of Fatma in order to abduct her; but his act had remained as an attempt as he had failed. As the case was heard, both Sancakdar Mehmet and Veli were sentenced with internment (*kalebend*) in Cyprus, in 1862.[143] Since abduction was described as a petty crime in the police records, it may be covered up easily, although this example is vice-versa.

Michael Durey uses newspapers as primary source and a scholar focusing on abduction and rape in the eighteenth century Ireland says that, "The evidence of consensual abduction is admittedly sparse and, as not one of these cases appears to have been the subject of a newspaper report, it remains impossible to delve far beyond the surface."[144] Despite the fact that this thesis focuses on court documents, it may be supported that sensational journalism gives wide publicity to abduction. If

[143] BOA.MVL 788/66 27 S 1279 (24 August 1862)

[144] Durey, p. 34.

there is a fiscal cliff between the perpetrator and victim, it became also worthy to mention. That is romance and sensation increase the value of newspaper so Michael Durey and James Kelly who are working on newspaper of Ireland works with such a primary source material.

Marriage of Abductor and Abductee: Familial Honor and Social Stigmatization

From Martinez-Alier: "as one parent said: 'in view of the elopement, he is no longer opposed to it, but rather on the contrary the marriage should take place the sooner the better so that public virtue does not remain unredeemed."[145] "As one parent lamented: "[he] snatched from her .. the most valuable jewel nature has given her and which she will never be able to recover.. resulting [in] the scandal of the family."[146]

While abduction and elopement breaks the tradition of an "ideal" marriage, its rituals, and eliminates the role of fathers and brothers. At the same time it is an illegitimate act and violation of the right of body freedom according to the state law. However, marriage provides the abductor, abducted and the eloped a legal status and exculpates them in the eyes of society; that is, the marriage of these people involves them in the social system, again. Rather than being a deflowered and unmarried woman, in fact even if the kidnapper did not rape, it is assumed that she is not a virgin anymore. The kidnapped woman has to choose marriage in order to rehabilitate her family honour and rescue herself from social pressure.

[145] Martinez-Alier, p. 103.

[146] Ibid., p.104.

June Starr, in *Dispute and Settlement in Rural Turkey, an Ethnography of Law* describes a kidnapping case of a fiancée on the eve of her wedding. Starr interprets the case as follows "any man who did marry her (except her kidnapper) would lose face and be the brunt of veiled jokes for a considerable period."[147] If the fiancé accepts his kidnapped fiancée, to get married, how long the jokes and humiliation will last of the husband cannot exactly be answered, but to have a child may be a way to block the rumor mill.

An official from nineteenth century of Cuba says that

> Now a very significant circumstance has been introduced. Da.Paula Calero has run away with her lover and has been deflowered by him. The first circumstance stains her honour, the second fills her with ignominy. Public morals, domestic decency [would profit by] the example of another marriage instead of by a young girl whose chastity has been violated and who perhaps, or not even perhaps, will not find an honest man who will want to take her in marriage. When a woman has gone astray, there are many who want her, not for anything good but to repeat the harm done. [148]

As the quote shows, once a single woman loses her virginity, she becomes a potential prostitute to others and as an example from the Ottoman Empire, bandits and slave traders kidnapped women to sell them as slaves or put them to work as prostitutes. In this respect, resolving such crimes by peaceful means and not bringing legal proceedings against culprits were derived from social pressure, the horror of being stigmatized, bad reputation etc. Not only families in the role of peace-maker but in Ottoman local councils, some of the interrogators put pressure on abducted women to marry their kidnappers by saying "there will not be any suitor to marry you."[149] To

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[147] Starr, pp. 139-140.

[148] Martinez-Alier, p. 103.

[149] BOA.MVL 1080/15, 17 Ca 1284 (16 September 1857)

the abductor they said "you need also a wife. Come, confess your act, and complete your sentence." If the kidnapper marries the kidnapped woman, according to the law, the punishment of the culprit lessened.

> If the challenger was, broadly speaking, his equal in honor, marriage was the appropriate solution. If he was inferior in honour, the appropriate path was the criminal's conviction. But if he was his superior in honour, the parent must put up with the shame. This last possibility emerged in cases of seduction.[150]

On the other hand, Martinez-Alier argues,

> When the social distance between the partners exceeded the tolerated maximum, considerations of family prestige came to prevail over the regard for a daughter's moral integrity. At this stage, marriage was no longer the appropriate form of redress. It was then deemed preferable to take the daughter back into the home and have the culprit prosecuted.[151]

Alier's area of study is nineteenth century Cuba and she shows the social disequilibrium between two families as the reason to register a complaint. However, this "social distance between the partners" includes the issues of financial situation, race, slavery, and virginity.

For the side of the Ottomans, if a murder or bodily injury happened in the course of a kidnapping or rape after the act, the victims' party applied to the court law. That is, kidnapping, which is described as a minor offense way now combined into one with the crimes of bodily assault. As the case includes more than one crime, the possibility of complaining to the police or entering a lawsuit against the

[150] Martinez-Alier, p. 111.

[151] Ibid., p. 92.

perpetrators was higher. In other respects, the kidnapping or elopement of a married women and a fiancée way different than that of an unmarried woman, since the husband or fiancé was directly affected, and such a crime was an attack to their privacy, honor and familial reputation. There were many husbands, engaged men, and father-in laws in the courts.

In 1863 in Ankara, the deceased Süleyman Bey's married daughter had been kidnapped and raped by Arslan with the help of Mehmet Bey who was at that time a fugitive.[152] The case was sent to the Supreme Council. According to their legal opinion, Arslan Bey was sentenced to hard labor for three years in Sinop and public exposure in his living place. Moreover, since he had raped and violate the virginity of the unnamed married abductee, he had to paid compensation for her virginity and the amount of this compensation, in that context, shall be corresponded to dower. If Arslan Bey could not cover the compensation, his brother or sister were to pay it. In conclusion, the arrest of Mehmet Bey was ordered to ascertain to what degree he had been involved in the crime.

An abducted wife may use courts as a tool to be cleared of blame, especially from rumors and libels spread among families and neighbors. That is, litigation provided them repair of honor and protection from becoming a gossip topic. On the question of why an unmarried -abducted woman would go to court in the Ottoman Empire, it was well known that courts did not have only judicial function but also they were used as notaries. In case of an abducted but at the same time raped woman, by taking legal action she recovered her damages. The compensation for virginity "*bikr-i tazminat*" was tremendously higher than dowry and bride price (*başlık parası*)

[152] BOA.MVL 643/82 8 Ş 1279 (29 January 1863)

and she documented her innocence in writing. When she wanted to marry, her suitor might learn of her past and thanks to the court documents, as a deflowered woman, she did not have to convince her future husband on the issue of whether it had been adultery or not.

CHAPTER THREE

ABDUCTION AND ELOPEMENT AS A PART OF TANZIMAT STATE POLICIES

Taking into account the cases of abduction and elopement, on the one hand, and the edicts, regulations and orders from Ottomans regarding marriage and abduction, on the other hand, the proper marriage was described with three characteristics. First, it should be not be luxurious and as soon as possible retrenching wedding expenses. Second, parents should constitute an obstacle to their marriageable daughters, specifically on the issue of marriage age. Daughters who turns 15 years old should be married if they had suitors; and thirdly the marriage should be congruent with morality.

The overall approach of the Ottoman authorities to abduction and elopement was shaped by their nineteenth century policies, the governmental techniques. As stated in one of the reports of the Supreme Council, the members of the court claimed there was two main reasons for abduction and elopement: the demand of high bride price/dowry; and the father, or in absence of father a legal guardian, forcing a girl into marriage. The ban on abduction and bride price was announced in 1850.

Along with legal regulations and the criminalization of abduction, the focus was on disciplining fathers who demanded bride prices, and who were the reasons

for the abductions and elopement. Such kind of parental behavior was postponed marriage, that is late marriage and it means waste of body and its potential.

During the nineteenth century, the Ottomans have faced with great expenditures to sustain the reforms, financial crisis, and populations decrease due to both epidemics and territorial losses. Moreover, high bride prices and expensive dowry demands led to the increase in the amount of unmarried people, potentially illicit sex, and such problems within this framework. In addition, late marriages meant decreases both in the fertility rates and population growth.

Apart from the issue of population, during the abduction of a girl, physical injuries, accidental killing, chance-medley or premeditated murder often occurred, but also sexual abuse of the victims, rape and forced marriage.[153] Hereby, it may be supported that the cases of abduction and elopement harmed security and public order. Overall, the potential problems that derived from abduction and wedding expenses can be grouped as the problem of securing public order, anxieties about demography and morality and inutile expenses that becoming an obstacle to the accumulation of wealth. As was described before, the imagined marriage of Ottoman authorities for their subject was to be loyal to morality, accessible, and avoid late marriages.

The effort to discipline fathers and restrict their authority in their daughters' marriage provided greater freedom to Ottoman women. In the edict of 1844, Abdülmecid announced that without the consent of their fathers, women could get married. On the other side, abduction deriving from bride price or in general terms the burden of marriage can not be followed through court records; that is, although

[153] As it was stated before, rape of the abductee was considered as possessing the body.

efforts we made to ban, a suitor did not sue his prospective father-in-law because of the fact that, the suitor wanted to ingratiate himself to the family of bride, especially the bride's father, in order to marry her. Some of the court records on which this thesis is based contains the abduction of the women by former-suitors; but none of their interrogation reports supply any information about bride price. Despite this, on the checklist of fathers, the suitors financial standing always came first.

Modernizing Custom and Sharia: Bride Price and Dower

In Ronald Jennings work on the duties and limitations of judicial power from 17th century Kayseri, it is said that the Ottoman judge was endowed with authority in matters of local administration, taxation, conscription and ration of marriage.[154] This is why the regulation of marriages is found in the qadi's sicils. Expecting to find judges record of all marriages in a place, within judge's sicils is not possible.

The records of Anatolian Sharia records give less documentation on marriage records; and since the available marital records have a high amount of dower (*mehir*) and prominent marriage witnesses, Nuri Adıyeke brings forward the idea that the registration of a marriage in front of a qadi was not generally achievable for the lower classes.[155]

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[154] Ronald C. Jennings, "Women in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* 18, no. 1 (1975), pp. 53-114; Ronald C. Jennings, "Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri," *Studia Islamica*, no.50 (1979), pp. 151-184.

[155] Nuri Adıyeke, "Osmanlı İmparatorluğu'nda Tanzimat Dönemi Evlilikleri," in *Pax Ottomana Studies, In Memoriam Prof Dr. Nejat Göyünç,* ed. Kemal Çiçek (Haarlem, Ankara: SOTA.Yeni Türkiye, 2001), pp. 122-123.

The underlying reasons why there are fewer documents from rural areas naturally reminds us that imams were also entitled to perform marriages. Payments to arrange a marriage, such as *izinname* and *harç* might force the prospective bride and groom and their family, besides the wedding with its ceremonies and procedures were costly.

Besides qadi's sicils, there are newly found marriage registries (*enkiha defterleri*) from Crete qadi's sicils[156] and a special notebook which lists marriages kept by the imam of Samatya Mosque ranging from 1864 to 1906[157] and Adıyeke says that "the mehrs defters," named by Ronald Jennings, are not special registers but part of the qadi's sicils.[158] Although Ottoman marriage law was based on Islamic law, Christian and Jewish subjects had the opportunity to use Sharia courts in order to arrange their marriages or divorces, as exemplified by the studies of Jennings; however, it was decided that only metropolitan bishop and his deputies were responsible forthe marriage and divorce of non-Muslim groups.

In the newspaper called as *İbret,* Namık Kemal criticized the Ottoman family and stated that "until when, the mothers will show their daughters for sale to slave trader- eyed woman visiting their houses for arranged marriage and without asking the consent of the daughter marry her to the groom that mother approved."[159]

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156 Ayşe Nükhet Adıyeke-Nuri Adıyeke, "Newly Discovered in Turkish Archives: Kadı Registers and Other Documents on Crete," *Turcica*, v.32 (2000), pp. 457-462.

157 Alan Duben and Cem Behar, *İstanbul Haneleri: Evlilik, Aile ve Doğurganlık 1880-1940*, (İstanbul: İletişim Yayınları, 1996), p.30.

158 Adıyeke, "Tanzimat Dönemi Evlilikleri," p.123.

159 "*Ne zamana kadar valideler kızlarını satılık meta' gibi senelerce her gün bir esirci bakışlı görücünün nazar-ı me'ayib-cûyânesine arzettikten sonra, hediyelik cariye gibi bir kerecik rızasını sormaya bile tenezzül etmeksizin, kendi beğendiği bir adamın eline teslim edecek*?" Namık Kemal,

Bride wealth is the payment to bride's father or relatives by the prospective husband and justified with a list ranging from bringing up the girl, compensation for the loss of a daughter as a labor force, woman as property, paternal right or the expenses of her dowry. In the Ottoman Sharia records, the bride price and dower (*mehr*) were used interchangeably; however, in order to arrange a marriage, a dowry had to be given to the prospective bride, as a religious principle; but the bride price was a tradition and not obligatory. This interchangeability shows that the judges did not interfere with the custom of bride price.

Deriving from the issues of late marriage and parental consent over unmarried women and young widows, the council of Kocaeli dispatched a report to the center in 1844. After Sultan Abdülmecid asked for the advice of shaykh-al-islam and negotiated with Meclis-i Ahkâm-ı Adliye, an imperial order[160] was enacted. The importance of this order was its stress on limiting parental authority over daughters and even punishment of guardians, while officers had been warned to take steps against marital extravagance (*teklifat-ı zaide*). Besides that, the permission fee (*izin akçesi*)[161] demanded by the judges to perform a marriage was banned.[162]

"Aile" *Yeni Türk Edebiyatı Antolojisi II 1865-1876*, ed. Mehmet Kaplan and İnci Enginün, Birol Emil (İstanbul: Marmara Üniversitesi Yayınları, 1989), 249. For the original see İbret, nr.56, 18 Ramazan 1289 (20 November 1872).

[160] BOA.İ.MSM, 3/38, 22 R 1260 (11 May 1844) quoted from Ercoşkun, p. 245.

[161] "*izn ve ruhsat i'tası zımmında irtikâba mebni-i ser kadı ve memur-u sair'in müstahak-ı ta'zir olacağı", "izn ve ruhsat zımmında kuzzat ve saire taraflarından zinhar ve zihnar akçe mutalebesi vuku gelmesin, lâzım gelür ise o makulelerin, iktiza-ı tedipleri icra olunmak üzere derhal derbar-ı şevketkarar mülükaname arz ve inha*" Şerafettin Turan "Tanzimat Devrinde Evlenme," in *Aile Yazıları 4 Evlilik Kurumu ve İlişkileri,* ed. Beylü Dikeçligil and Ahmet Çiğdem, (Ankara: T.C. Başbakanlık Aile Kurumu Başkanlığı Yayınları, 1991), p. 68. The examples of orders to control permission fee could be traced in 1822. (BOA, Hatt-ı Hümayun, No: 21806 and 21818.) See: Nuri Adıyeke, "Tanzimat Dönemi Evlilikleri," p.130.

According to Islamic law, the validity of a marriage required a license from a kadı, which stated there was no legal or religious obstacle in front of the marriage such as kinship or a previous conjugal union. On the issue of fictive kinship, Behar and Duben demonstrate the marriage of Tahsin Efendi and Ayşe Hanım in 1881.Their marriage was counted as null since the discovery that they were actually milk-sibling.[163]

A letter of authority (*izinname*) was obligatory in case a marriage was officiated over by an imam instead of qadi, by doing that qadi would be informed from marriages also; however it is hard to defend that Ottoman citizens obeyed this obligation.[164] Adıyeke lists various examples of *izinnames* and concludes that they were not standardized except for the special documents found in Crete. Although the law dictates, even a marriage witness sometimes was not written in the registries[165].

Illegal and excessive taxation for the permission of marriage became a crucial and continuing problem regarding marriages throughout the nineteenth century. A complaint from 1800 of Haremeyn-i Şerife documented that although mukataa vaivodina (mukataa voyvodaları) were not entitled to perform marriage and receive a fee in return of the service that actually qadis were in charge, they forced people into marriage and demanded money under the name of permission fee (*izin akçesi*).

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[162]Şerafettin Turan, pp. 66-68. ; İsmail Doğan, "Tanzimat Sonrası Sosyo-Kütürel Değişmeler ve Türk Ailesi," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi* 1, (Ankara: T.C Başbakanlık Aile Araştırma Kurumu Yayınları, 1992), p.186.

[163] Duben and Behar, p. 110.

[164] Ibid., p. 125

[165] Adıyeke, p. 127.

Although the contract of marriage necessitated parental consent, right along with free the will of prospective couple, if a father or a protector postponed a marriage he was to be sentenced and regardless of father's rejection, the qadi could marry the daughter.[166] The marriages arranged by qadis would be accounted as legal, and parents had no right to rescind. The further goals of the Ottoman Empire to prevent decrease of population i.e. to accomplish population growth, which means manpower, military reserve, more production and taxation, that is the new governmental techniques provided woman more freedom of choice while limiting parental authority. Although the Hanefi sect authorized woman as legal subjects in marriage, as a break in 1544, the Ottomans promulgated a decree "forbidding women to marry without the express permission of their guardians, and instructing judges not to accept a marriage unless the bride's guardian had given his consent."[167]

Judith Tucker says that the reason for such a limitation was the potential "ruin" of the households, "if women are allowed to act on their own, the Sultan assumed the stance of public patriarch and prescribed punishment for any who violated this order." However, it does not mean that no Ottoman woman violated the law[168] and arranged their marriages by themselves; but the edict of 1844 defined

[166] Turan, p. 67.

[167] Tucker, p. 60.

[168] Amira El Azhary Sonbol, "Adults and Minors in Ottoman Shari' a Courts and Modern Law," in *Women, the Family, and Divorce Laws in Islamic History*, ed. A. E. A. Sonbol (Syracuse, N.Y., 1996) 247.

woman as legal subjects and although it was partially and under some conditions, women had the right to arrange their own marriage.[169]

In the edict of 1844, rather than elopement or abduction, rejected suitors were encouraged to inform local judges and police officers, and regardless of whomever the father would be prosecuted. After taking legal action against father, the right to choose a husband could be claimed. So it was conditional and limited, but the concern to increase the population and make marriage accessible in order to avoid the detrimental effects of late marriage and abduction. The legal transformation bestowed some rights to Ottoman women and defined them as legal agents. The only option for the refusal and procrastination of his daughter's marriage was religious obstacles. That is, the right to refuse a prospective groom by father accepted as reasonable if his daughter and the suitor were not equal (*küfüvv)* shows that Islamic doctrines were followed. Furthermore, qadis shall be punished if they register such unholy marriages by accepting bribes.

Another issue mentioned in the edict was about late marriage. The council of Kocaeli noted that parents did not allow their daughters to marry until they were in their thirties and even young widows had suitors. As a response, the edict defined marriageable age as 15 years old and warned legal guardians not to obstruct marriage. As a side note, Ebussuud Efendi defined puberty at 12 years for both girls and boys, but if they did not admit their puberty and kept their silence, Ebussuud stated 18 age for boys and 17 age for girls.[170] Besides the policies of population

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[169] However there are sharia records exemplifying woman who arrange her marriage by herself. In 1664, Ayşe from Karahisarsahip defines herself as a pubescent at 14 years old and declares her intention to marry Abdi and they were married by qadi. Another example from the same place, Ayşe rejects engagement with Satılmış, which was arranged by her father called Sulbiye. See: Doğan, pp. 184-185.

[170] Ertuğrul Düzdağ, *Kanuni Devri Şeyhülislamı Ebussuud Efendi Fetvaları,* (İstanbul: Kapı, 2012), p.

growth, it may be supported that as the marriage age rose, it brought about extramarital sex and illegitimate child, so in this regard, marriage on time served both to protect the social order and prevent moral "corruption."

The wife of deceased Samancı Mehmet, that is, the widow Şerife Zinet from the village of Karaman, was abducted and raped by the villagers of Dobruca Halil, Mehmet, Mustafa and Mehmet in 1865.[171] In the interrogation held by the council of Ayaltı, Hüdavendigar, they confessed their offense and finally were penalized according to Article 198, which deals with defloration. They were sentenced to hard labour for three years. In addition, they were exposed to public (teşhir) in order to be a deterrent for others in their place. There were other suspects involved in the case of Şerife and they were to be arrested as soon as possible. With the allegation against sergeant Ali Çavuş, he was arrested and demoted, since he was absolved and released, his degree was to be restored.

Overall, the tone of the order concentrated on population growth and encouragement of marriage by pointing to Sunnah; these two issues may be traced back. However, the warning not to waste money on wedding way a battle against custom. As much as customary law did not conflict with sharia law, it can be said that the Ottoman governors and the practitioners of Sharia law generally tried to reach a common ground except for tax paying and the military.[172] As Akarlı writes,

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171 BOA.MVL 697/43 16 Za 1281 (12 April 1865)

172 Tuba Demirci, "Family, State and the Blurring of the Public and Private; Ottoman State and the Emergence of "Marriage Proper" in the Second Half of the Nineteenth Century," in *Social Behaviour and Family Strategies in the Balkans XVI-XX. Centuries*, ed., Ionela Baluta, Constanta Vintila-Ghitulescu and Mihai-Razvan Ungureanu (Regional Symposium, New Europe College, 9-10 June 2006, New Europe College, Bucharest, Romania, 2008), p. 208; Engin Deniz Akarlı, "The Ruler and Law Making in the Ottoman Empire," in *Law and Empire: Ideas, Practices, Actors*, ed., Jeroen Duindam, G. Harries, C. Humfress, N. Hurvitz (Leiden: Brill, 2013), pp.101-104.

" such 'particular' customs were considered not a threat to the overall system but a means to accommodate the composite demography and diverse conditions of Ottoman lands."[173] But in the nineteenth century, as customs of marriage were taken into account, the effort to reconcile law and custom was not continued due to the state's policy to increase its population and maintain social and moral order. The order was published in Takvim-i Vekayi[174] and sent to the province of Bosnia.[175]

The ban on bride price was announced after Meclis-i Vala had handled the report of Canik district in 1850 and the order was delivered to the all provinces.[176] The order made a connection with the abduction of woman and bride price. In addition, it stressed that bride price was raising difficulties to marriage.[177] The officers were to encourage the parents and legal guardians of unmarried girls to marry them off second to warn them about the abduction of women.[178] In addition to bride price, shooting at wedding ceremonies with no bullets was restrained.

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[173] Akarlı, "The Ruler and Law Making," p. 102.

[174] Ercoşkun, p. 73. Takvim-i Vekayi def'a 271, 06 C 1260 (23 June 1844)

[175] Ibid., p.74. BOA.C.ADL 13/825 23, C 1260 (10 July 1844)

[176] Ibid., p. 107. BOA.İMVL 162/4733,14 R1266 (27 February 1850)

[177] "*Ber-muktezâ-yı şer-i şerif tezevvüc edecek âdemden kız babası ve müte'allukâtı tarafından taşralarda başlık nâmıyla haylice akçe taleb ve ahzı cihetle bu madde emr-i te'ehhüle mâni' ve kız kaçırma madde-i memnûmasına vesîle olduğundan sâye-i ma'delet-vâye-i hazret-i şehinşâhîde bu usûlün külliyen lağv ve terkiyle"* A.MKT. UM, 13/21, 9 C 1266 (23 March 1850) from the governor (kaymakam) of Kayseri. For the other archival documents on prohibition of bride price: BOA. A.MKT.UM, 12/29 23 Ca 1266 (6 May 1850, Harput); BOA.A.MKT.UM, 12/40 26 Ca 1266 (9 May 1850, Sayda); BOA.A.MKT.UM, 12/47 27 CA 1266 (10 May 1850, Ankara); BOA.A.MKT.UM, 12/72 29 CA 1266 (12 May 1850, Saruhan); BOA.A.MKT.UM, 12/51 27 Ca 1266 (10 May 1850, Jerusalem).

[178] "*me'mûrîn taraflarından teşvîkat-ı lâzımenin icrâsıyla berâber ba'de-zîn kız kaçırma maddesine mücâseret olunamaması zımnında*" BOA.A.MKT.UM, 15/9 29 C 1266 (12 April 1850).

In 1845, the commissions of improvement (*imar meclisi*) of Niş, Üsküp, and Bursa stated that the demanded money for *mihr-i müeccel* was very high and needed to control. As a solution, they set different prices according to the income of families. In addition, the commission of the improvement of Hüdavendigar ordered to check the expenses of wedding. There was to be a cost journal (*masraf defteri*) and if the families exceeded the determined limit according to their grouping, they would be warned for retrenchment. In cases of disobedience, the parents would be rebuked and dismayed (*tahvif ve tevhib*).[179]

On 27 July 1845, the commission of improvement of Niş, remarked their observation over high *mihr-i müeccel* (*dowry*); and for the highest class (*âlâ*), mihr-i müeccel ranged from 800 to 1000 kuruş, the demanded dowry for the middle class was 600 kuruş and the lowest class was 300 kuruş. In order to strike a balance (*radde-i mu'tedile*), the officers decided the amount of *mihr-i müeccel*, and according to their regulation, the highest class must not exceed 400 kuruş, the middle class 200 and the lowest class 75.[180]

As a comparison with Bursa, the reorganization of dowry saw; the limit for the highest class at 2500 kuruş, for the middle class, at 1000 kuruş, and the lowest class at 750 kuruş.[181] Apart from the different amounts, for each group in various places, the importance and remarkable feature of these grouping was that dowry as in the domain of Sharia was kept under the control of state mechanisms. Similarly to the issue of unmarried women's legal rights over their marriage, dowry and its

[179] Ercoşkun, pp. 76-81.

[180] Ibid., p. 75. BOA.A.MKT, 26/27 22 B 1261 (27 July 1845)

[181] Ibid., p. 76. BOA.AMKT 26/58 30 B 1261 (4 August 1845)

determinacy were entering into sharia; but these efforts shows that both the bride price as a custom and dowry as a religious obligation for a true marriage engaged the attention of Tanzimat reformers. As Ortaylı argues, the standardization of dowry was the first intervention of the state mechanism into religious rules.[182] Categorization as a part of governmental techniques was applied to dower, that is, in the authority of Sharia.

In addition, one of the reports[183] of the Hüdavendigar commission of improvement stated that the damage of burdensome customs prohibited men of substance from acquiring wealth, and affected the middle class to the point of going into debt, and last for the poor (*zaif'ül-iktidar*) was meant a lifetime being unmarried. As the report shows, although the utmost attention was dedicated to population policies and bio-power techniques, unnecessary and conspicuous wedding expenses were evaluated as an obstacle to the accumulation of wealth.

At the language level, *velâyet* means "a being closely connected with another in love and relationship; a being an aid or protector; aid, protection"[184] Apart from its first usage, in Islamic law, *wilâya* or *welâya* stands for "guardianship." For marriage, welâye refers to the guardian's authority to marry the person for whom he was responsible. On behalf of an unable (*adem-i ehliyet*) person, guardians decided

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[182] İlber Ortaylı, "Osmanlı Aile Hukukunda Gelenek, Şeriat ve Örf," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi* 1, (Ankara: T.C Başbakanlık Aile Araştırma Kurumu Yayınları, 1992), p. 464. In the mentioned page, Ortaylı refers to the regulation of dower in Bolu and Ankara; however the footnote gives 1845 as the date but in text, I suppose wrongly, written as 1865. For Ankara and Bolu: BOA.Cevdet-i Dahiliye nr.11586, 29 Z 1261 (January 1845); Peter Benedict, "Hukuk Reformu Açısından Başlık Parası" in *Türk Hukuku ve Toplumu Üzerine İncelemeler*, ed. Peter Benedict and Adnan Güriz (Ankara: Ankara Üniversitesi Hukuk Fakültesi Yayınları, 1974), p.15.

[183] Ercoşkun, pp. 77-80. BOA.İMSM. 4/68, 03 Ş 1261 (7 August 1845)

[184] S. J. W. Redhouse, *A Turkish and English Lexicon*, (İstanbul: Çağrı Yayınları, 2006), p. 2148.

the marriage without any kind of consent or advice. According to Ebu Hanife and Ebu Yusuf, (founders of the Hanefi doctrine), guardianship was divided into two as *velayet-i icbar* and *velayet-i nedb or ihtiyar*. While velayet-i icbar was practiced for unable person and her consent was not asked; velayet-i ihtiyar was related to the guardian who arranged a marriage with the consent of the woman. The assent of the woman was seen as a right and compulsory.

Besides of unable person, a mentally stable woman entitles a person as her guardianship, the consent of woman in appointing the guardianship was based on her consent. The importance of the issue of guardianship was prominent because except for the Hanefi doctrine, the other three doctrines, Hanbeli, Maliki, and Şafi, made the consent of woman's guardians to marriage obligatory.[185] Aydın puts forward the idea that the great difference in defining the limits of guardianship within four doctrines resulted from their particular stress such as for Hanefis focusing on the pupilage, chastity for Şafism, and for Maliki doctrine both pupilage and chastity.[186]

Moreover, guardians are classified in two groups, the first one veliyy-i has or hususi veli, was consisted of paternal relatives; the latter one is *veliyy-i amm* or *umumi veli* is represented by a governor or a judge; especially for the orphan girls.[187] In case of a girl married before the age of puberty, in Hanefi doctrine, the woman may apply the court for the annulment of her marriage when she came of age.

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[185] Mehmet Akif Aydın*, İslam Osmanlı Aile Hukuku,* (İstanbul: Marmara Üniversitesi İlâhiyat Fakültesi Yayınları, 1985), pp. 24-26.

[186] Ibid., p. 25.

[187] Ibid., p. 26.

However, this kind objection for the nullity of marriage was available to the marriages organized by guardians, not by fathers or grandfathers.[188]

Regulations on Wedding Ceremonies and Expenses

The Penal Code of 1840 pushed regulation on wedding gifts. The issue was handled under the headline of bribery, and according to the fifth section's Article 7, the quantity and kind of wedding gifts shall be specified and limited with another article, and it was forbidden to trespass upon the law.[189]

In 1850, a sultanic approval (*irade*) was issued in Takvim-i Vekâyi and it described what was counted as gift and bribe in wedding ceremonies and circumcision feasts. Pursuant to irade, a prospective husband must not give any further gifts to the bride or her family; but only pay the necessary money to the imam, muezzin and watchman (bekçi).[190]

Mithat Pasha, as the provincial governor of Danube (1864-1868), took harsher and comprehensive precautions against the claimed marital extravagance and in 1865[191] a regulation on wedding and marriage (*İzdivac ve Tenaküh Maddesi*

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[188] Ibid., pp. 26-27.

[189] "*Düğünlerde ve bazı cihetlerle dostane ve muhibbâne itası mesnun (verilmesi adet olan) hedâyânın dahi cins ve mik- tarı başkaca bir kanun ile tebyin ve tahdit olunarak onun tecavüzü bir vakitte caiz olmaya.*" Ahmet Akgündüz, *Mukayeseli,* p. 815.

[190] Ercoşkun, p. 88. Takvim-i Vekayi, def'a 419, 27 Ra 1266 (10 February 1850)

[191] The date of ilanname was given differently in Tülay Ercoşkun's thesis as 21 Şaban 1281 (19 January 1865) but on the other hand Milen Petrov argues that its date was in 12/24 May 1865. See, Petrov, p. 181; Ercoşkun, p. 123.

Hakkında İlanname)[192] was announced. Petrov remarked on this ilanname as "one of the earliest and (most ambitious) talimatnames"[193] by Midhat Pasha. As was seen in the earlier attempts, the ilanname also included a categorization of families according to their wealth. Talimatname consisted of 11 pages and was sent to other provinces after it generalized. There were different actors and efforts aiming to abolish or at least limit both bride price and high mehr; however Midhat Pasha's talimatname had a huge agenda from the type of the cloth of the wedding dress, to the wedding dinner, what a dowery (*çeyiz*) should include, the quantity and quality of kitchen tools, the duration of the wedding ceremony, the exhibition of the dowery, the visit of newly-wed couples' family to each other and visits of prospective brides to Turkish baths were taken up in very detail.

According to ilanname, apart from close relatives, there should be no more guest in wedding ceremonies or also at the circumcision feasts. As an example, baklava and halva were in the forbidden list to send the bride's family. Exhibition of the dowry was also strictly forbidden; it was a showing-off and was the reason of waste.[194]

İzdivac ve Tenaküh Maddesi Hakkında İlanname consisted of very subtle details and reorganization of marriage and gift giving: Mithat Pasha intervened in

[192] Milen Petrov translated the name of ilanname as "the wedding party regulation" but it includes not only wedding ceremonies but also marriage (*nikah*). Another false naming was used by Petrov is about his translation of marriage gifts as "mehr". Infact, mehr is a religious obligation to make a valid marriage; but marriage gifts are part of custom and neither defined nor obligatory for sharia. See, Petrov, p.181.

[193] Ibid., p. 181.

[194] Ercoşkun, pp. 122-131.

daily lives of the subjects, even into the dowery of unmarried girls and the bride's veil.

The fourth categorization of subjects defined the wedding poor people and although all the rest of categories had to pay a sum of money to imam and headman, they were held exempt from this payment and not only that, but also the environment of the poor unmarried, from his villagers to the headman, hold responsible to contribute his marriage.[195]

As can be followed, abduction and elopement, which were defined as rural crimes and common among poor people, the court records for this thesis I can find are predominantly from villages. Although Petrov called this ilanname ambitious, Mithat Pasha was aware of the troubles of poor subjects and tried to show his performance as a remedy, which is very meaningful.

On the other hand, the justification of ilanname pointed out moral decline and honor killings, and that the delay marriage is directed people into obscenity[196] (*fuhşiyat*). As a response, some of the subjects took justice into their own hands. The result was homicide, or in plain words: honor killings. Although the ilanname did not call it in that and "the murderers' lives were ruined in prisons." (*ömr-i azîzlerinin habshânelerde geçüb berbâd olması).* As a footnote, the obscenity of unmarried was not condemned since the ilanname described their behavior as natural and necessary (*ta'bii ve zaruri*) that is sexual intercourse was a part of human need.

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[195] Ercoşkun, p. 131.

[196] Unfortunately Petrov interpreted this issue as "many young women were said to be turning to prostitution"; but in the ilanname both man and woman (*zükur ve inas*) were pointed. Another critic on Petrov's argument, he defends that this marriage burdens were "especially" affecting Muslim population, infact it was an overall problem in Balkans from Serbians to Bulgars. Petrov, p.181.

Another issue stated in the ilanname was elopement. Since girls over 18 years old were not married, the ilanname stated that they applied to the shameful act of elopement and the abductor had to punished and as a result both the woman and man's family have been stigmatized. [197]

To what degree the talimatname was practiced is not known; however, Petrov stated a civil lawsuit against a police inspector from Nis, since he as an uninvited person had attended to the wedding parties, "chasing away the hired musicians, and examining the food on offer"[198]

Ahmet Cevdet Pasha and His Allegiance with Bosnian Girls

Ahmet Cevdet Pasha was appointed to Bosnia-Herzegovina as a supervisor (*müfettiş*) in 1863. He improved and carried the province a step forward with population census, border security, repair of roads and bridges to facilitate transportation in trade routes to taxation he improved and carried the province a step forward.[199] Apart from the abovementioned agendas of Ahmet Cevdet Pasha his books Maruzat and Tezakir show his attention to nuptial matters, which accompanied the with military service of the Bosnians. The contribution that Maruzat and Tezakir made,

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197"*köylerde on sekiz yirmi yaşını geçen kızların tezvîc olunmamalarından dolayı nihâyet kaçmak ârını irtikâb ile kaçıran delikanluyu dahi cezâ-i kanûna uğradub bu vesile ile iki taraf hânedân ve hânemânına leke ve şe'n (şeyn) getirilmesi ve daha nice nice illetler ve fenâlıklar tahaddüs etmesi*" Ercoşkun, p. 248. For the full text of ilanname, see, pp. 247-252.

198 Petrov, p. 181. (for the related record: BOA.AYN.DEF.919, p.20, hüküm 211, 13 Rabiülevvel 1283/ 26 July 1866)

199 Ahmet Zeki İzgöer, "Ahmet Cevdet Paşa ve Bosna Islahatı," *Dîvân Disiplinlerarası Çalışmalar Dergisi* 6, no.1 (1999), pp. 211-223.

provide the reader images of marriage rituals, weddings, parental attitudes towards their children in Bosnia.

During his side audit, he described how he saw Bosnians were faithful and under the influence of the ulama's advice. In addition, he continued his words as follows: young male who would serve in the army were largely influenced by the sayings of their beloved ones (*maşuka*). Although he did not designate the act of lovers as elopement, his observation of social and cultural structure of the Bosnians was a typical example of abduction for marriage. While portraying the Bosnian's courting habits, he put weight on how they were uncorrupted and *people of honor* (*ehl-i iffet*) and then added that he had never heard of a case of rape during his inspection tour.

In the testament of Ahmet Cevdet, since Bosnia was under the influence of a cold climate (*ekalim-i baride*), children reached puberty. Late Bosnian young women did wear a large and full coat (*ferace)* until they reached 25 years old and they became lover with youngest in a chastely (*iffetkârâne*) way. Actually, in *Maruzat*, Pasha gives a specific age limit; but on the other hand, in *Tezakir* he defended that until marriage a Bosnian girl walked in the streets without putting on a ferace on a veil.[200] Becoming a wife of someone seems reasonable than " to be 25 years old" as a criteria. Another crucial detail given by Ahmet Cevdet is about how puberty was defined. He argued that 15 years old girls was not counted as at age of puberty; and after they reached 17 and 18 years old, Bosnian girls began to date in a free and public manner (*serbest ve alenî).*

[200] Cevdet Paşa, *Tezâkir 21-39,* ed. Cavid Baysun (Ankara: Türk Tarih Kurumu Basımevi, 1960), p. 24.

Apart from age, flirtation was described in detail: Young men went to the doorstep of their lovers. The girls, who were looking out from the windows, chatted, or served coffee and sometimes the young men entered the courtyard in order to perform ablution and girls fetched a towel and prayer rug for salaah. The moralistic voice of the Pasha continued as follows "If the lovers' fingers touches each other accidentally, it is counted as marriage and right after they were married."[201] In general, after a long time of flirtation, men and women tried to learn their partners' habits and characters and then decide to marry. Rather than approval of an arranged marriage, which was a common practice in Ottoman; Pasha defended the idea that the women and men of Bosnia preferred to unite their lives with a marriage based on love, that is love matches and generally registered their marriage in the courts by themselves.

Although *Maruzat* did not give further details about newlywed first wedding night, Tezakir states that the couple spent their night far from their homes.[202] Furthermore, the pasha defended that the proportion of love match marriages outnumbered traditional marriages. It is worthy of note that a Bosnian man choosing to follow traditional methods to marry had to give a ring (*yüksük*) as a sign of being engaged or at least a gold coin.[203]

As an example of this, Cevdet Pasha writes his donation to a poor man who could not afford a gold coin to become with his lover for three years. In fact, Pasha also sent them to court to solemnize their without the permission and knowledge of

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[201] Ibid., p. 25. "*Lakin bu arada kazâ-râ birinin parmağı diğerin eline dokunacak olursa bu âdetâ nikâh hükmünde tutulur ve hemen akd-i nikâh ettirilir.*"

[202] Cevdet Paşa, *Maruzat,* ed. Yusuf Hallaçoğlu (İstanbul: Çağrı Yayınları, 1980), p. 25.

[203] Cevdet Paşa, *Tezakir 21-39,* p. 46.

the prospective bride's parents, who had to give their consent to the marriage when the mother had learned it was the order of Ahmet Cevdet.

As a deduction, Cevdet Pasha portrayed the marriages in Bosnia as elopement and lacking parental consent. At the same however time he set forth that the parents of eloped ones tried to sound resentful or in other words pretended to make believe their daughters to their fake discontent (*ca'li dargınlık*) and after that immediately made peace with the newly-wed couple. From the perspective of the pasha, the explanation of such kind of a fake discontent by parents derived from the financial burden of the wedding ceremony. It is Pasha's contention that parents actually were pleased with elopement; because they avoided the dowry containing precious brocaded and tricolette clothes (*sırmalı ve işlemeli ağır elbise*), various rugs and carpets and paying for wedding dinner, which lasted week after week.

Not as a rule but in the form of advice, the pasha offered a remedy to the families who had nubile daughters and boys, "host for dinner only relatives and as for the rest offer coffee and sorbet (*şerbet*).[204] When he and the governor of Bosnia were invited to a wedding ceremony, in order to be a role model (*hüsn-i misal)* they drunk only sorbet and returned to their homes the pasha claimed that compared to previous expenditures to dowry and wedding dinner his suggestions was ten times cheaper.

In addition, as a historical anthropologist with the data he supplied, Cevdet Pasha put forward the idea that eloped girls had to run away and marry without asking her parents because paying for the marriage of a daughter led the household to a financial crisis and resulted in the loss of the parent's all. Under these conditions,

[204] Ibid., p. 47.

finding a husband was the task of daughters Pasha claimed that Bosnian girls were very skillful in that giving examples of how girls swept men off their feet and officers appointed to Bosnia married and stayed there.

On the other hand, some of the prominent families from Bosnia took elopement of their daughters as an offense and married their daughters by the book. The offense that Pasha mentioned is about familial honor and ignorance of parental authority for marital choices. The pasha concluded that parents who desired to marry their daughters with own hands lost their wealth or their daughters remained unmarried women.[205]

As a comparison to Christian families, Pasha said since they demanded a high bride price their daughters had more difficulty marrying and even the pasha made an analogy between slaveholders and the Christian tradition of marriage. He said, "They demand money from the suitors like selling their daughters."[206]

The question of why Pasha chose to define the act of parental behavior as false could be resulted from his order to ban wedding ceremonies and not only prohibition but also in case of a person holds wedding, he demanded to reduplicate land taxes of those. As far as Ahmet Cevdet was concerned, the Bosnians adopted these new prohibitions and this time, not arranging burdensome wedding ceremonies became a tradition, which was something weary for them and lovers who could not marry due to financial necessities of marriage easily entered into matrimony.

[205] Ibid., p, 26.

[206] Ibid., p. 25-26.

On the other hand, he argues that tradition belonged to the second structure (*tabi'at-ı saniye*)[207] and it was hard to break the mold; however, it may be suddenly altered.[208] It is Pasha's idea; Bosnians easily adopted new rules and quit their tradition of wedding rituals. However, his control and ban of expensive wedding ceremonies and order to duplicate taxes if someone wed his son with a ceremony also was a deterrent force over the Bosnians. Even though after his regulations, Cevdet pasha claimed, "lack of solemnization became a tradition." Whether he showed the picture of reality, or a part of he desired to choose should be remained as a question. In addition, Pasha tells his of donation ranging from six to twelve gold coins to who were in love for a few years but could not afford to get marry.

Ahmet Cevdet briefly stated that there had been an idle rumor in Saray Bosnia, of the Serbians' plan to carry out an attack to Bosnia and their military readiness. As was stated bre, one of the reforms accomplished by Ahmet Cevdet was about conscription and it is very note-worthy that he made a correlation between marriages and conscription. The pasha maintained that unmarried girls were so thankful and pleased with the attempt of surveillance (*teşebbüsat-ı teftişiyye*) over the facilitation of marriages (*emr-i izdivacın teshili*) and so they were making songs with reference to the green color of military uniform, (*yeşilli*) and giving their support to the Pasha's policies. Tezakir-i Cevdet, why Bosnian girls corroborated with the Pasha took a lot of room compared to Maruzat, which is a summary of Tezakir. There were two improvements regarding the unmarried girls of the Bosnians.

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[207] In that context, second structure refers to culture and habits which are learned after birth.

[208] "*adet insane tabi'at-ı sâniye olup kolaylıkla terk olunmaz ise de,ba'zı ahvâl-i fevka'l-âde ile def'aten ta'dil olunabilür*.", Ibid., p. 47. and in *Maruzat,* p. 85.

First, foreigners[209] and some of the officers assigned to Bosnia marrying for pleasure and a short time later divorcing their wives and taking leave was a serious problem. For these two groups of people the amount of (immediate) dower were twice times more than the usual, and underpayment of the dower was forbidden. The second regulation was related with the previous subject. If those foreigners and officers divorced, they had to pay immediately the (deferred) dower to their wives. In the opposite case, they would be imprisoned as Pasha warned strictly to the authorized person. As it was already referred, enabling and facilitating measurements towards marriage such as bride price, waste of wealth to wedding ceremonies were tried to bring under control. Third, apart from these precautions and bans, with the order of Ahmet Cevdet, man of cloth preached the Bosnian girls about the benefits of a well-timed (*vaktiyle*) marriage and raising the guardians of their soil not only for today (*dünyaca*) but also for the judgement day.[210]

Over and above this, as I summarized Pasha's observations started with the faithfulness and piousness of Bosnians and how they relied on the sayings of the ulama, and after that described the burdensome wedding traditions and his regulations then he touched on Serbians' military plans and the existing problems regarding conscription in Bosnia which seems irrelevant thus far. Although his narrations look like independent of each other and unrelated, he recapped all the issues with unmarried girls and conscription by saying that "the songs of girls were

[209] Although Ahmet Cevdet define them as gureba which is a plural form of garip, here it means foreigners.

[210] Cevdet Paşa, *Tezakir 21-39*, p. 44.

more influential than the advice of clergyman."[211] Moreover, in the following pages he even quotes from a part of the lyrics that the Bosnian girls were singing:

> the sultan ordered to the sir supervisor and told
> don't care the cost, run the gold coins like water
> marry the girls and until the ghazi valiant and
> [the girls] give birth to soldier wearing green [uniforms][212]

Ahmet Cevdet continued his commentary as follows: "Bosnian young men who had the horror of military service enjoyed the songs coming from their beloved ones' mouths and I firmly believed that the idea of the military will be settled."[213] Around 1864, Pasha visited to Saray Bosnia and made mention of the encouragement of the clergy to military service and girls' songs about men in green military cloth (*yeşilli*) to their lovers in recreation areas.[214] Furthermore, Pasha spun out the great interest of Bosnian young men for enlistment and described the streets of Bosnia as well. Men who enlisted themselves in the army, and wore the military uniforms were being applauded by the girls accompanied by the song of *yeşillim* and by that reason, the interest in enlistment was increasing.[215] Another reference to Bosnian young lovers was done through the depiction of a military ceremony: Pasha wrote that there was a tremendous crowd in front of the barrack door and since the newly founded

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211 Cevdet Paşa, *Maruzat*, p.86; *Tezakir 21-39*, pp. 66-67, 73.

212 Cevdet Paşa, *Maruzat*, p. 92; *Tezakir 21-39*, p. 47. "*Hünkâr, Müfettiş Efendi'ye emr etmiş demiş ki,/ Paranın gitdiğine bakma, altunları su gibi akıt/ Kızları tezvîc et, tâ ki gazî yiğitler ve / Yeşilli askerler doğursunlar"*

213 Cevdet Paşa, Maruzat, p. 92.

214 Ibid., p. 95. (There are some versions of folk songs named as "Yeşillim" in Youtube, and the theme of green wearing soldiers and marriage and love is compatible with this one.)

215 Ibid., p. 99.

regimental banner and "contemplation (*temaşa*) of this ceremony was as worthy as dearness"[216] so both the young men and women of Bosnia stared it.

Apart from Ahmet Cevdet's personal effort to make marriage easier, the order that had been sent to the Grand Viziership (*Sadaret*) in 30 March 1864 prohibited bride price, which was common among Orthodox Christian citizens. The order compared Muslim and Latin communities with Orthodox Christians in their marriage expenses especially considering the tradition of bride price. According to the document, neither Muslims nor Latins celebrated their marriages as luxurious as Orthodox Christians; however, some Orthodox Christians sold their daughters as slaves and demanded high bride prices, which resulted inan increase of abductions. Bride price as being an obstacle in front of getting married. It was forbidden and this order was sent to the talented authorities of Bosnia and Izvornik.[217] In response, Diyonisiyus Efendi, the metropolitan bishop of İzvornik and İgnatyos Efendi, the metropolitan bishop of Saray Bosnia, [218] said they appreciated the order.

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[216] Cevdet Paşa, *Maruzat*, p.103; *Tezakir 21-39*, p. 81.

[217] TŞR.BNM, 16/116 21 L 1280 (30 March 1864) "Osmanlı Belgelerinde Bosna Hersek," p. 247. "İslama nisbetle Ortodoksilerin ve bunlara kıyasen Latin milletinin öyle tekellüfle düğün masrafları yok ise de bazı kaza ve nevahide ortodoksilerin pek fena adetleri olup şöyle ki kızları babaları ve onlar olmadığı halde velileri cariye satar gibi muayyenül mikdar akçe almadıkça ere vermiyorlar (...) emr-i izdivaç su'ûbete duçar olup kız kaçırmak gibi nice fenalıklara başlıca sebep bu adet olduğu tahkik olunmuştur (...)"

[218] TŞR.BNM 16 /116. the correspondence from İzvornik 15 April 1280 (27 April 1864) ; and from Bosnia 25 April 1280 (7 May 1864)

Comparison of Ottoman Legal Reforms on Abduction with Serbia

Beginning with the first insurrection of Serbia, legal provisions regarding matrimonial problems became the interest of authorities. The ignorance and inadequacy of the Orthodox Church to regulate marital relations and further claim of the Serbian authorities to eradicate "backward marriage customs of Serbians" in order to make a progress in their civilizing project, the authorities turned their face to the problem of abduction, bride price, parental authority, late marriage, and divorce.[219] Vuletic argues that the legal provisions on these issues aimed to catch up to the civilized Europe, and abolish the ridiculed image of themselves among enlightened countries. As a comparison, while the code related to the abduction of women was legislated in the New Code of 1851 by the Ottomans, following the First Insurrection in 1804, the Serbian insurrection authorities criminalized the kidnapping of girls just after the article of homicide.[220]

Apart from the date of abduction code, another striking point between Ottoman Penal Code and Serbian law was the method of punishment and criminal actors. In the Ottoman case, the punishment of the perpetrators was defined according to the offender, but in the Serbian case, the relatives of the abductor automatically were seen as the abettors and they were penalized.

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[219] Aleksandra Vuletic, "State Involvement in the Institution of Marriage in Serbia in the First Half of the Nineteenth Century," in *Social Behaviour and Family Strategies in the Balkans XVI-XX. Centuries* edited by, Ionela Baluta, Constanta Vintila-Ghitulescu and Mihai-Razvan Ungureanu (Regional Symposium, New Europe College, 9-10 June 2006, New Europe College, Bucharest, Romania, 2008), 161-179.

[220] Vuletic, p. 164.

> Whoever carries away a girl by force (as it occasionally happens, particularly during rebellions, when the administration of justice is disorganized), the bridegroom, the godfather and the best man are to run the gauntlet and the others involved are to be punished with bastinado.[221]

As the mentioned code of Serbians shows that affinity and intimacy with the culprit became a reason for punishment, even if they were not personally involved in the act of abduction. Besides that the Ottoman Penal Code imposed on the abductors the penalty of hard labor, public exposure and imprisonment; however, Serbians practiced flagellation and bastinado, which were chastisement in general. Forty-seven years between these two codes shows an earlier attention and awareness of the Serbians to marital problems and after they became semi-autonomous with the Treaty of Bucharest, the implementation of other legal provisions on marriage was actualized. Scholars working on Ottoman family law underline how the Ottomans desperately postponed a family law which was compatible with the Tanzimat, especially from the possible reactions from religious man and Serbians following three years after the end of Second Serbian Insurrection (1818) promulgated a Marriage Law[222] while the Ottomans had to wait until 1917, a century.

On a side note, there are parallels between Ahmet Cevdet Pasha's voice from Bosnia in the 1860s and Prince Milo from Serbia in the 1810s. The pasha submitted that Christians were selling their daughters like slaves; and Prince Milo Obrenovic complained about profit seeking families from bride price and said " (…) people selling their daughters and sisters like livestock from the fold."[223] The consistency

[221] Ibid., p. 164.

[222] Ibid., p. 165.

[223] Ibid., p. 165.

between these two voices corroborates that the measurements towards bride purchase by Serbian authorities were fully accomplished; however it should be kept in mind that deterrence policies and punishments to abolish the crime of abduction is easier than control and eradication of the tradition of bride price, which was the greatest underlying reason for abduction.

One of the adverse sides of bride price according to the Serbians was the late marriage of daughters so "the local authorities were therefore instructed to keep an eye on the families with the girls of marriageable age and to take good care that parents did not delay unduly their marriage."[224] In addition, authorities reasoned their control because of illicit sex, out-of-wedlock babies and growing cases of infanticide as the result of late marriage; so they encouraged families to "marriage in time" and not to demand bride prices for their daughters as a precaution to this biggest sin.[225] Apart from moral and legal disputes regarding late marriages, it is inevitable to associate marriage with population policies although Vuletic did not touch upon this.

Since the precautions to control, bride price did not work adequately in Serbia, in addition to a legal act in 1844, clergy and police officers were informed in order to dissuade parents from demanding money in return to their consent to marriage.[226]

Vuletic stated that elopement in nineteenth century Serbia was very common and the root for elopement was explained with the custom of bride price, parents'

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[224] Ibid., p.167.

[225] Ibid., p. 167.

[226] Ibid., p. 168.

waiting to marry off their daughters, the similar issues that Ottoman court records provides information and examples.

Apart from them, in the example of Serbian elopements, the Orthodox Church banned kin marriage[227] and the penetration of state authorities into religious doctrines repeated with the removal of this ban in the 1840s. Another noteworthy issue is about the intervention of authorities to eloped lovers, Vuletic defended that although they were parted from each other due to legal obstacles, the lovers largely managed to reunite.[228]

Since the prominent and the most proportionate court, cases that this thesis covers are from Balkans, it is worth discerning Orthodox Christianity while referring to Sharia in the Ottoman Empire. Apart from the free will of the prospective bride and groom, parental blessing of a marriage was regarded as obligatory both in Sharia law and in the canon of Orthodox Christianity.

Abduction and Elopement in the Reports of Inspectors and Travelers

Alongside with the military, economic and judiciary reforms in the Tanzimat framework, penetration into everyday life of subjects was also aimed through statutory and indirect controls. The formation of councils (*meclisleşme*), a term borrowed from Seyitdanlıoğlu,[229] played an essential role in the implementation of the Tanzimat Edict. As some of the prominent examples of councils, Meclis-i Vala-i

[227] Ibid., p.168.

[228] Ibid., p.169.

[229] Mehmet Seyitdanlıoğlu, "Tanzimat Dönemi İmâr Meclisleri," *OTAM* 3 (Ocak 1992), p. 323.

Ahkam-ı Adliye, Meclis-i Al-I Tanzimat, Şura-yı Devlet, Divan-ı Ahkam-ı Adliye may be listed; but apart from them Commission of İmprovement (*Mecalis-i İmariyye or İmar Meclisleri*) authorized to inspect and inform the authorities in the capital, in addition this commission carried their work together with Meclis-i Vâlâ. The first inspectors sent to the provinces of Anatolia and Rumelia in 1840 and repeated in 1851.[230] The function and importance of this commission for Meclis-i Vâlâ was that, the reports of inspectors provided great detailed picture of provinces so reduced the workload of Meclis-i Vala both in determination of problems and making legal regulations.

In 1845, Süleyman Pasha, as the head of Meclis-i Vâlâ said that the inspectors would hold an examination on the issues of the protection of public health (*hıfz-ı sıhha-i umûmîyye*) and the battle against the ignorance of the citizens (*izâle-i cehl-i tebaa*)[231] indicates that apart from institutional changes, a new society was also imagined with the Tanzimat. In that sense, the contribution of inspector's reports[232] is numerous. These documents are an invaluable source for social history although historians have not made the best of them, yet. In 1863, Sultan Abdülaziz made leading officers inspectors. Ahmet Vefik Efendi was appointed to the Western Anatolian provinces such Ankara, Konya and Bursa; Abdüllatif Subhi Bey went to Bulgaria (Salonica, Tırhala, Yanya, İşkodra); Ahmet Cevdet Pasha was in Bosnia,

230 Çadırcı, pp. 187-189.

231 Seyitdanlıoğlu, İmar Meclisleri, p. 327.

232 Erkan Tural, "Bir Bürokrat ve Seyyah Gözüyle Canik (Samsun) Sancağı," Çağdaş Yerel Yönetimler 17 (2008), pp.76-77.

Herzegovina and some of the northeastern Anatolian provinces that Ali Rıza Efendi inspected was Trabzon, Erzurum, Adana and Diyarbakır.[233]

On 29 April 1863, Ali Rıza Efendi left from Istanbul for his circuit to Canik. From bribery and usury to prosperity Ali Rıza Efendi dealt with many problems in his site-audit Similarly to the precautions and orders of Ahmet Cevdet Pasha, the inspector of Bosnia, Ali Rıza Efendi, also laid weight on the vitality and necessity of population growth. Unmarried women in their forties because of the high bride price grabbed his attention and he put effort in order to convince parents to not demand a bride price.

Ali Rıza Efendi exemplifies the severity of the situation. Parents were borrowing from usurers in order to pay the bride price. Serbestoğlu states that the advice and remarkable effort of Ali Rıza Efendi resulted in success because within nearly three months, the quantity of marriage ceremony performance was more than 1000 and day by day, it was increasing, as an example qadis solemnized 292 marriage around in one week in the vicinity of Samsun, Kavak, and Ayvacık.[234]

As a convincing argument in the admonition of parents, he utilized not only from the benefits of population growth, the immediate need of soldiers, but also marriage as a shield to honor and chastity (*ırz ve namus*). In the end the inspector reported to Istanbul that in one year, the number of marriages had increased to

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[233] İbrahim Serbestoğlu, "Abdülaziz ve Teftiş: Ali Rıza Efendi'nin Canik Sancağını Teftişi," (Paper presented at the Sultan Abdülaziz ve Dönemi Sempozyumu, Ankara, December 12-13, 2013); Davison, p. 107.

[234] İbrahim Serbestoğlu, "Ali Rıza Efendi'nin Canik Sancağını Teftişi", *Sultan Abdülaziz ve Dönemi Sempozyumu*, 12-13 December 2013, Ankara. pp. 1-18.

10,000 with his effort.[235] Both Cevdet Pasha and Rıza Efendi as troubleshooters performed with great effort. In person, they contacted parents and guardians; on the other hand, Subhi Bey, the inspector of Manastır chose to put limits to marital extravagance.

During Suphi Bey's side-audit, he observed that the inutile expense and disbursement for marriages was incredible. After a consultation with the council of Selanik, they decided to divide subjects into five groups according to their reputations and financial status (*derece-i haysiyet ve kudretlerine göre*) and set a price for mihr-i muaccel. For example, while the expenses of first group limited to 32.500 kuruş; the lowest group that is the fifth one could not exceed 1900 kuruş.[236]

It is attempted to portray the gaze of inspectors along with edicts and regulations about marriage and bride price; on the other hand, the observations of English women travelers Georgina Muir MacKenzie (1833-1874), and Adeline Paulina Irby (1831-1911), may bring a new perspective. Being women made it easier for them to enter residences. For historians they are great source of family and daily life. Their journey to the Balkans coincided with the inspection tours of Ottoman officers. More precisely, they traveled to Bosnia and Herzegovina, Greece, Macedonia, Kosovo, northern Albania, Montenegro in between 1861 and 1877. They were well educated, financially well off had good connections.[237]According to their

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[235] İbrahim Serbestoğlu, "19.Yüzyılda Osmanlı Devleti'nde Nüfus Algısının Değişimi ve Nüfusu Arttırma Çabasında Müfettişlerin Rolü," *Balıkesir Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 31, (2014), pp. 265-267.

[236] Ibid., p. 266.

[237] Omer Hadziselimovic, "Two Victorian Ladies in Bosnian Realities, 1862-1875: G.H. MacKenzie and A.P. Irby," in *Black Lambs and Grey Falcons.Women Travellers in the Balkans*, eds., John B. Allcock and Antonia Yound, (New York: Berghahn Books, 2000), pp. 1-7.

conversation with the Serbian Christians of Novi Bazaar (Yeni Pazar), Christians suffered greatly from the Muslims. Their entrance to Christians' homes both at night and day, and in her words, they were "at the mercy of the Mussulmans"[238]

Apart from the remonstrance about compulsory military service, the Ottoman subject indicated that " In so far they are better, that the officials now sent from Constantinople are jealous of the Beys and the Beys of them, and the two opposing cliques act as some sort of check on each other."[239] This situation is similar to the inspectors who were "checking" the governors and officers. As the conversation continued, the subject mentioned from a case of abduction of a woman, from Novi Bazaar.

Another striking point stressed by the British travelers was about the habits of marriage age in Prilip. Since it was described as,

> One of the most prosperous places in southern Bulgaria" daughters were not allowed to marry until they reached thirty years old because their parents demanded money for marriage that is bride price. In the text, "(…) parents, who had the labour of bringing them up, may be rewarded for their services; and secondly, that they themselves may not be encumbered early in life with large families.[240]

Although Irby and MacKenzie did not call it as bride price, "the reward" reminds bride price.

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[238] G. Muir Mackenzie and A. P. Irby, *Travels in the Slavonic Provinces of Turkey-in-Europe*, (London: Daldy, Isbister, 1877), p. 269.

[239] Ibid., p. 269.

[240] Ibid., p. 129.

> Do you know that last summer Bashi-bozuks were sent to Novi Bazaar? But no insult, no injury is so hard to bear, as that of Mussulmans carrying off Christian girls. Lately a maiden of the rayah community was servant in a Mussulman family. Suddenly her parents were informed that she had become a Mahommedan; she was not suffered to return to them nor see them, but was secretly sent off to Saraievo. She escaped, came back to her family, they ventured to give her shelter, but the Mussulmans tracked her home and their vengeance fell upon the whole Christian community. Out of its 110 houses at least 100 were, in their estimate, connected with the escape of the poor girl; all felt the weight of their wrath, and several were completely ruined.[241]

The mentioned "bashi-bozuks" were irregular wage soldiers of the Ottoman army were made up of Turkmes, Circassians and Tatars incorporated into the Ottoman army with the regulations of Sultan Abdülmecid in 1843. As the quote shows, the abduction case narrated in the framework of conversion, abduction and conversion to Islam generally led great tensions between different religious groups. When the travelers asked if he experienced or heard of such a case, he stated that Muslims had abducted his wife, who was described as young and beautiful, and as soon as she had run away from her abductors, she had gone to the bishop who had later dealt with her suffering. After that, the bishop had married the girl to him and "when he [the bishop] left the town he put them in his house as one mode of providing for her safety."[242] From this case, even the girl had been married, it may be deducted that the anxiety of being a victim for revenge continued. Whether we consider it deriving from male honor, passion or revenge or not, however in the event of failure of abduction, as a generalization, the solution became an immediate marriage of the abductee; but in that case, the speech of the subject broke the routine.

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[241] Ibid., pp. 269-270.

[242] Ibid., p. 270.

Another valuable source on daily life in Balkans, Charles Thomas Newton (1816-1894), a British archeologist who focused on Greek and Roman artifacts, travelled in Ottoman lands between 1852 and 1859. His book "T*ravels and Discoveries in the Levant*" focused not only archeological sites, but also he observed the culture of Greeks and Turks. On the issue of early marriages, he stated that

> A young lady of thirteen, already married, and with a child in her arms, which from her own tender age she was unable to nourish. Among the causes of the degradation of the races in the Levant may be reckoned the unnaturally early marriages, which are very common in many of these islands. At Calymnos, girls generally marry at the age of twelve. The Greek Bishops might, if they choose this practice.[243]

In general, Newton complained about bad roads, and while defining Calymniotes far from civilization, he listed rough roadsfor wheeled vehicles, early marriage of women. In general, he claimed at the age of 14 Calymnos woman became married. In fact, Newton referred to Calymnos woman as "children" and in that, sense evaluated such marriages as child marriage. Apart from age, he observed many of these child brides died from undernourishment, dirt and general neglect.[244] Furthermore, Irby and MacKenzie depicted a desperate and suppliant mother whose daughter had been carried away by Muslims. According to the narration of British travelers, the mother begged them to save her daughter.[245]

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[243] Charles Thomas Newton, *Travels and Discoveries in the Levant,* (London: Colnaghi, D. E., 1865), p. 251.

[244] Ibid., p. 297-298.

[245] Mackenzie and Irby, *Travels*, p.270.

CHAPTER FOUR

THE NEW LEGAL SYSTEM AND THE CRIMINALIZATION OF ABDUCTION

Islamic Law and the Code of Bayezid II

Islamic law does not have a strict or special judgment/clause about abduction for satisfying sexual desires or getting married. Abductors were punished on behalf of the protection of the social order. It could be deducted that the maintenance of the social order was the principal purpose of Islamic law on that issue rather than focusing on woman as the victim of this criminal act.[246]

As discussed above, the abduction of women was not described properly in Islamic law; however, abductors were punished with *ta'zir* (discretionary punishment). In general, there are three basic crime categories in Islamic Law, which are hadd, qisas and ta'zir.[247] Such a category is generated in accordance with the type of the crime committed. "(…) crimes in general are defined as acts that injure either the Rights of God or the rights of Worshippers, or both."[248] That is,

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[246] Nevzat Toroslu, "Kadın Kaçırma," in *Türk Hukuku ve Toplumu Üzerine İncelemeler,* ed. Adnan Güriz, Peter Benedict, (Ankara: Türkiye Kalkınma Vakfı Yayınları, 1974), p. 428; Eralp Özgen, "Early Marriage, Brideprice and Abduction of Women," in *Family in Turkish Society*, ed. Türköz Erder (Ankara: Turkish Social Science Association, 1985), p. 324.

[247] M. Cherif Bassiouni, "Crimes and the Criminal Process," *Arab Law Quarterly* 12, no. 3 (1997), pp. 269-286.

[248] "Generalities on Criminal Procedure under Islamic Shari'a." In *Criminal Justice in Islam: Judicial Procedure in the Shara*, edited by Muhammad Abdel Haleem, Adel Omar Sheriff, and Kate Daniels, by Adel Omar Sheriff, 3-17. (London: I.B. Tauris, 2003), p.5.

against whom crime was committed can alter the punishment and its criminal category. Therefore, in one sentence, it will be necessary to define each of these terms.

Hadd crimes have a specific reference in the Qur'an or the *sunna* and even a judge as an authority cannot alter or diminish the fixed punishment because it is a punishment set by God. Homicide, theft, and fornication are categorized as hadd crimes. Qisas means retaliation and it is a kind of restorative justice. In case of a murder, the family of the victim or himself has the perpetrator put to death, send him prison or let him go free.

Apart from hadd and qisas, the qadi and executives practice ta'zir as a discretionary punishment method. Besides hadd punishment and homicide, ta'zir as a punishment type could be applied to a great deal of crimes ranging from drunkenness to defaming a woman with illicit sex, crimes against the state and highway robbery. As distinct from hadd crimes, ta'zir is not defined or mentioned in the Qur'an, so, in that context judges are relatively free in their jurisdiction. Depending upon the place, the time and the circumstances of committing a crime, the length of punishment and its practice vary.

For instance in Ottoman Islamic Law, ta'zir crimes were left to the discretion of the administrative supervisor (*ûlü'l-emr/ sultan*) and judges as his contributors. Apart from the sultan and judges, the constabulary- official for public order that is "*muhtesib*" in one word or (*vülâti ceraim / vülâti mezalim*) were responsible for detecting offences and taking precautions against such offences. Since legislative organs defined ta'zir crimes, the same offence may not be punished with the same criteria in different countries. Furthermore, a culprit could be judged from two

different crime type of ta'zir at the same time. Adel Omar Sharif brought forward an idea on that issue, since the ruler defined tazir crimes, criminalization[249] or the decriminalization of the act came under the authority of the rulers and judges.

Similarly, to the changeable definition of ta'zir, its punishment also varied from one judge to another. That is to say, the type of punishment (such as flogging, home detention or confiscation of property) was designated according to the character of crime and its jurisdiction from the qadi. Judges adjudicate the criminal cases based upon the customs, traditions, and lifestyle of the society in which they lived. Furthermore, social status and identity of the accused and the complainant, the result of his act, the detrimental effects of the crime on society, its extent and last how the crime was committed also shaped and determinated the judges' verdicts.[250] It can be deduced that there were various contributing factors in determining the punishment of ta'zir crimes. It varied from judge to judge and their individual opinions. In spite of that, while making decision on how the punishment should be done, societal and public interest were taken into account. After an introduction of what is hadd, qisas and ta'zir crimes I will go in detail how abduction was stated in the Ottoman code of law with related clauses in both the sixteenth century and nineteenth centuries.

Even though Islamic law was the major source for the constitution of Ottoman criminal law, Ottoman sultans with their promulgated decrees contributed to the state, which penetrated larger areas in time. The codes of laws that were brought into existence by sultans were in harmony with Islamic law. Up to changing

[249] Ibid., p. 6.

[250] Özgen, p. 324.

time and circumstances sultans as lawmakers, both modified and expanded its practice area. Apart from what decrees were and why they were needed, historians should relate these points to their functionality and meaning at the societal level.

Toroslu defends the idea that issuing decrees was done in order to replace punishments in Islamic Law with lighter ones.[251] Related to the above, adding new verdicts to the Islamic criminal law, which were especially open to argumentation, was about the arrangement of subjects' daily lives. On the other side, arrangement of subjects' daily lives by state law might be read as a kind of political intervention. Besides religion as a source of authority, power holders, who were sultans in this example, try to exercise their disciplinary power on the society.

In ta'zir crimes, the interpretation of an offense and its verdict could totally vary by different judges in the same geography and time. This is called as 'legal plurality'. Due to the judges' subservience to the sultan and the sultan's representation in the local areas both as a governor and as adjudicator, the mentality of political actors could be followed in court cases. In that context, it may be inferred that sharia law and daily agenda of political actors were intertwined, so codes of law should be examined with religious and political terminology.

Even though both Toroslu and Özgen stated that until the code of Suleiman I (r.1512-1566) women abduction was not mentioned in the Ottoman criminal law; in the code by Sultan Bayezid II. (r.1481- 1512) women abduction as a crime was touched on. Moreover, Suleiman I repeated the clause on abduction as it had been in the previous code. In the 26th clause of the code by Bayezid II, if a person entered a

[251] Toroslu, p.429.

house with the intent of theft, his punishment would be the same that for abductors, which was castration.[252]

As a crucial point, the sentence for the abduction of a woman was castration in the sixteenth century, but it does not mean its practice since even the sentence of adultery was not executed according to the law. Marc Baer writes, "Mehmet IV was the only sultan to order an adulteress to be executed by stoning during 465 years of Ottoman rule in İstanbul."[253] Baer underlines that the motives behind why Mehmet IV ordered that was related to the problems in his reign such as "the lack of sultanic virtue, the dominance of royal women, and the irrelevance of the sultan."[254] That is to say, the practice of castration probably did not come to realize and in order to avoid such an orientalist impressure this stress on practice is very crucial.

Furthermore, the code also defined forced marriages and ordered the cancellation of such marriages. Performing a marriage ceremony between an abductor and abductee was forbidden and judges who solemnized such marriages were to be shaved.[255] Toroslu, misinterpreting the clause in the code of Suleiman, which was copied from Bayezid II, and he writes that the abductor shall be shaved

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252 *"mesela bir kimesne bir kimesnenin gece ve gündüzde evine girse, hırsuzluğ ile girdüğü sabit ola, avret çeken gibi siyaset oluna ve avretle dutulanın içmiği kesile*" Ahmed Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri II Kitap II. Bayezid Devri Kanunnâmeleri,* (İstanbul: Osmanlı Araştırmaları Vakfı Yayınları, 1990), p. 169.

253 Marc Baer, "Death in the Hippodrome: Sexual Politics and Legal Culture in the Reign of Mehmet IV," *Past and Present*, no.210 (Feb. 2011), p. 61.

254 Ibid., p. 81.

255 *"Ve kız çekübgücile kabın koyub avret edene gücile boşadalar; o kabın koyan danişmendin adeti değil ise, sakalını keseler ve adeti değil ise ta'zir edeler.*" Akgündüz, *Kanunnameler*, p.170.

instead of the judge.[256] Shaving off a judge's beard had symbolic value. The beard was a symbol of intellectualness and literacy among ulema, shaving as a punishment method could potentially embarrasse and humiliate judges in the sight of society. If we return to the clause, in Islamic law, women have limited options to get divorces from her husband except in the case of marriage of convenience, but in the 26th clause, regardless of the abductors will, the divorce would be done even by force. [257]

The code of Suleiman had two clauses about women abduction, which are 33th and 34th clauses. Article 33th of the decree promulgated by Suleiman I says that "Furthermore, a person who abducts a girl [or] boy or enters [another] person's house with malice, and a person who joins [him as an accomplice] for the purpose of abducting a woman or girl shall be castrated by way of punishment."[258]

At the language level, there are some words in that article, which need more explanation. Heyd also underlines that in the Turkish version of the tenth[th] article "*çekmek*" (to pull) means "to abduct" and there are two words for abduction in the archival documents; one of them is "*karı/kız/ avrat/ bakire kaldırmak*" and the other one is '*çekmek*'. Both of them were used in order to define abduction. Heyd compares these two words and says that '*çekmek*' "might possibly mean, "to abduct

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256 Toroslu, p. 430. *"madde suçun cezasını failin, kaçırılan ve zorla nikah ettirilen kadını zorla boşaması, sakalının kesilmesi ve iyice dövülmesi olarak tesbit etmiştir."*

257 "*Kız ve oğlan çeken kişinin ve hiyanet ile bir ecnebinin evine giren kimsenin ve avret ve kız çekmeğe varan kimesnenin içmeği (emceği) kesile. Kız ve avret çeküb gücile nikâh etdirene cebr ile boşadalar ve nikah edenin sakalın keseler ve muhkem let edeler. Ve avretle dutılanın şer'an siyâsetin edeler*. (II, 42-43) Mehmet Akman, *Osmanlı Devleti'nde Ceza Yargılaması*, (İstanbul: Eren Yayınları, 2004), p. 147.

258 Uriel Heyd and V. L. Nage, *Studies in Old Ottoman Criminal Law*, (Oxford: Clarendon Press, 1973), p. 97.

by fraud."[259] However, such an argument may not be valid in the court cases about abduction. It is hard to assert such a claim because their language usage was the same and interchangeable.

Apart from this argument, entering somebody's house with the intent of committing a crime whether it is day or night is a limitation of place with only the house. If the criminal act was done in the outside, is there a change in the punishment becomes a question. Surely, house breaking aggravates the punishment of the perpetrators but the provision did not define if the crime was committed in a public place. On the other hand, the article punished anyone who assisted with a lesser penalty, compared to the abductors.[260]

The main issue on the tenth article is about the punishment of castration. Above cited verdict says that "içmeği kesile" as a punishment type and while Heyd supports the idea that this word group indicates castration; Mehmet Arif who published legal codes, defends the opinion that "*içmeği*" should be related to the word "*incik*" which is a cannon bone. Depending upon his deduction, Mehmet Arif argues that whether the attempt or the abduction act of itself, the accused would be punished with amputation of the leg from under the cannon bone.[261]

Even though in the penal codes of the nineteenth century there was no detail about elopement, the code of Suleiman stated that the eloped girl or woman had to be punished with the cauterization of her vulva.

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[259] Ibid., p. 97.

[260] Ibid., p. 98.

[261] Toroslu, pp. 429-430.

> If a person abducts a woman or girl, [acting] without the consent of the woman or girl, [that] man shall be castrated [but] no charge shall be made against the woman or girl and no fine shall be collected. If the women or girl is willing and runs away from her house, her vulva shall be branded.[262]

As the article shows, the punishment of women abduction was castration; and a female who eloped lost her sexual organs if she runs away voluntarily; however, the sentence of an eloped man was not stated in the related clause. On the side of abettors, the code of Suleiman also dealt with them and ordered to flogging and criminal fine.

> If [persons] join the [principal] criminal [as accomplices] for the purpose of abducting a woman or girl, the cadi shall chastise those criminals who joined [him] and they shall be fined according to their [financial] circumstances: the highest [fine] shall be 100 akçe; below that, shall be collected according to their circumstances.[263]

Following Heyd and Akgündüz, if the parents of the abductee did not give their consent to their daughter's marriage, *Dulkadir* regulations also regarded marriage as invalid.[264] Moreover, the code also assumed such marriages as defective (*fâsid)* and recommended obligatory divorce to prosecutors. "*Küfüv*" which means to be the equivalent of men and women for the marriage could be a reason for losing its legitimacy. The Dulkadir Penal Code gave the right to parents for a morganatic marriage and let parents divorce them by that reason. Women abduction involving housebreaking was sentenced the prosecutor with 15 gold pieces. In condition of

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[262] Uriel Heyd and V. L.Nage, p. 98.

[263] Heyd and Nage, p. 98.

[264] "*Eğer kız çeküb alub gitdüğinden sonra nikâh etse, nikâhı fâsiddür, ta'zir edeler. Meğer ki, velîsi caiz göre. Yine buncılayın rızâsı ile uydursa nikâh etse, velîsi tecvîz etmese, küfüv olduğıcihetden ta'arruz câizdür.*"Akgündüz, *Kanunname*, p. 478.

bodily harm, the punishment shall be according to sharia qisas and compensate the injured party. Apart from women abduction, the code of Dulkadir addressed the kidnapping of boys. Heyd interprets "arıt-" as castration[265] and the penal clause regarding boy abduction was harsher compared to women abduction. The accused was to pay 24 golden pieces.[266] Heyd states that this kind of illegal act should be related to pederasty, I think the code does not give any supportive clue on that issue.

Nineteenth Century Penal Codes and The Criminalization of Abduction

The judicial cases about abduction were reviewed in the circle of private law. Sharia courts did not deal with such cases until a complaint happened. If there was a plaintiff, then theabduction case become a subject of the sharia court. In fact, there is no certain rule on abduction in Islamic law. T qadi evaluates abduction cases as a violation of public order and customs not as an assault on the human body or freedom. Family order and its protection was the focus of the qadis, that is to say, the qadis of sharia courts interpreted abduction in terms of family order and societal norms. With the introduction of Nizamiye Courts, it can be clearly said that a new mentality and adjudication emerged.

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265 Heyd and Nage, p.136.

266 "*Ve bir nice kişi ev basub kız kapsalar her birinden varanın on beş altun alına. Eğer âdem cerahat eyleseler, şer'an diyeti alınub sahibine vereler. Ve eğer oğlan çekseler, arıdalar ve illâ yirmi dört altun alına. Eğer muhabbet bile ise iki tarafa zina haddin uralar ve illâ zina cürmi her birinden alına*." Akgündüz, p.478.

As mentioned previously, even though the case was heard by qadi, he couldnot file a lawsuit if there was not a litigant. The two parties could solve their problems between themselves by demanding money or taking revenge. However, the Nizamiye courts aimed to eliminate such alternative practices and even in the absence of a litigant, the principle of compulsory public prosecution was ordered. In addition to bringing a lawsuit at any price, the criteria in judging abductors ranged from the protection of family and social order to the rights of the abductee and the state's authority. After 1850, abduction cases were evaluated as crimes against the state. The right to kill or kidnapping a citizen were regarded as stepping out of line in the context of the state was the only exerciser of power and violence.

As it is well known, the Tanzimat Edict provides life, property and honor security, so changes in the mentality and approach to criminal cases for abduction should be considered within the circle of the Tanzimat period and institutional amendments during this time. Apart from bringing a case to the court and the reasoning of the penalty, the penalties towards abduction changed from flogging (*ta'zir*) to prison sentence. Below, I will introduce the increase in prison sentences from three months to ten years. However, the shift in the penalty type demonstrates that state's attention to abduction cases gradually increased.

Judicial cases about abduction were considered in the circle of private law and Sharia courts did not deal with such cases until a complaint was filed. If there was a plaintiff, then an abduction case becomes the subject of the sharia court. In fact, there was no certain rule on abduction in Islamic law. Moreover, the justification of the qadi's decision derived from the violation of public order; that is, there was no focus on citizens' life security or on their bodies. In the nineteenth

century, abduction cases were evaluated as the crimes against state. Right to kill or kidnapping a citizen was regarded as stepping out of line in the context of that the state is the only exerciser of power and violence. The changes in the mentality and approach to criminal cases for abduction should be considered within the context of the Tanzimat period and institutional amendments during this time.

The Edict of Tanzimat made promises regarding the life security, protection of honor, virtue and property; in addition to that, all these rights were to be secured for all Ottoman subjects regardless of their religion or ethnicity. Related to this new state approach, the Tanzimat Edict announced a new penal code that implemented in May 1840 since reform in criminal law was seen as necessary to accomplish and guarantee the promises of the Tanzimat. The equality among the Ottoman subjects that the Tanzimat Edict promised was also the target of this new penal code. In the same court case, diminishing the differences between the judications and creation of a stable and consistent law system became the focus of lawmakers.

Ottomans in the nineteenth century witnessed three penal codes, starting with 1840 and continuing with 1851 and 1858. Each of them was shaped by the needs of society and they were extended in time. The Nizamiye Courts led not only the penal codes, but also a partially new method for judgment.

During the reign of Sultan Abdülmecid, a committee composed of 44 members from the bureaucracy, leading educators and officers of the Supreme Council of Judicial Ordinance approved the new penal code of 1840. This code was comprised of a short preamble, 42 verdicts and 13 sections within itself, so just taking this point into account it can be said that the penal code of 1840 was short and not systematic. However, this does not diminish its importance and novelty

especially its focus and highlighting on equality before the law between Ottoman citizens.[267]

Trial of offense was to be done regardless of the perpetrators' rank, social, political and economic status or even he had close contact with influential people. In the second chapter of the 1840 penal code, manslaughter was exemplified with a comparison of a vizier and shepherd on a mountain. The code stated that if a vizier intended to kill a shepherd on the mountain the vizier would be judged according to the principle of equal treatment,[268] which was new for Ottoman legal practices. Since limiting the bureaucracy in favor of the rights of non-elite groups[269] was the target of the 1840 penal code, it contained precautions against bureaucratic crimes, bribery, corruption, opposition to officers, state security, bodily injury, brigandage, and nepotism.[270]

Apart from its themes, no one was to be sentenced without trial and evidence, which shows again the stress on the supremacy of law and becoming a state of law. As Rudolph Peters,[271] writes that corporal punishment was to be practiced only in

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[267] Ahmet Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyatı*, (Diyarbakır: Dicle Üniversitesi Hukuk Fakültesi Yayınları, 1986), no.6, p. 811. *".. kavânin-i müesseseye muhalif hareket edenler her kim ve hangi rütbede olur ise olsun haklarında mücâzat-ı mukarrere icra olunmak üzere*"

[268] Ibid., p. 811. *"faraza vüzeradan birisi tarafından bir çobanın bile canına kasd vukuunda ol vezirin hakkında dahi kısas-ı şer'i icra oluna*."

[269] Paz, p.54.

[270] Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyatı,* pp. 809-820.

[271] Peters, p. 127.

two criminal acts, manslaughter and rebellion against the state or in case of treason.[272] The sultan alone had the authority to cancel[273] this kind of punishment.

In general, the penal code of 1840 consisted of bureaucratic crimes. Its uniqueness was its protection of Ottoman citizens' right and the adherence to "equality before the law" whether a shepherd on the mountain or a vizier in the palace. In consequence of a developing Ottoman bureaucracy, in both numeric and influence, the content of the 1840 penal code predominantly consisted of bureaucratic crimes and neither in the form of human trafficking or woman of abduction were addressed in this code.

As can be seen in the case of Hanife Hanım, although she was abducted, in 1846, the criminals were sentenced with only bodily harm, but their act of abduction and attempt to rape was not taken into account.

In the sandjak of Karahisar-ı Sahib, three men captured Hanife Hanım wife of Dellal Halil, in 1846/1263. The intention of kidnapping by Kör Hasan, Dellal İsmail and Suleiman derived from sexual desires (*fiil-i şen'i*). How they abducted Hanife Hatun was described in the court records in that way, the three men deceived her with fraud, which is a crucial detail. Since fraud was determined, it was not an elopement but abduction. Even though the court record did not give details how police officers (*zabıta*) had been acquainted with the criminal case, the abductors and police officers had come across each other.

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[272] Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyatı,* p. 812. *"fiilen olduğu halde bir kimseyi veya bir takım adamları bağy ve isyana davet etmek ve onlara esliha ve barut vermek gibi şeylere tasaddi edecek olduğu takdirde ve bu makulelerin cünhası pek azim olacağından katl ve idam kılına."*

[273] Gülnihal Bozkurt, "Review of the Ottoman Legal System," *OTAM 2* (1992), p. 122.

Kör Hasan aimed his gun at the police (*teşhir-i silah*) and therefore he was sentenced with one and half years. His punishment could be from three months to three years as far as the severity of the police's injury. Although the point and severity of injury were not specified, by taking into consideration one and half-year imprisonment in chains (*vaz'-ı pranga*) of Kör Hasan it could be said it was an actual bodily harm. Besides, from the crime of beating Hanife Hatun,[274] Suleiman was sentenced to one-year chains.

Apart from these, remission of Dellal İsmail's punishment resulted from his old age and the council saw the time while he had spent in prison waiting court decision as adequate. As mentioned before, there was not a clause regarding women abduction in the code of 1840. How the judges evaluated this case shows many things since the crime was committed in 1846. Suleiman was the only one who was sentenced with bodily harm to Hanife Hatun. Even though these three criminals did not reach their goal, why they abducted a married woman was written down in the judicial record, which was rape. Neither the attempt to rape a (married) woman, nor her abduction was counted as criminal act.

Because the 1840 Penal Code was nonsystematic, covering more than one crime in the same verdict without concrete definitions and uncertain on what the sentence gave rise to the 1850 penal code. The 1850 penal code was called as the Qânûn-ı Cedîd, or the New Code. Compared to its predecessor it might be said that it was more systematic in defining crimes and in its structure. The New Code contains three small chapters and 47 articles. The first chapter had 17, the second seven and

[274] BOA.MVL 37/62. 19 Z 1263 (28 November 1847) "*Süleyman mezbureyi cerh ve kör Hasan dahi zabıta neferatına teşhir-i silah eylemiş olduğunu tahakkuk*"

the third one, 19 articles.[275] While the first chapter focused on crimes against to the state and individual, the second and third one concentrated on offences against life, honor and property, which the Tanzimat Edict had guaranteed in 1839. The input of the New Code was its articles on women abduction, forgery, gambling, public drunkenness, and indecent assault. All of these offences were evaluated as crimes against to public order, so all of them were judged within the concept of public prosecution, which was very new. [276]

In Shari law, in the case of a homicide, if the close relatives had accepted to blood money or just forgiven the culprit, the lawsuit would have been closed; however, the New Code introduced a new procedure on homicide. After the 1850 penal code, regardless of what the heirs had decided, the adjudication of the accused continued. The state as the only authority that exercised power on corporal punishment, homicide could mean stepping out of line in its eyes. Not only that, but also the Tanzimat Edict in 1839 made promises on life security of its citizens. Peters writes that, "Whereas the penal codes of 1840 and 1850 were very much a continuation of traditional Ottoman legislation in criminal matters, the 1858 penal code was different; it was clearly of French inspiration, especially in its structure, system and general notions."[277]

After a short introduction of the penal code of 1850, we can turn how abduction was addressed in the code. If a person kidnapped a female whether

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[275] Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyatı*, pp. 821- 831.

[276] Musa Gümüş, "Osmanlı Devleti'nde Kanunlaştırma Hareketleri İdeolojisi ve Kurumları," *Tarih Okulu* XIV (2013), p. 170.

[277] Peters, pp. 131-132.

Muslim or non-Muslim and took of the place of residence in order to marry her or took the girl without the intent of marriage, the abductor was to be arrested. After the interrogation, both the abductor and abductee were to be sent to the place they came from. By taking into account that during the trial witnesses was also listened to by the judge, transportation could be a challenge for everyone.

Apart from distance, ensuring the integrity of the case within the same place is reasonable for the court members. The punishment in that case shall be 6 months prison sentence. [278] Although Akgündüz states the related clause in that way, the same clause was cited in the book of Ahmed Lütfi as *Osmanlı Adalet Düzeni* (Ottoman Legal Order). Both of them specify that marriage between an abductor and abductee was invalid, and the perpetrator was to be punished with six months jail sentence. However, in the former one "taking the girl outside of her place"[279] was indicated as a crime; in the latter one, forcing the girl outside of her place was stated by Erdinç Beylem who is the abbreviator of *Ottoman Legal Order*.

Article six of chapter two also forbad the judge from solemnizing a marriage between an abductor and abductee, however, the case could be related to not only for women abduction, but also elopement since women had to get permission from their parental guardians. According to the Hanafi sect, girls who reached puberty could

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[278] "*gerek ehl-i islam ve gerek reâya kızlarının bulundukları memleketin mahkemesinden başka kazaen âher mahkemesinde akdetmek zu'muyla (iddiasıyla) kaçırmak veyahutmemleketten harice çıkarmak misüllû vaz'-ı nâ marzîye (hoş olmayan duruma) cesaret edenler olur ise, tutulup keyfiyettleri mahallî meclisinde tahkik olunduktan sonra mensup olduğu sancak meclisine ba mazbata inhâ olunarak o makûleler lieclit-tedip mahallinde nizamen altı mah (ay) hapsiyle mücâzat oluna. Ve o misillûlardan birisi kaçırdığı kızı kazaen âher mahkemesine götürür ise kefâet maddesi bilinemeyeceğinden hükkâm efendiler tarafından akdi hususuna mesağ (cevaz) gösterilmeyerek mülkiye memuru tarafına bil-ihbar tutturulup mahalli mahkemesine götürüle*." Akgündüz, *Mukayeseli*, p.826 and Lütfi, p. 138.

[279] *"... bulundukları yer mahkemesinden başka bir mahkemde nikahlamak üzere kaçırmak o memleketten dışarı çıkarmamak gibi bir alçaklığa cesaret edenler olursa ...*" Lütfi, p. 138.

marry whomever they wanted. The permission or consent of the parents was not necessary. On the other hand, İmam Muhammed, one of the prominent jurists of the Hanefi sect, declared that both the consent of the girl and parents was necessary to get marry. [280] In the example of Ottoman marriage practices, Aydın remarks that until 1544, parental consent was not seen as obligatory to marry; however, from this date forward judges had to be sure about parental consent in order to use their authority to perform a marriage. If the parents or protector of a girl did not give their assent the marriage could not be held could not take place.

To marry a woman in a distant place and without taking the consent of her parents could be followed through the case of İbiş from Sivas in 1849.[281] The sentence of an engaged woman with six months imprisonment is a strong evidence of elopement and her willingness to flee from her fiancé and not to get marry with Köseoğlu. The issue of why the name of an abducted or on who had eloped was not put on some records may have resulted from the anxiety that these records were also collective memory and easily led to a social stigmatization. Again, in this case, the name of the fiancée of Köseoğlu but officially wife of İbiş was not specified. In general, abduction and elopement were defined as a rural crime and in this case, it is not surprising that when the couple was caught, they were hiding in the village of Serkiz in Tokat. Furthermore, the substitute judge (*naib*) was strictly warned since he had arranged the marriage between the eloped couple and gave them official document of permission

[280] Aydın, pp. 96-99.

[281] BOA.MVL 76/57 11 N 1265 (31 July 1849)

(izinname).[282] Because, since the couple had married and equal of each other (*küfüv*) there was no way to declare the marriage null and void, according to the Shari'a. By contrast, the legitimate and holy marriage did not prevent the authorities' from sentencing the couple. Both of them were sentenced to six months imprisonment.

The word in the code "*kefaet*" (equal) is derived from "*küfüv*" and refers to the parental consent. Since in the abduction or elopement cases parents were not naturally informed, the clause forbad such marriages and counted them as invalid in the eyes of the state. At that point, judges who were responsible from performing a marriage and recording it to the state documents should not take part in such wrongdoings.

The efforts to improve the legal system continued with the penal code of 1858 with harsher punishments regarding abduction and human trafficking. From 1851 to 1858, there was an increased attention to kidnapping within the codes.

With the Reform Edict (*Islahat Fermanı*) in 1856, a new penal code was declared on 8 August 1858. Under the chair of Ahmet Cevdet Paşa, Muhammed Rüşdü, Ahmet Celal, Şevket, Seyyid Mustafa Hıfzı, Mahmut Paşa, İbrahim Edhem, and Muhammed Bey created the penal code of 1858 defined a general clause on the abduction of a subject as a crime instead of women abduction, however in the subtitle of the said clause, the abduction of women was also mentioned.[283] According to the 206th clause, if a person kidnapped an impuberes minor with force or maliciously detained him or her, the punishment ranged from three months to one year. If the abductee were a grown-up, the accused would work in hard labor

[282] "*naib-i muma-ileyhe izinname verdiğinden dolayı gafilane harekette bulunmuş olduğu cihetle kendüsine tenbihat ve tehdidat-ı lazıme icra kılınmış olub*"

[283] Gümüş, p.185.

temporarily. In cases of rape, the penalty was be aggravated. Toroslu and Erçelik defend the idea that this clause on abduction punished only the abductors who forcefully or wheedlingly kidnapped women but not rapists. They argue that abduction to get marrid or rape was not punished and the abettors were not put on trial.[284] Actually, the code on rape is clear and the harsher punishment was given to them as previously described. Moreover, in the jurisdiction of abettors, it is right to attend their view.

The version of women abduction in the penal code of 1858 was in that way,

> Whoever by force or fraud, carries away a child who has not attained the age of puberty is imprisoned fro from three months to one year; and if the child thus carried away is a girl who has not attained the limit of puberty the abducting person is placed in kyurek temporarily; and if the abominable act has been committed on the abducted girl the maximum of the punishment provided for that act is inflicted on those who have perpetrated this, and, if marriage has taken place in the case in which a girl is carried away, action is taken according to the requirement of the Sher' in the matter.[285]

After the 1858 penal code, the clause on the abduction of women was altered with that one,

> Whoever forcibly removes and carries away a female who has attained puberty is imprisoned for from three months to three years but if she has a husband the abducting person is placed in kyurek temporarily. Whoever assists the man carrying away a female who has attained puberty or a female whole who has not attained puberty in the affair of her forcible removal and carrying away, is imprisoned for from one month to six months.[286]

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[284] Ercoşkun, pp. 432 -433.

[285] John Alexander Bucknill and Haig Apisoghom Stepan Utidjian, *The Imperial Ottoman Penal Code: A translation from the turkish text, with latest additions and amendments, together with annotations and explanatory commentaries upon the text and containing an appendix dealing with the special amendments in force in cyprus and the judicial decisions of the cyprus courts,* (London: H. Milford, Oxford University Press, 1913), pp. 159-160.

[286] Ibid., pp. 160-161.

The 206th clause, which was amended in both 1858 and 1860, was changed in 1911 as this.

> Whoever by force or fraud carries away a person whether of the male or female sex, is punished in manner following: ıf the person carried away is of the male sex and has not completed the age of fifteen years the offender is imprisoned for from one year to three years. If the child in this manner carried away is of the female sex the offender is put in kyurek temporarily, and if the abominable act had been taken place punishment of kyurek for not less than ten years is awarded to him. If the person whether of the male of female sex carried away has completed the age of fifteen years the offender is imprisoned for from two years to three years. If marriage has taken place with regard to the girl carried away and the girl too has completed the age of fifteen years the case for general rights lapses by her desistance, or by that of her guardian if she has not completed that age from proceeding. If the woman carried away has a husband or if the abominable act has taken place the offender is placed in kyurek for not less than five years. ıf the person carried away has been, within forty-eight hours at the most and without any aggression of any kind having taken place, spontaneously left at some safe place whence it is possible for him to be taken by his family the punishment is imprisonment for from one month to one year. [287]

The amendment to the 206th clause of 1858 penal code was made in 1861 with more detailed and inclusive definition of abduction. If a man kidnapped a virgin shall be punished up to from three months to one year. In addition, if the abductee was married, the abductor will be sentenced with temporary hard labor. Abettors also will be punished from one month to one year. In 1913, bride theft was dealt with under the title of human trafficking. If the abductee were younger than 15 years old, temporary hard labor would be given. If the abductee were older than 15 years old, the accused would be penalized from two years to three years. In case of rape, the sentence will not be less than ten years.

Moreover, in case of a married woman, the clause says that the perpetrator would be sentenced not less than five years to hard labor. On the issue of marriage,

[287] Ibid., p. 161.

women had to right to cancel this marriage. A 20-years old woman or her parents could postpone public prosecution if a marriage contact was done; however, if divorce happened between two parties public prosecution would be applied. From 1851 to 1861, the authorities' concern with bride theft was gradually developed and disincentive punishments were put into the codes, which demonstrate the state's interest to life security and the bodies of its subjects.

Abduction or human trafficking was not mentioned in the 1840 penal code. The first time an abduction case was discussed by the members of the Supreme Council was in 1850.[288] Investigation into accused men and further attention of officers on these cases was ordered. Abductors and even attempts to kidnap were to be punished. The Supreme Council evaluated abduction cases with regard to high bride dowries and forced marriages. Up to that, the prohibition of bride dowries and facilitating measures to get married were practiced. The Article on Wedding and Marriage (*İzdivac ve Tenaküh Maddesi Hakkında İlanname*) was a result of how they viewed abduction cases and acted in order to restrain them and it was one of the measures to encourage marriage with a limited budget.

In addition to the economic challenges to marriage, imams were to be punished if they solemnized a marriage between an abductor and abductee. Limitation and control over imams' authority, prohibition of bride prices, and the order about diminishing some marriage rituals such as gifts and wedding dinners should be taken into account all together. Encouragement to marriage by the authorities should be considered as a precaution against abduction cases especially for poor subjects who could not afford weddings and its heavy burden. The data in

[288] Ercoşkun, p.94.

the archives also demonstrates that abduction and elopement were common among economically disadvantaged people.

Sentencing Elopement: The "Article" of Public Morality

The penal codes of the nineteenth century did not touch upon elopement. Although it was not criminalized, in practice, run away daughters and their lovers were punished. There was no regulation and legislation on elopement, and in one report, the absence of specified article was also mentioned but since elopement was regarded as harming public morality, disciplining those who had eloped ones was seen as necessary. In 1852, the unmarried and virgin Ümmühan, daughter of Topal Halil, eloped with Rumelili Duvarcı Nikola in the village of Zeytinli, district of Edremit.[289] Although they were engaged couple, when Nikola and Ümmühan were on the way to Ayvalık, a hurta derbend officer in Kemer arrested them. Temporarily, Ümmühan was placed in the *imam*'s house (the house of Muslim religious leader) and Nikola was put in prison.

In the court records of Supreme Council, the act was described as a case of abduction, but at the same time, the report stated that both of them had admitted their sexual intercourse *(fil'i şeni*). Without any reference to a specific article, Duvarcı Nikola was sentenced to one-year hard labour (*prangabend*) in Bursa and Ümmühan was exiled to Balıkesir for three months. According to the report sent by *müşir* (the ruler's personal counselor or advisor on military in Ottoman) of Hüdavendigar,

[289] BOA.MVL 211/29 6 S 1269 (19 November 1852) The summary of the document was wrongly stated that Ümmühan was the wife of the Topal Halil, but in the record it was two times written down that Ümmühan was the daughter of Topal Halil.

while Duvarcı Nikola was in prison Bursa, he had febrile seizures (*humma-i muharrik*), and after three days, he passed away.

In 1846, from the township of Akşehir, when Ali and Fatma eloped with the intent of marriage, they were arrested and charged with from adultery on their way, although, Ali refused the charges against him.[290] Ali and Fatma who were judged in accordance with discretionary punishment (*ta'zir*) were sentenced to corporal punishment, specifically Ali was stroken with a stick 79 times and Fatma 35, in addition to Ali's imprisonment for six months. Whether adultery had happened or was used as a method to guarantee the marriage by the couple, or the local council members used it as a way to discipline the abductors or eloped remains question.

For the side of court, abduction was criminalized, but not elopement, so this situation led to father's revenge and honor killings. Even if not, elopement resulted with quarrel, gunfight, injury or tragedy in one word as abduction created, it harmed the honor of the bride's family. As a comparison, the court cases show that before and after abduction, there might be problems about life security. However, since elopement was planned and the woman gave her consent, at the act of time bride's family was unaware so after the elopement there might be crisis, that might end with honor killings.

Another case that I categorize as elopement or forbidden love was located in 1859, Dersaadet. According to the council of police officers (*zabıta meclisi*),[291] Fatma the wife of the porter *(hamal*) Abdurrahman who worked in Kadıköy was abducted by Çoban (*shepherd*) Osman. The place of the event was Karahisar-ı Şarki

[290] BOA. C.ADL 93/5586 24 B 1262 (18 July 1846) I am gladful to Ebru Aykut Türker for sharing this record.

[291] BOA.MVL 817/111 28 CA 1275 (3 January 1859)

and the parties were from different villages; Fatma and her husband Abdurrahman were from the village of Dündar and Osman from the village of Ortaköy. İbrahim, the father-in-law of Fatma, also claimed that theft had also occurred. When Fatma and Çoban Osman were arrested by police officers (*zabıtas*) in Dersaadet, Fatma was disguised in men's clothes and sent to her husband. On the other hand, Çoban Osman was sentenced to five months prisonment.

The reason why I consider this case as elopement of a married woman derived from the sentence of the perpetrator as five months imprisonment, the lack of specific article in the records, Fatma disguised in the men' clothes, and the word put in the record as "*bi'l-iğfâl*" (to seduce or deceive). If this case were an abduction of married woman, the records would have referred to the article 206 focusing on abduction. In almost all of the reports put the related article, since in 1859 abduction was already criminalized.

Furthermore, from Karahisar-ı Şarki (Şebinkarahisar), which is the region of Black Sea to Dersaadet, how a woman in the clothes of a man could be forcefully taken away is a question that deserves answering. Although the record is very short, and the absence of interrogation was an obstacle to further analysis, it is noteworthy. Apart from the travel of the disguised Fatma and Osman, the report of the police officers used the word of *bil'-iğfal* which means inveiglement and is derived from the word of *gaflet* (in the meaning of to be deceived) shows that Fatma gave her consent to the act of Çoban Osman, that is it was a consensual abduction, i.e. elopement.

In the summer of 1850 in the sancak of Canik, a married woman eloped with Ali Osman, who had converted to Islam.[292] It is unfortunate that the report did not mention from the name of the runaway woman and her religious identity. Since the council of Canik had reported the case to the Supreme Council, the police officers had investigated them as they were walking about in the mountains and they had eloped seven months earlier. After the appointment of police officers to the case, they were found in the sancak of Amasya, in the house of Mehmet Efendi. After the interrogations and their confessions, it revealed that they eloped.

Similar to the case of Ümmühan, the woman was detained in the house of local *imam*, and Ali Osman was sent to prison until the determination of his sentence. In general, the court reports put down the related article before the rendering of a verdict, and again this case did not include any kind of reference or comparative interpretation (*kıyasi*) to an article, but the reason for the decision was the elopement of a married woman and Ali Osman's consent to this act without hesitation.[293] The mentioned woman with no name was sentenced to three months imprisonment. Ali Osman was penalized with hard labour for six months. The Pasha of Canik was warned by the Supreme Council not to release the runaway lovers before their sentence end.[294]

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[292] BOA.MVL 199 21 16 N 1266 (12 July 1850)

[293] "*merkum ve mezbure kendi istek ve rızalarıyla kaçmış olduklarını ifade ve beyan etmişler ise de mezburenin zevcesi olduğu halde merkume muvaffakiyetiyle gitmesi ve merkumun bi-muhaba götürmesi"*

[294] *"müddetleri zamanında sebillerinin tahliyesi hususunun ba-emirname-i sami Canik'in mutasarrıfı saadetlü paşa bendelerine emr ü işarı"*

In the eye of the judicial authorities, the abduction of woman and elopement became a serious and challenging problem if the parties were from different religions, that is, If the case included a Christian or Jewish girl. Since it generally involved the problem of conversion, non-Muslim religious leaders took these cases as an insult to their freedom of body and religion. In fact, not all the cases contained force; but in spite of that elopement and abduction accompanied by conversion increased the tension and led to serious turmoil, as it can be followed from the case of Ahmed and Cevher, which happened in July 1861 in Urfa. The issue was defined in the court report with the claims of Cevher's guardian on Ahmed's forced abduction to marry and provide Cevher the truth path. [295]

Whether a non-Muslim man, the guardian of Cevher described his allegations as "the truth path" (*hidayet*) or not is a striking point to go behind and a good sign to put forward the idea that the court records need criticism since they may undermine the voices of the parties. According to the report, Ahmet neither encouraged Cevher, nor forced her to take action, but it was Cevher who was willing of her own free will to elope.[296] Another point that was stressed by the court members was that the couple did not engage with any kind of indecent act *(fi'l-i şeni)* resulted with impunity. Despite the consent of Cevher, both the guardian of Cevher and the agent of Bıre-dostan,[297] objected to the marriage and her conversion to Islam and offered to take her back. In the end, the solution was putting Cevher in a separate room a priest

[295] BOA.AMKT.UM 487/76 21 M 1278 (29 July 1861) "*hidayete tertib ile tezevvüc etmek üzere cebren kaçırdığı"*

[296] "*mezbure Cevher'e bir güne muamele-i tergibiyye ve cebriye vukuu bulmaksızın kendü hahiş ve rızasıyla ırz-ı hidayet ve emr-i izdivaca muvakkat edüb fil'i- şeni dahi bulmaması cihetiyle*"

[297] I am not sure about this word, but it may be a tribal name.

(*umur-ı ruhani*) for more than three hours, and as Cevher did not change her mind, the officers get promise from the complainants not to threaten them and the marriage of Ahmet and Cevher was legitimized.

In 1855, a religious sect leader (*imam)* called Mehmet Efendi murdered his daughter Ayşe and his servant (*hidmetkar*) Osman, in Muğla. The village imam of Pesi claimed that Osman had abducted his daughter from his own house four months earlier and because his honor had been tarnished from this act (*şikest-i ırz*), he had headed out after them. Unfortunately, the document did not detail their story and the lack interrogation report led more questions.

First, the term "*bi'l-iğfal*"[298] means deception but also means seduction that is, there might be fraudulent sexual intercourse or it included only persuasion to elope. Based upon the word "*bi'l-iğfal*" it can be supported that Ayşe was deceived by Osman to run away or had a sexual act; but in both options, she was portrayed as a victim of Osman. On the other side, since his father had killed not only the "deceiver," but also his own daughter denotes that Ayşe was not seen as a victim or a victim still needs punishment due to her inexcusableness deriving from her opposition to father's authority regarding marriage preferences and dishonoring the family as a result of her actions.

Another report with more detail stated that the father Mehmet had caught them in flagrante and shot them.[299] When Mehmet as an *imam*, who had legal knowledge, was tried by the sharia court, he went unpunished and that situation was

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[298] "*Mehmet efendinin bakire kızı Ayşe'yi bil-iğfal hanelerinden kaçırmış ve efendi-i merkum şikest-i ırzdan dolayı bit-takib merkum Osman ile kızı mezbureyi telef ve idam etmiş olduğundan*" BOA. MVL 216/38 17 RA 1272 (27 November 1855), see also: BOA.A.MKT.MVL 80/83 21 ZA 1272, BOA.AMKT.UM 259/387 RA 1273.

[299] "*efendi-i merkum dahi bit-takib ırzının üzerinde bularak ikisini de telef ve idam etmiş*"

heard by and took the attention of the authorities of Muğla. The local council brought the deaths of Ayşe and Osman to trial. It is unfortunate that I did not find further evidence on what the writ was; but since the local authorities paid regard to an honor killing, it shows that the writ of the Sharia court on Imam Mehmet's release did not satisfy their sense of justice.

Apart from the interest of legal institutions, Osman's being a servant of his murderer that is in an inferior position in relation to Imam Mehmet might potentially have been an anxiety and obstacle to the elopement of the couple and aroused revenge. The claim of being eyewitness to the sexual intercourse of Osman and Ayşe alleged by perpetrator might be a libel to beat a charge since Imam Mehmed as a religious leader had the knowledge of the Sharia.

A similar murder of an eloped daughter by her father took place Tarsus, in 1853. Zeynep the daughter of Süleyman, an inhabitant of Avadanlı village in Tarsus, ran away with Abdullah from Tırnık village in order to marry him. Based on the court reports, it was claimed that while the lovers were enjoying in the river of Atgirmez, Süleyman gun shot his daughter from in left side.[300] This kind of homicide was described as an intentional killing (*amden katl*) and Süleyman was sentenced to 5000 *dirhem* as the amount of blood money (*diyet*) and hard labor at the arsenal (*Tersane-i Amire*) for five years. Apart from father Süleyman, who had killed his daughter due to a matter of "honor" Abdullah was also punished with iron fetters (*pranga*) for one year since he had been the reason for the death of Zeynep and had

[300] BOA.A.MKT.MVL 66/54 14 S 1270 (16 November 1853), BOA.MVL 211/6 18 M 1270 (18 March 1854) Another honor crime from Karamürsel in 1916, Hacıoğlu Ali killed the abductor Çolakoğlu İbiş İsmail since he lured away his daughter. Fort his case see: BOA. DH.EUM.5.Şb 26/18 15 N 1334 (16 July 1916)

ventured to abduct a woman (*kız kaçırmak kabahatine mütecasir olub*), the court regarded to punishment of (*tedib*) Abdullah as necessary.[301]

As a comment that based on the archival documents, elopement may have occurred to get rid of a forced marriage. The tragic case of Hatice exemplifies that her escape with a bunch (*bohça*) from the house aimed to get rid of parental oppression and a fiancé that she did not want to marry.[302] In 1863 in Sivas, the village of Bedirkale witnessed the murder of Hatice by her brother Ahmet after she ran to a man called Süleyman, son of Halil. On a Wednesday night in September 1863, Hatice, as a fiancée took some of her clothes and 300 kuruş and went to the house of Süleyman, since she was unpleased with her betrothal. Relying on the interrogation of Süleyman after the honor killing of Hatice, he asserted that he had not had a sentimental relationship or love affair with Hatice and had not been informed any kind of act.

Coincidentally, that night the şeri judge of district (*kaza naibi)* was in the village. When he had heard the case, he ordered Süleyman not to stay at home and instead at the threshing floor (*harman yeri*) and the next morning Hatice was taken to the house of village imam. As the brother Ahmet and his father Mahmud learned of Hatice's move to the imam's house, Ahmet claimed that his father had encouraged his act and ordered him to shoot the daughter.[303] Ahmet said that his father told him

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301 For forced labour as a punishment method, see; Gültekin Yıldız, *Mapusâne Osmanlı Hapishanelerinin Kuruluş Serüveni (1839-1908),* (İstanbul: Kitabevi, 2012), pp. 225-261.

302 BOA. MVL 666/47 21 Ş 1280 (31 January 1864)

303 "*kızın imam hanesine konulduğunu duyduk, babam dedi ki biz bu işi kabul etmeyiz seni evlatlıktan red ederim, şu kızı ur dedi, ben de tüfengimi aldım imamın evine gittim kurşun attım değmedi kız kaçdı dışarı çıktı ben de arkasından kapının önünde yetiştim tüfenkin dipçiğini anamın babamın reyi ve tahrikiyle iki defa başına urdum telef ettim*."

not to be passive to what had happened and if he did not kill Hatice, the father Mahmut said he would not give his blessings to his son, which may be interpreted as parental exploitation. At the time of incident, there was an intense hunt between Hatice and Ahmet. At the first shot Hatice managed to save herself by running, but as Ahmet caught her, he struck two a great blows with the gun and killed her. On the side of the parents, Emine and Mahmut maintained that they had seen their daughter and Süleyman having sex in the morning in the house of Süleyman, and called Ahmet to show him and, then ordered him to kill her.

Apart from the claim on adultery between Süleyman and Hatice, since Süleyman was an Alevi (*kızılbaş*) the parents, who defined themselves as Muslims, strictly refused their consent.[304] The council of Sivas commuted the abettors to temporary kyurek and Hatice's murderer Ahmet with hard labour and 15 years imprisonment in Ergani according to article 174,

> "Any person quilty of homicide without premeditation shall be punished with hard labour for fifteen years. Nevertheless the crime shall entail the punishment of death if preceded or accompanied or followed by another felony, or when it has been brought about by a design to commit a misdemeanor."[305]

After all, the village headman, imam, and Ahmet's family submitted a petition to the provincial court of appeals (*divan-ı temyiz*) and the district court of appeals (*meclis-i temyiz*) Ahmet had been in prison for eight years and they had nobody to support the

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304 "*Ahmet'i çağırdık ona dahi zinayı gösterdik bu oğlan kızılbaş biz islamız, biz bu işi kabul etmeyiz şunu telef et diyerek tenbih ettik*"

305 *The Ottoman Penal Code 28 Zilhijeh 1274. Translated from the French text by C.G.Walpole,* (London: William Clowes and Sons, 1888), p.76.

family.[306] Although the record did not give any clue if Ahmet was absolved from his sentence or not the case in the report, was described as the restoration of his honor (*istikmal-i namus*).

According to the Ottoman Penal Code of 1858, the Article 201 stated:

> Whoever dares to behave contrary to public decency by making it a habit to incite and entice young persons from amongst males or females to obscenities by preventing or deceiving them or facilitating the means of the coming about thereof is punished with imprisonment for from one month to one year; and if this matter of perverting or deceiving in this manner proceeds from persons who are the father or mother or guardian they are punished with imprisonment for from six months to one year and a half.[307]

A villager of Göllü, Hüseyin son of Murtaza, and a married woman, Fatma, eloped in 1861. The council of Kars decided to judge them according to Article 201.[308] As can be followed from the court report, the council members did not interrelate the act with a specific code, but believed that their act should be punished since it was against rules of good manner (*adab-ı umumiyye*). Fatma, however, declared that, she was not pleased with her husband Hüseyin, son of Dursun, and with her willing and consent she confessed to running away with keep Hüseyin.

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[306] BOA.A.MKT.DA. 9/73 15 R 1288 (4 July 1871)

[307] Bucknill, p.152.

[308] "*kanun-ı cezada bir güna sarahat görülememiş olduğundan icra-yı icabı re'yine talik olunub vakıa böyle rıza ile fiil'i şen'inin mütecaseri içün kanunda bir ceza-yı mahsus yoğsa da merkumun böyle hilafın taht-ı nikahında bulunan hatunu dağa götürüb gezdirmesi adab-ı umumiyye münafi hareket-i makduhadan olduğuna ve kanun-ı cezanın 201.maddesinde her kim zükur ve inastan genç kimseleri ihlal ve iğfal ederek fuhşiyata tahrik ve iğra ve esbab husulüne tehsil etmeği itiyad ederek adab-ı umumiyeye münafi harekete cesaret eyler ise onun bir mahdan 1 seneye kadar haps ile mucazat olunması muharrer olub merkumunun bunu itiyad etmiş makuleden olduğuna dair mazbata-I merkumede bir güna işaret görülememesi ve mezbure rızasıyla götürülmesi dahi esbab-ı mahfufiyeden(?) bulunduğuna binaen merkumun bu hükme kıyasen*" BOA.MVL 605/26 20 C 1277 (3 January 1861)

Although Fatma confessed to her sexual act with Hüseyin and even asserted that she was pregnant by him, he denied such sexual intercourse. According to report, Hüseyin and Fatma had wandered around in the mountains for five days. From this point and the claim of pregnancy, there are two questions. If Fatma was pregnant, it shows their sexual relation had begun earlier than and maybe their escape had resulted from her pregnancy.

The other interpretation based on the data might be that Fatma was determined not to return to her husband no matter what the cost. Besides that, Hüseyin the husband submitted a petition on his wife's runaway to a man. That is, he preferred to discipline his wife with legal punitive mechanisms. As in the case of İmam Mehmed, he might have chose to bring justice with his own hands, but he utilized state authorities to take his wife back or to punish her.

Before stating the criminal sentence of the elopement of a married woman and man, the report portrayed such cases from a wider perspective and indicated that such cases were very common in rural areas. "Without the permission and consent of a husband even if his wife was a prostitute, abduction of married woman is not acceptable neither religiously or rationally.[309] On the issue of court decision, the mentioned article 201 revised on 17 December 1860. The council of Kars referred to the unrevised article on 1 January 1861.

According to revised Article 201, a case against a woman's honor could be filed by her husband or, in absence of a husband, her guardian or father were entitled. A woman guilty of adultery could be imprisoned from three months to two years, but

309 "*böyle halkın taht-ı nihakında bulunan hatunu fahişe bile olsa zevcesinin izn ve icazeti olmaksızın na-mahrem olanlar dağa götürüb gezdirmek şer'an ve aklen kabul ve tecevvüz olunur şey olmayub adeta ırz ve namusça serbesti-i müdahaleti mucib halat-ı şen'iden olmağla ve taşra mahallerde emsali ekser vukua gelmekde bulunmağla icra-yı iktizası re'y-i heye'ate mütevakkıfdır*."

her sentence may be forgiven if her husband accepted her back to their marriage. Another point from Article 201 was about the evidences, if a woman was in the house of an unrelated man or the existence of handwriting would be counted as proof apart from eye witnessing the act of sexual intercourse.

Moreover, the man involved with the in adultery was to be punished for from three months to two years, and a judicial fine from five to 100 gold medjidies. If the adulterer was a man and had sexual intercourse in his house, he would be imprisoned from three months to one year and be required to pay a fine from five to 100 gold medjidies. As can be followed, the sentence of an adulterous married man was conditional. If he committed this crime in his own house, where sharing with his own wife and family. On the other hand, a woman under responsibility of husbands and fathers had to protect her sexual honor in any place and condition; but again the husbands had the right to cancel the imposition of penalty.

This thesis, aiming to understand how honor was perceived with the examples from court cases of abduction and elopement, could be summarized with the Article 201, since it was a good and talking article to show how the judicial system and the codes treated the honor of men and women differently. Returning to the case of Fatma and Hüseyin, Fatma was released because the jail time she served as she waited for judicial act was seen adequate and Hüseyin was imprisoned for six months. Why Fatma chosed to run away reminds that the divorce of a married woman was limited to specific conditions.

In conclusion, elopement meant protesting parental power, and a case of deviation in regards of societal norms. Moreover, it can be followed from the cases that cases of elopement were sometimes treated as abduction; that is by force, which

diminished the punishments of honor-killers and gained them a legal ground. Whether married or unmarried, women were punished even they had officialy married their lovers. Preserving public morality and disciplining woman was the focus of the decision-makers. While taking into account of the elopement of married woman, it should be kept in mind that Sharia law did not allow woman to a divorce as husbans did. The elopement of a married woman should be regarded as not an escape from a husband and their unhappy marriages, but also this system prohibited woman from divorcing.

CHAPTER FIVE

GENDER, HONOR AND VIRGINITY: WHO POSSESSES THE BODY?

"Honor belongs to the sultan and
I demand my honor from them and their punishment."[310]

In this chapter, rather than focusing on the Ottoman Empire's position, the codification and measures taken against abduction and elopement which were actually discussed in the Chapters Two and Three, I will focus on the side of the litigants and defendants, especially their self-defense mechanism by extracting their voices in the courts and utilizing from the interrogation reports. It can be said that abduction and elopement became problems of security since these two acts generally led murder, bodily injury or rape; but from the viewpoint of ordinary subjects, it was an issue of body, honor and virginity.

End of the three sections of this chapter serves a different purpose but overall they exemplify how a complex issue honor was. In the section of titled "Does a Prostitute Have Honor: A Degradational Honor System," the given attention is comparing the cases of abduction of unmarried and virgin woman and girls with the cases of prostitutes. Without any manipulation in the selection of court records, since these are only records about the abduction of prostitutes that I accessed in the

[310] BOA.İ.MVL., 524/123543, 1271 4 Ş (22 April 1855) An abducted and raped woman called Sofya, wife of Todori from Trabzon. "*Irz padişahındır, ben bunlardan ırzımı isterim ve terbiyelerini niyaz ederim*."

Ottoman archive, the possible deductions are brought to light. In the second section, titled, "Furious and Rejected Ex-Husbands and Lovers Abducting Woman for Revenge: Male Pride," the common point of the cases of abduction, the victims were ex-wives, or ex-lovers so it can be argued that abduction in that form was crime of passion.

In the third section, titled "The Case of İstanka: Forced Conversion or a Frustrated Love Marriage," is the only case which rather than being a victim, İstanka was a misuser of the honor-based system. İstanka's case is very similar to "Fatma's Story: The Dilemma of a Pregnant Peasant Girl,"[311] a woman's court case from the sixteenth century of Ayntab. For sure, cases of abduction and elopement are more than this thesis tries to cover and there are more things that this theme deserves further attention. However, in the limits of a this thesis, I have to pick some of them and discuss in detail.

Does a Prostitute Have Honor: A Degradational Honor System

On Tuesday, 7 November 1863, a police officer (*subaşı*) called Ahmet Pehlivan was murdered by a villager from Vardem, township of Ziştovi, in the province of Danube.[312] The court decided to judge the accused within the category of "crime against the state," such as resisting an officer, pulling a gun (*teşhir-i silah*) and felony against governmental officials. Primarily, the killing of a police officer on duty was the only focus of the court officers, which seriously aggravated the sentences of the perpetrators. Second and the most crucial point of this court case, is

311 Leslie Peirce, *Morality Tales*, pp. 351- 374.

312 BOA. MVL., 1075/47, 1283 M 14 (17 May 1282)

that even though the accused had recurrently stated their intention of housebreaking and the report (*mazbata*) indicated their confess and intentions, they were not sentenced from their attempt and judges have only dealt with the death of police officer. Each of the men had confessed that they broke into the house in order to kidnap a prostitute.

According to the related clause of the Ottoman Penal Code, the attempt to abduct was not included as a crime; however, in large part of the court cases of abduction, the attempt was regarded as a crime and perpetrators were given a penalty for their crime. In this part of the thesis, four court cases of abduction will be discussed. Two of them include police officers and offenders who attempted to abduct a prostitute,[313] and the other cases exemplifies attempt of a virgin and honest women from their houses. By comparing these cases, how court officers approached the honor of a prostitute will be discussed in detail.

As previously, mentioned, the motive of the crime was the abduction of the prostitution or taking her up (*fahişe kaldırmak*). The four suspected had confessed that they attacked to police officer's house in order to abduct Hatice. Even though Ganime (?) was not questioned, the records sent to the district governorate "kaymakamlık" of Tırnova and province of Tuna stated that Ganime had been come to Rusçuk when she was a little child.

The story of how she became a prostitute was not told. Whether she was a stolen child, which was a common crime in the Balkans and needs the attention of historians to learn, or was she a destitute child whose parents had passed away

[313][314] For prostitution see: Marinos Sarıyannis, "Prostitution in Ottoman Istanbul, Late Sixteenth-Early Eighteenth Century," *Turcica* 40, (2008), pp. 37-65; James E. Baldwin, "Prostitution, Islamic Law and Ottoman Societies," *Journal of the Economic and Social History of the Orient 55*, (2012), pp. 117-152; Fikret Yılmaz, "Zina ve Fuhuş Arasında Kalanlar Fahişe Subaşıya Karşı," *Toplumsal Tarih Dergisi 200*, (2012), pp. 22-31.

remain just as speculations since we cannot reach her voice. The last thing about Hatice was her arrest by the police officers of Vardem. As they heard there was a prostitute in the house of Lüleci "seller or maker of pipe bowls" İsmail, the police officers had seized him. They took Hatice with themselves in order to prevent any disorder.[314] Why the police officers took Hatice with them instead of putting her in jail was justified as a precaution in order to sustain social order.

More than this, it was said that a cavalry officer (*süvari zabıtası*) called Mehmet and infantry officer (*piyade zabıtası*) called Emin were charged to protect the house of Ahmed Pehlivan. Whether Hatice was taken for social order or with the intent of "entertainment" cannot be known; but the event was described in that way. The issue of whether a suspect was taken to the house of a police officer was there such a practice in general or the police officers abused their power by deforcing Ganime, needs to be kept in mind. In the case of exploitation, the police officers should be judged from the clause of adultery.

That night, Murad, son of Hacı Fehmi, Karamanlı Mustafa son of Hasan; and Mehmet, son of Perişan'ın Mustafa; drank hearty in Petro's tavern (*meyhane*). When they heard that there was a prostitute in the house of Ahmet Pehlivan, they made a plan to abduct her. While they were destined for Ahmed's house, they met a villager named Mehmet Efendi, son of Hafız (in Turkish a person who had memorized the Quran) Abdurrahim, who wanted to participate. Mehmet Efendi (20) was a shoemaker (*haffaf*); Murat (24) was a merchant who collaborated with his father and both Perişan'ın Mehmed (28) and Karamanlı Mustafa (25) were sailors. Another

[314] *"li-ecli-muhafaza Ahmed Pehlivan'ın hanesine verilüb ve bir güna uygunsuzluğa mahall vermemek üzere"*

feature that provided by court records was about their marital status and military service; all of them were unmarried and none had done his military service, yet.

Last, they were questioned whether if they had been sentenced in the past or not. Both Murat and Perişan'ın Mehmed had been punished from a clause of prostitution (*fahişe maddesi*); however what was the crime was not asked and they did not give any further details. Relying on Perişan'ın Mehmed's declaration, he stated that he had been sentenced for a crime related to a prostitute and imprisoned for four days, but he claimed it had been a libel. Two of them have never been to court or punished.

In 1840s, addressing questions to both the witnesses and perpetrators included name, name of the father, homeland and age. It may be suggested that the more interrogators had experienced act of cross-question, the greater variety of questions were asked. Such as profession, marital and military status of the parties, and whether they have a criminal record from previous convictions in the past were added on the list of questions. As the variety of questions increased, it became easier to follow the hidden or obvious motives of the crime and to scheme the profiles of both the perpetrator and injured party. Apart from that, it may be claimed that the interruption of interrogators during the statement taking have been gradually declined. In the first examples of interrogation, they generally behaved as arbitragers. It was a strategy to reconcile the parties or sometimes if a defendant refused to plead guilty, they offered the culprit confession for a reduced sentence. In this case, in the first interrogation reports kept by the subdistrict council (*kaza meclisi*) Mehmet Efendi confessed his guiltiness; but when they had questioned in

the governor's house (*konak*),[315] he refused what he had done; and claimed Perişan'ın Mehmed and Murad had shot.

On that night, Murad, Perişan'ın Mehmed and Karamanlı Mustafa had been blind drunk and encountered Mehmed Efendi after they had left the tavern. About that encounter, Karamanlı Mustafa said, "Even though he [referring Mehmet Efendi] had a criminal record he also joined us".[316] In a place called, "*maşatlık"* (non-Muslim cemetery), they agreed to abduct remove Hatice. Only Murad and Perişan'ın Mehmet had admitted their knowledge about the identity and homeland of Hatice. They had previously been sentenced concerning a prostitute. When they reached the house of police officer at 2 a.m., Karamanlı Mustafa had leapt over the stonewall and opened the door for his friends. The first reaction of the police officers was to chase them and repulse the attack. The four villagers pelted out, but as soon as the police officers got home, they returned and forced the door.

Thus far, the expression of testimonies and parties were coherent and consistent, however the question of who killed subaşı Ahmed Pehlivan became a challenging issue.. In the above, it was stated that Mehmed Efendi claimed that Perişan'ın Mehmed, Murat, and he had shot; but after at, he recanted his confession and accused Murad and Perişan'ın Mehmed of having fired their guns.

On the other hand, Perişan'ın Mehmed and Murat denied the allegations and sayed that they were drunk and did not shoot. There were three bullets mentioned;

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[315] A local governor's house used for both as his residence and courthouse. See Omri Paz, "Crime and Criminals,and the Ottoman State: Anatolia between the late 1830s and the late 1860s," (PhD diss., Tel Aviv University, 2010).

[316] MVL.,1075/47. From the deposition of Karamanlı Mustafa: "*Ben Murad ve Perişan'ın Mehmed üçümüz Ziştovi de Petro'nun meyhanesine gidüb orada biraz işret edüb Ahmed Pehlivan'ın hanesinde bir fahişe olduğunu öğrenib sonra meyhaneden kalkub maşatluk tabir olunurmuş vardığımızda Mehmed Efendi bir suçu olduğu halde o mahalde bizimle birleşti ve o fahişeyi Ahmed Pehlivan'ın hanesinden çıkarmak üzere sözü bir edüb oradan Ahmed Pehlivan'ın hanesine vardık*."

one shot by the police officer called Emin, and the remaining bullets by the villagers of Vardem. In the deposition of Karamanlı Mustafa, he indicated that when the police officers had chased them up and shot, he had called his friends to run away, and both Mehmet Efendi and Perişan'ın Mehmet had come closer to Karamanlı Mustafa. Then, Murad had pulled his gun on the police officers and fired.[317] According to Karamanlı Mustafa's deposition, he stated, he did not say who had fired the first shot; but he testified the second shot had came from Murad. On the other side of the case, the police officers Emin and Mehmed declared that the first shot with a pistol had led to the death of Ahmet Pehlivan, and recognized Mehmet Efendi as murderer since they had seen him. Not only had the police officers, but also Ahmet's family, his mother-in-law and neighbors had confessed the housebreaking, as it was referred to in the court reports.

As this case shows, Mehmed Efendi, Murad and Perişan'ın Mehmed accused each other of the crime. In fact, one of the earlier court reports described their statement in this manner, "We did this act all together and we are ready to serve our sentences."[318] Contrary to that sentence, once they understood the severity of the situation, especially the murderer Mehmed Efendi, they accused the others, and Perişan'ın Mehmed gave his drunkenness as his excuse.

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[317] MVL.,1075/47, From the deposition of Karamanlı Mustafa: "*Biz de kapıya dayandık içeriden zabıtalar silah endahtına ibtidar eylediklerinde ben arkadaşlarıma haydi gidelim deyüb geriye döndüm. Evvel den bizim arkadaşlardan bir silah atılub bu iki Mehmedler benim yanıma gelüb Murad sokak kapısı önünde kalmıştı. Biz Murad gelsin diye kendüsüne bağırdıkta Murad dahi elinde oan tüfengini heman zabıtaların üzerine endaht ederek Murad oraya düşüp bıçağının kabzası kırıldı, sonra Murad yanımıza geldi."*

[318] MVL.,1075/47 ,"*Bu işi dördümüz yaptık ve cezasını dahi dördümüz çekmeğe razıyız diyerek*"

The final decision of court was that, according to Article 174 and 175 of the Ottoman Penal Code (1858), the murderer Mehmet Efendi was sentenced for 15 years hard labor and public exposure (*teşhir*). The other three villagers were judged according to clause 113, which sentenced the person who waved a weapon against state officers from six months to two years imprisonment.[319] The court report added that, even though the three of them had brandished their gun to the police officers and were together with the murderer Mehmed Efendi, their reason of housebreaking derived to lure away a prostitute; so they judged from the clause of 113 instead of 206 which sentences women abduction. [320] Overall, while the court council drew forward the protection of officers, at the same time they neglected honor of Hatice.

The mother of Perişan'ın Mehmed; İmam Hasan, father of Mustafa; and Hacı Fehmi, father of Murat submitted a petition to the remission of their sons' punishment in 1864. They stated that they were too old to support themselves. Since their sons were the breadwinners of the households, they were stuck in a vulnerable situation with their younger children remaining in their house. Furthermore, they argued that maybe the bullet that killed the subaşı could have been shot from inside of the house. That is, they voiced the case as incrimination (*töhmet*) of their sons and asked for their sons' release. Rather than bargaining with the ruler, their petition was

[319] Bucknill and Utidjian, p.88. "If there be persons daring to use insulting treatment towards, malign or intimidate the regular troops or generally those who are placed by the Government in charge of maintenance of order or of administration so as to cause blemish to their dignity or honour whilst they are in the act of carrying out their function or because of the authority of office which they are exercising a fine of from one Mejidieh gold piece to three Mejidieh gold pieces is taken; and if such insults take place against the officers of regular troops or commandants of police they are imprisoned for from one week to one month and if there be any who brandishes weapon in the making of such insult or intimidation such is in every case imprisoned for from six months to two years."

[320] "*diğer eşhasın yalnız fahişe kaldırmak için hane-i mezkure gitmiş ve o sırada her ne kadar Mehmet Efendi ile maan-teşhir-i silaha cüret eyledikleri rüyet olunmuş ise de şu hal bi-hakk-ı mertebe-i bütünde görülememiş olduğundan bunların cinayetleri fahişe kaldırmak tasavvuruyla zabıtalara teşhir-i silah etmek derecesinde kalmış olmağla*"

a counterargument to the court's decision and its reliability.[321] They chose to be father and mother of the "victim" as a role, and their petition defending "innocence of their sons" may be interpreted as a distrust to police officers who have the power to bend the truth in the eyes of the perpetrators' guardians.

Nevertheless, the major voice tone of the petition that pleed for pity by giving references to the starvation of their infants earned their sons pardons. Because the mentioned article 113 sentences from six months to two years, and these three villagers were in prison for a half-year. After the petitioning act, they were released.

In addition to this petition, the mother of Mehmet Efendi, Mahuş, also sent a petition[322] saying that since her husband Hacı Abdurrahim, had passed away, she had nobody to meet their needs, except her son Mehmet, who had been in prison for one and a half years. Moreover, she added that she had to raise her young girl and sons who could not work at their ages and were in the need for protection. As well as the mother accepted his son's crime, she also defended his son by giving the example of where the bullet came from was not known; and she asked for the remitment from his son's punishment. In all, the parents of the detainees highlighted their desperation and poverty, which was the common point in the discourse of these two petitions.

On the side of victim's family, one of the court reports to the district-governship of Tırnova reflected that Ahmed Pehlivan's family got into a difficult

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321 For petitioning see Halil İnalcık, "Şikâyet Hakkı: Arz-ı Hâl ve Arz-ı Mahzarlar" *Osmanlı Araştırmaları Dergisi VII-VIII*, (1988): 33-54. John Chalcraft, "Engaging the State: Peasants and Petitions in Egypt on the Eve of Colonial Rule," *International Journal of Middle East Studies* 37, (2005), pp. 303-325.

322 "*hangi taraftan atılan silahın kurşunu isbat ettiği henüz bilinemiyor ise de olvakittenberü oğlum merkum mehmed rusçukda mahpus tutulmaktadır ve bunlardan başka gerice evladım var ise onlar yetim ve yetime olmaları cihetiyle büyüklerine bakmağa iktidarları olmayub*"

situation and even his wife was pregnant. Therefore, the council members of Tırnova asked to pay a fair amount of Ahmed's salary to the family as an immediate remedy and, in the long term, offered to put the family on a stipend.

As in the 206th clause of the Ottoman Penal Code, women abduction was criminalized; however in the case of a prostitute, an attempted abduction was regarded non-punitive. Even I tried to compare Hatice's case with regard to a similar one, the archives did not provided the sufficient data. Comparing Hatice's case with nearly similar conditions, time, and attendant circumstances may facilitate understanding whether it was an exception or the mentality of the court officers.

Ahmed son *of* İmam Ali, villager of Sekiviran in Kütahya, raided the house of subaşı in order to abduct a prostitute.[323] Even though the document did not refer to the exact time of incident, the report sent to Hüdavendigar dated back to 8 June 1860. By relying on the document, it was night and Ahmed drew his gun on the police officers and injured four police officers. After his capture and trial, Ahmed was sentenced for two years imprisonment, according to clause 114, which was about resistance to police officers.

According to 114th clause of 1858 OPC:

> if there be any one daring to beat anyone of the officials or a private in the troops of the regular army or police whiltst they are in the act of carrying out their function or because of the authority of office which they are exercising he is imprisoned for from six months to two years even if it having been without a weapon there shall appear no trace of wound.

As the court report (*mazbata*) shows, an attempt to abduct a prostitute was not regarded as a crime to honor, again.

[323] BOA.A.MKT.UM., 409/54, 1276, 19 Za (8 June 1860)

To continue, another court report from İzvornik on 2 September 1861[324] sentenced Marko from the village of Odrone, to two years for becoming as the chief criminal and prompting his relatives to abduct a certain girl named Jivane from Brajani Villlage. Similarly, to Hatice's case, during the act of abduction, a shootout had occurred between the two parties and a neighbor of Jivane had killed one of the relatives of Marko. By the reason of housebreaking, and attempt to abduction of Jivane the court adjudicated to try Marko and his seven abettors for women abduction according to article of 206th in the Ottoman Penal Code. As usual, before the announcement of resolution, the related article was written to the court report and it was in that way "whoever forcibly abducts an adult female shall be punished from three months to three years and whoever abets the abductor shall be imprisoned from one month to six months."[325]

In fact, this article was an amplification of the Article 206 of the 1858 penal code that aggravated the sentences of abductors and for the first time, abettors were included into the provision of the related article. Moreover, the same article survived until 1911, so both in the case of Hatice that actualized in 1863, the case of Habibe from 1866 and Jivane from 1861, and the prostitute mentioned in Ahmed's case from 1860 the related article did not included attempt of women abduction. However, court members decided to sentence Marko to two years and the abettors of Marko were imprisoned for three months. The attempt to abduct Habibe and housebreaking with a gun at night by Mehmed caused Sadullah's release from murder.

[324] BOA.MVL., 933/29, 1278 26 S (2 September 1861)

[325] "*kanun-ı cezanın 206.maddesi zeylinde her kim bir baliğayı cebren ahz kaldırub kaçırır ise 3 aydan 3 seneye ve her kim bir baliğayı ve yahud baliğanın kaçırılmasında kaçıran adama muavenet eder ise 1 aydan 6 aya kadar hapis olunması muharrer bulunmağla*"

When a certain Mehmed bin Ali had committed housebreaking with the intent of kidnapping Habibe, her brother Sadullah heard the noisy clamor of her mother.[326] It was night and he was armed. Sadullah asked who was there, but did not have an answer and pulled his gun on Mehmed. Because of the sound of the gunshot, the villagers, and more importantly, the headman of Karamosinler village, in Cisr-i Mustafa Paşa, rushed to the scene and when the headman asked what had happened, Mehmed confessed his crime at the point of death. A headman was reliable, and an acceptable testimony.[327]

Sadullah was not put on trial for premeditated murder; and was released by the criminal council of provincial criminal court (*meclis-i kebir-i cinayet or meclis-i cinayet-i vilayet*). His release was justified with demonstrative evidence (*kavi kefalet*) accompanied by the absence of hostility between murderer and victim, in addition to protection of self and honor (*mudafaa ve muhafaza-i nefs ve ırz içün)*. As the court decision of 1866 reveals, Sadullah's act was evaluated to in the circle of honor and self-defense. The clauses of 186 and 187 were used in the court decision and written down in the court report.

According to the 186th clause of the 1858 Penal Code, "acts of killing or wounding taking place for defense or protection of self or honour are pardoned."[328] Even though the French version and the Ottoman Penal Codes did not include protection of the others' life and honor, Sadullah's pardon shows that the clause was

[326] MVL., 1037 /55, 1283 11 C (21 September 1866)

[327] For witnesses see Paz, p. 54.

[328] Bucknill and Utidjian, p.140.

extended in practice and included protection of others' life and honor. The other article placed in the court report was 187:

> act of killing, wounding or beating committed for repelling a person while he is getting up into the house, shop or room by setting up a ladder or while he is forcibly breaking open places which are under lock or while he is breaking through the wall of or breaking the door of an inhabited house or its appurtenances by night are like-wise pardoned; and if this affair is in the day-time although these acts of killing, wounding or beating are not held entirely pardonable yet the author thereof is excused and he is treated in the manner to be set forth in Art. 190.[329]

Furthermore, Article 190 of the 1858 Penal Code charged excusable person with from three months to three years imprisonment and police supervision from five years to ten years based on the case itself, since the event time of the crime was at night, Sadullah's sentence was pardoned. [330]

It is my suggestion that in order to understand why council members preferred not to sentence or put him under police surveillancewas related to their judicial backgrounds. Officers of Nizami Courts were the same people who took offices in Sharia courts. Although state law was their new reference guide, rather than the Quran, hadith, and local custom, it is irrational splitting their past and today in one stroke. As Milen Petrov writes:

> There was a significant degree of cadre continuity from the şer'i to the nizami courts: in the Danube province, for example, members of the ulema- from the local kadı to the province's chief âlim the *müfettiş-i hükkam* who held office in the provincial statute. Furthermore, the ulema managed to preserve their presence in all walks of the reformed Ottoman judicial system, even after its final major reorganization in 1879.[331]

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329 Ibid.p.140

330 Article 190 ,"*the killer, wounder or beater whose excusableness has been verified is imprisoned from three months to three years and such are kept under the police supervision also from five years to ten years as the case may require.*" Ibid., p.142.

331 Milen V. Petrov. "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868," *Comparative Studies in Society and History 46*, (2004), p.741.

To put it simply, while addressing the issue of judgments by Nizami court members, historians have to admit that officers were educated in medrese and did not completely bear themselves from the stamp of shari'a codes, its terminology, daily practices and societal codes. In respect thereof, I suggest to imagine if Sadullah appeared before the judge of Sharia.

According to the prominent judger Ebussud Efendi (chief jurisprudent 1490-1574), if a person broke into a house and tries to forcibly exploit her, in case of a bodily harm or killing, the killer was excused.[332] On the other hand, Ömer Hilmi, in his well known book, evaluated murder of a perpetrator who forced a women to adultery or a men to homosexuality as permissible if there was no way to defend themselves: But he put he emphasized that killing should be the last method to defend purity.[333] Moreover, as it was stated that, the event time was at night, and it is known that people shall not to be outside of their houses at night. Anyone outside of their houses was regarded as potential criminals or at least malicious.[334]

This situation was not peculiar to the nineteenth century. Night patrols of the 18th century were active to maintaining the order and safety of the community. In that context, anyone who defied the curfew after evening pray was a threat to public security. It should be noted that until late nineteenth century lightning of the streets

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[332] "*Mesele: Zeyd, Hindin evine girip, cebr ile tasarruf eylemek isteyip, Hind Zeydi ahar tarikle def'e kadir olmamakla, balta ile vurup mecruh eyleyip, Zeyd o cerahetten fevt olsa, Hinde nesne lazım olur mu? El cevap: Gaza etmiş olur."* Düzdağ, p.158.

[333] Ömer Hilmi, Miyar-ı Adalet, 171/3 "*kezalik bir kimse diğer kimesneye cebren zina veya livata etmek isteyip de katlden maada bir tarik ile ırzını muhafaza mümkün olmazsa o kimsenin katli mübahtır. Ama katlden başka bir tarik ile ırzını muhafaza mümkün ise o surette katl mübah değildir*." Quoted from Akgündüz, *Mukayeseli,* p. 911.

[334] Petrov, "Tanzimat for the Countryside," p. 321.

did not exist so, as a measure, people had to provide a lantern with them.[335] Pera was the first place with lighted streets in 1856. After that, the other parts of Istanbul became familiar with street lightening. By considering this, it is hard to presume street lightening in the provinces, not to mention rural area, such as sub-districts and villages in the nineteenth century.

All taken into account both in the case of Hatice and Habibe, the different resolution of these two cases may emanate from the concept of honor. The honor of a prostitute and a virgin girl were assessed apart from each other. Even though Hatice was not in her house, the four villagers attacked the house of subaşı in order to abduct her, so the criterion of whose property may not be a valid question. Despite of the confession and admittance of the perpetrators in the court case of Hatice, the jurisdiction did not impose a penalty to the four villagers of Vardem by the reason of their attempt to abduct a woman.

Being a prostitute, as in the case of Hatice, may have deeply affected the decision of the court, since honor and putridity (*ırz ve namus*) may not be concepts matching with a prostitute in the minds of court members. The rehabilitation of Hatice was not evaluated as crucial as the honor and dignity of the state. That is, the murder of a police officer was the primary focus of the court during the jurisdiction and they disregarded the insult against Hatice. The same interpretation is valid for the case of Ahmed who injured four zabıtas.

Unfortunately, the archival document on Ahmed's case does not have an interrogation report so lack of further documents limits us. The question of why Ahmed from Kütahya and four offenders from the village of Vardem did not

[335] Fariba Zarinebaf, *Crime and Punishment in İstanbul 1700-1800*, (Berkeley, California: University of California Press 2010), p. 20.

sentenced for their attempted abduction may be answered with court officers' attention to protect zabıtas rather than one of the reasons of "moral degeneration" of the society.

At least the reports from Hatice's case informing why she was kept in the house of the subaşı, however in the case of Ahmed from Kütahya, the question of why a prostitute was in the house of a zabıtas was not answered. The protection of state officers took precedence over the honor of a prostitute. As the examples show, the identity of victim as a judicial subject could decrease or increase the sentence of the perpetrator. Alternatively, in the case of prostitutes it may lead totally negligence.

At the discourse level "honest women," "prostitute," or "an adulterer" were opposite of each other in a normative patrimonial society and their respectability and honor designed based on their marital status and virginity. The discrimination against to prostitutes was valid also for widows in marriage. A fee for permission to marry by kadı *(izinname)* divided women according to whether they had had sexual intercourse or not. That is, virgin or coitized "sexually experienced"and in that procedure a man had to pay for a virgin three kuruş; and for a widow two kuruş.[336] To be a virgin was the highest point of this sexually designed hierarchy of male-dominated ethics and understanding, while prostitutes were, naturally, at the bottom.

On the other hand, Hatice as a married woman to Enes was not lucky as Şerife, since she was suspected having inclination towards obscenity as her abductor called Lazoğlu Temel, claimed it was not rape but a consensual sexual relationship.[337] In the interrogations, four villagers of Murçiva (*Yeni Pazar*), sub-

[336] BOA.A.MKT.MVL, 24/32, 1266 06 R (20 January 1850) quoted from Ercoşkun.

[337] BOA.MVL 689/58 12 B 1281 (11 December 1864)

disctrict of Rize alleged that Hatice as a virgin married woman had given her consent to Temel.

It is note-worthy that these four witnesses were not ordinary subjects but there was a registrate (*müdir*), and deputy of substitute judge (*naib vekili*) among them, which gave pause to historian whether their being officers influenced the council and litigation process or not. Surely, they were counted as credible witnesses. According to the report send to the provincial governor of Trabzon, taking into account all of these, there was not satisfactory evidence to charge Temel and in order to hear the witnesses of woman and man who was in the mill when Hatice was abducted, the investigation and interrogation of these subjects was seen necessary. Apart from the witnesses of crime scene, the household that the claimed rape or sexual intercourse had been committed and the abettors of Hatice's abduction shall be investigated.

The issue of whether there was a mutual acquaintance between Hatice and Temel existed or if she had a tendency towards obscenity was to be asked to witnesses. That is, in this case, the focus was the rape of Hatice; however, the abduction of women was criminalized before 1864. Although the act was in there, the officers gave their attention to bodily assault.

In that sense, the exclusion of prostitutes from their legal rights is a result of their position in a patrimonial society that defined women as attached to his father or husband; or unmarried, married or public woman. Since family honor was a term related to virginity for an unmarried woman and for a married one to be honest and loyal to her husband, a prostitute who was neither virgin nor married was beyond of this kind of masculine honor. As a crime, abduction of a woman closely tied to rape,

if a virgin woman had been abducted, she would have been taken a dowry since virginity considered a marriageable property. Because abduction tarnished her image and led to bad reputation within the societal codes, it gets harder to get married. On the other side, in case of an abducted prostitute both having bad reputation and being not a "marriageable" woman, their judicial rights disregarded since they have been already stigmatized and their existence regarded as an assault to family and social order.

For instance, in the book of Thomas Holloway, *Policing Rio de Janerio: Repression and Resistance in a Nineteenth Century City,* exemplifies the judicial discrimination against prostitutes:

> Kidnapping (rapto) only applied to the taking of women "for libidinous purposes", by violence if the victim over seventeen and by violence or seduction if she were under that age. There were to be no penalties for any of these "crimes against the security of honor" if marriage between perpetrator and victim followed the event in question. And for all of these offenses an additional penalty was that the offender was to provide a dowry for the victim, unless he raped a prostitute.[338]

Defining the victim as "honest women" and "public woman or prostitute" within the legal codes is not something very common; but in practice it is.

Furious and Rejected ex-Husbands and Lovers: Male Pride and Revenge

Jivane and Gozdine the sisters from İzvornik (1861); Köle from Mitrovica (1862), Hatice from Tırnova (1863), and the other Hatice from Shumen (1865). The common ground between their stories was about that they were exposed to violence

[338] Thomas H. Holloway, *Policing Rio de Janerio: Repression and Resistance in a Nineteenth Century City,* (Stanford, Calif.: Stanford University Press, 1993), p. 60.

and abduction since they refused to marr their suitors. Although Jivane, the younger sister of Gozdine, had no concern with Marko, when he and his relatives broke into their house, the abductors did not find Gozdine and immediately caught Jivane and carried her off.

Similarly, Hatice from Shumen, a married woman, also became a victim of a refused suitor and lost her life. The other two victims suffered from their ex-husbands: Yusuf and Suleiman, which shows that divorce did not put an end their existing problems. Since a historian may rarely reach further results after a court settlement, how the litigant and plaintiff moved on and whether extrajudicial agreement or problem had been occurred between them or not may hardly be obtained. In the case of Hatice and Köle, despite of their divorce, their ex-husbands continued to turn their ex-wives' lives into hell.

According to social, moral, and legal norms, a man should abduct neither a married woman nor his ex-wife or a reluctant girl for marriage. Although social and moral norms disapproved such kind of an act, refusal of marriage and unrequited love sometimes resulted in the abduction of women. Abductors who felt humiliated and identified their refusal as a matter of honor applied to abduction in order to restore their honor for themselves and their self-representation in public. The resolution of their refusal is reimbursed by attacking to the honor and body of a woman. As Jon Elster writes that honor of a person does not decrease or increase, but it exists or not and in that context, the abduction of women for refusal in marriage is a way to regain the honor that abductors presumed they have lost.

Honor is an attribute of free, independent men, not of women, slaves,

> servants, or other "small men." (The latter can however, as we shall see, be very much concerned with honor.) It is achieved or maintained by victories over equals or superiors, where "victory "can mean anything from getting away with an insulting look to raping a man's wife or killing him. No honor can be gained from subduing slaves or servants, although it may be lost by not doing so. Several writers emphasize that the game of honor in feuding societies is zero sum. One achieves honor by humiliating others: what is lost by the one is gained by the other.[339]

Accordingly, to Jon Elster, William Miller brought forth the idea that revenge derives from strong social pressure.[340] In one of the attempted definitions of honor, it is portrayed as forward-looking, while revenge is backward looking.[341] Since this thesis take advantage of anthropological studies, it does not mean that the question of whether revenge is rational and result-oriented or not will be argued. Rather than dealing with the philosophical and ethical arguments on what is revenge, the interrelation between honor and revenge will be the focus when bringing the abovementioned four-court cases from the Balkans with their historical and social setting to the table.

It is obvious that one of the prominent conducive factors to perpetrate in the four court cases in the Balkans was about the revenge of the abductors. Having said that, the theme of love, hope to win the hearts and minds of the abductee by showing their "bravery" and desperation; courting habits and marriage rituals in the nineteenth century Balkans are touchable issues for

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[339] Jon Elster, "Norms of Revenge," *Ethics* 100, no. 4 (Jul., 1990), p. 867.

[340] Whitley Kaufmann, *Honor And Revenge: A Theory Of Punishment*, (Dordrecht: Springer Netherlands, 2013), p. 97.

[341] Alan P. Hamlin, "Rational Revenge," *Ethics* 101, no. 2 (Jan., 1991), pp. 374-381.

historians and some of them will be mentioned in the limits of this part.

In Turkish, the distinction of honor (*namus*) and prestige (*şeref*) is more obvious. That is, the usage of honor in the subjectification of men and women differs from each other. *Namus* belongs to women and it is about sexual modesty, to specify precisely, chastity for women and girls until they marry. The participation of men in the question of *namus* is related to preserving the chastity of female members in their family. [342] Not only having illicit sex, as Clementine Van Eck exemplifies, female members of a family should keep themselves out from any kind of gossip and blame (*töhmet*).[343] In short, their reputations must be uncorrupted. The bad reputation of a female member directly besmirches a male's reputation and prestige in his circle.

As can be seen, the drawing inference may be summarized as follows: males are the guardians of honor and neither their chastity, nor their sexual reputation are regarded as prominent in the representation and respectability of the families. To put it a different way, honor in the usage of sexual modesty is not associated with male. Despite that, honor in the meaning of prestige and reputation consists male's honor, and I prefer to use male "pride" in order to prevent a possible contradiction in terms. Since the rejection for marriage and love may lacerate the feelings of an abductor, the perpetrator commits a crime of passion, that is abduction of ex-wives or lovers in order to restore their honour and take revenge.

Female abduction for revenge occur not only to wed, but also seizure of

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[342] Clementine Van Eck, *Purified by Blood: Honour Killings Amongst Turks in The Netherlands*, (Amsterdam: Amsterdam University Press, 2003), pp. 9-10.

[343] Leslie Peirce, "Honor, Reputation, and Reciprocity", *European Journal of Turkish Studies* [En ligne],p.36. 18 | 2014, mis en ligne le 03 février 2014, Consulté le 13 mai 2015. URL : http://ejts.revues.org/4850 (13 May 2015)

property, acquiring money and status through their act were crucial motivating factors. Apart from them, as Caroline Dunn stresses, pre-existing hostilities between families[344] or two parties took the attention of abductors to take their revenge by assaulting the body and reputation of a female. Forcing a debtor to pay the amount he promised,[345] the abduction of wives and daughters became their Achilles' heel. That is to say, revenge abduction may be both an outcome of an existing, previous hatred but at the same time, it potentially generates hostility between parties. This hostility can be traced from court cases but some of them were resolved by extrajudicial methods such as blood feud, murder. Lastly, if the revenge abduction could be tolerated by the families, marriage became a peacemaker.

The court case between the villagers of Pedrovane and Brajani derived from a refusal of marriage.[346] Although the documents did not give any information about the ages of parties, religion and economic status, it can be inferred that Yakov Bopiçiç, father of Gozdine and Jivane, had a servant (*hidmetkar)* called as Trişbo. It means he was not an ordinary poor subject living in Srebrenica, sancak of İzvornik. The abductor Marko with his two uncles and relatives, in total seven people from Pedrovane, came to the house of Yakov in the village of Brajani and broke into the house with force at 2 a.m. Since the women in the house had heard the noise, they immediately had hidden Gozdine in the attic. Even Marko, son of Mihata

344 Caroline Dunn, "Damsels in Distress or Partners in Crime? The Abduction of Women in Medieval England," (Ph.D. diss., Fordham University, 2007), p. 185.

345 Ibid., p.186.

346 BOA.MVL, 933/29 26 S 1278 (2 September 1861)

Akşamoviç, hunted for Gozdine, he did not find her and took her younger sister Jivane from the house.

However, before going into more detail, it will be better to draw the relation between Gozdine and Marko. According to the interrogation reports of Marko, his uncles Niko and Savo Akşamoviç pointed out Marko and Gozdine had met while they had been husking corn (*kokoroz)*[347] in the field, and for one year, they had been in love (*aşıklık etmek)*. Apart from their emotional attachment, Marko stated that he had given two pieces of gold to Gozdine and in return, she had given him candy as a sign of promise and commitment. Marko said that these gifts between them symbolized their engagement. His uncle Niko also claimed that his brother Mihata, father of Marko, had sent 100 kurus to Yakov Bopiçiç for the engagement of his son and Gozdine and offered almost 20 raki (*20 kıyyeye yakın arak*) and they got drunk..

Despite of none of the other testimonies mentioned from a previous attempt to abduct Gozdine, a villager from Brajani named as Dragiç Maryanoviç told in his declaration that while Gozdine had gone to fetch water with barrels at mid-afternoon, Marko and his abettors had a go to abduct her. But as soon she had noticed their intent, she had fled.

On the one side, in the interrogation of Marko he said, "After then, I realized that her father had dissuaded her. One day we went their house, she escaped and for the second time when we came, she did not welcome us, so we went back home."[348] Marko, his relatives and some of the villagers from Brajani let on about that Marko

[347] Kokoroz a Turkish Word actually comes from Albanian "kokërr" and means corn or maize, http://en.wiktionary.org/wiki/kokoroz

[348] *"muahharen babası kızın aklını çeldiğini anladım bir gün gittik kızı almak istedik de kız bizden kaçtı geldi ve ikinci defa geldik kızın babası hanesinde idi kız bize çıkmadı"*

with his family had come to the Yakov's house (as *düğürcü*) although the villagers of Brajani mentioned once time visit, the villager of Pedrovane claimed it was twice.

Apart from that, the exact time of the attempted abduction of Jivane was two months before the two parties were interrogated means it should be February 1861 and on Saturday at 2 a.m. Before the day of the event, which was on Friday night, Marko and his family had visited Yakov's house. This was the second visit Marko referred to in his declaration. Contrary of Marko's deposition, Yakov related the incident as follows:

> " they got my home and asked for my eldest daughter Gozine in marriage to afore-mentioned Marko and when I said I will get my daughter's opinion, they returned back their home. Next night at 2 a.m, it was night prayer time, all of them came together and they broke my door by force in an instant. Although they looked for my eldest daughter since they did not find, they carried off my younger and virgin daughter Jivane by force."[349]

Again, the villager from Brajani, Dragiç Maryanoviç gave voice to the answer of Marko's family to Yakov,

> "I heard that as the family of Marko declared their intent for their visit and stated their wish to acquire Gozdine from Yakov's family. In answer to Yakov's saying, which was he will ask for her daughter's opinion, they [Marko's family] reminded the engagement gift [*nişanlık*] they had given and insisted that they will took Gozdine as their bride. This time, "Yakov said I am not informed of your engagement, I can not consent" and the family of Marko got back home. Next night on Saturday night…"[350]

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[349] "*haneme gelüb büyük kızım Gozdine yi merkum Marko için taleb ettiler ben bir kere kızıma sorayım dediğimde avdetle hanelerine gittiler ertesi gece saat 2 de yatsu vakti idi cümlesi birlikte geldiler ve heman cebren kapumu kırdılar büyük kızım merkumeyi almak üzere aradılar ise de bulamadıklarından küçük kızım Jivane nam bakireyi alub cebren götürdüler*."

[350] "*Marko için almağa geldik ver demeleriyle bir kere kıza sual edeyim demesiyle anlar demişler ki biz senin kızını şu kadar vakittir nişan verdik mutlaka kızı isteriz dediklerinde Yakov benim sizin nişanınızdan haberim yoktur verememe demesiyle onları gerüye avdet edüb gitmişler bunu işittim ferdası gice ki cuma günü ahşam yani cuma ertesi*"

As it was stated before, when Marko did not find his lover Gozdine, he caught Jivane and the father Yakov was detained at home by them. There was the silence of the night and the screams coming from Yakov's home were heard easily by the villagers of Brajani. Some of the neighbors woke up; others put their work to one side and sprang towards the door of Yakov. In front of Yakov's house, villagers of Brajani and Pedrevona were fighting with stones and sticks. At that moment, one of the Yakov's neighbors called Vasil Maryanoviç snatched a wooden pile from the barn to rescue their villager's daughter Jivane.

The tragic moment of this case is about Vasil and Marko's relative Peternova Koçil. Vasil hit Peternova Koçil and once on his head and at his back of the neck, Peternova lay in a pool of blood. As his company saw him, they set Jivane free and carried their injured friend away. At the point of death, Peternova Koçil showed Vasil as his murderer to his brother and 8-9 hours later, he passed away.

Even though Vasil Maryanoviç refused all the charges, the existence of testimonies led his imprisonment and brought him to justice. The most tragic moments of this case is the abduction of the younger sister, Jivane, instead of Gozdine, her victimization and the death of Peternova Koçil; however, it may be argued that what made this case important for state officers was the death of a subject. For the case of abduction, the possibility to arrange peace between the two parties always existed, that is, the parties could make peace, but the death of Peternova Koçil, which was not compensable, led this case to trial.

The adjudication of this case lasted for 18 months, from February 1861 to August 1862. After all reports went to Şerif Osman Pasha, the governor of Bosnia, from local court of İzvornik and interrogations the court announced their decision.

Marko and his seven accomplices were tried with reference to Article 206. Marko was sentenced to two years imprisonment while his abettors were penalized with three months imprisonment.

On the other side, since the death of Peternova Koçil had been without intent, that is manslaughter, the court members did not resolve the sentence of Vasil Maryanoviç and preferred to postpone arrest judgment. Still, one of the court reports stated that the struggle between Peternova Koçil and Vasil was reciprocal and the motivation of Vasil had been to rescue Jivane from the abductors, so the case was evaluated as a chance-medley rather than a premeditated murder and the related articles on accidental death or beating, that is Articles 189 and 190 were mentioned.

Article 189

> "the person who commits the acts of killing, wounding or beating taking place in reciprocation is likewise excusable (…)" and article 190 " the killer, wounder or beater whose excusableness has been verified is imprisoned for from three months to three years and such are kept under police supervision also for from five years to ten years as the case may require."[351]

Although the article draws the high limit of punishment as ten years, in the report it was called as 15 years; and as it can be seen neither the voice of Jivane or Gozdine had been heard, since the officers did not interrogate them, but instead their father and male neighbours.

By taking into consideration the date of interrogation and both litigant's and litigatious' statement, it could be said that nearly at the end of October in 1865,

[351] Bucknill, p. 142 .

Hatice was forcefully abducted by Yusuf.[352] The case was sent away to the High Council of Judicial Ordinances (*Meclis-i Vala*) by the provincial governor of Tuna, Midhat Pasha, 30 April 1866. The first investigation file was opened in the town of Şumnu and the latter one in Rusçuk**.** The crime occurred in the province of Tuna, Şumnu town, Karaevhadlar, and Kölemiş villages.

The abductor, Yusuf son of Ali Osman, was from the village of Karaevhadlar and 22 years old. He was a day laborer (*rençber*), which means he had not his own land to cultivate; he was a worker for the other's property. Apart from his age, occupation and socio-economic position, the interrogation reports of Yusuf inform us that he was unmarried and had not done his military service yet. Although there were mounting evidences and attestations against Yusuf's denial, he had never give up his counterstatements.

> A: Daughter of Mustafa, was in love with me and while we had been eloped, her father and mother caught us and I did not touch her, so first of all the police officers sent me to town of Şumnu and then here.
> Q: It is no use to deny, if you tell the truth, you would serve your sentence but we may help you to get marry with that girl.
> A: (…) these sayings are all libel. If I abducted this girl with the help of a couple of people, why I go to a village to get marry instead of the town of Şumnu where there are also muftis? Her parents wedded Hatice to Yunus since she will elope to me. (…) Why you put us in the jail, call the girl and confront us? [353]

[352] BOA. MVL 1076/47 24 S 1283 (8 July 1866)

[353] "*C: Baştan bizim köylü Hatib oğlu Mustafa'nın kızı beni isterdi ve kaçamak oldu kaçar iken anası babası yetişüb eli elime değmeden çevirdiler. Onlar için Şumnu'ya ve oradan buraya gönderdiler. S:sen inkarun faidesi olamayub doğrusunu söyler isen bu kızı sana verdirüb bir güne ol kurtulursun C: (...) bütün bütün iftiradır ben şu kızı 3-5 kişi ile çıkarmış olsam ne ararım öyle köylerde Şumnu'ya giderim orada müftü de var o kız bana kaçacak olduğundan kocaya verdiler (...)kızı çağırıb murafaa edin bizi boş boşuna niçin yatırıyorsunuz?"*

Considering the interrogators' intensive effort to draw Yusuf about the abduction of Hatice, and seven witnesses against Yusuf's plea, he rejected to confirm his crime until the confrontation of Yusuf, the father Mustafa and a villager named as Yusuf, and Hacı Mehmed Ali. After the confrontation, he uttered that,

> what can I say, the girl have called me and even I attempted to take the girl on my own, her mother has seen us and stopped. Because of that I kidnapped the girl and I have never violated her, and her parents did not give me away Hatice in marriage.[354]

The first interrogation of parties began in 6th December 1865 and the last one had been written in 22 January 1866.

Moreover, it is my assertion that the most outstanding statement within the court reports, which lasted 13 months, is the above quoted sentence of Yusuf. The motive behind why he abducted Hatice was accentuated and he, finally, pleaded his guilt. Except Yusuf's statements, neither Hatice nor her father Mustafa made a mention of whether there was a relation between Yusuf and Hatice, or did Yusuf ask Mustafa's consent to marry Hatice.

Since there is lack of supporting arguments, it is hard to say whether they had a love affair or not, but it may be deducted that the underlying reason of this kind of abduction was to take revenge from Hatice and her family. The rape of Hatice could be attached to family honour because the body of the virgin in the family, and her virginity are concepts linked to familial honour. On the side of Yusuf, based on his claims, he was refused, and a disappointed lover who felt small.

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354 "*ne diyeyim kız beni çağırmış idi yalnızca gidüb almak istemiş isem de anası görüb men' etti ondan taşra (dışarı) çıkardım ve ırzına dokunmadım o kızı bana vermediler*."

On the other side of this criminal case, the abductee, Hatice, daughter of Mustafa, was also from the village of Karaevhadlar and was 18 years old and married to Yunus. It was claimed that on the night of 19 or 20 October and at 2.00 a.m, Yusuf with his four accomplices had broken down the door to Hatice's house and kidnapped her. At that time, Hatice's father had gone to the town with his friend İbiş, so during the housebreaking and the crime of abduction Hatice and her mother were alone in their house.

Hatice's father Mustafa was a married farmer and 45 years old. After the abduction of Hatice the four abettors, Yusuf and Hatice arrived at a place called as Büyükdere, in here the abettors dressed up Hatice a long and full coat (*ferace*) and left them alone with Yusuf, and Hatice claimed that he had raped her more than once and beat her up there. After the claimed rape and beating, Yusuf took her mother along too and stayed that night in the house of his brother Ahmed's house. Sarı Mehmed, who was a villager from Karaevhadlar, had been at the same house that nights so after this act of crime had come to the court, he became witness to support Hatice's allegations. On the side of Mustafa the father, he stated that when Hatice was back to their house, her daughter's whole body was badly bruised.

On the day following day the crime, Yusuf, his mother, and Hatice set off from their village of Karaevhadlar to the village of Gülmüş which was far two hours from their place. Following their arrival to the village of Gülmüş, they had stayed the night with one of Yusuf's widowed relative, the wife of the deceased İsmail. On the third day of Hatice's abduction, Yusuf had called his relative Musa Efendi, who was a preacher (*hatib*) of the village, to their place of residence. When the interrogator had asked Hatip Musa Efendi how the event had happened, Hatip had

claimed that he had heard a girl had come to their village and since he was a prominent person of the village, the villagers had asked him to find out what was happening. He also insisted that he knew nothing about his relative Yusuf and had not seen him in the village. Since he would be punished if he had deceived the court as a perjurer, and the interrogator had the evidences that Yusuf had kidnapped Hatice from the depositions of other witnesses such as the villagers from Karaevhadlar and Gülmüş, then Hatip confessed that Yusuf had called him and then he had headed to the above-mentioned house.

The common point of Hatice and Hatip's depositions was that when Hatip had entered the house to perform a marriage between Hatice and Yusuf, Hatip had asked Hatice whether if she had come there willingly or not. Hatice had answered that she had been threatened with a knife from her back by Yusuf, and what was more to the point; she was married to Yunus from her village.

As I pointed out, this part of the event was same both on the behalf of Hatice and Yusuf's relative Hatip. After Hatice's expressed that she had been kidnapped and threatened by Yusuf and she was already married to another person, as Hatib had heard the sayings of Hatice, he spitted in Yusuf's face and informed the members of the village council (*köy ihtiyar meclisi azaları*) of the case. Afterwards, Hatip let Mustafa know her daughter was in their village, Mustafa took his daughter, and filed a complaint against Yusuf. Later, when Mustafa spoke in court Yusuf, he showed Hatip as his deponent and added, "I ask my right according to what is available to the sultan's law."[355]

[355] "*Padişahın kanunu ne ise onu isterim*."

One of the prominent witnesses verifying Yusuf as the abductor was Hacı Mehmed Ali, from the village of Karaevhadlar. After Hatip had spit in Yusuf's face, he had run to his village and begged Hacı Mehmed Ali to solve this issue. Even though Yusuf had denied all criminal charges towards himself, Hacı Mehmed Ali stated that Yusuf had confessed that he had kidnapped the girl.

Previously it was mentioned that there were four accomplices as stated by Hatice and her father Mustafa. In the depositions of Hacı Mehmed Ali, he also agreed that Yusuf had told him they were four and his confessions in the first interrogations that kept by the police officers (*zabıta*) in Şumnu. However, during the trial Yusuf insisted in his innocence, and answered all the claims as libel. Since he totally disowned his act, it was meaningless to expect from Yunus naming the identity of his accomplices. On the other hand, there were two names in the court file as accomplices: Yusuf and Ahmet.

Since the suspected Yusuf was badly ill, his interrogation was postponed until he came around, but Ahmet, a farmer from the village of Doğancılar, claimed not to be guilty. At the event time, Ahmed was a newlywed; and declared that he had never left the village for 40 days by producing all the villagers as his witnesses. Through the villagers had never seen Ahmet in the village of Gülmüş, and absence of mounting evidences Ahmet was not punished.

In 1279 a married women named as Köle (means slave in Turkish) was abducted from Mitrovica (Yenipazar), by Usta Osman and his 10 Albanian accomplices. Since Köle did not have a further closer relative except her uncle, and suitors were knocking their doors in order to ask for the girl's hand for their son, then Köle appointed her uncle Abdulhamid (32) as her guardian on the issue of marriage.

In Islamic law, in the absence of a father, guardians could use their authority and simply because Abdulhamid was her uncle he could not use his power, that is, if Köle appointed her uncle as guardian then the process began.

Five to ten days after the authorization of his uncle, Köle married with Abdullatif (17) without any consent or knowledge of herself.. Both Abdullatif and his brother Salih worked as tailors. When Köle and her mother heard of this marriage, the mother went to the court and applied for the cancellation of the marriage. Even though both Usta Osman and others had tried to reach an agreement and visited Köle's house, it did not give any result. After three months, Köle's mother sent a petition to the district governor (*kaymakam*) of Yenipazar and the district governor invited the two parties to the council in order to hear their sides.

In the interrogation of Uncle Abdulhamid, it was stated that the governor agreed to the cancellation of the marriage by the reason of the girl should marry whomever she wants. That is even a guardian approves a marriage, the consent of the women should be supplied. In addition, after nine months, Köle married Hacıoğlu Ahmed, son of Arslan Hoca. Furthermore, one night while Köle was in her mother's house, Usta Osman with ten Albanian men broke into her house and kidnapped her and her uncle, Abdulhamid.

After the abduction of the married Köle and her uncle Abdulhamid; Usta Osman, and the Albanians took them to the forest. Abdullatif was waiting there with his brother, Salih (21) said in his interrogation he had learned what had happened after the event and even though he had been sick, he had caught them on the road in order to prevent a possible gunfight which was ordered by his father, Usta Osman.

In the next year, Abdullatif and Salih moved from one place to another and they did not release the uncle, Abdulhamid. In the confessions of Abdullatif, Salih and Abdulhamid, they all stated that after eight months, Köle had died of sickness. All of them repeated that the girl had suffered from a bedbound illness for three months. However, the records give no information about what the disease was, or whether they sought help from someone or not. The uncle, Abdulhamid returned to Yenipazar seven or eight months after Köle's death. He was kept by the officers and confronted by Köle's father-in-law Arslan Hoca. After Arslan Hoca filed a complaint against the uncle, the council decided that Abdulhamid had been kidnapped and declared him innocent.

Abdullatif and Salih they wandered outside of Yenipazar for one year. When they returned after three years, Arslan Hoca brought a lawsuit against them, saying "what is necessary in Sharia and state law should be followed."[356] It is noteworthy that instead of the husband Hacıoğlu Ahmed, the plaintiff was his father, Arslan Hoca. In addition, in the court records, the interrogation reports of the Köle's husband, and her mother are not present which made the court case incomplete.

Apart from who went to the court as a plaintiff, both Abdullatif and Salih claimed that they did not kidnap the girl. Salih said, he had caught up with them on the road and he was out of touch with his father and brother. Abdullatif defended himself in saying, "my father abducted the girl and then I took her from the forest."

The most important point of this case is about the kidnapper, Usta Osman. Since he had passed away in these three years, both Salih and Abdullatif blamed him. Furthermore, when the interrogator asked Abdullatif if he had married Köle or not,

356 "*Şer'an ve kanunen ne lazım gelirse icrasını isterim."*

Abdullatif stated that they had not married, but had sexual intercourse during one year. The reason why Abdullatif had not married Köle might be that the qadi might investigate them to solemnize a marriage and since Köle was already married, the marriage record could have betrayed them. A natural deduction of not getting married means rape (*fiil-i şen'i)* and according to the related clause of abduction of women in the case of a rape, the sentence was heavier. As mentioned before, the punishment for abduction with the intent of marriage and abduction for other reasons were evaluated differently, comparing them in the former one the sentence was lower than the latter.

Finally, the court decided to punish Abdullatif according to the 206th and 19th clauses of state law. The 206th clause, which mentioned here, was an updated version of 1860. Since Köle had attained puberty and married the clause said the sentence would be from three months to three years and temporary kyurek punishment. Abdullatif was given the heaviest sentence that is three years imprisonment. Since Köle had been married, kyurek punishment was added to his sentence.

As for 19th clause of the law, how and for whom kyurek punishment should be practiced was told. The 19th article defined this punishment in that way, "Kyurek is employment in arduous services with chains on one's feet."[357] And exposure of the culprit in public (teşhîr) for two hours with a summary of his crime and his punishment in very large letters was held on his chest. After this exposure, the culprit was sent to the place of punishment with chains on his legs.[358] However, criminals

[357] Bucknill and Utidjian, p. 16.

[358] Ibid., p.16.

younger than 18 or over 70 years old were excluded from this practice. After two years, the 1862 amendment added the exclusion of "amongs Muslims the ulema and sheykhs and khatibs and imams and amongst other communities the clergy"[359] from the rule of exposure in public places. The court records dated from was 1865, however the actual time of the event was before three years that was 1862 and since the document said, Abdullatif was 20 years old, it can be deduced that he had been 17 years old when abduction had taken place.

Taking into consideration that Abdullatif, who was less than 18 years old should have not been exposed to the public, however the court council seems to have taken three years after the event. While in the code of 1850, the accomplices were not sentenced, in the modified 206th clause the accomplices were also punished. The 206th clause stated that they would be imprisoned from one month to six months, and Salih as an accomplice punished with four months prison sentence.[360]

From the records, it can be said that, Süleyman bin Mehmed (40) and Hatice was a divorced couple from Tırnova, who had a six years old daughter, and grownup children.[361] Even though Süleyman had asked for two times to marry him, she had refused him. After two and half years, Süleyman proposed again. Hatice sent her

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[359] Ibid., p.16.

[360] BOA.MVL, 991 /74 27 M 1281 (2 July 1864) "*merkum Osman'ın evvelce vefatı cihetiyle hakkında tayin-i cezaya mahall kalmayarak merkum Abdullatif ile Salih'in tahdid-i cezası lazım gelmiş olacağına olan bir baliğayı cebren kaçıranların muvakkaten küreğe konulması ve o makulelere muavenet edenlerin dahi 1 aydan 6 aya kadar hapis olunması kanun-ı cezanın 206.maddesi zeylinde muharrer bulunmasına mebni bu hükme tatbikan ve tarih-I hapislerinden itibaren merkum Abdullatif'in 19.maddede muharrer kaideye tevfikan mahallinde bade't-teşhir 3 sene müddetle vaz'-ı küreğe alınmak üzere ve yine irsal olunarak defter-i mahsusuna işaret olunmak üzere tarih-i hapsinin bu tarafa bildirilmesiyle beraber merkum Salih'in dahi 4 mah müddetle mahallinde hapis edilmesi…*"

[361] BOA. MVL, 1000/49 17 C 1281 (18 October 1864)

refusal by way of her six years old daughter. In 1864, when Hatice was in her son's house, Süleyman with his two friends, Rüstem and Halil entered from an unlocked door and abducted Hatice while she was sleeping on her bed. Süleyman held a knife to his former wife's back, and when the children heard noise from the living room, they tried to resist their father but it did not work.

When they were on the road, Rüstem departed from them. Süleyman, Halil, and Hatice slept that night in a cornfield. After then, Süleyman had forced Hatice to marry him in the village of Heybeli. Moreover, after the marriage had been performed in front of the qadi, they returned to their place, the village of Yayçe, Tırnova. Hatice applied to the court with the encouragement of her children regarding the forced marriage and her abduction and the home being broken into, Süleyman defended himself. He said Hatice had chosen go with him in the interrogation reports and stated that he would not divorce Hatice at any price.

Despite the fact that Hatice had no witnesses to prove it was a forced marriage, she showed the bruises on her body. The court paid regard to this evidence. In the end, the court decided to sentence Süleyman according to the 190th clause of the law, which sentenced killers, wounders, or beaters to three months to three years. Moreover, the 190th clause required police supervision of criminals from five years to ten years.[362] Unfortunately, the court records reveal that neither the qadi who solemnized a marriage between Hatice and Süleyman or the accomplices were punished.

Overall, this case is a good example of abduction by the reason of refusal of a marriage proposal. It is obvious that Süleyman was determined to marry Hatice again

[362] Bucknill and Utidjian, p.142.

and felt wounded by the rejection of his recurrent proposals. The angry and humiliated ex-husband who had applied force and intimidation did not change his mind before the court and insisted on not divorcing Hatice.

In conclusion, the exposure of former wives and lovers to the terror of their abductors may be read as another perspective of honor; that is male pride. The common point of these cases was that, the abductors were furious and rejected. Taking bodily revenge on their abductee, rape was important to possessing the body. Honor as a term for covering sexual purity for a woman but also male pride and power, is a complex term. This section shew how abduction became a gun in the hands of abductors.

The Case of İstanka: Forced Conversion or a Frustrated Love Marriage?

İstanka, a 15 years old girl pressed charges against her husband, Bismil in 1860.[363] According to her interrogation report, while she was cutting wood in the forest, an Albanian, Bislim with his two friends offered to come with them, if not, İstanka claimed, they threatened her with their knives and guns. İstanka said that, she was forced to go with them and then the three men carried her off to the house of Silo, a Muslim man. After six weeks, they went to the council of Leskovac and forced İstanka to be Muslim.

Based on İstanka's statement, when her father came to the council, her abductor, and accomplices chased him. Even İstanka tried to run after her father, but

[363] BOA.I.DH. 1290/101508 10 Ra 1277 (26 September 1860) For conversion, Selim Deringil, *Conversion and Apostasy in the Late Ottoman Empire,* (New York: Cambridge University Press, 2012).

they threatened her with knives. Under pressure, İstanka admitted to be a Muslim and declared it in the council. After the forced conversion, İstanka stated that she had stayed in their house for seven months. But one day she had tried to run out of the house, however Bismil and his brother Yayzir had caught her and in the following fifteen days, she had been secluded. The second attempt of at escape had worked out. In a rainy and foggy weather she had escaped, she claimed she had slept in the mountains and hills, and asked villagers how to reach Nis. Finally, at the end of three weeks, as soon as she had succeed to pass from Leskovac to Nis, the day she came to Nis, she had applied to the judicial authorities for her claims on forced conversion and capture.

When the interrogator asked her whether Bismil had arranged a marriage with her or not, she answered that she did not know anything about marriage, but they had sexual intercourse. As a detail, she was called as *small woman* (*kadıncık*) in the village of Sekriye during the seven months.

In addition, apart from her abduction and forced conversion, she gave the names of the accomplices, the relatives of Bismil. Since both Bismil's and İstanka's interrogation were dated in the same day, (15 August 1860), the records may have been kept after the statements were made. Because, when İstanka had escaped, Bismil was not aware where she had gone. Moreover, after the escape of İstanka, Bismil had gone to the Pasha in order to file a missing person report that is his wife.

On the side of Bismil, son of Ömer, he was from the village of Sekriye and a farmer. With the interrogation of Bismil, the case became reversed, because he claimed that he was officially married to İstanka and he had not kidnapped her. He said, İstanka had come to Leskovac with her own free will and in order to be a

Muslim. Two months after her arrival, he had seen the girl, they had fancied from each other, and one day, Selo, a farmer ağa, and a Christian man had called Bismil to the house of Selo to submit the message of İstanka for marriage. At that time, İstanka was staying in the house of Mahmud Kavas, Bismil claimed that he had gone to this house, and asked for her hand in marriage and İstanka had accepted. Before their marriage ceremony, İstanka's family had come, but she had showed them the door.

To continue from Bismil's deposition, they had married in Leskovac and he added that there had been six marriage witnesses and their marriage ceremony had lasted five days and five nights. After seven months of being married, Bismil said that, as İstanka had left the house, his wife might had been kidnapped or run away, so he had gone to the Pasha to find her.

Finally, yet importantly, Bismil stated that he would not accept a divorce since he had gone to to a great expense for this girl. As it can be followed through this thesis, marriage, its ceremonies, gifts, bride price, and dower required much expenditure, thus divorce means a second tour of the abovementioned list, for a second marriage. On the other hand, if a man divorced his wife, he had to pay his ex-wife alimony, so even getting divorcing was burdensome.

While Bismil denied all accusations, he showed all the inhabitants of Leskovac as his witnesses. As the questions increased, Bismil swore that before her escape from her family house, they had been in love.

Two days later coming a report from the former *naib* of Leskovac, Salih Efendi, specified that when İstanka had escaped from her house to Leskovac, she had stayed in the house of Mahmud Kavas and had come to the council to be a Muslim. According to the Salih Efendi, at that moment, Bismil had not been there, said Salih

Efendi. Moreover, he added that, they had asked İstanka whether she had come to Leskovac by force or for money, but İstanka had said that she had come on her will. Salih Efendi declared that, İstanka's mother had been at the council, she had stood up to her daughter and even tried to beat her daughter, but İstanka had managed to dodge the blows. Furthermore, the Christian members of the council had been there. They had to put their vote, and finally İstanka had become a Muslim. According to the report sent by Salih Efendi, two months later, Bismil and İstanka had come to the council for marriage, even they had a permission document (*izinname).*

Besides Salih Efendi, the deputy of despot, priest Mito, was asked for his testimony ten days later. Priest Mito was in the mentioned councils stated by Salih Efendi. Priest Mito stated that they had asked İstanka whether she had been forced or not, had anyone deceived her for marriage, or for money, but for what reason and why she insisted on converting were asked. He declared that İstanka had come voluntarily and had not been forced to become a Muslim. Priest Mito added that, her father and mother had come to the council, but İstanka had rejected her father and her mother unless they also became Muslims.[364] In the end, Priest Mito said, he had had to sign the papers since İstanka was determined.

A second interrogation was held on 21 August 1860. The reports of Salih Efendi and Priest Mito were read to İstanka. She admitted she had become a Muslim on her own free will, but now she wanted to become a Christian again.

> Q: (..) it is obvious that you did not become a Muslim with force, do you have anything to say?

[364] "*İstanka anasının ve babasının yanına gönderilecek olduğunda merkume İstanka anasına ve babasına hitaben ben Müslüman oldum bundan sonra siz benim anam babam değilsiniz eğer siz de benim gibi Müslüman olursanız o vakit anam babam söylersiniz dedi. Ve anasını babasının yanından tard edip ve yanlarından kaçdığını gördüklüğüm cihetle*"

A: Infact, I became a Muslim on my free will; but now I am again a Christian.
Q: Why did you change your mind?
A: I was born as a Christian and I will die as a Christian.
Q: Nobody will oppose you when you say I will return to my former-religion, but why did you libel your husband Bismil about forced conversion?
A: I did not libel. I became a Muslim before [marriage to] him but I will be a Christian again.[365]

Moreover, when the interrogator asked İstanka what happened in the house and why she had said, " I saved my life", she said, " I was not maltreated, but I want to save my religion."[366] It the end, the court decided that İstanka's claim was fake since Mahmud Kavas also supported the side of Bismil. According to Mahmud Kavas, İstanka had said if she did not marry Bismil, she would die.

In this chapter, I examined different aspects of abduction and elopement. With the cases of prostitutes, what honor means and how there was a degradational honor system which did not include or at least putting prostitutes at the bottom of the system, was shown. Apart from woman's sexual honor, in the second part of this chapter, about male pride, furious and rejected lovers and former-husbands, were documented from the perspective of male values and not focusing on honor in the meaning of sexual purity but male pride. The third section, İstanka was the only case with interrogation report including a fake litigant. That is, İstanka was the example of

[365] "*S: Ey kızım gerek Papas Mito'nun ve gerek Süleyman Ağa'nın verdiği cevabları işittik ve bismilin ifadeleri gibi senin cebren müslüman olmadığın bu halde dahi anlaşılıyor daha bir diyeceğin kaldı mı? C: O vakit fil-hakika isteğimle Müslüman oldum fakat şimdi ben istemem ben yine Hristiyan oldum. S: O vakit isteğinle müslüman olur da şimdi istemediğine sebeb nedir? C: İstemem bu dinde doğdum bu dinde öleceğim S: Sen eski dinine avdet edeceğim demiş olaydın sana kimse bir şey demez idi beni cebren Müslüman ettiler deyu kocan olan Bismil'e niçin iftira ettin? C: Ben iftira etmedim ben evvelide Müslüman oldum o kendi dinini tuttu ben kendi dinini tuttum yine ben eski dinimde kalacağım*."

[366] "*S: Bu Bismil'in evinde ne zor gördün de canımı kurtardım diyorsun? C: Hiçbir zor görmedim ancak dinimi kurtarmak için kaçdım*."

how she manipulated facts and as a probably unhappy and regretful woman from her marriage and conversion; she used abduction to restore her honor and dignity.

The limits of the İstanka's case may be listed, there was no record about her family and whether she returned her husband or not is not known. However, as a burdensome act, Bismil threw money at their wedding and since to get marry again necessitated paying a bride price or at least dower, marriage gifts, and ceremonies, it seems that as an expensive act, Bismil did not want to divorce. Besides, even he accepted to divorce; he would have had to pay alimony.

CHAPTER SIX

CONCLUSION

As a crime of everyday conflict, following the abduction of women and elopements from the archives is the tip of the iceberg, because successful elopements and abduction of woman cannot be understood from court records. On the one hand, the party of eloped ones might have convinced their parents or guardians to support their marriage; on the other hand, the abductors sometimes may have managed to persuade both the abductee and her family deriving from the issues of rape, to give familial honor to their conjugality. The cases that this thesis found generally involved manslaughter, gunfights, and sexual assault, which hindered the reconciliation of parties and resulted in bringing an action or petitioning if the daughter's fathers did not seek "justice" with his own hands, that is, honor killings. As was stated, the parties could make peace, but not only the families, also the interrogators made an effort to the reconcilie the parties. "You will have a husband eventually, so let's marry you to this guy" was one of the arguments of the interrogators to persuade the women to settle the case.

Fariba Zarinebaf writes, "sexual attacks (abduction and rape) made up 1.84 percent of cases in the collection imperial orders in Istanbul and its dependencies in 18th century."[367] However, as she notes, the percentage of these crimes was

[367] Fariba Zarinebaf, *Crime and Punishment in İstanbul 1700-1800* (Berkeley, Los Angeles, London: University of California Press, 2010), p.113.

underreported and the settlements of the cases were reached outside of the courts and while the Imperial Council dealt with “more serious crimes”, both abduction of woman and abduction were considered as minor offenses if the case did not involve homicide, physical assault or conversion.

Reconciliation *(sulh)* among the parties was also practiced by the interrogators. The neighbors, friends and acquaintances of the abductee acted as ries, since a daughter’s honor was not something about herself, but affected and shaped the values, social status, and honor of her family. In some records, the subjects petitioned thatthey were not to be known as the place, which lacked security for the women, and was famous for the abduction of women so they delivered a case of abduction to the authorities.

In 1844, Abdülmecid promulgated a law that the daughters stated that had the right to choose their husband and marry without getting the consent of their fathers if the father opposed the marriage for no reason. Despite that, the cases of eloped lovers who were put on trial, shows that the absence of a specific criminal code on elopement did not stop the authorities from punishing them. Connected to this point,it is hard to follow the cases of high bride price and dower are rare in the records of Meclis-i Vala, as a interfamily issue. The family of the suitors again did not bring cases against bride fathers or generally speaking their families.

For the cases of elopement, the judicial reports (*mazbata*), did not explicitly mention high bride price as an issue, which caused lovers to run away. Potentially, elopement was derived from more than one opposing situation, such as finance, religion, or hostile families. Rather than recording the reasons, the judicial reportss described the case with short sentences and then initiated penal prosecution. In that

sense, only a few of the records included in the interrogation reports supplied the underlying reasons for the elopement or abduction; that is it is hard to ascertain the reason for the act.

As a petty crime, the abduction of women was criminalized in 1851. Apart from this codification, in practice the abductors were couraged to marry their victims as only marriage could restore the "honor" as attributed to women, their families and the surroundings.. However, the marriage of abductee and abductor as a way of cleaning stain cannot be understood from these records. This subject needs further research of the Sharia records, which kept marriage contracts. Such study was beyond this thesis.

Besides marriage, courts were tplaces of disciplining woman and bargainingfor the honor and sexual assault that is compensation of virginity. Most of the cases studied were from the Rumelia provinces. Thesis did not show that elopement and abduction were common in these places; rather than that I commented on this issue to see this point as the act of bringing a suit towards against the culprit was common and accessible in these regions. Moreover, as a generalization, most of the plaintiffs were husbands and fathers or father-in-law instead of the victim, which is a sign that woman's honor and her protection belonged to their families, especially the male members.

As a conclusion, the abduction of woman and elopement were an alternative ways to prearranged marriage. However, on the side of the state, it was not a proper way to marry and so needed punishment. In this thesis, male-female relationships, courting, and marriage norms was taken into account, and in that sense, as a tradition, the Tanzimat state aimed to modernize and get rid of this "backward"

tradition with its efforts to control bride prices and doweries. However, culture as a private sphere is not something easily changed so the argument can be supported that the efforts of the Ottoman state failed.

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