ALTERNATIVE CLAIMS ON JUSTICE AND LAW:
RURAL ARSON AND POISON MURDER
IN THE 19TH CENTURY OTTOMAN EMPIRE

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ALTERNATIVE CLAIMS ON JUSTICE AND LAW: RURAL ARSON AND POISON MURDER IN THE 19TH CENTURY OTTOMAN EMPIRE

by

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Title: Alternative Claims on Justice and Law:
Rural Arson and Poison Murder in the 19th Century Ottoman Empire

This study examines the ordinary Ottoman subjects' interplay with justice and law from the mid- to late nineteenth century Ottoman Anatolia and Rumelia at a time when the Ottoman state's centralization efforts escalated and its claim on justice was much stronger than ever. It explores the Ottoman state's interventions to the everyday life by regulations and instructions in order to show their impact on the ordinary subjects while at the same time concentrates on the subjects' perceptions of and reactions to these interventions from a perspective informed by gender studies and social history.

Rural arson and poison murder, in this study, are regarded as two unique means to implement justice unofficially and assert agency by peasants and women. Based on archival evidence yielded by the nizamiye court records and particularly by the interrogation reports, this dissertation explores the way justice was perceived by common people and to what extent this perception overlapped or differed from the justice as defined by the Ottoman state. In doing so, it aims to uncover alternative claims on justice and law by common people and their own narratives of conflict. By focusing on intra-peasant disputes and domestic conflicts, it investigates the ways these people found solutions to their very real problems and implemented justice unofficially when the official mechanisms proved to be incapable of providing an outlet in situations of everyday crisis.

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Başlık: Adalet ve Hukuk Üzerinde Hak İddiaları: 19. Yüzyıl Osmanlı İmparatorluğu'nda Kırsal Kundaklama Vakaları ve Zehirle İşlenen Cinayetler

Bu çalışma ondokuzuncu yüzyıl ortasından sonuna değin, Osmanlı devletinin merkezileşme çabalarının yoğunlaştığı ve adalet üzerindeki vurgunun hiçbir zaman olmadığı kadar güçlü olduğu bir dönemde, Anadolu ve Rumeli'de sıradan Osmanlı tebaasının adalet ve hukukla olan etkileşimini incelemektedir. Çalışmada Osmanlı devletinin gündelik hayata yaptığı müdahalelere, bunların sıradan tebaa üzerindeki etkisini göstermek amacıyla odaklanılırken; aynı zamanda tebaanın bu müdahaleleri nasıl algıladığı ve ne şekilde tepki gösterdiği toplumsal cinsiyet çalışmaları ve sosyal tarihten beslenen bir perspektif içinde ele alınmaktadır.

Bu çalışmada, kırsal alanda vuku bulan kundaklama vakaları ve zehirle işlenen cinayetler, köylülerin ve kadınların adaleti gayrı-resmi yollardan tesis ettikleri ve kendilerini tarihsel özneler olarak kanıtladıkları iki özgün yöntem olarak değerlendirilmiştir. Nizamiye mahkemesi kayıtları ve özellikle de istintaknâmelerin sunduğu arşiv malzemesine dayanılarak, sıradan ahalinin adaleti nasıl kavradığı ve bu kavrayışın devlet tarafından tanımlanan adalet anlayışıyla ne ölçüde örtüştüğü veya ayrıştığı araştırılmıştır. Bu yolla ahalinin adalet ve hukuk üzerindeki iddialarıyla birlikte, kendi aralarındaki ihtilafları nasıl dile getirdiği ortaya çıkartılmaya çalışılmıştır. Köylüler arası çekişmeler ve hane içi çatışmalara odaklanan bu tez, resmi mekanizmaların gündelik kriz durumlarındaki acziyetleri karşısında, ahalinin kendi sorunlarına nasıl çözüm ürettiği ve gayrı-resmi yollardan adaleti nasıl tesis ettiğini araştırmaktadır.

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I dedicate my dissertation to my great family.

CONTENTS

INTRODUCTION

> History is not about what has vanished, but what once has existed... if we sense an absence in what we turn back and contemplate; it is our own absence, the absence that we strive hard to compensate with the struggle to understand. The people in history are the ones we try to understand with the awareness that we "follow them" and "we will also be followed," to wit through a perspective that belongs to the present, that faces the future.[1]

> Even though stories are the inevitable results of action, it is not the actor but the storyteller who perceives and "makes" the story.[2]

This dissertation is an attempt to shed light on the experiences of ordinary men and women with crime in the nineteenth century Ottoman countryside. These actors who have never earned a scholarly mention thus far are primarily those disgruntled Ottoman peasants who attempted to take justice into their own hands by fire in disputes over honour, women (*kız maddesi*), property, and labour and those desperate wives who poisoned their husbands for various reasons when other avenues of recourse were closed to them. I argue that rural arson and poison murder provide a new glimpse at the social history of the nineteenth century Ottoman Empire and further, add flesh and bone to the agency of peasants and women in

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[1] Cemal Kafadar, *Kim Var İmiş Biz Burada Yoğ İken* (İstanbul: Metis Yayınları, 2009), p. 14. "*Tarih, yok olanla değil bir zamanlar var olanla ilgilidir…Dönüp seyrettiğimiz zamanlar için bir yokluk söz konusu ise, o bizim yokluğumuzdur, anlama çabasıyla telafi etmeye çalıştığımız yokluğumuz. "Onlardan sonrası" olduğumuzun ve bir de "bizden sonrası" olacağının bilinciyle, yani bugüne ait ve geleceğe dönük bir perspektifle anlamağa çalıştığımız birileridir mazinin insanları*." I am grateful to U. Ceren Ünlü for translating this excerpt which I could not manage in a way the excerpt deserves.

[2] Hannah Arendt , *The Human Condition* (New York: Doubleday Anchor Books, 1959), p. 171.

everyday conflicts from a bottom-up perspective. A close investigation of the *nizamiye* court registers on arson and poisoning cases unravels individual contentions in peasant society and domestic conflicts respectively while reflecting alternative claims on justice, judicial strategies employed by litigants, and their interactions with one

another and with state officials and institutions. It also reveals how local norms and customs and the Islamic law (*şer'î*) shaped the way individuals dealt with wrongdoers and provided them with unique means to cope with their problems within the community and the family. In this regard, this dissertation aims not only to investigate the legal institutional practices in the countryside or how the courts dispensed justice in particular situations, but also to concretize those abstract concepts such as law and justice on the everyday level from the viewpoint of multiple actors involved in this process.

The Ottoman Empire in the mid-nineteenth century was undergoing a rapid transformation triggered by the Tanzimat reforms. The new legal institutions –most importantly *nizamiye* courts- codifications, and regulations were the basic governmental instruments of a more penetrating state authority which aimed ambitiously to seize control over alternative local power structures and also over the Ottoman subjects by centralizing the monopoly of justice and violence and thus supplant other mechanisms of justice available to the populace. The suppression of crime and maintenance of public order and security in the provinces turned into urgent questions that were to be addressed by the central government in order to manage the populace better while maintaining the loyalty of the subjects and enjoying support and legitimacy. Before the landscape of such an atmosphere many studies, preoccupied with state-society relations, have been interested in showing

how the countryside was kept under control and how the domination over the provinces was legitimized by the Ottoman state.[3] However, this was not a unilateral process and the Ottoman state was not the sole historical agent acting in a vacuum with a formidable power. The local authorities and ordinary Ottoman subjects from every strata, gender, occupation, and ethnic origin came to the fore as active respondents to the changes that directly affected their lives. Their actions and interactions among themselves and with the authorities determined to a great extent the distance between projects and outcomes.

In most cases, local actors perceived these newly introduced changes as an intrusion to the way things went on in the countryside and as an obstacle impeding the immediate execution of justice. On many other occasions, the official legal mechanisms fell short of providing an outlet for peasants in situations of crisis. Therefore the law was largely neglected not because peasants were indifferent to law but because the alternative sites of dispute resolution available to them were much more effective and immediate than the official mechanisms in resolving their conflicts within the community. Local norms and customs along with the *şer'î* legal culture, which determined the way people perceived crime, justice and law until that moment, represented a challenge to the efforts of the central government when it attempted to deepen its expansion into the provinces with a strong hand via new governmental techniques. Notably, the intersection of the "old" with the "new" brought forth diversified claims on justice and law.

In this process, collective financial retribution –*kasame*- as a longstanding local custom –*örf-i belde* or *usûl-i kadîme*- that was appealed to as a way of

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[3] Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003), p. 2.

compensation in arson cases with unidentified perpetrators turned into a contested domain in which peasants, the local governors, and the central government appeared with their own agendas and interests. Arson was a typical rural crime committed very frequently in the Ottoman countryside. It was a customary practice, an act of retaliation recoursed to by peasants against other peasants and against their economic superiors with an intent to exact individual revenge, and a reflection of power relations within the village. Though it was mostly a weapon of vengeance in the hand of relatively powerless individuals, it was sometimes used as a weapon of intimidation by more powerful actors against their inferiors or equals. Above all, as Regina Schulte argues in her book about rural arson cases in nineteenth century Upper Bavaria, it was a "form of speech" the meaning of which was clear for all peasants.[4]

The correspondances available from the mid-nineteenth century onwards between the local governors of various provinces and the central government reveal that rural arson turned into an issue of utmost concern for the authorities as it posed a threat to the security of life and property that the Tanzimat promised to protect. It was such a clandestine crime that the perpetrators mostly remained hidden. The central government was insistent on the investigation and detection of the crime by the new legal courts and the punishment of the perpetrators before the law while undermining the functions of the local customs. Communities, on the other hand, sought preventive measures and asked for the reimplementation and enforcement of *kasame* that had been outlawed by the Ottoman state for being against the spirit of the Tanzimat. It is striking that the peasant community was willing to pay for the

[4] Regina Schulte, "Civil Society, State Law and Village Norm: Semantic Conflict in Nineteenth Century Rural Germany," *Crime, History & Societies* 1, no. 2 (1997), p. 82.

damage caused by someone else rather than calling for the help of police and justice. As Cathy A. Frierson mentions in the Russian context, "the problem with the imperial police and judicial systems was not that they were too invasive and punitive but that they were rarely there at all to police and protect against the rural communities' own malevolence."[5] Similarly, Ottoman peasants who were vulnerable to fires set by their malicious fellows knew very well that the arms of the imperial justice could not reach that far to their villages to protect them. In the absence of such protection, kasame had a practical meaning for peasants in compensating the damage caused by undetected arsonists that could provide an outlet to avoid further harm.

In the nineteenth century, as before, the government was quite dependent on the active participation of the community to guarantee order and detect criminals in the localities. The crime of arson was not an exception. However, the peasants were usually reluctant to denounce offenders. In the face of this reluctance, it was not easy for the local authorities to identify the arsonists and bring them before the courts. The inability to eradicate this crime by the force of law, in the end, compelled the Ottoman state to return to the old customs. The local governments in Rumelia played a significant role in this process as intermediaries formulating and transmitting villagers' demands and wishes to the central government and pushing the latter to acknowledge the former as a legitimate and invaluable source of local knowledge. Eventually, the central government could not turn a deaf ear to the demands. Kasame was confirmed as legitimate when it came out that the nizamî investigative procedures were useless in detecting arsonists if village communities refused to cooperate with the state. This specific case clearly displays how methods

[5] Cathy A. Frierson, *All Russia Is Burning! A Cultural History of Fire and Arson in Late Imperial Russia* (Seattle and London: University of Washington Press, 2002), p. 139.

offered by communities as a solution to their internal problems differed from the solutions produced from above. In this regard, I aim to show in this dissertation how the abstract notions of law dissolved when faced with the concrete reality of daily life at the local level.

Similar to rural arson, poisonings turned into an anxiety for the Ottoman government from the mid-nineteenth century onwards parallel to the growing concerns about public health and security. In poisoning cases, too, the regulations enacted after the Tanzimat to control and restrict the sale of poison throughout the Empire failed on many occasions in spite of the incessant efforts of the central government since poison was not only a weapon of murder but a substance used for many reasons on various occasions from medicine to trades in the everyday lives of the populace. The interventions of the government to the sale of poison created a contentious arena in which physicians, lay healers, pharmacists, herbalists, and health inspectors soon took their parts. However, the sanctions of the regulations enacted hardly reached as far as the relatively isolated parts of the Empire. Nor could they bring the artisans and trades under control in Dersaadet and the countryside. From arsenic (*sıçan otu*) and corrosive sublimate (*aksülümen*) to cantharide (*kunduz böceği*) and mercury, various poisons continued to be available and in demand throughout the nineteenth century. Besides the availibility of poison, the stipulations of şer'î law in poisoning cases interestingly provided disappointed women an opportunity to get rid of abusive or feckless husbands with the least damaging repercussion at least until the moment when poisoining was included into the repertoir of premeditated murder with the proclamation of the 1858 Ottoman Penal Code.

Given the context of the nineteenth century Ottoman centralization and legal reforms, this dissertation attempts, on the one hand, to examine the legal means, regulations, and institutions through which the Ottoman state tried to permeate the countryside, eradicate crime, and maintain order. It examines the success and failure of these administrative and governmental responses to crime and transgression formulated from above while, on the other hand, illustrating their concrete effects at the local level on the population. The tensions and conflicts within the peasant community and household and the unique methods developed by the Ottoman subjects in the countryside to cope with these problems came to the fore through an investigation of the crimes of arson and poisoning. In this regard, rural arson and poisoning cases illuminated the encounter between the state and the populace while uncovering the interactions, contentions and solidarity networks among the villagers, neighbors, and women.

Of course, poison and fire were not the sole means for women and peasants in settling scores, taking vengeance, or implementing justice in their own ways. Apparently, peasants assaulted or shot their fellow villagers as often as they burned their hay barns. They killed their adulterous wives, sisters, daughters and their partners when their honour was at stake. Poison was not the sole weapon used by women. They also murdered their husbands with deadly weapons from wood and axe to rope and knife. Nevertheless, examination of these two types of crimes offered this study opportunities that other types of crimes and methods could never offer. Rural arson not only opened a window into the lives of peasants, overwhelmingly male ones, in their daily conflicts and showed the function of fire as a unique weapon of vengeance and executing justice, but also illuminated the role of community in crime detection and investigation. Murder by poison not only shed

light on the domestic space full of conjugal discords, but also opened another avenue into the world of forensic medicine. In this regard, these two crimes which were frequently committed but rarely detected and reported due to their hidden nature, bestowed a spectacular look into the social history of the nineteenth century Ottoman Empire.

This study explores a grey domain where the distinction between crime and punishment gets blurred and individual peasants and women appear on the scene as the agents of unofficial justice. Both arson and poisoning were retributive in nature, spurred by real or alleged wrongdoings by the victim when the official legal mechanisms were perceived unsatisfactory or unavailable by the perpetrators. In arson cases, the law was ignored as the disputes which engendered the act of vengeance were minor affairs. Moreover, arson was an invaluable means of ensuring a sense of justice and immediate satisfaction by inflicting punishment on the wrongdoer without delay that could never be provided by the law. In this respect, as Regina Schulte emphasizes, the fire had a cathartic function on an emotional and psychological level.[6]

Unlike eighteenth and nineteenth century Britain, rural arson in the Ottoman countryside was not a weapon of social protest that manifested collective grievances, but rather an individual action with a message of hatred that aimed to chastise the alleged offender unofficially. In most of the poisoning cases, on the other hand, the inability of women to obtain a divorce through official means in conjugal discords led them to violence. Until the proclamation of the 1858 Ottoman Penal Code, there was no stipulation on poisoning in penal codes and it was not

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[6] Regina Schulte, *The Village in Court: Arson, Infanticide, and Poaching in the Court Records of Upper Bavaria, 1848-1910* (Cambridge: Cambridge University Press, 1994), p. 56. Also see Frierson, p. 148.

even considered a premeditated crime. Apparently, it was the safest and the most efficient method to kill a husband with the possibility of going undetected, an action that needed no physicial power and spilled no blood.

Yet, it should also be noted that unofficial justice as exemplified in these cases is different from popular justice in which the alleged offenders were punished by the community or some vigilante groups whenever the official legal mechanisms were perceived to be inefficient or totally nonexistent. As Steven G. Reinhardt mentions, the private prosecutors of popular justice always have the approval or support of the community.[7] In many cases of arson and poison murder, on the other hand, the perpetrators were condemned by the community since the offense committed was obviously not in the social interests of the community but served the individual interests of the offender.

Arson and poison murder were clandestine crimes overwhelmingly committed in the countryside. For that reason, this study basically examines a geography outside the capital city. Two decades ago, a British historian John E. Archer criticized crime history for having a "lopsided look" due to the tendency of historians to study urban crime. This "lopsided look" or in other words, the "urban bias" still dominates the field in Ottoman studies. In spite of the rising interest in urban crime, punishment, policing institutions and surveillance practices particularly during the last decade,[8] rural crime with its many lacunas still requires further

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[7] Steven G. Reinhardt, *Justice in the Sarladais 1770-1790* (Baton Rouge and London: Louisiana State University Press, 1991), p. 161. *Samosud* in nineteenth century rural Russia constitutes a good example for popular justice. Its various forms and nature were examined in detail by Stephen P. Frank and Cathy A. Frierson. See Stephen P. Frank, "Popular Justice, Community and Culture among the Russian Peasantry, 1870-1900," *The Russian Review* 46, no. 3 (July, 1987), pp. 239-265; and Cathy A. Frierson, "Crime and Punishment in the Russian Village: Rural Concepts of Criminality at the End of the Nineteenth Century," *Slavic Review* 46, no. 1 (Spring, 1987), pp. 55-69.

[8] Nadir Özbek, "Policing the Countryside: Gendarmes of the Late 19th Century Ottoman Empire (1876-1908)," *International Journal of Middle East Studies* 40 (2008), pp. 49-50.

attention by Ottomanists. Particularly focusing on the Rumelian and Anatolian villages, this dissertation aims at gaining insight into the rural life and society with its actors and thus, contribute to the social history of the Ottoman Empire in general and the history of rural crime in particular.

In this attempt to understand rural society and people, I utilized judicial records produced by the nizamiye courts of the period. I aimed to show how nizamiye court registers as an underutilized source in Ottoman studies can open up a new window into the intra-peasant disputes and conjugal discord while providing an opportunity to render the experiences of these men and women visible. These court registers bring those "silent" and "invisible" actors of history into light not necessarily when they rioted and asserted their agencies through collective action, but when they attempted to resolve their individual disputes by their own means. The agency of these actors burst into sight when they transgressed the boundaries defined strictly by the state and were brought before the courts to stand trial. Indeed, this type of agency and subjectivity assertion have largely eluded historians' attention. Just as workers' agency beyond protests and political activism has usually remained out of the scope in labour history,[9] E. P. Thompson notes that common people were usually taken as historical agents only when they responded to economic stimuli like high food prices and unemployment.[10] Peasants' agency also has been closely associated with collective contentions, resistance, and protest

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[9] See Donald Quataert, "Introduction," *Workers and the Working Class in the Ottoman Empire and the Turkish Republic 1839-1950*, eds. D. Quataert and E. J. Zürcher (London: Tavris Academic Studies, 1995), p. 19.

[10] E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past and Present*, no. 50 (February, 1971), pp. 76-77.

which left other forms of exercising agency almost intact.[11] This aspiration made other forms of daily conflicts among peasants unworthy of note unless they resulted in and reflected larger social disturbances.

In this dissertation, I seek to overcome this reductionism and demonstrate peasants in action while handling their individual conflicts with other peasants and their superiors. I claim that as much as peasant uprisings, intra-peasant disputes also provide the historian a unique opportunity to recover the subordinates' voices and show their interactions not only with the authorities but also with other peasants.

Just as peasants come to the attention of scholars on certain occasions, women in Ottoman history usually are rendered visible only if historians are able to show their participation in the public sphere. They come to the fore only when they appear in the şer'î courts as litigants in disputes on property transaction, inheritance, or conjugal relations (marriage and divorce), mostly in the early modern context. These disputes to a large extent determine the way we perceive their agency. Yet, as Suraiya Faroqhi writes, village women largely escape the attention of scholars since they rarely had a recourse to law and therefore rarely appeared in the şer'î courts that were located in towns and urban centres, and when they appeared, the subject was usually inheritance disputes.[12]

Without doubt, research undertaken for writing women into history thus far has added greatly to our understanding of women's involvement in Ottoman public life and their roles in disputes as active agents. Yet, crimes committed by women

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[11] Although some studies underlined the significance of "hidden transcripts" among the Ottoman peasantry besides overt action and protest, they did not attempt to draw on individual contentions as a means to make peasant agency visible. See, for example, E. Atilla Aytekin, "Neither 'Monarchism' nor 'Weapons of the Weak': Peasant Protest in the Late Ottoman Empire," *Perspectives on Ottoman Studies* (Berlin: Lit Verlag, 2010), pp. 105-119.

[12] Suraiya Faroqhi, "18. Yüzyıl Anadolu Kırsalında Suç, Kadınlar ve Servet," *Modernleşmenin Eşiğinde Osmanlı Kadınları* (İstanbul: Tarih Vakfı Yurt Yayınları, 2000), p. 13.

such as infanticide and prostitution have begun only recently to receive scholarly attention while the perpetrators of more violent crimes still have not become subject of a systematic analysis, leaving domestic space and domestic conflicts that ended up with violent acts in the dark. The nizamiye court registers of the Tanzimat period, with respect to this, provide a useful prism through which one can discover these women's lives, thoughts, and emotions, their experience with violence, and the encounter between them and the law.

In this dissertation, I seek to bring to light women who were the perpetrators of crimes like arson and poisoning by which they asserted a strong agency to settle domestic conflicts and put an end to their miseries. These women certainly were not passive victims in the face of poverty, domestic violence, and prearranged marriages. When they were furious, disgruntled, or disappointed, they had recourse to violence. In many cases, the domestic household turned into a site of retribution and empowerment from being a site of subjugation and male domination. For that reason, I argue, female criminality and poison murder provide fascinating examples to examine women's agency from a new perspective. The cases of poisonous wives and arsonist women reveal a rather different picture of Ottoman women than that depicted by exotic harem narratives. The nizamiye court records with interrogation reports illustrate these women culprits' experiences better than any other source in the absence of written documents directly produced by these women and give us a key to go into the ordinary Ottoman households that clearly reflect the fabric of traditional gender roles and conjugal discords.

Obviously, one can object to the usefulness and reliability of judicial records in lending evidence about the "real" voices and experiences of the subordinates. As Edward Muir and Guido Ruggiero eloquently note, judicial records are far from

being unbiased texts as the judicial process itself involves power relations. The interrogators ask the questions and these questions limit and manipulate the answers of the litigants and witnesses. The litigants and witnesses may manipulate the courts as well by telling lies. Briefly, "court cases generate evidence that has been polluted by authority" Muir and Ruggiero write, "since only one party has the power to coerce and the command of all the information."[13] In this regard, judicial records do not provide the historian a smooth opening into the past in which everything becomes clear as it actually happened, but present a distorted picture of the past. The historian situated in her/his own vantage point from which s/he sets out to roam the past unavoidably distorts this already distorted picture once more. "By their choices and comparisons," Roger Chartier states, "historians assign new meaning to speech pulled out of the silence of the archives."[14]

Of course, it is not the task of this study to discuss such very basic historiographical issues like the impartiality of the historian, the question of historical truth, and the reliability of sources. Every source has its own shortcomings and biases and poses problems to the researcher. Keeping these interpretative problems in mind, I claim that the nizamiye court records of the nineteenth century provide the historian with an invaluable means to reconstruct the Ottoman history that can never be provided by şer'î court records. As Milen V. Petrov has stated, these records with interrogation reports –*istintâknâme*s- "contain the first-person narratives of bona fide non-elite social actors, which have proven so elusive in other

[13] Edward Muir and Guido Ruggiero, "Introduction: The Crime of History," in *History from Crime*, eds., E. Muir and G. Ruggiero (Baltimore and London: The Johns Hopkins University Press, 1994), pp. viii-ix.

[14] Roger Chartier, *On the Edge of the Cliff: History, Language, and Practices* (Baltimore and London: The Johns Hopkins University Press, 1997), pp. 3-7.

types of Ottoman sources, including *sicil* [şer'î] records."[15] In these interrogations, unlike şer'î court records, the scribes do not summarize or adapt the words of the litigants and witnesses questioned before the courts into indirect speech, but maintain their verbatim accounts. The availability of verbatim accounts, though tainted by the authoritative voice of the interrogators, bestows a rare opportunity for illuminating the thoughts, attitudes, and emotions of mostly illiterate people who would otherwise remain in the "invisible or opaque realms of human experience."[16]

In spite of the opportunities provided by the nizamiye court records, this study was constrained due to the lack of previous research on the social history of crime in the nineteenth century Ottoman Empire in general and on the history of rural crime in particular. As is well known, since the scholars working on the nineteenth century have been largely fascinated by the institutional transformations engendered after the proclamation of the Tanzimat, the social and cultural history of the period has remained an understudied field to a great extent. There are indeed very few studies written on the nineteenth century from a social history perspective when compared to the early modern period. Early modern Ottomanists have unquestionably contributed to the field greatly albeit the limitations of şer'î court registers and produced enormous knowledge especially on gender and urban history. This dissertation, to some extent, has been inspired by these works which proved that legal registers and particularly the records of crime can be used to disclose not simply the workings of justice, but also the historical actors, society, and culture on the everyday level. Yet, it suffered a great deal for focusing on a field where

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[15] Milen V. Petrov, "Tanzimat for the Countryside: Midhat Paşa and the *Vilayet* of Danube, 1864-1868" (Ph.D. diss., Princeton University, 2006), p. 267.

[16] Muir and Ruggiero, vii.

domestic crime, female criminality, and rural crime have not received any systematic scholarly attention.

Milen V. Petrov's dissertation on the Province of Danube, which, I believe, has an exceptional merit in utilizing nizamiye court records as a source and in writing the history of the countryside by incorporating the everyday level successfully into this story, served as a good example for this study from the beginning. Besides Petrov's dissertation, I owe much to the literature produced in the Russian, British, French, German, and American contexts on rural arson and poison murder. Especially Cathy A. Frierson's *All Russia Is Burning* and Regina Schulte's *The Village in Court* encouraged me to study peasant society through the prism of rural arson cases. Admittedly if I had not read these books, I would probably not have regarded rural arson as a topic worthy of study. These books taught me not to neglect even those seemingly unimportant, mundane, and trivial archival cases that show ordinary peasants pursuing their very individual goals which uncover the silhouette of a hidden picture that provides us with the means to understand rural society and its actors better. *Village Justice* by Tommaso Astarita, though it is a book on a single poison murder case committed in a small village in Italy in the early eighteenth century, became a real guide for the chapter on poisonous wives as it showed to what extent the court records can be utilized and interpreted in writing the stories of these women.

Of course, most of my gratitude is reserved for the archival registers. In order to feel capable enough to start writing this dissertation, I read more than a thousand documents, several dossiers, registers (*defter*), and scanned various contemporary newspapers and journals. Though I was able to use probably much less than one- tenth of these materials in the writing process, they all helped me to

understand and imagine a world that had disappeared a long time ago. Yet, some documents proved substantially more useful than others. The archival documents in the Prime Ministry Ottoman Archives classified in the *İradeler* (Imperial Orders) catalogue, especially *İradeler- Meclis-i Vâlâ* (Supreme Council of Judicial Ordinances) and *İradeler –Divân-ı Ahkâm-ı Adliye* (Council of Judicial Ordinances), most of which were with interrogation reports, provided the necessary material for writing this dissertation. I conducted a systematic study by scanning the catalogues and spent much time reading court records on capital crimes. Since both arson and poison murder were categorized as capital crimes after 1858, I gleaned my material extensively from among these cases. In fact, at the very beginning, I was planning to write a dissertation on capital sentence. However, as soon as I encountered poisonous wives and arsonists in the archives, my research deviated from its initial trajectory. In time, these cases reached a considerable number, which provoked me to probe the sources more systematically.[17]

Briefly, this dissertation aims to make a contribution both to the social history of crime and punishment and gender history within the context of the nineteenth century Ottoman legal reforms and regulationist policies. This study of rural arson and poison murder as seen from the window opened up by the nizamiye court records discusses the mechanisms of the official legal system at the local level, the operations of unofficial justice within the village, the tensions in rural family and

[17] This so-called "systematic" research indeed was hampered by quite structural obstacles. As is well known, the short summaries of the archival documents that can be accessed on computers at the Archives do not let the researcher find everything available. Searching with keywords does not reveal all documents related to the subject. For instance, a summary of a document may state that a woman killed her husband, but does not state how she killed him. This obscurity led me to examine cases with female perpetrators, working like a detective, and indeed, I discovered many murders by poison by reading these seemingly unrelated cases.

community life, and the encounters between village culture, norms, and customs and the Ottoman state. It shows how ordinary people resolved their conflicts in the community and family in their own ways and how daily life escaped from control at a time when the Ottoman state was much more concerned than ever to enhance its authority and control over the population and regulate every sphere of social and political life with legal and institutional means. Rural arson and the poison issue also display clearly the Ottoman state's obsession with regulation in the Tanzimat period. These two issues depict the failure and success and the flexibility and rigorousness of the Ottoman government in its intervention and intrusion to the society while showing, on the other hand, the same picture from the viewpoints of the populace.

This dissertation contains three parts. Part I, with two chapters, was written with the intention to provide a larger framework and context within which the next parts on rural arson and poison murder would be more meaningful and comprehensible. Chapter 1 briefly situates this study in the genre of the social history of crime and punishment and then attempts to give a critical outline of Tanzimat studies. The meaning of the court records as a source for history writing, the institutional context of the nineteenth century legal transformations and the complications caused by the co-existence of şer'î and nizamî law in the legal arena also is elaborated in this chapter.

Chapter 2 examines the Ottoman government's growing concern over centralization in the Tanzimat period and the challenges posed by the local actors in this effort. Capital and corporal punishment were chosen as two specific issues through which the central government attempted to take control on the local notables. This chapter also aims to understand the meaning of the new legal system for the populace in the countryside, how they perceived it and to what extent they

used, manipulated, or rejected it. Additionally, it tries to delineate a picture about the judicial procedures at the nizamiye courts, how things worked in these new courts at the local level and how the community, neighbors, and circumstantial evidence played roles in this process.

Part II, with three chapters, is an attempt to understand the role of fire in the Ottoman countryside as a medium or a "form of speech" among peasants with a function to chastise the opposite party without having recourse to law. Peasants in these cases took justice into their own hands and settled their individual scores when they were wronged. As a violent and very frequent crime against property, rural arson cases reveal the disputes among peasants on the everyday level, the place of honour and vengeance in community, and the Ottoman state's attempts to detect and punish these transgressors by law.

Chapter 3 deals with undetected arson cases and the solution offered by the villagers to this problem. The main issues examined in this chapter are the collective financial retribution –kasame-, why its administration was forbidden by the Tanzimat state and how it was desperately permitted after a while. Chapter 4 examines the perpetrators and victims of arson. Disgruntled peasants play the lead in this chapter with their individual contentions. Simple quarrels, labour disputes, and honour issues come to the fore as basic motives triggering revenge. This chapter shows how local dynamics, customs, and norms played roles in the villages and how they shaped the peasants' sense of justice. The last chapter of this part brings forth the female perpetrators of this overwhelmingly male crime. Rather than peasant women who rarely appear as the vengeful arsonists in the archival records, we see enslaved domestics as the masters of fire. Though arson by these female perpetrators was not a rural crime and most were committed in urban centers within elite

households, I included them in the analysis in order not to neglect the gender dimension of this narrative and shedding light on their experiences with fire.

Finally, Part III deals with the poison issue with its various dimensions. Chapter 6 addresses the institutional and legal dimension of this issue by examining the Ottoman state's interventions to the business of poison sale, its growing concern about its regulation, and the various historical agents involved in this process from herbalists, lay healers, and pharmacists to health inspectors. In Chapter 7, this time poisonous wives take the stage. This chapter demonstrates unhappy, desperate, and sometimes passionate women who could not find a way to get rid of their husbands except for poisoning. It aims to bring the domestic household and the marital disputes into light while illuminating the impact of şer'î legal culture on poison murder and poison trials. The way the poisonous women were treated before the courts, how they asserted their agencies and how this agency was denied at the court are also other issues that will be dealt with. Chapter 8, the last chapter of this part, examines the role of forensic medicine in uncovering this secretive crime. Though autopsy courses became a part of the curriculum at the School of Medicine starting from the 1840s, autopsy was rarely appealed to by the courts as a tool for establishing medico-legal proof. All through the period under examination, the role of forensic medicine and particularly dissection in poisoning cases remained a complicated issue. It could not easily take the place of eyewitness testimony and always posed a problem for the courts both in İstanbul and in the countryside. This chapter aims to provide a picture of poison murder from another angle, where law encountered medicine.

To conclude, every selection of material, every choice made as an historian unfolds the past in a particular manner. While this choice serves us to see something

better, it hides other things from view, as Cemal Kafadar writes.[18] This dissertation was written with the awareness that what it manages to cover is always destined to be partial and incomplete. No wonder, it left many issues and stories untouched while magnifying and favoring some others in order to make them visible. Yet, it enthusiastically attempted to rescue those moments from oblivion when the actors of history with no heroic qualities disclosed themselves with their words and deeds, in speech and action.

[18] Kafadar, p. 19.

PART I

CRIME, PUNISHMENT, AND LOCAL JUDICIAL PRACTICES IN THE OTTOMAN COUNTYSIDE

CHAPTER 1

HISTORICAL SETTING

Law, as an intrinsic part of sovereignty, sets the contours of the state-society relationship and defines the framework of what would be considered as a transgression in a given time and space. Bounded with time and space, transient, and not having an essential core, it may undergo remarkable changes as a socially and historically constructed phenomenon. Criminal law and penal policies change too in relation to the dynamics of political economy, class structures, ideologies, and discourses dominant in a certain period. Therefore, a legitimate act in the past, for instance, may turn into a crime in the course of time and new punishment methods may be invented. The social forces suggest a profound change in the definition of crime and punishment and what they meant within any society at any time.

Particularly from the 1960s onwards, many revisionist historians attempted to explain the history of crime and punishment in different historical contexts in relation to these social forces, the social context in which these two practices were embedded, going far beyond the quantitative analysis dominant in the field. They criticized the teleological approaches which elaborated penal changes in terms of progressive development and reform. The invention of the penitentiary that had

appeared in the trajectory of the eighteenth century Enlightenment thinkers like Montesquieu, Voltaire, Beccaria, and Bentham as the ultimate form of reform and a manifestation of so-called philanthropist and humanist thinking was also revisited and criticized in terms of the social control function fulfilled by this new mode of punishment.[19]

As early as 1939, Georg Rusche and Otto Kirchheimer attempted to show how the humanitarian ideas for the reform of criminal law were conditioned by the demands of the labour market and the ruling classes. According to these scholars, the prison system, apart from the humanitarian ideals, was the invention of mercantilism where in a period of labour shortage, the value of convict labour had gradually increased and been exploited in the houses of correction.[20] Likewise, in eighteenth century France, not humanitarian ideas but the increasing need for more oarsmen "on the cheapest possible basis" was the reason behind the substitution of galley labour for the death sentence.[21] Rusche and Kirchheimer investigated the changing methods of punishment starting from the Middle Ages and suggested "to strip from the social institution of punishment its ideological veils and juristic appearance." Accordingly, punishment was not a simple consequence of crime that was needed to deter criminals, but a social phenomenon determined by the mode of production and the needs of the labour market in a given time. Claiming that "every system of production tends to discover punishments which correspond to its productive relationships," they suggested a direct relation between the value of

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[19] Robert P. Weiss, "Humanitarianism, Labour Exploitation, or Social Control? A Critical Survey of Theory and Research on the Origin and Development of Prisons," *Social History* 12, no. 3 (1987), pp. 331-32.

[20] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (London: Transaction Publishers, 2003), pp. 72-84.

[21] Ibid., pp. 55-57.

human being, which is the value attributed to someone's labour, and the punishment methods.[22]

For Michel Foucault, too, the reforms in the criminal law, the appearance of more lenient methods of punishment, and the disappearance of punishment as a public spectacle in the eighteenth century were not the result of a "process of humanization." They were rather the indication of the emergence of "a whole new system of truth," a new power regime working with new governmental techniques and scientific discourses which he called "disciplinary society."[23] The birth of prison, in this respect, was a product of the new mentality about punishment which no longer aimed at "the theatrical representation of pain" to restore the "momentarily injured sovereignty" by the criminal act, but rather directed at the mind and souls of the subjects along with aiming the utility and docility of their bodies.[24] By doing so, he questioned the logic of rationality behind confinement.[25] According to Foucault, all institutions of incarceration, including prisons, were the kernel of the "disciplinary society." In this regard, he argued, Bentham's *Panopticon*, which was developed as a perfect architectural form of imprisonment, was a showcase that aimed at the production of "homogeneous effects of power" and subjection through a surveillance mechanism "at the lowest possible cost" with

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[22] Ibid., p. 5. Also see Dario Melossi, "Introduction to the Transaction Edition", ibid., p. xxvii.

[23] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979), pp. 8-24.

[24] Ibid., pp. 3-31 and 48.

[25] Michel Foucault, "What is Called 'Punishing'?" *Power: Essential Works of Foucault 1954-1984*. Edited by J. D. Faubion (New York: The New Press, 2000), p. 383.

"maximum intensity," and by increasing "the docility and the utility of all the elements of the system."[26]

Indeed Michel Foucault's seminal work on the "birth of prison," *Surveiller et Punir,* became a turning point in understanding the impact of discursive power in the construction of deviance, criminality, and institutions of confinement. In spite of the radical perspective of his work, he was criticized heavily by historians for being largely theoretical, and lacking any sufficient empirical analysis to support this theory.[27] More theory-oriented scholars, on the other hand, criticized him for putting too much emphasis on social control in his conception of power and punishment, which did not "accept that there are elements of the penal system which either malfunction and so are not effective as forms of control…as if penality affords no place to non-rational phenomena."[28] After all, in his later works, Foucault suggested the expansion of the definition of power and offered a new way of thinking about it by including the subject and "the forms of resistance against different forms of power as a starting point" in his analysis.[29] In this way, he redefined the concept as something omnipresent, dispersed, and open to renegotiations. Suffice it to say that

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[26] Foucault, *Discipline and Punish*, Chp. 3, esp. pp. 200-202, 218.

[27] Peter Spierenburg, "Punishment, Power, and History," *Social Science History* 28, no. 4 (Winter 2004), pp. 612-13. Spierenburg also stresses that Foucault's aim in writing *Surveiller et Punir* was to make an historical analysis that would "form the basis of a study of modern society." He states that the book, in fact, was not a finished project as Foucault intended to make an empirical analysis as well. However, when his attention was shifted to sexuality, Spierenburg claims, he failed to complete his task.

[28] David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: The University of Chicago Press, 1993), pp. 162-63. Timothy Mitchell, on the other hand, criticized Foucault for overlooking the role of colonialism and imperial projects in the construction of modernization discourse and modern subjectivities. See Timothy Mitchell, "The Stage of Modernity", in *Questions of Modernity*, ed., T. Mitchell (Minneapolis and London: University of Minesota Press, 2000), pp. 5-6 and 13.

[29] Michel Foucault, "The Subject and Power," *Power: Essential Works of Foucault 1954-1984*. Edited by J. D. Faubion (New York: The New Press, 2000), pp. 327-29.

both his work conceiving the prison as one of the institutions in which modern techniques of control were materialized and his concept of power have proved to be insightful for many scholars who study crime, punishment, carceral institutions, and informal justice systems in different historical contexts.[30]

Another historiographical trend in the social history of crime emerged in the 1970s in Britain in parallel with the emergence of Foucault's "birth of prison" in France. Just as *Surveiller et Punir* opened up a new venue for studying crime and punishment, *Albion's Fatal Tree*, a collected work by Douglas Hay et al., and *Whigs and Hunters* by E. P. Thompson on the eighteenth century England started a new trend in the writing of social history by investigating the relation between criminality and law and the ongoing class struggles in society.[31] Before these

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[30] Many scholars from various disciplines, including historians, have used Foucault's views that he developed in *Discipline and Punish* and in his later works as a starting point for their analyses. For instance, Khaled Fahmy, in his study on the new conscription system introduced in nineteenth century Egypt during the reign of Mehmed Ali, has reflected much on Foucault's work by integrating his concepts such as governmentality, disciplinary power, and surveillance as analytical tools to understand the construction of the social in Egypt and conceptualize the disciplinary techniques used by Mehmed Ali's military authorities to create "docile bodies." He also borrowed much from the Foucauldian concept of power, which takes the "subject" into account by integrating into his analysis the moments of resistance against the controlling agencies of the state. See Khaled Fahmy, *All the Pasha's Men* (Cambridge: Cambridge University Press, 1997), especially Chp. 3. For some other studies in which he used a Foucauldian terminology in analyzing his topic, see "The Police and the People in Nineteenth-Century Egypt," *Die Welt Des Islams* 39, no. 3 (1999), pp. 340-377; "Medicine and Power: Towards a Social History of Medicine in Nineteenth-Century Egypt," *Cairo Papers in Social Science* 23, no. 2 (Summer 2000), pp. 1-40; "Justice, Law and Pain in Khedival Egypt," *Standing Trial: Law and the Person in the Modern Middle East*, ed. Baudouin Dupret (London, New York: I.B.Tauris, 2004), pp. 85-115. See also Rudolph Peter, "'For His Correction and as a Deterrent for Others': Mehmed Ali's First Criminal Legislation (1829-1830)," *Islamic Law and Society* 6, no. 2 (1999), pp. 164-192 for an analysis of Egyptian criminal codes of 1829 and 1830 made within an approach borrowed from Foucault. He claims that "these new laws mark a transition from a period in which punishment was often cruel and arbitrarily imposed to a period characterized by rational punishment, consisting in controlled and precisely measured penalties…" For a recent Foucauldian article on Turkey discussing the changing rationalities, discourse, and methods of punishment in neo-liberal societies with reference to his concepts like biopolitics, disciplinary societies, and confinement see Alev Özkazanç, "Biyopolitik Çağda Suç ve Cezalandırma," *Toplum ve Bilim*, no. 108 (2007), pp. 15-51.

[31] Douglas Hay, Peter Linebaugh and E. P. Thompson, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Allen Lane Penguin Books, 1975); E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane Penguin Books, 1975). Peter Linebaugh acknowledges these two works as "the culmination of a historiography that had considered crime within a broader framework of social history" which had roots in the earlier works of E. J. Hobsbawm and G. Rude on "social banditry" (1959) and the "crowd" (1962) respectively.

seminal works emerged, E. P. Thompson's article on "history from below" published in the *Times Literary Supplement* in 1966 had already brought forth the necessity of reconstructing the experiences of ordinary people that had so often been ignored in the mainstream history and understanding the past in the light of their experiences.[32] Along with Thompson's earlier studies like *The Making of the English Working Class*, *Albion's* and *Whigs* came to be regarded by historians as path-breaking works written from the perspective from "bottom-up".[33] The orientation of the authors in these two books was to show the close relation between the property relations in the eighteenth century England and the law as an arena of power and ideological structure along with examining crime as a manifestation of social conflict. Douglas Hay, E. P. Thompson, and Cal Winslow explored how the old customary rights of the people were curtailed and criminalized due to the changes in property and class relations.[34]

The criminalization of customary rights that had long been a part of the moral economy of the lower classes came with the ascendancy of the Whig government which enclosed the royal forests and common lands with a parliamentary act, the Black Act of 1723, and created specific types of crimes that

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See Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge: Cambridge University Press, 1992), p. xix.

[32] Jim Sharpe, "History from Below," in *New Perspectives on Historical Writing*, ed., P. Burke (Pennsylvania: The Pennsylvania State University Press, 1992), p. 25.

[33] Peter Linebaugh criticizes the view promoted by E. P. Thompson in *Whigs and Hunters* who believed that "the law indeed expresses ideals of justice which transcend the corruptions of the rulers". Instead, he defended the political position of *Albion's* by approving the role of law in consolidating ruling-class authority. See Linebaugh, p. xxiii.

[34] Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, eds., D. Hay, P. Linebaugh and E. P. Thompson (London: Allen Lane Penguin Books, 1975), pp. 17-63; Cal Winslow, "Sussex Smugglers," in ibid., pp. 119-166; E. P. Thompson, *Whigs and Hunters*. Also see E. P. Thompson, "The Moral Economy of the English Crowd," pp. 76-136.

had never existed before. Further, the Act introduced the death sentence for more than fifty offences that can be labelled as property crimes from hunting deer, poaching hares, and maiming cattle to setting fire to houses, barns, haystack, and cutting down trees.[35] By manipulating criminal law in favour of their class interests, Douglas Hay notes, the ruling classes redefined the meanings of crime and criminality. When the daily survival strategies and customary rights of the people came under attack and were defined as crime that deserved the death sentence, they used mercy as a "currency of patronage" to maintain order and subjection.[36] Although this approach stripped off law from its outer appearance and showed its ideological and conflictive nature, it was criticized either for viewing law as a simple manifestation of class conflict[37] or for being too much trapped in a social control approach.[38]

Yet, like Foucault, the British Marxist historians had a substantial influence on the later generations of social historians by offering an angle from below and showing how popular perceptions of crime and law may differ from the official or elite perceptions. For example, Martin J. Wiener examined the law's expanding role in regulating society which led to the creation of new crimes in the late nineteenth century England. He elaborates how the meaning of criminality and punishment

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[35] Thompson, *Whigs and Hunters*, p. 22; and Hay, "Crime and Justice in 18th and 19th Century England," *Crime and Justice* 2 (1980), p. 51.

[36] Hay, "Property, Authority and the Criminal Law," pp. 18, 45, 62-63.

[37] Carlos Aguierre and Ricardo D. Salvatore, "Writing the History of Law, Crime and Punishment in Latin America," in *Crime and Punishment in Latin America,* eds., C. Aguierre and R. D. Salvatore (Durham and London: Duke University Press, 2001), p. 8. Also see Jim Sharper's criticisms of the "history from below" approach which mentions Marxist historians' inclination to see only those moments or episodes in history in which people engaged in overt political activity. See "History from Below," p. 27.

[38] Joan Neuberger, *Hooliganism: Crime, Culture, and Power in St. Petersburg, 1900-1914* (Berkeley, Los Angeles, London: University of California Press, 1993), p. 13.

were reshaped in parallel to the new conceptions of human nature emerged during the course of century. While in the early and mid-decades, "crime was a central metaphor of disorder and loss of control in all spheres of life" which promoted disciplinary techniques in punishment, in the last quarter of the century and with the impact of natural sciences on criminology, it was turned into something instigated by "environmental and biological forces beyond control." As Wiener states, "increasingly, violent behaviour was being connected to mental abnormality." In this regard, criminals were conceived as human beings deserving therapeutic intervention rather than discipline.[39]

Historians studying nineteenth century social and judicial transformations in Russia, too, have produced prominent works on the construction of criminality, law, and justice by comparing peasant views about these issues with elite perspectives and discourses, especially by focusing on the countryside. Jane Burbank, for example, challenges the view promoted by the nineteenth century "educated" elite that regarded peasants as backward, uncivilized, custom-bound, and too uneducated to understand law. Contrary to this argument, she demonstrates that Russian peasants had a legal culture and used township courts which had been established after the emancipation of the serfs and the court reform in 1864 extensively as a legal opportunity to resolve their conflicts.[40]

Stephen P. Frank compares the popular thinking about crime, law, and justice with elite representations of rural crime and gives attention to the gap

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[39] Martin J. Wiener, *Reconstructing Criminal: Culture, Law, and Police in England, 1830-1914* (Cambridge: Cambridge University Press, 1994), pp. 11-12, 260-61 and 271.

[40] Jane Burbank, *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905-1917* (Bloomington and Indianapolis: Indiana University Press, 2004). For a similar analysis by another historian see Gareth Popkins, "Code versus Custom? Norms and Tactics in Peasant Volost Court Appeals, 1889-1917," *Russian Review* 59, no. 3 (July 2000), pp. 408-424.

between them. He argues that this constructed cultural difference served to govern the "lawless" countryside like a colonial setting with various techniques. By focusing on everyday conflicts among peasants, he illuminates how ordinary peasants perceived courts and imperial justice and what kind of extrajudicial methods they employed in resolving their conflicts due to the deficiencies of state agencies in implementing justice in the countryside.[41] Cathy A. Frierson, on the other hand, focuses on arson cases as a form of popular justice in the Russian countryside. She highlights the peasant agency, showing that arson was a method of settling scores in intra-peasant conflicts and a mechanism of social control for the community beyond being a crime.[42]

In the nineteenth century Ottoman context, the literature on rural perceptions of crime, justice, and law is not as extensive as the literature on the social history of rural Russia. It is limited to some provincial studies which provide insight into the daily routines and conflicts of the Ottoman peasants. The scholarly works on the social construction of criminality examining the ruptures in discourse and mentality in the Ottoman context are also very limited. Yet, a few studies are worth to mention. For instance, Cengiz Kırlı explores how the gift-economy "as a routine and legal practice" in the administrative and bureaucratic structure of the Empire lost its prevailing meaning and began to be treated as bribery. Gifts had long been symbolic indicators of the patronage relations within the bureaucracy, especially in the informal economy shaping the relations among the provincial notables, local governors, and the central officers. However, the aim to secure efficient state control

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[41] Stephen P. Frank, *Crime, Cultural Conflict, and Justice in Rural Russia 1856-1914* (Berkeley, Los Angeles, London: University of California Press, 1999).

[42] Frierson, *All Russia Is Burning.* For an analysis of extrajudicial punishment in Russian villages, see Frierson, "Crime and Punishment in the Russian Village," pp. 55-69.

over the bureaucracy after the Tanzimat and especially with the 1840 Ottoman Penal Code, Cengiz Kırlı claims, turned the centuries-old legitimate custom of gift-giving into a crime overnight. The Sultan was declared the sole authority that had the right of giving and receiving gifts. In this way, the legitimacy of the central government was re-established through the adaption of a new language of law.[43]

Gülhan Balsoy examines how abortion (*ıskat-ı cenîn*) was turned into a crime with the 1858 Ottoman Penal Code from an unapproved, immoral act. In this process, she argues, midwives who had been practicing their profession traditionally began to be seen as a threat to the population concerns and pronatalist goals of the Ottoman government.[44]

In the nineteenth century, many practices and professions that had long been traditional, legitimate, and widespread in the Empire came under the scrutiny of the state with the premises of public order and security. Little wonder, the attempt to regulate social life was not a phenomenon unique to the nineteenth century.[45] However, it is worth noting that nineteenth century efforts to regulate and order the city and the countryside differed from those previous efforts, given the fact that the

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[43] Cengiz Kırlı, "Yolsuzluğun İcadı: 1840 Ceza Kanunu, İktidar ve Bürokrasi," *Tarih ve Toplum*, no. 4 (Güz 2006), pp. 108 and 116-118.

[44] 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), pp. 137-149. Also see Tuba Demirci and Selçuk Akşin Somel, "Women's Bodies, Demography, and Public Health: Abortion Policy and the Perspectives in the Ottoman Empire of the Nineteenth Century," *Journal of the History of Sexuality* 17, no. 3 (September 2008), pp. 377-420.

[45] In the sixteenth century, due to the complaints from the Muslim residents, the operation of taverns in Muslim neighbourhoods was enjoined by the state since these places were seen as the centers of immoral conduct. In the seventeenth and eighteenth centuries, the state placed a ban on the sale of wine to Muslims and the export of wine to İstanbul. Though it was an illegal practice, a great effort was spent to police and punish prostitution. See Fariba Zarinebaf, *Crime and Punishment in İstanbul 1700-1800* (Berkeley, Los Angeles, London: University of California Press, 2010), pp. 103-4 and pp. 86-111 (Chp. 5). For a nineteenth century analysis of the regulationist policies of the Ottoman State in policing prostitution in İstanbul see Müge Özbek, "The Regulation of Prostitution in Beyoğlu (1875-1915)," *Middle Eastern Studies* 46, no. 4 (July 2010), pp. 555-568.

incessant state interventions into the fields of public order, security, and public health came through the codification of laws and establishment of new regular judicial bodies and policing institutions with a new emphasis on central power.

Below I will briefly give an outline of the historical setting of the nineteenth century Ottoman Empire following the Tanzimat Edict. I will first give an overview about the scholarship on Tanzimat reforms. Since this dissertation investigates rural crime and punishment from a social history perspective, and particularly the agencies of various non-elite Ottoman subjects who become visible only in their words and deeds when they stood trial at the courts, the institutional and political framework of legal reforms implemented in the nineteenth century also will be sketched in order to embed the specific themes of this study in a meaningful context.

By and large historians begin their accounts by claiming that the past under their scrutiny was a period of change and transformation. No doubt, it enables them to make a smooth introduction into their topics and provides them a legitimate foundation for their specific choices of time-span in their analysis.[46] Nineteenth century Ottoman historians, too, almost without exception have mentioned the distinguished administrative and legal reforms and changes of the period as a prelude to their studies. Accordingly, the nineteenth century was an age of large-scale transformation, an era of modernization that brought increasing centralization of state power and rationalization of the governmental techniques. The fact that the Ottoman modernization had started previously has also been mentioned by many

[46] For example, Fariba Zarinebaf, in her recent book, puts forward the significance of the eighteenth century in the history of İstanbul as an "important transitional and formative period" with regard to institutional and legal changes. See Zarinebaf, p. 2.

scholars.[47] Still, due to its long-run effects on state-society relations, though with different emphasis on the consequences or success/failure of the reforms initiated during this period, the proclamation of the Imperial Edict (the *Hatt-ı Şerif* of Gülhane) on November 3, 1839 has been regarded as a milestone that opened a "new era", the Tanzimat period (1839-1876), in the nineteenth century.[48]

The Tanzimat, for many scholars, was a project aiming to eliminate the danger of the disintegration of the Empire and to enhance state authority and power over the Ottoman territories and population.[49] Accordingly, the reforms necessary to realize this project were started to be implemented gradually. Tax reforms came to the fore to increase the state revenues, curtail the power of local intermediaries, and relieve the cultivators' burden of over taxation by employing salaried officers (*muhassıl*s) from the centre in order to transfer taxes directly to the Central Treasury.[50] The principle of equality before law for all subjects of the Empire, regardless of status and religious affiliation, aimed at integrating non-Muslim subjects into this policy while eliminating the foreign pressures about it which turned into an issue of great concern for the Ottoman state especially after the Paris Treaty. As the Serbian and Greek struggles for independence and the Crimean War had demonstrated, the Ottoman Empire needed to address these concerns. Along

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[47] See for instance, İlber Ortaylı, *İmparatorluğun En Uzun Yüzyılı* (İstanbul: İletişim Yayınları, 1999), p. 13; Roderic Davison, *Osmanlı İmparatorluğu'nda Reform, 1856-1876* (İstanbul: Agora Kitaplığı, 2005), pp. 20-25; 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. 55.

[48] Roderic Davison, for example, sees the *Tanzimat* period as "a new era in Ottoman efforts at reform and westernization" with special emphasis on Muslim-Christian equality pronounced by the *Tanzimat* Edict. See "Turkish Attitudes Concerning Christian-Muslim Equality in the Nineteenth Century," *The American Historical Review* 59, no. 4 (1954), pp. 846-47.

[49] See for example, Ortaylı, pp. 90, 94.

[50] Stanford J. Shaw, "The Nineteenth Century Ottoman Tax Reforms and Revenue System," *International Journal of Middle East Studies* 6, no. 4 (October 1975), pp. 421-423.

with the principle of equality, the security of life, honour, and property of the Empire's subjects would be maintained by new laws that were promised initially by the Tanzimat and later by the Imperial Script of 1856 (*Islahat Fermanı*).[51]

The first judicial reform had been introduced with the establishment of Supreme Council of Judicial Ordinances (*Meclis-i Vâlâ-yı Ahkâm-ı Adliye*, henceforth the Supreme Council) on March 1838 in the reign of Mahmud II. After the proclamation of the *Hatt-ı Şerif*, it was declared as the principle legislative organ which, then, exercised a judicial function as well, "acting as a special administrative court of first instance for trials of important political and administrative leaders accused of violating the laws of the Empire, and also as a final court of appeal for criminal cases originally decided by the provincial councils under the Tanzimat criminal code." According to the *Hatt-ı Şerif*, the Supreme Council would be

[51] Of course, it is a different matter toconsider to what extent these promises became a reality. Several scholars have underlined the failure of the Empire to institutionalize the reforms and to solve the problem of ethnic and religious disintegration. Roderic Davison, for example, has argued that the reform period advanced the status of non-Muslims only in a slow and piecemeal fashion and did not lead to genuine equality. See Davison, "Turkish Attitudes," p. 848. Similarly, Halil İnalcık emphasizes the difficulties of establishing a new order, stating that "the reforms introduced on paper, in most cases, resulted in the continuation of old customs under new names." See Halil İnalcık, "Applications of the Tanzimat and Its Social Effects," *Archivum Ottomanicum*, no.5 (1973), p. 107. Most importantly, the reactions of the Ottoman Muslims to the reform acts, especially after the promulgation of the Imperial Rescript of 1856, with its emphasis on the equality of Muslims and non-Muslims, were not very positive. Ahmet Cevdet Paşa aptly noted the psychological mood and reaction of the Muslim population: according to the Muslim community, the Imperial Rescript disrupted the balance among the *millet*s. Since they lost their superior position as a ruling *millet* vis à vis non-Muslims, it was a "day of mourning and despair for the Muslims. See Ahmed Cevdet Paşa, *Tezâkir 1-12* (Ankara: Türk Tarih Kurumu Basımevi, 1991), pp. 67-68. Mustafa Reşid Paşa, known as the "father of the Tanzimat" and the Grand Vizier in 1856, also was critical of the reform edict, as it would change the imperial customs which had prevailed for six hundred years in the Ottoman lands. He declared that these reforms could potentially trigger violent conflicts between Muslims and non-Muslims. For the memorandum of Mustafa Reşid Paşa, see ibid., pp. 76-82. For an analysis of the reactions to and perceptions of the Tanzimat reforms by the Muslim population in İstanbul, see Cengiz Kırlı, "Balkan Nationalisms and the Ottoman Empire: Views from Istanbul Streets," in *Ottoman Rule and the Balkans, 1760-1850: Conflict, Transformation, Adaptation*, eds., A. Anastasopoulos and E. Kolovos (Rethymno, 2007), pp. 253-255; and idem., Sultan ve Kamuoyu. *Osmanlı Modernleşme Sürecinde 'Havadis Jurnalleri' (1840-1844)* (İstanbul: İş Bankası Kültür Yayınları, 2009).

responsible for preparing necessary legislations in order to carry out the legal reforms.[52]

The first Ottoman Penal Code was promulgated on May 3, 1840 (1 Rebi'ülevvel 1256) as promised in the reform text. Probably, the most significant aspect of the 1840 Ottoman Penal Code was its emphasis on the principle of equality. It was a direct message to the bureaucracy, who challenged the state's authority, as it stated in the very first article that "a vizier and a shepherd are equal before the law."[53] That the criminal law clearly imposed the Sultan's absolute right and control over the judicial function by forbidding the execution of capital sentences without the Sultan's authorization (*fermân*) was another important aspect of the law.[54] It was again a warning, this time, to provincial rulers who might attempt to challenge the Sultan's authority by executing justice autonomously. In this way, the Sultan reclaimed his will and right to punish, kill or pardon which had long been features peculiar to the sovereign power. As Ruth Miller claims, "political centralization was a major priority of the new criminal law system" and the aim of the central state was to tighten control over the provincial administration and narrow

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[52] See 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), pp. 54-63. Also see Mehmet Seyitdanlıoğlu, "Tanzimat Döneminde Yüksek Yargı ve Meclis-i Vâlâ-yı Ahkâm-ı Adliye (1838-1876)," in *Adalet Kitabı,* eds., B. Arı and S. Aslantaş (Ankara: Adalet Bakanlığı Yayınları, 2007), pp. 207-220. The legislative function of the Supreme Council was taken over by the High Council of the Tanzimat (*Meclis-i Âli-i Tanzimat*) in 1854. See Stanford J. Shaw, "The Central Legislative Councils", p. 64. As being the first attempt of establishing a high court with a responsibility outside the jurisdiction of the shari'a, the Supreme Council can also be regarded as a starting point that paved the way for the emergence of the *nizamiye* courts. See Avi Rubin, "Ottoman Modernity: The *Nizamiye* Courts in the Late Nineteenth Century" (Ph.D. diss., Harvard University, 2006), p. 43.

[53] Ahmed Lütfi, *Osmanlı Adalet Düzeni-Mir'ât-ı Adalet yahut Tarihçe-i Adliye-i Devlet-i Aliyye (1887)* (İstanbul: Marifet Yayınları, 1997), p. 116. "*Bu itibarla Devlet-i Aliyye memurlarından veya sair eşhâstan hiçbir kimse diğer bir kimsenin canına kast edemeyeceğinden, bir vezir ile bir çobanın adalet önünde farkı yoktur. Kasten adam öldürme fiili bir vezir tarafından da işlense şer'î kısas uygulanır.*"

[54] Tahir Taner, "Tanzimat Devrinde Ceza Hukuku," in *Tanzimat I* (Maarif Vekaleti, 1940), p. 227.

the activities and jurisdictions of the local elites, especially with regard to violent crime.[55]

The 1840 Ottoman Penal Code was followed by a new penal code that was enacted on July 14, 1851 (15 Ramazan 1267). The new code, in fact, was not "new" but just more comprehensive than the former. It was also more detailed about the concept of criminality so that it defined three categories with regard to crimes committed against lives and individual security, against honour and dignity, and against property.[56] Nevertheless neither penal codes was not exhaustive in the sense that they did not mention many crimes committed against the individual, such as defamation, arson, or sexual offences, nor did they specify any detailed regulations about the criminal procedures. As Gabriel Baer states, the primary object of these codes were, like the old Ottoman *kanûnnâme*s, to protect people against the tyranny of the officials and oppression (*zulüm*) and safeguard public order rather than to protect the rights of the individual.[57] The obscurity remained in defining crimes against individuals, and prescribing punishments also led the courts to give lenient sentences for those undefined crimes like premeditated murder.[58]

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[55] Ruth A. Miller, "From Fıkh to Fascism: The Turkish Republican Adoption of Mussolini's Criminal Code in the Context of Late Ottoman Legal Reform" (Ph.D. diss., Princeton University, 2003), pp. 46-50. Also see Cengiz Kırlı, *Sultan ve Kamuoyu*, p. 73.

[56] Ibid., p. 11. Miller also sees a drastic change between the 1840 and 1851 Ottoman Penal Codes with regard to the philosophy of criminal law. She states that the emphasis on equality and the so-called quasi-liberal ideas in the former diminished with the enactment of the latter by leaving its place to "the will of the Sultan". Further, she sees rising elements of authoritarianism in the latter, claiming that the 1851 Ottoman Penal Code should be viewed as the "beginning of a textual incorporation of şer'î thought into the Tanzimat legal framework." See ibid., 68-92.

[57] Gabriel Baer, "The Transition from Traditional to Western Criminal Law in Turkey and Egypt," *Studia Islamica*, no. 45 (1977), pp. 142-145.

[58] See Appendix A.

The 1858 Ottoman Penal Code, which was inspired by and adopted or translated in an altered form from the French Napoleonic criminal code of 1810[59] and promulgated on August 9 (28 Zilhicce 1274) under Sultan Abdülmecid, signified a rupture from its precursors, but simultaneously a continuity. It was a rupture in the sense that the punishment reserved for crimes against individuals became much more severe. Before 1858, for example, a person who committed homicide had received a sentence of five or six years at most while s/he got either ten to fifteen years imprisonment/hard labour or a death sentence afterward. Likewise, when an adulterous wife had been killed by her husband after being caught with another man *flagrante delicto* before 1858, the husband had not been given a guilty verdict as the previous penal codes had been silent about sexual and honour crimes except for abduction. The murderer had stood trial only before the şer'î law as the sole ground of justice for cases of adultery. The new penal code, on the other hand, criminalized this act.[60] In poisoning cases, too, the 1858 Ottoman Penal Code marked a threshold since it defined poison murder, for the first time, as premeditated murder. The various degrees of criminal offences were distinguished again for the first time as felony (*cinayet*), misdemeanour (*cünha*), and contravention (*kabahat*) with the 1858 Ottoman Penal Code. While şer'î concepts and prescriptions had dominated the 1840 and 1851 Ottoman Penal Codes these concepts were incorporated into a more "secular" framework in the new code. Yet, as Miller mentions;

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[59] For a detailed analysis and comparison of the 1858 Ottoman Penal Code and French Penal Code of 1810 see Miller, pp. 92-100.

[60] See Article 188 of the 1858 Ottoman Penal Code in *Fihrist-i Kanûnnâme-i Cezâ*, p. 44. Yet, the 1858 Ottoman Penal Code preserved the principles of Islamic law by showing tolerance to crimes committed in the defense of honour by giving lenient sentences. The honour defence was accepted as a legal excuse (*ma'zuriyet*) that attenuated the guilt but did not exempt the perpetrator from liability.

> …*şeriat*, again, was not in any way ignored in the new code… Instead, the precedence of *şeriat* and its position within the secular ideological framework is invoked specifically on numerous occasions… the primary goal of the Ottoman criminal law reform did not drastically change. Throughout this period, in fact, *şer'î* ideology continued to be incorporated into the new system.[61]

These new legislations after the Tanzimat marked the history of social and legal transformations throughout the nineteenth century. Historians of the Ottoman Empire indeed owe much of their raw data to these developments in the legal arena. Yet, the studies on the Tanzimat period remain confined to diplomatic and institutional history and historians of the Tanzimat period still have not used the opportunity to exploit these data to its full extent. Indeed, the modernization paradigm and an institutional approach to history have shaped the contours and concerns of much of the work done about nineteenth century Ottoman history.[62] Accordingly, society is conceived of as a static and homogeneous realm, ready to receive state-imposed sanctions, codes, and order from above. Denying any agency and role to individual subjects in shaping their environment, and ignoring the dynamics of resistance, confrontation, and negotiation embedded in power relations, many scholars writing within the framework of these approaches construct a top-down narrative and unavoidably glorify state power. Though produced by prominent historians that absolutely paved the way for later research, they focus mainly on the institutional and administrative changes brought by the reforms as a result of a state-centred approach.[63] Under the sway of this approach, most of the scholarship

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[61] Ibid., p. 99. Also see Ahmet Gökcen, "Tanzimat Dönemi Osmanlı Ceza Kanunları ve Bu Kanunlardaki Ceza Müeyyideleri" (M.A. thesis, İstanbul Üniversitesi, 1987), pp. 38-39.

[62] For a criticism of the modernization paradigm in general and its effects on Hamidian historiography, see Nadir Özbek, "Modernite, Tarih ve İdeoloji: II. Abdülhamid Dönemi Tarihçiliği Üzerine bir Değerlendirme," *Türkiye Araştırmaları Literatür Dergisi* 2, no. 1 (2004), pp. 71-90.

[63] Stanford J. Shaw, for instance, studied the successive implementation of central legislative councils in İstanbul and their internal organization and operations. See "The Central Legislative

configures state and society as two separate entities and, as a result, views the survival of local power holders and patronage relations in the provinces, even after the vigorous state efforts for centralisation, as a failure of the Tanzimat. Yonca Köksal criticizes this perspective for it constantly reproduces a discourse around the dichotomy of the failure or success of the reforms, disregarding the regional/provincial differences and state-society relations as significant factors in this narrative.[64]

No doubt, there are also many exceptions in Ottoman studies which go far beyond the perspective criticized above. In this regard, the popular attitudes to the reforms came under close scrutiny and have constituted an important niche among the bulk of work on Tanzimat studies. Many revisionist studies attempt to understand how these reforms planned in the centre were implemented in the countryside and how they were responded to and resisted by the local people. As claimed by Donald Quataert, "protest was an unexceptional part of everyday Ottoman life" in the nineteenth century. For various reasons from droughts, famines, and commodification of agriculture to the flow of refugees into the Ottoman lands and the state policy of centralization, he states, rural unrest became widespread and violent on certain occasions.

Councils", pp. 51-84. Musa Çadırcı, Mehmet Seyitdanlıoğlu, and İlber Ortaylı examined the transformations in the administrative structure by focusing on the establishment of local councils and municipalities in the provinces. See Musa Çadırcı, *Tanzimat Sürecinde Türkiye* (Ankara: İmge Yayınları, 2007); Mehmet Seyitdanlıoğlu, *Tanzimat Döneminde Modern Belediyeciliğin Doğuşu: Yerel Yönetim Metinleri* (İstanbul: Türkiye İş Bankası Kültür Yayınları, 2010); and İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahallî İdareleri (1840-1880)* (Ankara: Türk Tarih Kurumu, 2000).

[64] Yonca Köksal, "Local Intermediaries and Ottoman State Centralization: A Comparison of the Tanzimat Reforms in the Provinces of Ankara and Edirne (1839-1876)" (Ph.D. diss., Columbia University, 2002), pp. 6-10; "Imperial Center and Local Groups: Tanzimat Reforms in the Provinces of Edirne and Ankara," *New Perspectives on Turkey*, no. 27 (Fall 2002), pp. 107-138; "Tanzimat ve Tarih Yazımı," *Doğu Batı*, no. 51 (Kasım-Aralık-Ocak 2009-10), pp. 198-200.

Protests took very different forms from peasant avoidance and social banditry to open insurrections against the state and intersectarian violence, and yet have escaped the attention of scholars for a long time.[65] Like Quataert, many scholars argue that the tension and resistance in the Ottoman countryside was the impact of the new tax regime and the land law of 1858. The initiators of these revolts against the Tanzimat were mainly the local notables whose material interests had been damaged by the reforms. The conflicting interests in the implementation of new taxes were accompanied by the lack of adequate control by the central government which could not remove the old ways of levying taxes on the population while, at the same time, introducing new methods of extraction. The faulty assessment in determining the tax and the techniques used to identify land and property such as cadastral surveys and statistics further exacerbated the problem. The discrepancy between the intentions and the outcomes, the expectations of the local people from the reforms and the way these reforms were administered in the provinces was huge and that is why the Tanzimat, unexpectedly, created a great amount of tension and caused local disturbances.[66]

Along with these studies and to a certain degree parallel to them, another niche in Ottoman history has been created with the contributions of scholars who

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[65] Donald Quataert, "Rural Unrest in the Ottoman Empire 1830-1914," in *Peasants and Politics in the Modern Middle East*, eds., F. Kazemi and J. Waterburry (Miami: Florida Int. University Press, 1991), pp. 38-49.

[66] See Halil İnalcık, "Tanzimat'ın Uygulanması ve Sosyal Tepkiler," *Belleten* 27 (1964), pp. 382-83; Mark Pinson, "Ottoman Bulgaria in the First Tanzimat Period –The Revolts in Nish (1841) and Vidin (1850)," *Middle Eastern Studies* 11, no. 2 (May 1975), p. 105; Huri İslamoğlu, "Politics of Administering Property: Law and Statistics in the Nineteenth-century Ottoman Empire," in *Constituting Property in the East and West,* ed., Huri İslamoğlu (London: I.B.Tauris, 2004), pp. 293-308; Ahmet Uzun, *Tanzimat ve Sosyal Direnişler* (İstanbul: Eren Yayınları, 2002), pp. 9-14. For the unrests triggered by the quarantine programs in the provinces, see Nuran Yıldırım, "Osmanlı Coğrafyasında Karantina Uygulamalarına İsyanlar: Karantina İstemezük!," *Toplumsal Tarih*, no. 150 (2006), pp. 18-27. Musa Çadırcı also examines briefly the application of the Tanzimat in the countryside. See Musa Çadırcı, "Tanzimat Döneminde Türkiye'de Yönetim," in *Tanzimat Sürecinde Türkiye*, pp. 187-99.

study the changes brought by the reforms from a local perspective, with a special emphasis on the Ottoman provinces as their unit of analysis. As Iris Agmon writes, "only recently have historians tackled the challenge of reconstructing Ottoman reform as experienced in certain provinces by studying various contributions by provincial figures and social groups and the ways in which local realities and aspirations shaped the transformations."[67] She suggests an "integrative perspective" which would ignore neither the view of the provinces nor the Ottoman centre and thus would reveal a "more pluralistic and dynamic picture" of Ottoman history.[68]

These provincial studies have come to constitute a particular place in the studies of the Tanzimat period. Elizabeth Thompson, for instance, focused on the Damascus advisory council and examined the local agents' interaction with the central state.[69] Yonca Köksal, in her dissertation, compared Edirne and Ankara provinces, and underlined the varying outcomes of the reforms implemented in these provinces. Delineating the impact of the local socio-economic dynamics, the positions of the local intermediaries, their coalitions among themselves and negotiations with the central state, she put forward the local power structure as a significant determinant in understanding the impact of the reforms.[70]

Provincial histories obviously have contributed extensively to a "more pluralist" approach to the Ottoman Empire by showing how the central state was only one of the agents in this large process of reform and absolutely required the

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[67] Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (New York: Syracuse University Press, 2006), p. 10.

[68] Ibid., p. 49.

[69] Elizabeth Thompson, "Ottoman Political Reform in the Provinces: The Damascus Advisory Council in 1844-45," *International Journal of Middle Eastern Studies* 25, no. 3 (August 1993), pp. 457-475.

[70] Yonca Köksal, "Local Intermediaries and Ottoman State Centralization".

other actors' cooperation, negotiation, and compliance in establishing this project. Yet, they mostly rested on an institutional perspective and were concerned with the local elites and/or local administrative and legal councils as historical agents. Broadly speaking, the way ordinary people experienced these transformations that had immediate effects on their lives and the way their reactions or resistance to these changes produced "the reality of everyday life"[71] has remained as an understudied aspect until recently.

This trend has been reversed in recent years to a certain extent. The growing attention to culture and anthropology and the recent interest in social history since the 1990s have changed both the perspectives of Ottoman historians and the subjects they have chosen to study. As highlighted by some scholars, the last decade has witnessed an increased interest in studies on law and justice, crime and punishment, surveillance and policing practices, and so forth by young students of Ottoman history. Most of these studies have been conducted within the cultural and social history approaches. This new interest also has changed the questions raised about the Ottoman past, which is why the focus of attention has shifted from the state and its institutions towards the historical agents that had been rarely studied before.[72] It has brought about more sophisticated approaches and methods borrowed from

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[71] As Ian Burkitt says, "the production of daily reality does not occur somewhere beyond our reach in, say, the 'higher' echelons of the state, and is then imposed upon us. Rather, the reality of daily life –the sum total of all our relations- is built on the ground, in daily activities and transactions." See "The Time and Space of Everyday Life," *Cultural Studies* 18, no. 2/3 (March/May 2004), p. 212.

[72] Nadir Özbek, "Tarihyazıcılığında Güvenlik Kurum ve Pratiklerine İlişkin Bir Değerlendirme," in *Jandarma ve Polis: Fransız ve Osmanlı Tarihçiliğine Çapraz Bakışlar*, eds., N. Levy, N. Özbek and A. Toumarkine (İstanbul: Tarih Vakfı Yurt Yayınları, 2009), pp. 1-3; Özgür Sevgi Göral, "19. Yüzyıl İstanbul'unda Suç, Toplumsal Kontrol ve Hapishaneler Üzerine Çalışmak," in *Osmanlı'da Asayiş, Suç ve Ceza,* eds., N. Lévy and A. Toumarkine (İstanbul: Tarih Vakfı Yurt Yayınları, 2008), pp. 18-19; Gülçin Tunalı Koç, "'Sözüm bu iki Gözüm el-vefâ ve tam vefâ': Müneccim Sadullah el-Ankaravî'nin Kaleminden 19. Yüzyıl Ankara'sında Hizmetkârlar," *Tarih ve Toplum*, no. 5 (Bahar 2007), pp. 41-42.

literary, cultural, and anthropological studies in dealing with the archival material and inevitably, contributed to the fragmentation of topics chosen for study.

Court Registers as a Source for History Writing

In this process, parallel to the general historiographical trends in the world, judicial records have come to be regarded as a valuable source for historical investigation in studying not only the institutions of justice, but also to gain insight into the ordinary people's lives. New studies on social and cultural history have utilized court registers profoundly and deconstructed the narrative and discourse embedded in them in order to construct a new memory about various aspects of social and political life that had hitherto been understudied. In doing so, they have tried to resuscitate the lost voices and experiences of the marginal groups and individuals that have long been neglected.[73]

Since the 1970s, early modern history of the Ottoman Empire has been studied from this perspective, to a great extent, by making use of şer'î court registers. From economic and social history to local politics and urban history, these registers brought forth new areas and topics for scholarly attention.[74] The most

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[73] For genuine examples of this wide literature in the world, see Clive Emsley and Louis A Knafla, eds., *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice in Modern History* (Westport, Connecticut, London: Greenwood Press, 1996); Edward Muir and Guido Ruggiero, eds., *History from Crime* (Baltimore, London: The Johns Hopkins University Press, 1994); and Margaret L. Arnot and Cornelie Usborne, eds., *Gender and Crime in Modern Europe* (London: UCL Press, 1999).

[74] Beshara Doumani, for example, studied the social history of Jabal Nablus (Palestine) by drawing heavily on local sources. By focusing on peasants and merchants, she attempted to highlight the cultural life and the urban-rural relations along with the political-economy of the region. See Beshara Doumani, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700-1900* (Berkeley, Los Angeles, London: University of California Press, 1995). Iris Agmon studied the court registers of Haifa and Jaffa in the nineteenth century. She analyzed the discoursive construction of family and gender in the legal arena. See Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (New York: Syracuse University Press, 2006). Boğaç Ergene examined the

significant contributions have come particularly from female scholars in the area of gender studies. As Ze'evi suggests, "the history of Ottoman women has been thoroughly revised, based to a large extent on material found in the *sijills*."[75] In this respect, şer'î court records reveal much with regard to women's roles in matters such as property relations, inheritance issues, marriage, and divorce.[76] Drawing on şer'î registers, many studies demonstrate the position of Ottoman women vis-à-vis the şer'î law and indeed give us insights into the everyday conflicts in which those women were involved.[77]

Although şer'î court records have been utilized substantially to study the early modern Ottoman history, nizamiye court records have not received considerable scholarly attention until the last two decades. Some scholars have examined in detail the establishment and organizational structure of the nizamiye

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judicial and administrative operations of Çankırı and Kastamonu şer'î courts in the eighteenth century and showed the judicial strategies the litigants used at the courts to show the local communities' perceptions of law and the courts. See Ergene.

[75] Dror Ze'evi, "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5, no. 1 (1998), p. 36.

[76] See, for example, Madeline C. Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden: Brill, 1997); Ronald C. Jennings, "Divorce in the Ottoman Sharia Court of Cyprus, 1580-1640," *Studia Islamica*, no. 78 (1993), pp. 155-167; Beshara Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to1860," *Society for Comparative Study of Society and History* (1998), pp. 3-41.

[77] What should be stressed here perhaps is that most of these studies, with few exceptions, have been interested in either with the Ottoman Arabic-speaking population or Ottoman Balkans. See for example Amira El Azhary Sonbol, ed., *Women, the Family, and Divorce Laws in Islamic History* (New York: Syracuse University Press, 1996); *Beyond the Exotic: Women's Histories in Islamic Societies* (New York: Syracuse University Press, 2005); Amila Buturovic and Irvin Cemil Schick, eds., *Women in the Ottoman Balkans* (London, New York: I.B.Tauris, 2007). Leslie Peirce's "Morality Tales" should be mentioned as an exception. In her book, she conducts a microhistorical analysis by focusing on the Ayntab şer'î court registers. With a special emphasis on gender, she analyzed how local community in Ayntab appealed to justice and what kind of strategies local people devised in the court to use the law for their own benefits. See Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003). Başak Tuğ, in her dissertation, studied eighteenth century Ankara and Bursa şer'î court records to explore the socio-legal history of sexuality, subjectivity, and gender by focusing on local power relations and institutional and discursive practices in the legal arena. See 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).

courts.[78] Miller has studied the content of the new nizamî penal codes introduced after the Tanzimat and demonstrated the extent to which the incorporation of şer'î doctrine and personnel into the new legal system served for the centralization project of the Tanzimat state and then gradually led to the emergence of authoritarian elements. These studies have unquestionably enriched our knowledge about the nizamiye legal system and this dissertation also has taken advantage of their contributions extensively. Yet it should be noted that they reflect much the pitfalls of the state-centred and institutional perspective.

Some other recent studies, however, have utilized the nizamiye court records more extensively in a fashion inspired by anthropological studies. For example, Milen V. Petrov, in his dissertation, demonstrates how ordinary people "proved quite skilful in playing the new judicial game."[79] By utilizing interrogation reports and employing an interpretive approach, he shows the extent to which litigants managed to use the new legal procedures, negotiated with state power, and employed discursive strategies to manipulate law to their advantage.[80] Avi Rubin, in his dissertation focusing on the Abdülhamid period, discusses several issues related

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[78] See, for example, Sedat Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu: Nizâmiyye Mahkemeleri'nin Kuruluşu ve İşleyişi 1840-1876* (Eskişehir: Anadolu Üniversitesi Yayınları, 2004). Fatmagül Demirel also examined the operations and structure of another *nizamî* institution, the Ministry of Justice. See *Adliye Nezareti Kuruluşu ve Faaliyetleri (1876-1914)* (İstanbul: Boğaziçi Üniversitesi Yayınları, 2007).

[79] Petrov, "Tanzimat for the Countryside," p. 286.

[80] See Milen V. Petrov, "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868," *Comparative Studies in Society and History*, no. 46 (2004), pp. 730-759. Avi Rubin criticizes Petrov for being sticked to criminal cases and ignoring the civil domains of the legal system. According to Rubin, "the criminal setting presents one of the most dramatic encounters conceivable between the state and its subjects within an unmistaken matrix of power relations." Therefore, he maintains, this extreme setting cannot entirely reveal the actual meaning of resistance or compliance. See Avi Rubin, "Legal Borrowing and its Impact on Ottoman Legal Culture in the Late Nineteenth Century," *Continuity and Change* 22, no. 2 (2007), pp. 292-93. However, I find his critique unwarranted since Petrov himself puts forward the interpretive problems posed by the nizamiye court records as historical sources and shows his awareness about the "pitfalls in trying to reconstruct a social reality from documents which often distort the picture in favor of the extraordinary." See ibid., p. 735.

to the judicial procedure, from nizamiye legal culture to court proceedings, mainly by elaborating lawsuits published in *Ceride-i Mehakim*. He also investigates the responses of litigants to the new nizamiye judicial system and utilized interrogation reports in order to examine individual manoeuvres.[81] Ehud Toledano in his study on slavery in the nineteenth century Ottoman Empire highlights the value of court records in constructing the social and cultural history of enslavement. Emphasizing the significance of recovering the personal stories of slaves and resuscitating their voices, he suggests adopting a "more flexible approach" in interpreting source material and invites historians to use their imaginations while recovering past human experience.[82]

These studies utilize hermeneutic approaches in exploring the individual stories of ordinary people who appealed to courts in pursuing their own agendas as plaintiffs, defendants, and witnesses. The interrogation reports, which can sometimes be found attached to the memorandums (*mazbata*) of the nizamiye court records, has provided them the means to recover the lost voices of ordinary people, mostly illiterate, and construct their experience within the social and cultural milieu surrounding them.[83] In contrast to the limitations of şer'î registers as a source that is

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[81] Rubin, "Ottoman Modernity," especially Chapter V.

[82] Ehud R. Toledano, *As If Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven and London: Yale University Press, 2007), pp. 34-38, 55. In spite of his stress on the necessity to make source material "speak for the silent men and women", Toledano does not exploit the *nizamiy*e court records and interrogation reports to the full extent. For some other works that utilize interrogation reports extensively see Burak Onaran, "Kuleli Vakası Hakkında 'Başka' bir Araştırma," *Tarih ve Toplum*, no. 5 (2007), pp. 9-39 and Y. Hakan Erdem, "Magic, Theft, and Arson: The Life and Death of an Enslaved African Woman in Ottoman İzmit," in *Race and Slavery in the Middle East*, eds., Terence Walz and Kenneth M. Cuno (Cairo and New York: The American University in Cairo Press, 2010), pp. 125-146; Ebru Aykut, "Osmanlı'da Zehir Satışının Denetimi ve Kocasını Zehirleyen Kadınlar," *Toplumsal Tarih*, no. 194 (Şubat 2010), pp. 58-64. I should thank Seçil Yılmaz for providing me the article by Hakan Erdem as soon as it was published.

[83] *Irade* collections (particularly İ.MVL and İ.DA) usually include interrogation reports. They are sometimes available also from the *Meclis-i Vâlâ* records which do not include the final verdics (*irade*), *Sadaret* (Grand Vizierate) records and *Zabtiye* (Police Department) catalogues. However, I

highly formulaic and lack direct quotations from the interrogations,[84] nizamiye court records indeed have proved more fruitful in accessing the worldview articulated by illiterate peasants, women, slaves, artisans, and other various "marginal" actors. Petrov emphasizes the usefulness of these court records in providing "the kind of raw 'social history' data." While şer'î registers contain only the summaries of the court cases, he states, the interrogation reports reveal the "verbatim accounts of what was said during the investigative process. As such, these documents contain the first-person narratives of bona fide non-elite actors, which have proven so elusive in other types of Ottoman sources, including *sicil* [şer'î] records."[85]

In spite of their quality mentioned above, it should be born in mind that nizamiye court records, like any other historical sources, do not provide an unbiased, transparent reflection of reality. Natalie Zemon Davis notes the "literary/fictional qualities" of legal texts, by which she means "the extent to which

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have no definite explanation for the absence of these reports in many *irade* catalogues and the presence of them in some others. It presumably must be related with the classification system of the Prime Ministry Ottoman Archives. It also should be noted that court records do not always include all pieces of interrogation reports. Sometimes, we can find only the interrogations conducted in the lower-level courts, but not in the upper-courts, or sometimes vice versa. We know that the litigants were interrogated at all levels of courts and the reports were referred to the higher courts from the lower ones. But it seems that only some of them were preserved in the files. A standard file from İ.MVL collection usually contains sub-district, district, and provincial memorandums (*mazbata*s), *tahrîrât*s (official notes) from the district and provincial governors, interrogation reports, şer'î writ (*i'lâm*), memorandum of the Supreme Council and the Sultanic approval (*irade*).

[84] Iris Agmon, for example, calls attention to the nature of source material available for historians studying the Middle East and claims that the legal sources which have been used extensively for writing European medieval history, "provide too 'thin' a description for this kind of historical analysis [history from below] in the case of the Middle East." See Agmon, *Family and Court*, p. 33. Dror Ze'evi, though accepts şer'î registers as the best source for writing microhistory, notes the deficiencies of these sources which usually do not contain any information about the motivation and background of any event in question. See Ze'evi, p. 48. For some other works that mention the deficiencies of şer'î court registers see Fatima Zohra Guechi, "Mahkama Records as a Source for Women's History," in *Beyond the Exotic. Women's Histories in Islamic Societies*, ed., Amira El-Azhary Sonbol (Cairo: The American University in Cairo Press, 2006), pp. 152-161; Zarinebaf, pp. 5-7.

[85] Petrov, "Tanzimat for the Countryside," p. 267.

their authors shape the events of a crime into a story."[86] In addition to their literary/fictional quality, judicial sources also operate within a power relationship in which the litigants and the interrogators did not have an equal stand and the former's position and answers were mediated through the latter. In this respect, the depositions given before the court in the direction of the questions asked by the interrogators may reflect a "distorted" picture of what actually happened.[87]

Nonetheless, nizamiye court records can be regarded as a distinguished source that allows us to access the least mediated and the most direct voice of the illiterate, ordinary Ottoman subjects and their agency. This dissertation also draws largely on the nizamiye court records as a main source to investigate specific forms of crimes committed by the non-elite subjects in the Ottoman countryside. It aims to make agency visible that comes to the fore not necessarily at the moments of resistance or political tension, but in everyday conflicts as experienced by the ordinary people.

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[86] Natalie Zemon Davis, *Fiction in the Archives. Pardon Tales and Their Tellers in Sixteenth Century France* (Stanford, California: Stanford University Press, 1987), p. 2.

[87] Tommaso Astarita, *Village Justice. Community, Family, and Popular Culture in Early Modern Italy* (Balimore and London: The Johns Hopkins University Press, 1999), p. xviii. These problems posed by the textual analysis of the court records as a historical source are mentioned by many other scholars as well. See, for example, David Warren Sabean, *Power in the Blood* (Cambridge: Cambridge University Press, 1984), p. 2 and Amy Singer, Christoph K. Neumann and Selçuk Akşin Somel, "Introduction: Re-sounding Silent Voices," in *Untold Histories of the Middle East: Recovering Voices from the 19th and 20th Centuries*, eds., A. Singer, C. K. Neumann and S. A. Somel (London and New York: Routledge, 2011), p. 2.

The Nizamiye Courts:[88] An Institutional Context

As indicated earlier, the establishment of the central legislative council -*Meclis-i Vâlâ*- in İstanbul and the proclamation of subsequent criminal codes marked the first instances of a reform period in the judicial system. The pillars of these judicial innovations in the countryside were the new councils invested with fiscal and administrative responsibilities besides judicial authority. In this process, upper councils (*muhassıl meclisleri*) were established in provincial centers (*eyalet merkezleri*) by tax collectors (*muhassıls*) appointed from İstanbul to implement the programme of fiscal centralization.[89] In places where a tax collector was not appointed, lower councils (*küçük meclisler*) would be established. They would be responsible for collecting taxes and executing justice according to the 1840 Ottoman Penal Code.[90] When the new tax collection system was abolished in 1841, these

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[88] Nizamiye court is translated to English as "secular court." However, according to Ruth Miller, this translation is inaccurate due to the definition of the word "secular." She claims that the new laws and courts do not signify a rupture from the old penal system which relies on Islamic courts and ulema; on the contrary, the old system was incorporated into the newly established system. Therefore, she rejects the use of this term and suggests the word "regular" instead. See Miller, p. 45. Agmon, on the other hand, claims that the nizamiye courts are often called "civil courts." She also finds it inaccurate for two reasons. First is that the new court system was not only responsible for civil matters, but all legal fields except for the family law which fell under the jurisdiction of the şer'î courts. Second, there was no distinction between civil and public law in the legal culture of the Ottoman Empire. That is why she prefers to call these courts either "the nizamiye" or "the reformed system." See Iris Agmon, "Recording Procedures and Legal Culture in the Late Ottoman Shari'a Court of Jaffa, 1865-1890," *Islamic Law and Society* 11, no. 3 (2004), pp. 333-34. Avi Rubin's word of choice is also "regular." He finds the secular/religious divide anachronistic and teleological since this kind of distinction implicitly acknowledges the European history as the standard according to which other histories should be evaluated. See Rubin, "Ottoman Modernity", p. 15. Throughout this dissertation, I will use the term "the *nizamiye* courts" as it appeared in Ottoman Turkish.

[89] According to İlber Ortaylı, these councils were the first examples of the local administrative bodies which paved the way for the later developments that came after the Provincial Reform Law of 1864. See İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahallî İdareleri,* p. 33. According to Carter V. Findley, they can be viewed "as a new step toward political participation by the local populace". See Carter V. Findley, "The Evolution of the System of Provincial Administration as Viewed from the Center," in *Palestine in the Late Ottoman Period*, ed., David Kushner (Jerusalem: Yad Izhak Ben-Zvi Press, 1986), p. 6.

[90] Article 4 of the 1840 Ottoman Penal Code stated that the murder cases committed in the provinces would be heard by the *Meşveret Meclisi* (Advisory Council) according to the şer'î law (*Öldürme olayları taşrada meydana geldiğinde, o yerin Meşveret Meclisi'nde şeriat marifetiyle yazılmış*

councils were renamed *memleket meclisi* (provincial council). Later in 1849, a new procedure was introduced with an instruction that redefined the functioning of this organ which also changed its name to e*yalet meclisi* (provincial council) or *meclis-i kebir* (great council) within which *meclis-i cinâyet* (criminal council) emerged soon as a special commission to handle criminal cases. Of course, it did not put an end to the continuous changes in the administrative and judicial structure.

Another regulation introduced in 1854 established a new court system, *meclis-i tahkik* (investigative council) in the provinces with more distinguished judicial functions.[91] Sedat Bingöl states that meclis-i tahkik was founded in order to overcome some defects of the ongoing system. The previous councils were both judicial and administrative organs and obviously it was this dual function that led to the retarded operation of the judiciary. The heavy work load of the councils was a serious obstacle before the implementation of justice extending the alleged criminals' stay in prison unnecessarily before their cases were heard at the court. Furthermore, the overburdened court system did not function appropriately, referring many cases to Dersaadet before carrying out necessary investigation or even judicial proceedings.[92] Unlike the previous councils, meclis-i tahkik had an authority to release a verdict in certain petty crimes. This supposedly would relieve the heavy burden of the judicial system. However, in serious crimes that required blood money or retaliation, it was to refer the case to the upper councils, meclis-i

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şartlara göre davası görülür). See Lütfi, *Mir'ât-ı Adalet*, p. 116. In fact, *Meşveret Meclisi* or *Meşveret Divânı* was an annual gathering council of the pre-Tanzimat period.

[91] Bingöl, pp. 57-76. Also, see İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahallî İdareleri*, pp. 32-43.

[92] Bingöl, pp. 74-75.

kebîr or meclis-i cinâyet. These councils also were not authorized to return a verdict and had to refer such cases to Dersaadet, to the scrutiny of the Supreme Council.[93]

Although it is possible to regard these early attempts of reorganisation in the countryside as the origin of the nizamiye court system, it seems that many scholars acknowledge the promulgation of the Provincial Reform Law of 1864 (*Vilayet Nizamnâmesi*) as the initial moment in this process. Since these early councils were administrative, fiscal, and judicial bodies with no precise specialization, Sedat Bingöl claims, they were different from the nizamiye courts with regard to their working systems and the composition of their members.[94] Furthermore, it was only after the enactment of the Provincial Reform Law in 1864 that a new hierarchical judicial organization separate from the şer'î courts was introduced.[95] However, it is not possible to understand why meclis-i cinâyet and meclis-i tahkik that were founded particularly with special judicial functions within a distinct hierarchy of appellate procedure cannot be considered as a ground that led to the institutionalisation of the nizamiye system. In fact, as Bingöl himself mentions, the regulations of 1849 and 1854 were explicit enough in defining the legal proceedings and procedures in a clear-cut manner, i.e. the detailed records of such proceedings as interrogations (*istintâk*), and official protocols/memorandums of the councils (*mazbata*) that would be designated during the investigation process at the courts. These procedures were quite similar to the ones followed by the later nizamiye

[93] Ibid., p. 85.

[94] Ibid., p. 49.

[95] See ibid., p. 48; Rubin, "Ottoman Modernity", p. 45; Demirel, pp. 16-17; Petrov, "*Tanzimat* for the Countryside", p. 265.

courts.[96] Additionally, not the şer'î law but the new penal codes were the official basis for the rulings and verdicts released by these councils. For that reason, the local councils established in the 1840s and 1850s can be acknowledged as the first institutions to enforce the nizamiye legal system in accordance with the Ottoman penal codes.[97]

Of course, this does not mean that the significance of the Provincial Reform Law of 1864 should be downplayed. It constituted an important landmark in the reorganisation of the local administrative councils that brought forth a strict separation of administrative and judicial functions of these councils while delegating the latter to the newly founded judicial units. The provincial law initially was implemented in the Province of Danube (*Vilayet-i Tuna*) which served as a model for this new judicial experimentation. When it proved to be successful in Tuna, then it was promulgated with a few modifications in 1867 for general application. Accordingly, the provincial administrative organization was restructured by defining new units as province (*vilayet*), district (*liva, sancak, kaymakamlık*), sub-district (*kaza, müdürlük*), and village (*kariye, köy*).

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[96] For the inventory of the new instructions that would be carried out by these councils in legal cases, see Bingöl, pp. 72-85.

[97] Indeed, it seems that there is a lot of confusion with regard to the introduction of the new nizamiye legal system in the Empire. Avi Rubin, for example, states that the establishment of the Supreme Council in 1838 "may be considered the opening shot in the process that led to the emergence of the Nizamiye courts." Then, he claims that "the first organs of what would soon become the Nizamiye court system started to appear" with the introduction of the 1858 Ottoman Penal Code. Finally, he suggests viewing this "as a process rather than an event" and argues that the promulgation of the Provincial Reform Law of 1864 should be considered "as a defining moment in the emergence of the *nizamiye* system as a whole, because it delineated a clearer judicial hierarchy with a clear division of labour between various judicial bodies." See idem., "Ottoman Modernity, pp. 43-45. Ekrem Buğra Ekinci, on the other hand, starts his examination of the nizamiye courts with the introduction of the 1840 Ottoman Penal Code and continues briefly with the establishment of provincial councils while implicitly indicating to the Provincial Reform Law of 1864 as the inital moment for the emergence of the nizamiye courts. See "Tanzimat Devri Osmanlı Mahkemeleri," *Yeni Türkiye*, no. 31 (Ocak-Şubat 2000), p. 769.

In parallel, a new schema was introduced in the judiciary by separating the administrative and judicial functions of the councils in the countryside. With respect to this, the judicial organization was divided hierarchically into a number of court systems with a clear division of labour. Hereafter, the provincial court of appeals (*divân-ı temyiz*), the district court of appeals (*meclis-i temyiz*), and the sub-district court of first instance (*deâvî meclisleri*) in the province, district, and sub-district levels respectively would be responsible for administering judicial matters specifically.[98] At the village level, on the other hand, the council of elders (*ihtiyar meclisi*) would have the authority to handle petty conflicts by amicable agreement (*sulh*). Each council was required to refer important cases to the upper councils.[99] Until 1868, the Supreme Council in İstanbul remained as the central judicial organ that reviewed cases forwarded by the provincial court of appeals. It was then replaced by the Council of Judicial Ordinances (*Divân-ı Ahkâm-ı Adliye*) and separated from the Council of State (*Şûrâ-yı Devlet*) with legislative authority.[100] Subsequent reorganizations of the nizamiye courts were made in 1869[101], 1870 and

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[98] As promised in the Reform Edict of 1856 (*Islahat Fermanı*), these judicial councils were to be representative and therefore composed of both Muslim and non-Muslim members. See Roderic Davison, *Osmanlı İmparatorluğu'nda Reform*, p. 142.

[99] Demirel, p. 17. For the transcribed text of the Tuna Provincial Reform Law see Mehmet Seyitdanlıoğlu, "Tuna Vilayeti Nizâmnâmesi," in *Tanzimat Döneminde Modern Belediyeciliğin Doğuşu*, pp. 51-67.

[100] Shaw, "The Central Legislative Councils," p. 76 and Demirel, *Adliye Nezareti*, pp. 19-20.

[101] The regulation about the internal organization of the Council of Judicial Ordinances (*Divân-ı Ahkâm-ı Adliye Nizamnâme-i Dahilisi*) promulgated in February 1869 (27 Şevval 1285) stated that the nizamiye courts were made up of four levels. The first was the sub-district courts called *deavi meclisleri*, the second was the district courts called *temyiz-i hukuk meclisleri*, the third was provincial courts called *divân-ı temyiz*, and the highest court in Dersaadet, called the Council of Judicial Ordinances, was the *Divân-ı Ahkâm-ı Adliye*. A few months later in April 1869, the Regulation on the Nizamiye Courts (*Mehakim-i Nizâmiye Nizamnâmesi*) was enacted to define the jurisdictional sphere of these courts. See Demirel, pp. 21-24.

1871, the last of which remained in force until the enactment of the law of the nizamiye judicial organization (*Teşkilat-ı Mehakim Kanûnu*) in 1879.[102]

Given the above-mentioned inventions in the legal domain during the second half of the nineteenth century, it becomes clear that both the emergence and institutionalization of the nizamiye court system did not occurred at once. It also should be noted that apart from the question of how and when the *nizamiye* courts were established, another question about the "duality" of the legal system in the Ottoman Empire occupied the agenda of the historians studying the post-Tanzimat period. Evidently, this new system neither demarcated clear lines between the nizamî and şer'î adjudication nor did it totally eliminate the latter's function and influence in the legal domain.[103] On the contrary, the new legislation existed side by side with the Islamic law. Similar to their functions as *ex officio* members in the previous local councils, şer'î judges (*nâib*s) held their prominent positions as chief judges and presided over both şer'î and the nizamiye courts with a title of *müfettiş-i hükkâm* at all levels of the local councils.[104]

In this regard, Miller argues that gradually more şer'î notions were integrated into the penal codes enacted after the Tanzimat along with the incorporation of the ulemâ into the new legal system.[105] In the scholarly literature, this outcome of the reforms leading to a "dual court system" mostly has been interpreted as a failure.

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[102] Ibid., pp. 24-33.

[103] For a similar argument on Ottoman Egypt in the nineteenth century see Khaled Fahmy, "Justice, Law and Pain in Khedival Egypt," pp. 91-92.

[104] Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies (Vol 1),* eds., Colin Imber and Keiko Kiyotaki (London and New York: I.B.Tauris, 2005), pp. 53-54. For another work on the changes introduced from 1840s onwards about the appoinment procedure of *kadı* and *naib*s (şer'î judges), their salaries, and education, see Hamiyet Sezer Feyzioğlu, *Tanzimat Döneminde Kadılık Kurumu* (İstanbul: Kitabevi Yayınları, 2010), pp. 47-101.

[105] Miller, p. 45.

However, as Agmon claims, the şer'î court system also had its share from the reform project, and şer'î courts became subject to regulation as much as the nizamiye courts. By tightening central control over the appointment of judges, their salaries, and education, the central government aimed at the subordination of the judicial system in the provinces where the şer'î courts were a part with strong local networks.[106] For that reason, instead of regarding the coexistence of these two court systems as a "duality," Agmon has described the post-Tanzimat judicial court system as "legal pluralism."[107] Similar to Agmon's argument, Rubin argues that "the double role of the *nâib*" was obviously not a failure of the Tanzimat, nor was it "due to lack of means and manpower." The nizamiye court system was a product of a judicial rationality that was inspired both by the French procedural law and its judicial formalism and the *Hanafî* law[108] that reflected the "notion of indivisible spheres" of the previous eras when the *Kanûn* had coexisted and operated alongside the Islamic law. Yet, he emphasizes that the appearance of a distinct nizamiye court system in the nineteenth century "signified the end of the centuries-old dominance of the Shari'a courts."[109]

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[106] Agmon, *Family and Court*, pp. 69-70.

[107] Iris Agmon, "Recording Procedures and Legal Cultures," pp. 348-49. For an argument of legal pluralism in the context of nineteenth century Russia, see Burbank, pp. 7-9. The existence of a multiplicity of local courts with local religious and customary practices was recognized as legitimate by the Russian Empire. For that reason, Burbank calls the imperial approach to law "legal pluralism." Criticizing the liberal ideal of a single justice and law for all citizens of Russia and the dichotomy constructed between the law and the custom, she argues that the legal system in nineteenth century Russia was inclusive of different types of local courts, with multiple regimes of justice.

[108] One of the four schools of law in Sunni Islam.

[109] Rubin, "Legal Borrowing and its Impact," pp. 296 and 279 respectively. Ze'evi also thinks similarly. He states that the nineteenth century legislations were different from the old Ottoman *kanûnnâme*s with regard to the conscious separation from the Islamic law. According to Ze'evi, the amalgamation of the Islamic law and the *Kanûn* into one single legal system had been obvious from the sixteenth century onwards and there had been no competing conceptions of law. However, he argues, there occurred a break with tradition in the nineteenth century when the 1858 Ottoman Penal Code destroyed old social boundaries between Muslims and non-Muslims, the free and the slave and introduced new divisions and themes that had not existed in şer'î law. Although Islamic law and

Given the above-mentioned discussion, I will not further these arguments on "duality" or "legal pluralism," but rather briefly draw on some archival evidence in order to show how the co-existence of these two legal domains and two separate but strongly interconnected court systems caused problems in the everyday operations of the justice system in criminal cases. These examples illuminate, on the one hand, the rigorousness of the central government in pursuing the court practices at the countryside in accordance with the new penal codes while demonstrating the so-called confusion stemming from the "legal pluralism" or dual operations of the courts on the other.

Nizamî and Şer'î Jurisdiction

In the summer of 1840, a certain Koca İslam oğlu Mustafa was killed by his wife Şerife in Çobanlar Village of Kütahya.[110] She murdered her husband as he slept by hitting him on the head with a sledge that was used for washing clothes which caused his death two minutes after the blow. Şerife confessed her crime before the sub-district council of Eğrigöz, which was the initial administrative and judicial authority responsible for investigating criminal cases in its purview. Although the heirs of the victim demanded retaliation first, they gave up soon and requested Şerife be removed from their village, along with the payment of a certain amount of blood money (*diyet*). Expulsion as such was a penalty widely inflicted on those "notorious criminals and harlots, whom their neighbours in a town or village reject

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Kanûn continued to exist side by side in the nineteenth century, they "were now rivals vying for authority and power". See Dror Ze'evi, "Changes in Legal-Sexual Discourses: Sex Crimes in the Ottoman Empire," *Continuity and Change* 16, no. 2 (2001), pp. 235-40.

[110] BOA., İ.MVL, 9/137, 18 B 1256 (15 September 1840).

as being unfit to live among them" in the early Ottoman Empire.[111] Here as the case reveals, it was not only the community who could demand the deportation of a criminal, but also the plaintiffs.

As a procedural requirement, Şerife's lawsuit was forwarded to the Council of Kütahya to be reviewed and accordingly the tentative decision of the district council was approved. Tayyar Paşa, who was at the time the *ferik* of Kütahya district and authorized for the execution of the punishment, deported Şerife to another district, granting the plaintiffs' requests while exempting her from paying blood money as she was destitute and "even unable to pay a single *akçe.*"[112] Unfortunately, the court register remains silent about the circumstances of domestic conflict that made Şerife commit such an outrageous crime. But it reveals a crucial fact about the hierarchical organization of the judicial procedure that was started to be implemented following the Tanzimat and the 1840 Ottoman Penal Code which precisely aimed at governing the balance of power between the central state and its provinces.

As soon as Şerife's lawsuit was submitted to the highest court in Istanbul, the Supreme Council as a last resort for confirmation of the local councils' verdicts, it came out that Tayyar Paşa had not followed the procedures that had been introduced by the Penal Code. According to the procedures, Şerife should have been put in prison in Kütahya until the official decree –*irade*- from Istanbul had been released. However, Tayyar Paşa, banishing her without waiting for the approval of the verdict by the Sultan, had transgressed the imperial rules and gone far beyond his authority. Since the execution of sentences was subject to the confirmation of the Sultan, his

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[111] Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), pp. 303-304.

[112] "*Bir akçe edâsına dahi muktedir olamadığından diyetten dahi ferâgat..."*

behaviour was considered to be contrary to the procedures and treated as a challenge to the central power. As strongly emphasized in the legal records, Tayyar Paşa obviously was not a man ignorant of the codes or procedures at all.[113] He should have known that şer'î provisions could never override the provisions of nizamî law.[114] This principle was of course closely connected to the new concerns of the modern state. Public security and interest, henceforth, were just as important as the private claims of the plaintiffs.[115] Neither the personal rights of the heirs or the victim nor the public interest could be neglected.

By all means, the central government was very sensitive and vigorous about the implementation of the law and execution of justice in the provinces according to the penal code. It was so because one of the main intentions manifested in the penal code was to curtail the arbitrary power of the local judicial and administrative authorities.[116] The obvious way to achieve this goal was to leave them no leeway with precise instructions in exercising jurisprudence.[117] However, this agenda could

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[113] *"...müşârün-ileyh dahi bunu bilmez adam değil iken doğrusu bu suretle icrâ ve inhâ eylemesi pek usûlsüz olduğundan..."*

[114] Considering the relatively early date of the case, 1840, we can assume optimistically that Tayyar Paşa was really ignorant about the provisions of the new Penal Code, which was also promulgated in 1840. Probably, he attempted to implement justice without being aware of the new orders of the central government. After all, the supremacy of Islamic law over *kanûn* was evident until the promulgation of 1840 Ottoman Penal Code. See Heyd, p. 180.

[115] Khaled Fahmy, "The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth Century Egypt," *Islamic Law and Society* 6, no. 2 (1999), p. 246.

[116] Bingöl, p. 37; Miller, "Apostates and Bandits: Religious and Secular Interaction in the Administration of Late Ottoman Criminal Law," *Studia Islamica*, no. 97 (2003), p. 167.

[117] For an analysis of a similar trend encountered in Egyptian legal sphere during the reign of Mehmed Ali see Rudolp Peters, "'For His Correction and as a Deterrent Example for Others': Mehmed Ali's First Criminal Legislation (1829-1830)," *Islamic Law and Society* 6, no. 2 (1999), pp. 164-192. Peters emphasizes that this new mentality in the legal sphere which brought rationality in the punishment of crimes was introduced in Egypt with the promulgation of the first criminal code. The rationality of the law was apparent in making punishment uniform and quantifiable with an objective of retribution and rehabilitation of the culprit. The aim of this rationalization was first to "curb extortion and embezzlement by officials" and second "the centralization of power" besides

not be carried out unproblematically sometimes due to the challenges posed by the local actors, just as the case reveals above, and sometimes because of the defects or complications inherent in the administrative and judicial apparatuses of the state. Especially confusions stemming from the overlap of şer'î and nizamî jurisdictions in the legal arena created troubles both for the local authorities and for the central bureaucracy. The murder of Habib bin Osman from Trabzon Province is illustrative representing such confusion.[118]

In 1847, a certain Habib, an inhabitant of Gelice Village in Karahisar-ı Şarki, was slaughtered with an axe. His wife, Emine, was taken into custody for the alleged murder of her husband and she confessed her crime before the şer'î court and the local council. According to her testimony, their marital discord was due to the inability of Habib to maintain his family properly.[119] The heirs of the victim persistently requested the retaliation of the murderess up to the last moment when the rope was put around her neck before their eyes. However, then, they showed mercy and pardoned her from retaliation. They even did not request blood money since she had nothing but just her clothes that could be counted as property.[120]

This case turns out to be problematic just at the moment when Emine was forgiven and saved from the gallows. When the Governor of Trabzon referred the verdict of the local council to Istanbul, it came out that Emine had been released

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enhancing the legitimacy of Mehmed Ali's rule by providing a guarantee for his subjects that they would be protected from the arbitrary power of local officials.

[118] BOA., İ.MVL, 108/2461, 3 Z 1263 (12 November 1847).

[119] BOA., İ.MVL, 90/1829, 1 Ra 1263 (17 February 1847).

[120] *"...mezbûrenin boğazına ip takılarak salb-i servi olundukda verese-i merkumun rahm-i araz (?) olarak katile-i mezbûreyi ba'de-l-afv (...) ve mezbûrenin kendi libâsından başka mal ıtlak olunur bir nesnesi olmayub..."* This case is also prominent with its details disclosing how, though very briefly, a retaliatory punishment *–kısas-* is come to be executed.

from prison just after her case had been heard and adjudicated before the şer'î court. It was obvious that the local authorities were not following the nizamî orders closely though seven years had passed since the enactment of the 1840 Penal Code. The Supreme Council's warning was very precise and clear. This kind of homicide should have been punished according to the penal code and the murderers should not have been released even if the heirs of the victim pardoned the criminal.[121] According to the penal code, Emine deserved to be imprisoned for from five to fifteen years. Eventually, the decree released from Istanbul sentenced Emine to five years imprisonment.

Apparently, the incorporation of nizamî principles into the existing system of şer'î jurisdiction induced some complications in the execution of justice. However, these so-called complications cannot be considered as unique to the nineteenth century criminal justice procedures. Uriel Heyd states that clashes between kânûn and Islamic law in the sixteenth century and the instances where the former diverged from the latter were numerous contrary to the assumptions of historians like Barkan, who had supposed completely separate spheres of jurisdictions for each. In this sense, the fetvâ of the *Şeyhülislam* (the chief mufti) Ebu's-Su'ûd Efendi pronouncing the supremacy of the sharî'a over the kânûn, was just a theoretical question.[122]

It seems that the legal sphere in the nineteenth century was less handicapped with regard to such clashes, since the supremacy of sharî'a in criminal justice pronounced by Ebu's-Su'ud Efendi had been replaced by a mutual

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[121] *"...bu makule katil ve katileyi verese affetse dahi yine kanûnen mücâzât olunmak lazım geleceğinden bu misillülerin hemen salıverilmeyüb mahbesde tevkifi hususu..."*

[122] "There can be no decree of the Sultan ordering something that is illegal according to the sharî'a" (*nâ-meşrû' olan nesneye emr-i sultânî olmaz*). See Heyd, p. 180.

acknowledgement of each spheres of jurisdictions. As şer'î jurisdiction could not override nizamî law and eliminate its adjudicatory power, the opposite was also true just as Article 171 of the 1858 Ottoman Penal Code clearly revealed: "The provisions of the law cannot render void the rights of persons; accordingly if the murdered man has left heirs they may bring their action to enforce their private rights; and their claim shall be remitted to the Courts which administer the Sheri law."[123]

Indeed, as Miller claims, there was no fight over jurisdiction between the temporal and divine authorities. On the contrary, they worked together, "mutually supporting and expanding central authority" by separately employing justice.[124] While the former dealt with the private rights and claims of the victim or the heirs, the latter employed the provisions of the penal code. However, penal enforcement was totally subject to the authorization of the central power, as revealed by the case of Tayyar Paşa above.[125] This mutual mechanism in the legal sphere can be detected in many criminal cases. For instance, in the Leskofça sub-district of Tuna Province,

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[123] See *The Ottoman Penal Code 28 Zilhijeh 1274. Translated from the French text by C.G.Walpole* (London: William Clowes and Sons, 1888), p. 75. For the Ottoman text see *Fihrist-i Kanûnnâme-i Cezâ*, p. 40. "*Hükm-ü Kanûn hukuk-ı şahsiyeyi ıskât edemeyeceğinden maktulün veresesi var ise onların iddiaları üzerine hukuk-ı şahsiye davası mehakime-yi şeriyyeye havale olunur."* I am thankful for Nurçin İleri who provided me the English translation of the 1858 Ottoman Penal Code just in time when I was struggling to translate the articles from Ottoman Turkish to English.

[124] Miller, "Apostates and Bandits," pp. 161-166.

[125] Before the proclamation of the Tanzimat and the 1840 Ottoman Penal Code, the local administrative authorities had the power to exercise their judgment in meting out punishment. *Kadı* (şer'î judge) representing the şer'î authority, could pronounce a guilty verdict but could not prescribe or execute the deserved penalty. He was expected to deliver the culprit to the provincial administrators for the execution of the sentence. It was the basic reason for the fact that kadı court records rarely mention the punishments imposed for the alleged crime. See Tuğ, pp. 217, 238-239. After the Tanzimat, however, the local administrators' authority in the legal arena was curbed by the central power which prohibited the infliction of punishment without getting approval from the Sultan. See the 1840 Ottoman Penal Code (first section, Article 4): "*Öldürme olayı taşrada meydana geldiğinde, o yerin 'Meşveret Meclisi'nde şeriat marifetiyle yazılmış şartlara göre davası görülür. Bilahare şer'î ilâmı ve meclis zabtı Dersaâdet'e gönderilip, Şeyhülislamlığa takdimle tasdik olunur. Bundan sonra da kezâ Padişah'a arz ile fermân-ı âli gönderilmedikçe cezâ infaz edilmemelidir".* Lütfi, *Mir'ât-ı Adalet,* p. 116.

when a woman named Meryem strangled her husband with the help of another man, she should have been sentenced to death, instead of fifteen years imprisonment, according to Article 170 of the Ottoman Penal Code. Because the heirs of the victim requested compensation, however, and the nizamî provision could never eliminate the şer'î verdict, her sentence was commuted to imprisonment.[126] Similarly, the death sentence of a woman named Alime was commuted to fifteen years imprisonment when she had killed her husband in Sivas with the help of three men by squeezing his testicles. Since the heirs requested compensation, the death sentence was declared null and void.[127]

Nonetheless, in some cases, the Supreme Council could order the execution of capital sentences, "*siyâseten*," for habitual offenders (*sabıkalı*), professional criminals, or for those "who in the execution of a great crime have practised tortures or other acts of cruelty upon any person whatsoever" albeit şer'î court's verdict for administrative or political reasons.[128] Giving an offender a less severe punishment

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[126] BOA., *Tuna Ayniyat Defteri* 919, no: 674, p.57, 13 N 1283, (19 January 1867). *"...mezbûrenin şu halde kanûnen idamı lazım gelür ise de diyete mahkumiyeti bu cezânın icrâsına mani olacağına mebnî diyet hususunun olvechile tesviyesiyle...mezbûrenin hususiyet-i haline riayeten bilâ-teşhir onbeş sene müddetle mahallinde nisâya mahsus mahbesde habs edilmesi..."*

[127] BOA., A.MKT.MVL, 123/65, 12 C 1277 (26 December 1860). *"...madde-i katl taammüden vuku' bulub ancak katil-i mezkurun mucibi diyet olmasından dolayı mezbûrenin kanûnen müstahak olduğu idam cezâsı sâkıt olmuş olduğundan ve kanûn-ı cezânın 172. Maddesinde kısas veya idam cezâlarından afv olunan katilin müebbeden veyahud onbeş seneden ekall olmamak üzere muvakkaten küreğe konulması muharrer bulunduğundan (...) onbeş sene nisâya mahsus mahbesde hapsi..."*

[128] *Siyâseten katl* was stipulated with Article 173 of the 1858 Ottoman Penal Code: *"Bir kimse cinâyet ve şekavet-i müstemire eshabından olub bir cinâyet-i azimeyi işlemek için diğer eşhâsa işkence veyahud pek ziyade gaddarane suretle eziyet eder ve bunun sabıkalı olduğu tahakkuk ve tayin eyler ise siyâseten katl cezâsıyla hükm olunur."* See *Fihrist-i Kanûnnâme-i Cezâ*, pp. 40-41 and *The Ottoman Penal Code*, pp. 75-76. For a brief illustration of "punishment siyâseten" and examples for its application see Heyd, pp. 192-195. It was commonplace in the nineteenth century Ottoman Empire to inflict capital sentences siyâseten. In 1857, when Şevki Paşa was stabbed to death by his servant Mehmed due to an unpaid salary of three thousand guruş, he was sentenced to death "siyâseten" by the Supreme Council. Mehmed would be hanged on the tree in Beyazıt Square and his corpse would remain there to be exposed to public for 24 hours to be a deterrent for others. The fact that Şevki Paşa was a high-ranking official while the murderer was his servant should be a stimulant in the decision of the Supreme Council. See BOA., İ.MVL, 373/16371, 5 Za 1273 (27 June 1857). Bandits were also subject to such punishment. See C.ADL, 81/4906, 1274 (1857/1858).

than the one s/he actually deserved could damage public morale and pose a challenge to the public interest and order. The following case from İzmir is illustrative of such an anxiety.[129]

In March 1865, two men named Ömer and Mehmed were seized and charged with killing Hacı Mehmed Ağa and his mother, Sultan Hatun in Kuşadası. When the accused were tried before the sub-district council, initially both denied the alleged crime, but then admitted it, saying that Ömer had slaughtered Mehmed Ağa while Mehmed had cut the throat of the woman.[130] Further, they had burned the house with the aim of concealing the homicides, which, contrary to their expectations, led to their capture by attracting attention to the fire. The motive behind their violent acts was nothing more than money. They said that they had first tied the victims, beaten them with wood to make them speak to find out where the money had been hidden, and then slaughtered them since their efforts to extract information had proved useless.

The crime was absolutely a premeditated murder deserving capital punishment. Moreover, the murderers had practiced torture on their victims which aggravated the crime and then set fire to the house, which was also a capital sentence according to the penal code. Based on their confessions, the provincial council of İzmir forwarded the case to the Supreme Council asking the murderers to be sentenced to death. One problem that remained was that the murderers did not

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[129] BOA., İ.MVL, 569/25575, 18 Za 1283 (24 March 1867).

[130] Ömer was the first to confess before the court as the interrogator intimidated him saying that he would be sent to Cezayir Hanı, the prison in İzmir, if he did not tell the truth. In case he confessed, the interrogator said, he would be saved from punishment: "*Doğrusunu söyle kurtul Cezayir Hanına gitmeyesin."* Of course, it was only a tactic resorted to make Ömer acknowledge his crime. For the conditions in Cezayir Hanı in the mid-nineteenth century see Ufuk Adak, "XIX. Yüzyılın Sonları XX. Yüzyılın Başlarında Aydın Vilayeti'ndeki Hapishaneler" (M.A. thesis, Ege Üniversitesi, 2006), p. 43.

confess their crime before the şer'î court. Homicide was a violation of private rights, entitling the heirs to decide the type of punishment. In the absence of a confession, the heirs were required to prove their claims by producing two eye-witnesses to the crime. The victims' heirs returned to Kuşadası in order to find witnesses but did not come back, which left the şer'î rules of criminal procedure incomplete. According to the Governor of İzmir, such complications in jurisdiction were responsible for preventing the execution of justice "by saving the offenders from the long arm of the law." Therefore, he suggested, the criminals should be punished according to the penal code. Consequently, after two years, the şer'î verdict was released in the direction of the heirs' wishes. They did not ask for the culprits' retaliation, but the payment of blood money. As the aforementioned examples demonstrate, normally the capital sentence pronounced should have been converted to hard-labour. However, Ömer and Mehmed's cases were reviewed by the Supreme Council and they were sentenced to death *siyâseten* to provide an example to the rest even though the heirs did not ask for retaliation. The blood money was ordered to be paid to the heirs by the treasury.

In this chapter, I provided a general framework about the historiography on the social history of crime and punishment and gave a critical outline of the Tanzimat studies, the time span of which overlapped with this dissertation's period of concern. The meaning of the court registers as a source for history writing, the institutional context of the legal transformations in the nineteenth century and the complications caused by the co-existence of şer'î and nizamî law in the legal arena were also elaborated. Going beyond the theoretical discussions on legal pluralism, I attempted to show the actual operations of law at the local level with its various problems

stemming from the incorporation of the long-standing legal culture of şer'î law into the new system along with the central government's concern over the administration of justice in the provinces, which sometimes threatened the very basic premises of the Tanzimat. Briefly, in this chapter, I tried to contextualize my dissertation within the dynamic background of institutional and legal transformations of the Tanzimat period.

CHAPTER 2

OTTOMAN GOVERNANCE AND THE OPERATIONS OF NİZAMİYE COURTS

History begins where justice ends.[131]

There is no doubt that all modern states overwhelmingly are preoccupied with the repression of crime since criminal acts constitute a challenge and threat to the state's monopoly on the legitimate use of violence. The attempt to prevent, control, adjudicate, and punish crime represents one of the main interests of state power and proves a state's capacity to control and govern its population while enhancing its legitimacy. For the Ottoman Empire, too, the repression of crime particularly in the distant provinces was an important business in the nineteenth century due to the interest of the government to keep a close eye on its population as well as over the local power holders.

The governmental techniques, including the legal reforms with printed and standard codes, employed during the century are clear indicators of this rational reflex which proved vital for the survival of the Empire. As Foucault writes in his seminal article on "governmentality" the primary target of the new art of government that had emerged in the eighteenth century was the population and the "essential mechanism" of this new form of power was "the apparatuses of security."[132] Of course, the articulation of sovereignty, government, and discipline in this new power regime was not a choice but necessity that was brought by economic and demographic changes. The implications of it for the Ottoman Empire also were

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[131] Muir and Ruggiero, "Introduction", p. vii.

[132] Michel Foucault, "Governmentality," in *Power: Essential Works of Foucault 1954-1984*. Edited by J. D. Faubion (New York: The New Press, 2000), p. 219.

manifold. Indeed, what mostly was considered as the legal and technical borrowing from the West were the implications of the rising interest of the Ottoman state in sovereignty nested in the better and more efficient governance of the population. The Tanzimat reforms and the subsequent socio-political, economic, and legal transformations accompanying them were the culmination of this new concern with "administrative power."[133] The survival of the Empire was inevitably related to the well-being of the population and the well-being of the population was closely linked to the security matters. Punctuality, regularity, standardisation, and institutionalisation that would be maintained by a more abstract, definite, and impartial government were, therefore, an extension of the new mentality of governance underpinned by a political rationality.

In general, better governance meant centralized administrative power and authority for the Ottoman state. In order to realize this ambition, the state was to address two questions. First, the provincial elites had to be subordinated to the central government by holding a monopoly on justice and violence; and second, the obedience of the subjects had to be procured by maintaining order and providing them the promised equality and justice by better government.

Control over Local Elites: Capital and Corporal Punishment

In the nineteenth century, the attempt to assert a monopoly on justice became evident with the introduction of new penal codes and the creation of a complex court system with strict appellate procedures that left little room for any kind of discretionary or arbitrary power of the local elites. In this system of appeals, the

[133] See Anthony Giddens, *The Nation-State and Violence* (Berkeley and Los Angeles: University of California Press, 1987), pp. 172-197 (chapter 7).

courts at different lower levels in the countryside with precisely defined rights and jurisdiction would be subject to the central government's scrutiny as was elaborated before. The courts at the sub-district level, for example, could pronounce sentences for petty offenses that deserved imprisonment up to one month or pecuniary punishment, but they had to refer more serious cases to the upper-level courts the jurisdictions of which were also limited to one-year imprisonment at most. Other cases that required capital punishment and sentences of more than one year imprisonment or hard labour were to be brought to the attention of the central legislative council and could be executed only by the order of the Sultan.[134]

Capital punishment was certainly a deterrent example for offenders but population was not something that could be sacrificed easily. For instance in 1857, due to the increase in banditry and highway robbery, the offenders caught were executed with the most severe punishment to be deterrent for others in Yanya (Ioannina). Twenty-three of the offenders were executed *siyâseten* and twenty more received a death sentence. More than a hundred bandits also were caught and put in prison. Given the fact that such crimes were obviated in the province, the central government sent an order to the Governor of Yanya ordering him to put an end to capital executions since it would bring the destruction of the human population.[135]

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[134] Bingöl, pp. 163-64. Except for the offenders who were shot to death during an armed conflict with the *zabtiye*s, no one would be executed, including those who abjured from Islam. See BOA., C.ADL, 88/5278, 29 Z 1255 (4 March 1840); C.DH, 157/7801, 18 B 1260 (3 August 1844); A.MKT 19/37, 1260 (1844).

[135] *"…elde bulunan eski ve yeni bunca mücriminin ale-l-ıtlak idamı …birçok nüfus-ı beşeriyenin itlâfını müdi olacağından o makuleler hakkında en ağır kürek cezâsı tertib kılınub…"* See BOA., A.MKT, 92/70, 12 R 1274 (30 November 1857). However, the government's concern about population might be overwhelmed easily by the general concern about security. When a man named İsmail stabbed Hasibe to death and wounded Fitnat in Üsküdar, he was sentenced to death *siyâseten* to be deterrent for others due to the recent increase in the number of murder cases. *"…şu aralık mevâd-ı katliyenin kesreti vuku'una mebnî emsaline ibret-i müessire olmak üzere katil-i merkumun Üsküdar'da Büyük İskele civarında salb olunması…"* See BOA., İ.MVL, 376/16493, 24 Z 1273 (15 August 1857).

In 1844, the central government sent a memorandum to the district governors to be announced to all judges (*bilcümle hükkâm ve nüvvâb*) and claimed that the Sultan took great interest in murder cases. The şer'î writs (*ilâm*) and court proceedings submitted to İstanbul hereafter, the memorandum stated, would include the details of the investigation procedures. The circumstances that motivated the murderer, how the crime was committed and acknowledged were to be recorded with great care.[136] No one could be given the death sentence without a detailed investigation.[137] For that reason, when the Governor of Baghdad, Ömer Paşa, executed three bandits in Süleymaniye without following the necessary procedures, his act was regarded as a transgression challenging the authority of the central government.

In 1859 Ömer Paşa caught twenty bandits from the Hemvend tribe and hanged three of them to be a deterrent example for others without trying the culprits before the şer'î and nizamî courts. Apparently, the Governor implemented justice by his own hands, not feeling the need to ask İstanbul for the confirmation of his decision. As the law was clear enough about the fact that the death sentences could

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[136] BOA., A.MKT, 11/58, 7 R 1260 (26 April 1844). *"…işbu katl maddelerine savb-i âcizânemizden dahi çok dikkat ve i'tinâ' olunarak ne suretle vuku' bulmuş ve sebeb ve hikmeti ne olmuş ve katilleri nevecihle ikrâr ve itiraf etmiş ise… takdim olunacak ilâm ve mazbatalarda arz ve beyan olunması…"* When the wife of a murder victim in Saruhan district demanded the retaliation of the murderer in 1846, the local council was asked by the central government to conduct another interrogation so that to be sure that the heir was insistent upon her claim. *"…katl-i nefs hususu şâyân-ı dikkat mevaddan ve bu makuleleri veresenin muahharen kısastan af edegeldikleri mesbûk olan halâttan olmasıyla bu babda tedkikat-ı icâbiyenin icrâsıyla veresenin tekrar istintâkı zımnında…"* See BOA., İ.MVL, 77/1491, 2 Ca 1262 (28 April 1846).

[137] In Gaçka sub-district, Hersek, a certain İstefan was caught in the mountains by the zabtiyes and was accused of being a bandit as he was armed. However, according to his statement at the court, he was just looking for his horse that had been stolen a few days earlier. Yet, he was sentenced to death immediately. The local verdict was not approved by the central government since "*itlâf-ı nefs*" was a serious matter and a single interrogation could not be sufficient to release a death sentence. The local government was ordered to question İstefan again and to carry out a more detailed investigation. See BOA., A.MKT.UM, 388/56, 9 C 1276 (3 January 1860) and A.MKT.UM 389/9, 13 C 1276 (7 January 1860).

be executed only by an imperial decree (*irade-i seniyye*), only after conducting an investigation and with the condition of obtaining a şer'î and nizamî verdict that would determine the deserved punishment, his act was regarded as a direct challenge to the central authority, and further as an alternative claim to power. He was dismissed from office and called back to İstanbul immediately since what he had done was against the principals of law (*esâs-ı kanûn*) that had been in force since the promulgation of the Tanzimat.[138]

Of course, Ömer Paşa was not the only governor who abused his authority and behaved outside the law. The various transgressions of law against persons by local governors and officials were reported frequently to İstanbul. Ordinary peasants filed petitions to higher councils or the central government in order to pronounce their complaints about the tyrannical behaviour of pashas and beys. In 1850, Torbacı oğlu Mustafa lodged a complaint petition to the Kastamonu council claiming that Emin Bey, the superintendent (*müdür*) of Durağan sub-district in Sinop, had

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[138] *"...emniyet-i can meselesi Tanzimat-ı Hayriyenin birinci rüknü olarak onun vazı' ve tesisi günündenberü neşr olunan kavanin ve nizâmât hükmünce kısas ve idam cezâsı mutlaka şahs-ı mücrimin şer'iyyen ve kanûnen mürafa' ve muhakemesiyle sübut-ı cinâyetine ve onun üzerine bilâ-istizân fermân-ı ali süduruna mahsus ve mütevakkıf olduğuna...bunların idamları esas-ı kanûna mugayir olduğu..."* When the Supreme Council asked Ömer Paşa to explain why he had violated the law, he attempted to justify his act by claiming that these bandits had been the main cause of disorder in Kürdistan and Iraq, raiding villages and killing people. He maintained that they had caused many peasants to leave their villages and flee to Iran or to the mountains. These peasants, he stated, were obedient subjects paying their taxes to the Sublime Porte and had submitted their complaint petitions to Ömer Paşa in order to get rid of the bandits. Furthermore, these bandits had killed nine gendarmeries (*asâkir-i zabtiye*) when they had been collecting *emvâl-i mîriyye* in Süleymaniye. The urgency to deal with this problem had compelled him perforce to punish these bandits without getting consent from Istanbul as soon as they had been captured. In any case, according to Ömer Paşa, these bandits were unruly men deserving capital sentence. In order to strengthen his hand, he also acquired two memorandums from the Baghdad Council and the council of Iraq and Hicaz Army which were designed to prove the merits of the Governor in the province and sent them to İstanbul along with his letter of defense. See BOA., İ.MMS, 16/675, 12 R 1276 (8 November 1859); İ.DH, 450/29737, 16 C 1276 (10 January 1860); İ.MMS, 17/732, 14 B 1276 (6 February 1860). According to Roderic Davison, on the other hand, Ömer Paşa was dismissed from the governorship of Baghdad not due to his arbitrary administration and justice, but because of the political conspiracies of his rivals in Istanbul. See Roderic Davison, *Osmanlı İmparatorluğu'nda Reform,* p. 144. Although Ahmed Cevdet Paşa does not mention any reason for Ömer Paşa's dismissal, he explicitly remarks his dislike for him, claiming that he was neither a good administrator nor a good soldier. For details, see Cevdet Paşa, *Tezâkir 13-20* (Ankara: Türk Tarih Kurumu Basımevi, 1991), pp. 34-35.

committed adultery forcefully with his daughter-in-law Ünzile and made her slander herself as the perpetrator of this illicit act. Furthermore, Mustafa had been tortured with 350 strokes to obtain a confession from him. According to his claims, the local nâib Ali Efendi also had been an accomplice in this act since he had divorced Ünzile from her husband and got her married to the village headman in exchange for a bribe of 350 *guruş* (piastres). Ünzile later denounced that Emin Bey had forced her to commit adultery and compelled her to put the blame on her father-in-law, Mustafa. Though full proof could not be obtained in order to elicit the guilt of adultery, Emin Bey was sentenced to two years hard labour as the other issues related to the case, bribery and torture, were established.[139]

Another complaint was received from Sivas in 1854 when the superintendent of Zile sub-district, Ahmed Bey, beat a certain İbrahim to death with a cornel stick just because he did not have travel papers (*mürûr tezkeresi*).[140] İvranyalı Derviş Hasan's petition was about the unjust execution of his brother by the district governor Süleyman Bey.[141] The subject of another petition received from Konya was a local notable, Mümin Ağa, from the Karaağaç-ı Gölhisar sub-district. He had been commissioned somehow to capture a certain bandit in the vicinity, but by making this authority a pretext to settle his personal grudge with Mustafa's father,

[139] BOA., MVL, 197/47, 25 Ca 1266 (8 April 1850); İ.MVL, 166/4922, 11 C 1266 (24 April 1850).

[140] BOA., İ.MVL, 314/13207, 25 Z 1270 (18 September 1854).

[141] BOA., A.MKT.MVL, 76/49, 16 Ra 1272 (26 November 1855). For a recent article about the complaints of local population about the tyranny of Hüseyin Paşa, the father of aforementioned Süleyman Bey see, Cengiz Kırlı, "İvranyalılar, Hüseyin Paşa ve Tasvir-i Zulüm," *Toplumsal Tarih*, no. 195 (March 2010), pp. 12-21.

he had first given him 1400 strokes and left him crippled and then set fire to his house.[142]

Apart from the special concern on the execution of capital sentences and the tyrannical behaviours of local governors, the central government also had a keen interest in the use of corporal punishment by officials for various crimes in the provinces. Chastisement was a discretionary punishment (*ta'zîr*) in şer'î law and the practice of bastinado (*falaka*) was a common form of corporal punishment.[143] It was carried out with a stick (*değnek*), often reserved for minor crimes and the specific number of strokes that would be inflicted on the offender was fixed according to the Hanafî law. The strokes were not to exceed 39, 75, and 79 and were to be administered according to the seriousness of the crime committed.[144]

The 1840 Ottoman Penal Code had not contained any stipulation about corporal punishment. However, we see that certain instructions were issued in 1845 and dispatched to the provinces. The instructions identified clearly the methods that should be followed while inflicting chastisement and the offences for which this kind of discretionary punishment would be reserved. A correspondence between the central government and the army marshal (*müşir*) of Erzurum, Halil Kamil Paşa, shows that chastisement with a stick was acknowledged as a legitimate method to punish offenders who had been convicted for committing fornication, public

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[142] BOA., A.MKT.UM, 173/5 29 S 1271 (21 November 1854). For other complaints about the district governors of Sultanhisarı (Aydın) and Peridor (Bosnia), see BOA., İ.MVL, 500/22601, 24 B 1280 (4 January 1864) and A.MKT.MVL, 83/8, 21 Ra 1273 (19 November 1856).

[143] Mehmet Demirtaş, in his recent book, examines the crimes committed by artisans and the punishment reserved for them in İstanbul between the late seventeenth and late eighteenth centuries. He states that bastinado and chastisement were common forms of punishment meted out for less severe crimes like cheating in prices and weights. See Mehmet Demirtaş, *Osmanlı Esnafında Suç ve Ceza: İstanbul Örneği* (Ankara: Birleşik Yayınları, 2010), pp. 315-18. Fariba Zarinebaf also provides some very brief information about corporal punishment in the eighteenth century İstanbul with reference to secondary sources. See Zarinebaf, pp. 157-160.

[144] Heyd, p. 273.

drunkenness, molesting young boys and women, gambling and so on, whereas beating petty offenders like thieves was forbidden. Furthermore, bastinado as practiced by making the culprit lay on the ground was strictly forbidden. According to the instructions given to the marshal, if the culprit was a man, he would be beaten standing on his feet and in case the culprit was a woman, she would be seated and then beaten. The execution of the sentences would be carried out in front of the prison. The stick employed in this practice would be without any knots and not be raised too high, at most up to the level of the head. Exempting certain parts of the body, like the head, face, abdomen, chest, and genital organs, it would be administered randomly on the culprit's body. As stipulated by the Hanafî law, the minimum number of strokes inflicted would be three while the maximum would not exceed 79.[145]

Obviously the main purpose of this quantification was the prevention of arbitrary corporal punishment and elimination of excessive beating by officials. Although in theory the number of strokes was fixed, the theory might not have worked in practice. As Heyd states, beating far exceeding the legal limit permitted by the şer'î law was not a rare occurrence and sometimes resulted in death.[146] Another purpose of these instructions, on the other hand, was to standardize the severity of the blows by identifying clearly the way punishment would be executed.

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[145] BOA.,C.ADL, 19/1161, 8 S 1261 (16 February 1845). Also see A.MKT, 22/44, 7 S 1261 (15 February 1845), C.ADL, 43/2623, 9 S 1261 (17 February 1845). For the Amasya and Ankara districts' memorandums about the same issue, see C.ADL, 35/2081, 13 S 1261 (21 February 1845) and C.ADL, 83/4986, 21 Z 1262 (10 December 1846) respectively.

[146] Heyd, p. 274. A case from Ottoman Beirut shows that the fixed number of strokes for certain crimes was not always the rule. When Mehmed, a soldier in the fourth regular army, raped a six-year old Armenian boy while he was drunk, he was sentenced to five years hard labour in Akka fortress and dismissed from the army. He also was sentenced to corporal punishment and received 200 strokes in front of his regiment. The document states that he was an indecent person (*edebsiz makulesinden*). Probably due to the aggravating circumstances in this case, the number of strokes he received exceeded the maximum number of strokes fixed by the law. See BOA., A.MKT.MVL, 135/3, 3 Ca 1278 (6 November 1861).

Khaled Fahmy argues that "the problem of administering a 'just measure of pain'" was a serious concern of Mehmed Ali's criminal legislations in the nineteenth century. However, he maintains, "there was no way to standardize the severity of the blows," even if the number of lashes per offence was specified by the law. He views the replacement of corporal punishment with imprisonment sentences as a consequence of this difficulty to ensure a standard, commensurate, and comparable punishment regime.[147] As is clear from the correspondence examined above, the Ottoman government spent effort in order to standardize pain while inflicting chastisement. However, this effort did not lead to the replacement of corporal punishment with imprisonment until 1858.[148] The 1851 Ottoman Penal Code incorporated şer'î provisions about corporal punishment and regulated the infliction of physical pain by codifying the Hanafî law's stipulations that fixed the number of strokes.[149] Corporal punishment was accompanied by imprisonment or banishment for many offences.

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[147] Fahmy, "Justice, Law and Pain in Khedival Egypt," pp. 105-106. Similar to Fahmy, Rudolph Peters regards Mehmed Ali's first criminal legislation in 1829-1830 as an effort to replace arbitrary punishment with standard, rational, and more quantifiable punishment. He compares the new criminal law with the old Ottoman *kanûnnâme*s and highlights the differences between the two, stating that the Ottoman *kanûn*s, unlike Mehmed Ali's legislation, lacked specific penalties for each offense, did not quantify punishment, and included harsh corporal punishment. Interestingly, however, he does not compare Mehmed Ali's criminal law with the nineteenth century Ottoman legislations as its counterpart. See Peters, "For His Correction and as a Deterrent Example for Others," pp. 167-168.

[148] The 1858 Ottoman Penal Code contains no stipulations about corporal punishment. However, it does not mean that corporal punishment totally disappeared in daily judicial practices. On the contrary, it continued to be meted out according to the şer'î law. The archival evidence shows that it was part of the punishment reserved especially for soldiers. If a soldier attempted to desert from the army, he would stand trial before the martial court and be chastised with 60 strokes. See BOA., A.MKT.UM, 262/34, 4 R 1273 (2 December 1856). When two soldiers from the zabtiye battallion of Nish raped a Christian woman and another two zabtiyes raped a girl in Berkofça, they received 100 strokes as a punishment and sentenced to *pranga* (iron fetters) for one year. See BOA., HR.MKT, 338/55, 23 Za 1276 (12 June 1860).

[149] Accordingly, crimes such as wine-drinking, molestation, yelling on the street (*nara atmak*), and violating the maximum market prices (*narh*) and weights would be punished according to the şer'î law with chastisement. In case the misdemeanor was a habitual offence, then the convicted person would be sentenced to hard labour if caught in Dersaadet and to *pranga* in the countryside. If the

Apparently, the motive behind the regulation of corporal punishment had two implications. First was the concern about the lives and well-being of the population as promised by the Tanzimat, and second was to expand control over the local elites. For that reason, the central government was quiet rigorous and cautious about the limits it set for the local governors in exercising judicial function and meting out punishment. In 1852, when Mehmed Salih, the Governor of Silistre (Silistra), informed the government about the fact that chastisement was a very common practice in Rumelia, corporal punishment came into the agenda once more. Although minor offences like larceny should be punished with imprisonment or pranga according to the prescriptions of the nizamî law, Mehmed Salih claimed, they were usually subject to corporal punishment. Furthermore it was to his knowledge that Dursun Paşa, the Governor of Üsküp (Skopje), had been ordering corporal punishment for such crimes contrary to the principles of the *Tanzimat-ı Hayriye*.[150] In fact, all government officials in the countryside had been warned previously about the central government's special concern on forbidding the arbitrary execution of corporal punishment. Yet, seemingly, it had not proved effective. Once more, the central government had to send an admonition (*tenbîhât*) to the local governors and officials in order to prevent this practice.[151]

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crime subject to punishment was against honour such as defamation and slandering, then the culprit either would be imprisoned or banished in addition to chastisement according to the şer'î provisions. Similarly, causing physical injuries with blunt objects would be punished with imprisonment for from fifteen days to three months alongside chastisement. See Lütfi, *Mir'at-ı Adalet*, pp. 137-138, 145-146.

[150] *"…gerek vali-i müşarünileyhin ve gerek sair vülât-ı i'zâm hazırânının öyle cezâ-yı cünha ile eshâb-ı töhmeti darb ettirmeleri Tanzimat-ı Hayriyye'nin mugâyiri olarak tecvîz olunamayacağına binaen ba'd-ezîn hadd-ı şer'î lazım gelen eshâb-ı töhmetden mâ'dâsının öyle darb ettirilmeyüb ber-mucib-i kanûn-ı cezâ pranga ve habs ile mücâzât olunmaları babında vali-i müşarünileyh ile eyalet-i merkumede müstahdem sair vülât-ı i'zâm-ı hazırânına tenbîhât-ı lazıma…"*

[151] BOA., İ.MVL, 236/8340, 28 B 1268 (17 May 1852).

Briefly, the way punishment would be meted out by officials was an important question for the central government. In this regard, a wide range of issues became a concern for the government, from torture and corporal punishment to the way the capital sentences would be executed. Torture was forbidden, yet it always continued to be a part of the criminal investigation process.[152] Severing heads and exhibiting them in public to strengthen the deterrence of the punishment was forbidden.[153] Execution by shooting was also prohibited as it was a form of capital punishment reserved only for soldiers.[154] When the nâib of Konya released a *recm* (stoning to death) verdict for a man, who had abducted another man's concubine and committed adultery with her, the verdict was not approved by the Supreme Court stating that the guilty party should not be stoned to death, but punished according to the penal code. Furthermore the nâib was dismissed and sentenced to ta'zîr punishment.[155] Apparently, hanging (*salb ile idam*) came to be regarded as the only legitimate method to execute capital offenders.

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[152] See, for example, BOA., A.MKT.MVL, 4/49, 13 Ra 1263 (1 March 1847). *"...malum-ı âlileri buyurulduğu üzere bu makule hapishanelerde mücrimine darb ve işkence olunması külliyen men' olarak bil-defaat her bir mahalle tenbihnâmeler irsal ve ıztâr buyurulmuş olduğu halde..."* Article 103 of the 1858 Ottoman Penal Code stipulated that public officers or servants "who shall order to be put, or shall himself put, to the torture any person charged with an offence, shall be punished with incarceration (*kalebendlik*) for from three to fifteen years, and shall be declared for ever incapable of holding any rank or public office." See *The Ottoman Penal Code*, p. 46; and *Fihrist-i Kanûnnâme-i Cezâ*, p. 25.

[153] When two bandits, Kosta and Deli Manol were killed in İzmir, their heads were severed and exhibited in the fish market with placards written in three languages. The central government found it appropriate and informed the Governor of İzmir that severing heads had been forbidden. See BOA., A.MKT.MVL, 207/95, 1271 (1854-55).

[154] BOA., HR.MKT, 168/18, 27 Ra 1273 (25 November 1856); HR.MKT, 263/57, 27 Ra 1273 (25 November 1856).

[155] BOA., A.MKT.MVL, 23/66, 6 Ra 1266 (20 January 1850).

Control over Local Population: The Meaning of the New Legal System

Not less important than the need to ensure the subordination of the provincial elites was to maintain order by ensuring the visibility of the state in the provinces. Standardized, uniform legal codes and hierarchical judicial institutions with regular procedures were among those instruments for the modern Ottoman state to maintain the "state effect"[156] and thus, the obedience of local populations. 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. However, law meant different things to the subjects of the Empire. More precisely, nizamî law did not have an immediate or homogeneous effect on the population on every occasion as soon as it started to be enforced. The coexistence of two different realms of jurisdictions and institutions, şer'î and nizamî courts, and adherence to the former was one of the reasons for it, as the chapter on poison murders will reveal more clearly. Another reason, on the other hand, was the prominent place of old customs in community life and the possibility to settle disputes outside courts, which will also be demonstrated in more detail in the chapter about rural arson.

Apparently, the şer'î and the nizamî law with different requirements in establishing guilt, gathering evidence, and pronouncing sentences led to confusion not only in the minds of the educated governors, as demonstrated in the case of Tayyar Paşa above, but also in the minds of the ordinary people. For some, law meant only the Islamic law while for others it was the principles of the Tanzimat.

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[156] The term as used by Timothy Mitchell refers to the disciplinary and governmental techniques and methods employed by a modern state that created an effect of an abstract, ideal, and freestanding state power with structures standing apart and enframing the more concrete and subjective realm of society and economy. See Timothy Mitchell, "Society, Economy, and the State Effect," in *The Anhtropology of the State: A Reader*, eds., A. Sharma and A. Gupta (Oxford: Blackwell Publishing, 2006), pp. 169-186.

Although these two spheres of law were not mutually exclusive, many people thought that they were. This perception inevitably shaped their responses and strategies before the courts when they had to be a part of a criminal investigation process.

The şer'î law had certain advantages for the Muslim population with respect to the inequality of judgment. The testimonies of Muslims and non-Muslims, not to mention men and women, were not equal before the şer'î law.[157] This question was especially getting important when the dispute was between a Muslim and a non-Muslim person since non-Muslims could not testify against Muslims.[158] As Ronald Jennings states, "one of the most severe legal disadvantages of *zımmi*s [non-Muslims] was their inability under any circumstances to testify as witnesses against Muslims."[159] However, the Tanzimat and the new penal codes granted all subjects equal standing before the law, depriving Muslim subjects of their centuries-old superior position with regard to non-Muslims' inferior legal status. A case from Prizren district of Üsküp in 1858 is illustrative of this point, as it clearly shows how a murderer's defence denying his crime at the court by rejecting the non-Muslim eye-witnesses' testimonies against him failed to be useful before the nizamiye courts and demonstrated the meaning of the new legal system to all subjects of the Empire.[160]

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[157] In *hadd* (fixed) and retaliatory punishments, women were not able to stand as witnesses before the şer'î courts. See Mehmet Akman, *Osmanlı Devleti'nde Ceza Yargılaması* (İstanbul: Eren Yayınları, 2004), p. 88.

[158] Ibid., p. 88. Also see Heyd, p. 245.

[159] Ronald C. Jennings, "Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Ottoman Kayseri," *Journal of the Economic and Social History of the Orient* 21, no. 3 (1978), p. 257.

[160] BOA., İ.MVL, 418/18310, 8 Za 1275 (9 June 1859).

Adem was a gendarme (*zabtiye neferi*) in the Komanova sub-district and shot a non-Muslim girl, Done, to death in public just because she changed her mind about converting to Islam and thus ruined Adem's plans to marry her. When he was questioned at the şer'î court, Adem denied all charges. Since the heirs of the victim could not find any Muslim witnesses to substantiate their claims, they could not ask for the application of the talion law (retaliatory punishment). However, Adem's case would be heard by the nizamiye court as well and it seems that the murderer did not have any knowledge about what constituted proof for the new penal codes and courts. When he stood trial in the district court, the interrogator asked him to confess his crime since there were many eye-witnesses to the crime he had committed.

> Adem, you assume that the Muslims who saw you firing a rifle do not come to testify [at the court] and the non-Muslims' testimonies are not valid. However, we do not judge you according to the şer'î law but according to the Kanûn. Kanûn questions everyone whether he is a Muslim, Christian, or a gipsy and we record everything. What we hear at the court is true. But you deny the charges and do not relieve us. However because we rely on the testimonies, we refer it to the state and the state sentences you to retaliation.[161]

Adem was still not convinced and indeed, could not understand why he would be sentenced to death. The interrogator explained to him how the rest of the investigation would be carried out. The court would summon witnesses and if their testimonies would prove to be sound and accurate, then the court was responsible for referring the case to the state, which would punish Adem according to the law. Evidently, the law for Adem was something different from the law that was referred to by the interrogator. Adem said that he would acknowledge the accusation "if two

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[161] *"Adem senin aklınca benim tüfeng attığımı gören müslümanlar şahitliğe gelmezler hristiyanın dahi şahitliği tutulmaz dersin lakin seni şerîyen mürafa' etmiyoruz kanûnca tahkîk ediyoruz kanûn müslüman da hristiyan da çingene de her kim olur ise sual eder ve kayd ederiz bizim işittiğimiz doğrudur fakat sen inkâr ediyorsun bizi vebalden kurtarmıyorsun fakat bu ifadattan bize emniyet geldiği gibi devlete yazarız devlet dahi seni kısas eder."*

Muslims who pray five times appear at the court as witnesses."[162] He must have been very confident that no Muslim would denounce him. Indeed, in spite of the fact that there were more than fifty Muslims who had seen Adem firing his rifle, none of them bore witness to the murder.[163] Yet the non-Muslim witnesses were summoned to the court and their depositions were heard and recorded as legitimate proof. As stated in the memorandum of the Supreme Council, there were two grounds on which to make judgment in such murder cases. One of them was the personal law (*hukuk-ı şahsî*) that belonged to the heirs of the victim, and the other one was the Kanûn that would fix a punishment according to the penal code. Though Adem's guilt could not be established before the şer'î law due to the inability of the heirs to find Muslim witnesses, he was found guilty according to the latter and sentenced to death.

The story of Adem may prove very revealing for someone who studies conversion. It also demonstrates the role of faith and religion in the daily lives of the ordinary people. However, of interest in this case for our purposes is the interrogation of the murderer at the nizamiye court which clearly illustrates the application of the new legal procedures at the local level and the discourse employed by the court personnel in order to convince the murderer to confess. We see that the principle of equality before the law introduced by the Tanzimat was the ultimate reference furnished by the court. It is equally important to note that though

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[162] *"…çıksın iki müslüman şahit beş vaktini kılar şahitlik etsin…"*

[163] Heyd states that "In the view of the shari'a, a Muslim is neither legally nor morally obliged to bear witness against a criminal who has violated a 'right of God', for which he is liable to a hadd penalty. The Ottomans even regarded it as humane not to assist in such cases in the conviction of a fellow Muslim." See Heyd, p. 246. This may explain to a certain degree the reluctance of the Muslim eye-witnesses to appear at court and give testimony against Adem. Of course, a number of other factors might also be effective in this reluctance such as the behavior of Done abondoning her decision about conversion to Islam and the tension between Muslims and non-Muslims in a remote border province in Rumelia with high security concerns.

two decades had passed after the promulgation of the Tanzimat, a zabtiye soldier was still unaware of the meaning of the new legal system and assumed that adherence to şer'î rules of evidence would save him.[164]

As is evidenced by the above-mentioned case, law meant Islamic law for most of the populace in the Empire. Though incorporated into the new legal system and worked side by side with nizamiye courts, after all şer'î stipulations were quite different with regard to nizamî norms. When peasants first came in contact with the new legal system, their experiences and interactions with the judicial realm had been already shaped by the rules of criminal procedure in şer'î courts. Naturally, the strategies devised at the nizamiye courts and the discourse invoked were, to a great extent, the products of a memory inherited from particular past experiences with the judiciary. In this regard, people's inability to refer to new codes or to understand legal proceedings alongside the consequences of their criminal behaviour did not stem from indifference to the law. On the contrary, they often regarded and recognized law as a useful means of resolving their conflicts and obtaining results on their behalf.[165]

As Petrov shows for the Province of Tuna, there is plenty of archival evidence from various localities that prove the readiness, skill, and fluency of

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[164] In fact, this should not be surprising because as Taner Akçam states, even in 1880s, most of the *zabtiye*s were illiterate and had no knowledge about the penal codes and investigation methods. See Taner Akçam, *Siyasi Kültürümüzde Zulüm ve İşkence* (İstanbul: İletişim Yayınları, 1995), p. 229.

[165] The depositions of a girl called Tepkana from Pazarcık sub-district of Filibe is striking in this sense. Tepkana was a servant in the house of Pazarcıklı Rıza and she was raped by him and became pregnant in November 1861. She filed a lawsuit against him in May 1862. However, the interrogator was suspicious about her claim since she did not appeal to court when the alleged rape had occurred. When the interrogator asked her why she was so late to file a claim, she said that she had been afraid and just found the time to sue him. She further stated that if her claim was not considered at the sub-district council, she would go to the upper-court. *"S: Ya bu iş geçen kasımdan iki gün sonra olmuş diyorsun olvakitten berü hiç dışarıya çıkmadın mı ve ananı ve babanı görmedin mi niçün onlara söylemedin hele bu iş zor ile olmadı gibi anlaşılıyor doğrusunu söyle … / C: Ne yapayım korkudan arası uzadı şimdi fırsat buldum geldim dava ederim burada olmazsa Filibe'ye giderim elbet ırzımı Rıza'dan isterim."* See BOA., MVL, 950/25, 13 M 1279 (11 July 1862).

ordinary people in learning to "speak Tanzimat."[166] Peasants articulated the principles of the Tanzimat into their own vocabulary and encoded keywords that proved meaningful and useful for their interests in the context of new legal reforms. In their petitions, some of them complained about the injustices they were exposed to by asking for the implementation of law against the wrongdoers in line with the discourse of justice and equality promoted by the Tanzimat.[167] Some others represented themselves as loyal subjects paying taxes regularly and thus touched the very heart of the reforms.[168] Obviously, a just and equal treatment and protection expected from the Sultan and voiced metaphorically with reference to the Tanzimat jargon provided the subjects the means to represent their material interests. From the side of the government, on the other hand, the Tanzimat was a means to extract the obedience of the Ottoman subjects, a "symbolic capital" for the Ottoman state that would serve its interests.[169]

What appeared as an indifference to law or disobedience on some occasions was, in some cases, due to the prevalence of old customs. As is evidenced in rural

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[166] Petrov, "Everyday Forms of Compliance," p. 733; and "Tanzimat for the Countryside," p. 264.

[167] See BOA., İ.MVL, 85/1723, 3 Z 1262 (22 November 1846). *"Tanzimat-ı Hayriye usul-i iktizasınca ahkam olunmak niyazım beyninde…"*

[168] See BOA., A.MKT.UM, 173/5, 29 S 1271 (21 November 1854). *"bu kadar senedenberü askeriyede hizmet edüb sakat olarak senevî dahi yedi sekiz yüz guruşdan mütecâviz vergü verirken şimdi mümaileyh Mümin Ağa'nın eşkiyayı tutmak bahanesiyle kadimden…(?) nefsâniyyetini izhâr ile böyle pederimin hanesini yakub eşyasını yağma etmesi perişaniyetimizi ba'as olarak bu keyfiyet ise adil-i nesafet-i Tanzimata mugayir ve münafi bulunmuş olduğu…"* E. Atilla Aytekin mentions that even when the Ottoman peasants revolted, they did not rise up against the state. On the contrary, they always voiced their demands "in a language of allegiance to the state". He states that the deference to the state in language stems from the peasants' pragmatism rather than their monarchism or naivety. See Aytekin, p. 116. For a similar argument also see Karen Barkey and Ronan Van Rossem, "Networks of Contention: Villages and Regional Structure in the 17th Century Ottoman Anatolia," *The American Journal of Sociology* 102, no. 5 (March, 1997), pp. 1354-55.

[169] Boğaç Ergene borrows this concept - symbolic capital- from Bourdieu and uses it to explain the discourse of legitimization –justice, benevolence, generosity- appealed by the central government for revenue-extraction from the Ottoman subjects. The Tanzimat state also used such legitimization to extract both revenue and obedience. See Boğaç Ergene, "On Ottoman Justice: Interpretations in Conflict (1600-1800)," *Islamic Law and Society* 8, no. 1 (February 2001), pp. 66-69.

arson cases, setting fire particularly to hay barns, straw stacks, stockyards, olive groves, and fig orchards in many Anatolian and Rumelian villages was an old and a commonplace custom that peasants appealed to settle their disputes out of court. It was a way of restituting justice and resolving conflicts stemming largely from very simple matters of fury and grudge. As a particular form of rural crime, arson was not even considered serious by the peasants themselves unless it directly targeted buildings used as residences, thus threatening lives.

In Rumelian villages, houses became targets only if the person in question had committed a heinous crime like murder. In such cases, the punishment reserved for the offender was extrajudicial and collective, carried out by the community or, as is revealed by some cases, it was an administrative punishment organized and ordered personally by local officials. Fire was used arbitrarily as a means of extinguishing collective outrage, especially if the offender had managed to escape. In 1840, when Antoine, the translator of the Austrian Consulate, was killed by three men in İşkodra (Shkodra), the houses of the alleged murderers were set on fire, probably on the order of the district governor Abdi Paşa, as they had fled after the murder.[170] In 1855, when a zabtiye soldier was murdered by a Christian subject, again the district governor ordered his house to be burnt. But this time his fellow villagers also had their share from the retributive act. Along with the murderer's house, several other houses also were burned down.[171]

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[170] BOA., HR.TO, 149/1, 13 January 1845.

[171] BOA., HR.TO, 196/24, 20 June 1855. This case is distinctive with regard to the complications of the retributive act of the district governor. Hacı Abdullah Ağa, a zabtiye soldier, who was employed to take revenge on the murderer, went too far and attempted to punish the fellow villagers of the murderer. In this process, women and children were treated cruelly, the livestock of the peasants were taken away, and sixteen men from the village were arrested. According to Monsieur Bezdani, the charge d'Affairs of France, the events had reached to such a level that the Christians and Muslims had started to bear arms and this would potentially lead to an armed conflict.

Feud murders were also commonplace and a part of local customs, especially in Rumelia. In 1870, when Hamza and Halil were seized in Prizren after they had stolen a horse and a cow from a village, it came out that the former was a runaway murderer who had killed a man called Kadri as Kadri had murdered his father. Further, Hamza had set fire to the house of the local headman as he had motivated the peasants to set his house on fire after he had killed Kadri. Hamza received a capital sentence for his previous crimes of murder and arson.[172] The government was rigid about inflicting capital sentences in feud murders.[173] In addition, the use of reconciliation (*kan barıştırmak*) through an amicable settlement (*kaide-yi sulhiye*) between the parties in such cases was forbidden by the government as sulh proved not to be deterrent, on the contrary diminished criminals' fear of punishment.[174]

Cevdet Paşa, in *Tezâkir*, mentions that the people of İşkodra in particular were "uncivilized men" reputed for their traditions of vendetta.[175] This habit never ceased to be a problem for the local governors in Rumelia.[176] In 1870, Derviş Paşa, the governor of İşkodra, was quite anxious about the subsequent feud murders that had erupted.[177] Like Cevdet Paşa, he also thought that the adherence to such

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[172] BOA., İ.DA, 8/209, 15 Ş 1287 (10 November 1870). For another case of feud from Prizren see BOA., İ.DA, 12/413, 10 Ca 1290 (6 July 1873)

[173] As can be seen from a case from Konya, although the local council suggested fifteen years hard labour for a murderer as such, feud murder was accepted as an aggravating factor and his sentencewas commuted to capital punishment. See BOA., İ.DA, 14/565, 15 C 1291 (30 July 1874).

[174] BOA., İ.MMS, 48/2028, 18 L 1290 (9 December 1873).

[175] Cevdet Paşa, *Tezâkir 13-20*, p. 161. Cevdet Paşa also stated they always carried guns and never gave up the habit of severing heads –*muâmele-i vahşiyâne*- when they killed an enemy and exhibited them. See ibid., pp. 167, 169, 189.

[176] As late as 1902, the central government decided to issue a declaration for the people of Rumelia in order to announce that they should leave the long-standing cherished custom of vendetta and turn to the courts to conclude their disputes instead. See BOA., İ.HUS, 96/1320M-037, 9 M 1320 (18 April 1902).

[177] BOA., İ.DH, 615/42874, 25 R 1287 (25 July 1870).

customs and revenge by the peasants was due to their "uncivilized and ignorant" state of mind.[178] Since they did not give away the murderers, it was nearly impossible for the local government to catch any of them. In this case, the most effective method to restitute justice was to resort to the ancient custom of setting fire to the houses of the murderers.[179]

This case reveals not only the anxiety about the feud murders and the administrative punishment reserved for those fugitive criminals, but also shows how disgruntled Derviş Paşa was due to his curtailed jurisdiction in murder cases. He complained that the adherence to the proceedings of criminal law by conducting investigation into a murder case, interrogating the criminal, and then referring the case to Istanbul to be approved by the Sultan was a long procedure causing delay in the execution of justice. To make matters worse, in such cases, temporary hard labour was the punishment deemed proper for most of these criminals.

According to Derviş Paşa, both the delay in justice and the form of punishment reserved for murderers were far from being deterrents and further exacerbated the situation by debilitating the local efforts of maintaining public security and order. This unavoidably provided grounds for intervention by the foreign officers in the locale. For that reason, Derviş Paşa asked for an exceptional authorization to inflict capital sentences that would serve as an urgent exemplary punishment. In the face of such emergency, the central government accepted his request and granted Derviş Paşa exceptional but temporary permission. As is

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[178] *"...o havali ahalisinin hâl-i vahşet ve cahiliyetleri iktizâsınca yekdiğeri beyninde vuku' bulan katlden dolayı müddet-i medide kan davası sürülüb maktûlün veresesi katilin mütellekatından birini öldürmek ve madde-i katle mütecâsir olan adam her kimin hanesine dehalet eder ise onu derhal hiss-i (?) kabul ile ketm ve ihfâ eylemek öteden berü âdet-i mer'iye hükmünde olmaktan naşı..."*

[179] *"...minelkadim buraca kanûn-ı cinâyet ahkâmından olarak her şeyden ziyade tesir-i kuvviyesi görüldüğü üzere firarda bulunan katillerden bir kaçının yalnız haneleri ihrâk olunmasına..."*

evidenced from this case, the central government was responsive to the local demands if the subject in question was security and public order. However, it is also important to note that the suspension of rules was not permanent. The temporary authorization bestowed to Derviş Paşa was to be annulled as soon as the state of emergency in İşkodra was over.

It seems that the Ottoman peasants favoured extrajudicial settlement for two reasons. First, as Derviş Paşa mentioned, to insure a quick restoration of justice without delay by appealing to extrajudicial measures, like setting fire to murderers' houses, was apparently much more effective than seeking official punishment. Formal mechanisms of justice could sometimes take years delaying the immediate retribution and the murderers, in the end, could receive more lenient sentences than those expected. For example, when Todori from Yanya had been allegedly murdered by his wife with the help of another man called Kosta in 1863, they had been convicted immediately and had acknowledged the allegations before the local court; but the case dragged on for eight years without reaching a conclusion. Not surprisingly, when the suspects were retried, they denied everything. Although two members of the local court testified that they had been witnesses to the alleged murderers' confessions, the Supreme Council pronounced a not-guilty verdict and ordered the suspects to be released because the previous interrogation reports of the convicts could not be found due to the laps of time and since eight years had passed since the murder, the court did not accept the testimonies of the witnesses, based only on memory, as a ground for indictment.[180]

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[180] BOA., A.MKT.DA (DES) 9/66, 21 Ra 1288 (10 June 1871). *"…mürur-ı zaman hasebiyle varaka-yı istintâkiyeleri dahi mevcud olmadığı anlaşıldığına ve ikrâr-ı mezkurun sekiz sene sonra kuvve-i hafızadan ihbar olunması pek de medâr-ı hükm olunamayacağına binaen merkuman Kosta ve Eleni'nin tahliyeleri."* For a similar domestic murder case from Rusçuk that lasted for nine years and in the end resulted in the release of the convicts see BOA., İ.DA, 4/74, 3 M 1286 (15 April 1869).

Besides the delay in court proceedings, the second factor that made the peasants to prefer extrajudicial settlement over official ways was the burdensome bureaucratic legal procedures. Given the physical distance of the upper courts from some sub-districts and villages extrajudicial settlement often proved to be the cheapest and the most accessible way of implementing justice in the countryside. As enunciated by the Intendants (*Müfettiş*) of Anatolia and Rumelia, İsmet Paşa and Kamil Paşa respectively, some sub-districts were too far from the provincial centres, which deterred most of the plaintiffs from pursuing their claims. The plaintiffs were mostly old men, women, or poor people unable to go to the provincial centres and incapable of bringing witnesses to these courts due to the costs it entailed. Hence when they were asked to do so, they often failed to attend the trials and abandoned their claims.[181] It was only in 1869 that a new regulation was enacted in order to overcome this obstacle before the smooth implementation of justice. Hereafter, the local treasury (*mahallî mal sandığı*) would cover the expenses of the witnesses and then it would be compensated by the party that had lost the case.[182]

Suffice it to say that nizamî jurisdiction played a central role in community life after 1840. Its interplay with the villagers' customs, beliefs, and attitudes was varied. Sometimes it took time for the villagers to get familiar with the prescriptions, proceedings, and language of the new legal system. Yet, they used and manipulated it for their own needs and benefits and pursued solutions at the nizamiye courts while the officers employed to investigate criminal cases and question the litigants took advantage of their ignorance about the new system. It also

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[181] BOA., İ.MVL, 282/11093, 3 Za 1269 (8 August 1853) and A.MKT.MVL, 56/38, 23 Za 1268 (8 September 1852).

[182] Bingöl, pp. 219-220.

should be noted that the judicial game was played not only between the defendants and plaintiffs, but included various actors of which the community was a central part.

Given the prevailing theory of proof in şer'î law, witnesses were always an essential basis for legal system. The role of witnesses in criminal procedures did not change with the new nizamî law and thus, the cooperation of the community with the judicial authorities remained a critical issue for the operation of justice. Nevertheless, unlike şer'î courts, nizamiye courts largely made their verdicts on circumstantial evidence. If a confession could not be obtained and in case there were no witnesses to the crime, circumstantial evidence that was gathered with the cooperation of the community started to play a pivotal role in indictments.

In the following section, I first will briefly elaborate on the judicial practice at the local courts and then try to analyse the role of community, witnesses, and circumstantial evidence in criminal investigations which also yield some important issues about reputation, gender, and honour in community life.

Judicial Procedures and Methods at the Nizamiye Courts

In almost all criminal cases, the investigative process started with gathering evidence if the offender could not be seized red-handed. Gathering evidence started with an examination of the *corpus delicti* (the evidence of crime). In most cases, villagers including the local headman, imam, local notables like *çorbacı*s and the zabtiye were the first to examine the corpse of a murder victim or the wounds of an assault victim. If the person attacked or wounded was still alive, s/he was questioned initially by these persons in order to learn the identity of the offender or the suspect.

In most cases, it was the village community who seized and delivered the alleged offender to the local government. Then came the criminal investigation process which included the interrogations of litigants and witnesses at the court and the establishment of guilt by relying on witness testimonies and circumstantial evidence.

A standard interrogation usually began by asking the defendant or the witness, under oath, for his/her name, family name, age, occupation, faith, marital status, and residence. Sometimes, s/he also was asked whether s/he was literate or not. Women also were asked to give the names of their husbands. Interrogators were careful to not let the questioning get suggestive or leading. Therefore initially they asked the defendant why and how s/he had been arrested and let the defendant tell his/her own side of the story. Interrogators usually intervened with questions to bring out the contradictions inherent in this story. If the accused or the accomplice was reluctant to speak, he encouraged him/her by saying "tell us everything, nothing will happen to you" or if s/he was insistent on denial, he said "tell the truth and we will save you."[183] These were tactics employed by the interrogators.

Admission of the guilt neither saved the culprit from penalty nor procured a lesser punishment. Interrogators used the ignorance of the defendants about the law in order to extract information or confession. In this regard, the interrogation process was a war of tactics and strategies between the nizamiye courts' officials and the defendants. Petrov examined in detail the defensive strategies employed by the defendants in the context of legal self-defence. He states that the "complete submission [of the defendants] to the judicial process and …willingness to accept its

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[183] "*Keyfiyeti nasıl oldu ise söyle sana birşey irişmez.*" and "*Doğruyu söyle seni kurtaralım*." See BOA., İ.MVL, 541/24320, 9 C 1282 (30 October 1865), MVL 636/35, 9 Ca 1279 (2 November 1862).

decisions, whatever they may be" was the most common discursive strategy along with other strategies such as "credibility defence" and "gullibility defence".[184] According to Petrov, these strategies employed as a form of "symbolic compliance" to the law were the ways in which ordinary Ottoman subjects attempted to manipulate the law for their benefits.[185] Thus, he exploited the interrogation reports as a source with a potential to reveal the agency of these peasants. In this dissertation, I also have benefited from this approach and utilized interrogation reports in order to draw attention to the question of agency and subjectivity.

During the interrogations, the main goal of the interrogator was to elicit a confession. In this process, the defendant was sometimes threatened with torture[186] or the sufferings s/he would experience if s/he was sent to prison.[187] If several persons were complicit in a crime, it was also important to understand who the actual perpetrator was. In such cases, the interrogators carefully focused on the details that would bring it out. If it could not be detected, the court abstained from inflicting the severest punishment reserved for the crime. In any case, whether a confession was obtained or not, the court released its verdict by considering witness

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[184] The most common forms of symbolic obedience were: "I would be resigned to my punishment" (*cezama razı olurum*), "there would be nothing left for me to say" (*diyeceğim kalmaz*), "what can I do, I shall suffer [my punishment]" (*ne yapalım, çekeriz*). See Petrov, "Tanzimat for the Countryside," p. 292.

[185] Ibid., see chp. 6, pp. 260-316.

[186] See for example BOA., İ.DA, 7/132, 13 L 1286 (16 January 1870). *"S: Kostanti sen böyle görmedim diyorsun ancak böyle demekle zahmet çekersin doğru söyle / C: Efendim doğru söylerim kim olduklarını göremedim zira havf ettim beni dahi katl eylemesinler onun için bilemedim / S: Bunu doğru söyle kendini kurtarasın istersen zahmet çekmeyesin / C: Efendim başım üzerinde duran karye-i mezbûreli …Tanaş idi gördüm doğrusu budur / S: Aferim şimdi doğru söyledin şimdi nice olduğunu doğru söyle korkma sana bir şey yoktur …/ S: Kostanti bunu sen hergün böyle söylersin ancak sen düşünüb bize doğru haber verecek idin biz de seni kurtarırız dedik sen hala evvelki cevabını söylersin fenalığı davet edersin sonra pişman olursun doğru söyle hükümetten kurtulasın."*

[187] See page 60, footnote 129.

testimonies and circumstantial evidence and forwarded it to the upper court for confirmation.

The Role of Community and Neighbours

According to şer'î law and the old Ottoman kanûn, the detection and arrest of a criminal, especially in cases violating the private rights of an individual was the common obligation of the people living in the vicinity of the place where the crime was committed. If the criminal could not be found, then they had to pay the blood money or compensation to the heirs or the victim.[188] Petrov claims that the kasame procedure of the Islamic law in homicide cases with unknown suspects that necessitated the oats of fifty men among villagers, who would swear that they had nothing to do with the crime and then pay the blood money to the plaintiff, turned to be obsolete by nizamî investigative practices since the criminals were usually detected after conducting a nizamî investigation.[189] However, the archival evidence shows that kasame remained an ongoing practice in the new system in homicide cases and was ordered to be implemented by the central government.[190] As will be seen in the chapter on rural arson, this procedure also was carried out in the countryside in arson cases with unknown suspects. This demonstrates the incorporation of old procedures and şer'î law into the nizamî jurisdiction when the

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[188] Heyd, p. 235. Held also states how this system was abused by people and governors. See ibid., p. 311.

[189] Petrov, "*Tanzimat* for the Countryside," p. 279. Also see Adalet Bayramoğlu Alada, *Osmanlı Şehrinde Mahalle* (İstanbul: Sümer Kitabevi, 2008), pp. 153-56.

[190] See BOA., A.MKT.MVL, 56/32, 22 Za 1268 (7 September 1852); A.MKT.MVL, 61/56, 26 Ca 1269 (7 March 1853); A.MKT.UM, 266/85, 16 Ca 1273 (12 January 1857); A.MKT.MVL, 104/94, 21 C 1275 (26 January 1859); MVL, 805/-A/26, 5 C 1283 (15 November 1866).

latter proved to be ineffective in finding a solution for the violated private rights of individuals by detecting criminals.

Along with offenders like murderers or arsonists, the seizure and arrest of the thieves and bandits also was assigned to the community. When Ali Paşa was assigned to the post of governor of İzmir in 1853, one of the first things he did was to ascribe collective responsibility to the peasants in denouncing, seizing, and delivering the bandits to the government.[191] Similarly, in 1860, a prescription given to the Silistre, Yanya, Selanik (Salonica), Rumeli, and Üsküp Governors, and to the sub-governors (*mutasarrıf*s) of Edirne (Adrianople), Filibe (Plovdiv), Tırhala, and Sofya (Sofia) reveals that the village community was to be held responsible for seizing any bandits that came to their villages under the guise of a zabtiye and delivering them to the government. Further, if the bandits dared to show their guns, the villagers were to respond with armed skirmish.[192] In September 1865, another instruction was published in Tuna Newspaper announcing the responsibility of villagers to seize the thieves and bandits in the vicinity. The instruction reminded the villagers that condoning the escape of criminals from the government by harboring them to stay in their village was equivalent to having been an accomplice and this would not escape the attention of the government.

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[191] Alp Yücel Kaya, "19. Yüzyıl Ortasında İzmir'de Mülkiyet, Emniyet ve Zaptiyeler," in *Jandarma ve Polis*, eds., N. Levy, N. Özbek and A. Toumarkine (İstanbul: Tarih Vakfı Yurt Yayınları, 2009), pp. 202-204.

[192] Yonca Köksal and Davut Erkan, *Sadrazam Kıbrıslı Mehmet Emin Paşa'nın Rumeli Teftişi* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2007), pp. 70, 193 and 198-199. *"Ekser hayâdîd ü eşkıyânın ara sıra zabtiye kılığına girerek ve kıyafetle bazı köylerde kendilerini kabul ettirdikten sonra icrâ-yı habâsete cesaret eylemekte oldukları mütevâtir olmakla buna dahi bir çare bulmak lazımdır. Bu aranılan çare dahi oradan ve gerek kâ'imakam ve müdir tarafından ba'dezin kaza ve kurra ve nevahiye gönderilecek zabtiyelerin yedlerine ismini ve sıfat ve memuriyetlerini mutazammın memhûr pusula verilip zabtiye namıyla öyle pusulasız bir âdem gelecek olduğu halde kat'en kabul etmeyerek hemân tutup icâbına göre kaza ve sancakbaşına ve kürsi-i eyalete gönderilmeleri ve it'at etmeyerek teşhir-i silah edecek olursa mukabele eylemeleri hususlarının dahi mekatib-i mahsusa ile bi'l-cümle kâ'imakamlara ve kaza ve köy müdür ve muhtarlarına anlatılması ve kürsi-i eyaletce dahi bu vechle hareket edilmesi iktizâ eder."*

> Villagers, you know that thieves and highjackers and bandits go from one village to another and roam around desolate places so as not to be seized and seen by the zabtiyes. Even if they give no harm to the villagers, when they are arrested and interrogated, it becomes clear where they stopped and stayed. For that reason, some men are indicted of being an accomplice and some others are arrested for giving bread to the thieves and put in prison and at least for a while they suffer at the hands of interrogators.[193]

When any armed person appeared in any village, he was to be asked for his license. If he could not present it, he had to be seized and brought to the government by the villagers. In case he resisted, the villagers had the right to kill him. Carrying guns was strictly forbidden, except for the village watchman and for those who had special licenses, which would supposedly make it easy for the villagers to distinguish bandits from the zabtiyes or good men. When a village in the neighbourhood asked for the help of another village to seize the bandits, it was mandatory to go for help. If they did not, they would again be treated like accomplices who had aided and abetted the bandits.[194]

As is evidenced from the above-mentioned instructions, the local governments really did need the community's cooperation and involvement in the operation of justice since zabtiye soldiers as the main security force in the countryside were usually incapable of preventing crime due to their "loose behaviour" and "ignorance about their responsibilities."[195] In other words, the

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[193] *"Köylüler, siz bilirsiniz ki hırsız ve haydut ve eşkıya takımı zabitin eline geçmemek ve gözüne görünmemek içün köyden köye dolaşub tenha yerlerde gezerler ve bunlar köylülere hiç zarar etmeyecek olsa bile tutuldukları vakit istintâklarında nereye uğradıkları ve nerelerde oturup kalktıkları meydana çıkar onun içün bir takım adamların kimisi yataklık töhmetiyle ve kimisi hırsıza ekmek vermek kabahatiyle habs olunurlar ve hiç olmaz ise bir müddet istintâk elinde sürüklenirler…"* For the whole text of the instruction see Appendix B.

[194] *Tuna Gazetesi*, no. 29, 7 Ca 1282 (28 September 1865).

[195] Köksal and Erkan, p. 198; Also see Kaya, p. 196. For the telegram sent to the Supreme Council by the Governor of Hüdavendigar Province, Hüsnü Paşa, that complained about the disorder among the zabtiye soldiers see BOA., İ.DH, 566/39389, 2 Ca 1284 (1 September 1867).

community was expected to facilitate the justice system's working as the government's agent of security in the countryside.[196] Of course, collaboration was no less important for the community than it was for the state. It was to the community's benefit to expel infamous individuals from society. Therefore, in many cases, villagers declared that they no longer wanted such persons in their community and asked for the implementation of justice according to law.[197] Obviously, the villagers knew very well how central their role was in shaping the outcome of any trial. They appeared in court as witnesses, gave testimonies against or in favour of the alleged offenders and plaintiffs and thus actively took part in the local judicial process. Since the offenders almost always admitted their guilt before the community and local courts, but then revoked their confessions in the upper courts, witness testimony was crucial to make the previous confessions of the offenders clear and enable conviction.

Whether eye-witnesses to the crime or not, the testimonies of the neighbours, relatives, friends, and other village fellows of the litigants were of crucial

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[196] Apparently, this situation continued in the 1890s as well. Nadir Özbek states that the maintenance of order in towns and villages was largely the duty of the local communities in the 1890s since the gendermarie regiments were located in provincial centers. See Özbek, "Policing the Countryside: Gendarmes of the Late 19th Century Ottoman Empire (1876-1908)," *International Journal of Middle East Studies* 40 (2008), p. 52. According to the Provincial Yearbook (*Salnâme*) of 1285 (1868/1869), the total police force in Tuna Province with an overall population of two million (women included) was less than 3500. See Petrov, "Tanzimat for the Countryside," p. 60. In 1870s, the Ottoman Empire with a population of approximately 27 million had a police force of approximately 38,000. See Özbek, ibid., p. 51. Of course, the police force was not evenly distributed among the provinces. Tuna Province as the seat of the Provincial Reform Law was probably the one with the largest police force. For instance, in 1310 (1893), Halep with 150,000 inhabitants had only 25 gendermaries. It means there was only one gendermarie per 6000 inhabitants. See BOA., DH.MKT.PRK (DES), 1359/134, 28 L 1310 (15 May 1893).

[197] See, for example, BOA., İ.MVL, 429/18864, 12 Ş 1276 (5 March 1860); MVL, 953/42, 3 Za 1279 (22 April 1863); MVL, 685/33, 28 R 1281 (30 September 1864); MVL 705/87, 12 M 1282 (7 June 1865). Of course, this practice was not unique to the nineteenth century. Heyd states that banishment was a common method to get rid of "undesirable elements" such as notorious criminals, hartols, gipsies, and lepers. See Heyd, p. 303; and Suraiya Faroqhi, "Bursa'da Cinayet: Bir Cui Bono Vakası," in *Osmanlı'da Asayiş, Suç ve Ceza*, eds., N. Levy and A. Toumarkine (İstanbul: Tarih Vakfı Yurt Yayınları, 2008), pp. 74-76.

importance for the courts as they revealed the reputation of the defendants and plaintiffs in their community. If a defendant was an infamous person in his/her village, a repeat offender (*sabıkalı takımından*), a person of bad repute (*eşhâs-ı muzırre*), or a suspect (*mazanne-i sû'-i eşhâs*), the court learnt it from the witnesses.[198] Likewise his/her infamous character, the good character of the defendant (*ehl-i ırz*) also was validated by witness testimony.[199] The focus on honour and reputation in crimes involving women, especially in sexual crimes, made the public opinion more important for the judicial system. Whether a woman was unchaste (*alûfte*) or honourable (*erbâb-ı iffet*) was supported by the community and it played a central role in the court's decision in determining the gravity of the crime and severity of the punishment.[200]

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[198] If a person was of a bad sort or a repeat offender with a previous criminal record and if s/he committed manslaughter (accidentally killed someone), s/he would be sentenced to one year pranga, contrary to a person with a clean criminal record who would be released in such a case. When a certain Mehmed from Drama district admitted that he had killed his son accidentally without any intention, he was sentenced to one year *pranga* since he had a previous criminal record. See BOA., A.MKT.MVL, 32/73, 23 Za 1266 (30 September 1850).

[199] In some cases, the good character and the clean criminal record of the offender was stated in petitions filed to the judicial authorities by the community and asked for a mercy. For example, see the case from Kütahya about Hacı Hattat Efendi BOA., İ.MVL, 380/16648, 27 S 1274 (17 October 1857).

[200] When four soldiers forcefully committed an indecent act (*fi'l-i şeni'*) with a woman called Nazik Hanım in Isparta, it came out after the investigation that the victim's chastity was questionable. The memorandum of the Hamid District stated that an indecent act could be regarded "forcefully" only if the woman in question was honourable. The soldiers were sentenced to four years hard labour but neither was dismissed from the army nor received any corporal punishment which was an administrative punishment reserved for soldiers in such cases as mentioned before. "*Mezbûre pâk-dâmen olmayub alûfte makulesinden bulunduğu tahkikat-ı ahireden anlaşıldığından…muamele-yi cebriye ile fi'l-i şeni' icrâsı erbâb-ı iffete mahsus olmasıyla ve bu mezbûre erbâb-ı iffetten olmayub…"* See A.MKT.DA (DES), 2/42, 18 M 1285 (11 May 1868). In Pravadi (Varna), when the wife of Hüseyin, Hanife, claimed that she had been raped by her fellow villagers Ömer and Ali Osman, the offenders denied the accusations. However, the village community (*karye-i ahali*) testified that she was an honourable woman (*ehl-i iffet*) and the court condemned the men to hard labour for four years. See BOA., A.MKT.DA (DES), 9/49, 24 M 1287 (26 April 1870). If the girl assaulted was claimed to be a virgin, it was easier to establish the crime by having the girl's virginity examined. However, if she was a married woman or a widow, then the community testimony about her reputation and honour became crucial for the court. In Eskişehir when Halil murdered his wife Hatice, he claimed at the court that he had killed her since he had seen her *flagrante delicto* with Ahmed. However, when the villagers were asked about the woman's reputation, they said that she was an honourable woman. Later, it came out that Halil murdered her due to a grudge stemming from

The credibility and personal respectability of a witness was also of crucial importance for the reliability of the depositions. For that reason, many of the witnesses were chosen mostly from among the village elders or notables including the headman and imam, of course with the exception of eye-witnesses to the crime. As they were the first who went to the crime scene, examined the wounded or assaulted person, and questioned the eye-witnesses besides accompanying the zabtiye in catching the alleged offender in most cases and then questioning him/her, these persons naturally had more information about the circumstances of the crime and their views were regarded as a reflection of the public opinion.[201] According to the prescriptions issued in 1854 in order to regulate the criminal procedure in the Court of Investigations (*meclis-i tahkik*), all witnesses' testimonies would be heard before the court without regard to gender and religion and they would be treated equally. Each witness would be heard separately and both witnesses and accomplices to the crime, if they existed, would be confronted with the defendant to repeat their depositions in front of him/her.[202] Confrontation (*muvâcehe*) was a legitimate procedure to obtain a confession. Yet, at this point, the accused could dispute the charges claiming that the witnesses were not impartial due to their relationship with the plaintiff or because of their enmity against him/her.[203] Then,

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a monetary issue. See BOA., A.MKT.DA (DES), 56/13, 8 Ca 1292 (12 June 1875). Also see BOA., İ.DA, 18/796, 6 M 1294 (21 January 1877).

[201]Başak Tuğ states that this witnesses "constituted a 'class', a well defined group, mostly from among the well-off local notables with military and religious titles" in the eighteenth century Ottoman Empire. It is evident that it was not much different in the nineteenth century. See Tuğ, p. 244.

[202] Bingöl, p. 78.

[203] For example, in 1864, when Tahir forcefully committed adultery with the wife of Salih, Hanife, in Bolu, he refused the testimonies bored against him saying that one of the witnesses was working at the pasture of Tahir and the other one was his servant. See BOA., MVL, 685/33, 28 R 1281 (30 September 1864). Similarly in another case, when a certain Veli from Tolcı district set fire to the hay barn of Toncu, he denied accusations and did not accept the witnesses' testimonies claiming that they

the court might order further investigation to ascertain the truth about the alleged relationship or hostility.

Besides the local courts, the Supreme Council also could order further investigation if the local court failed to follow judicial procedures properly[204] or the evidence mentioned in a local memorandum was deemed unconvincing to release a guilty verdict. In accusations of assaults or torture, for example, a physician's examination was necessary to detect any traces of it.[205] In clarifying whether a crime was premeditated or unpremeditated, it was important to have knowledge about the circumstances of the case.[206] When a person was accused by some others for an alleged crime, the credibility and reputation of these persons were as much important as the alleged criminal's credibility and reputation.[207] In brief, procedural gaps or any failure in the investigation process were not excused. The following

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were false-witnesses. He said Toncu was a rich person and he must have given them money to testify against him. See BOA., İ.DA, 2/30, 10 C 1285 (28 September 1868).

[204] See BOA., A.MKT.MHM, 295/64, 19 L 1280 (28 March 1864); A.MKT.UM, 388/56, 9 C 1276 (3 January 1860).

[205] When a certain Hatice from Tirebolu was convicted for having poisoned her husband and acknowledged her crime before the court, she later claimed in the upper court that she had confessed because she had been beaten and forced by Kethüda oğlu Mahmud to do so. Since there was no detail in the memorandum of the Trabzon Council, the Supreme Council asked to be informed whether there were any traces of such a beating on Hatice's body. See BOA., A.MKT.UM, 419/21, 19 M 1277 (7 August 1860). In another case from Silistre, Salih, an alleged rapist, revoked his previous confession claiming that it had been obtained under duress as he had been tortured during the interrogation process. However, when he was examined, no sign of torture was found and his denial did not work. See BOA., A.MKT.DA, 10 B 1288 (25 September 1871).

[206] When a certain Hüseyin was stabbed to death in Tokat, the murderer claimed that he had found Hüseyin and his wife Hafize in his bed flagrante delicto and killed him. To understand whether his claims were true or not, the Supreme Council asked where the dead body of the victim was found and if he had divorced his wife after the event or not. See BOA., A.MKT.MVL, 47/1, 11 M 1268 (6 November 1851).

[207] See for example BOA., A.MKT.MVL, 105/4, 23 C 1275 (28 January 1859); BOA., İ.DA, 13/491, 15 M 1291 (4 March 1874).

case shows clearly the vigilance and rigor of the Supreme Council in releasing verdicts, especially death sentences.[208]

On August 25, 1859, a woman called Gece allegedly was murdered in Ragel, a village of Tulça sub-district in Vidin. Hearing the screams, the villagers immediately gathered at the crime scene and found the woman stabbed to death. The suspicion fell on a Kazak Yanko, with whom the victim had been living for three years, since he had fled immediately following the event. Furthermore, a neighbour woman, Yovana, reported that she had seen exactly what had happened that night. Accordingly, she had seen Gece crying and running towards her house while Yanko had chased her with a knife in his hand with which he stabbed her soon to death. After a short while, Yanko was seized but denied the accusations. He claimed that she must have been murdered by four unidentified men (*meçhûl ül ahvâl*) who had broken into his house that night and assaulted Gece and himself. He had fled, he said, because he had been so scared. This is what we learn from the initial memorandum of the Tulça sub-district. When the case was referred to the Supreme Council, however, the information revealed by the local memorandum was not found convincing. The Supreme Council addressed three important questions related with the case in order to bring some ambiguous issues into light that were not included in the memorandum.

The first question addressed was about the crime scene. Given the conflicting denunciations of Yovana and Yanko, the Supreme Council wanted to learn where the dead body of the victim had been found. If Yanko's deposition was true, she must have been found somewhere inside the house since he had claimed that four men had come and attacked them in his place. On the other hand, if Yovana's

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[208] BOA., İ.MVL, 451/20156, 3 S 1278 (10 August 1861).

statement was true, then the dead body must have been found on the street, not inside the house.

The second question was about the motive behind the crime. The Supreme Council asked the local council to investigate the relationship between the victim and the alleged murderer, saying that "If someone kills another, he does it due to a grudge and hostility. For that reason, it must be found out if there had been any hostility between the couple and if they had had a quarrel for any reason before the murder was committed."[209]

Finally came some questions about the alleged murderer. The local council was asked to report if the alleged murderer had had any wounds on his body in accordance with his claims that he had been attacked. The information about his previous criminal record also had been clarified. Some villagers declared that Yanko had been indicted before for a murder case and had been in prison for a while. Moreover, he was a person of bad sort. The Supreme Council wanted to learn the reputations of these villagers as well and further asked the local council the names of the persons who first went to the crime scene.

Upon the orders of the Supreme Council, a further official inquest was carried out by the Tulça sub-district council. Accordingly, the council stated, the dead body had been found somewhere between the house of Yanko and Yovana. The persons who had arrived at the crime scene initially and found the victim were four village zabtiyes whose names had been given in the memorandum. According to the depositions of these zabtiyes, Gece had still been alive when they had arrived and more importantly, she had told them the name of the murderer, Yanko.

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[209] *"bir adam bir adamı katl etmesi bir garez ve nefsâniyyete mebnî olacağından bunların aralarında olan bir güna garez var mıdır ve katl maddesinin vuku'undan mukaddem ahir suretle münazaaları vukubulmuş mu idi."*

However, the motive behind the murder could not be established. Yet, it was stated that Yanko was a Cossack and the Cossacks were known for their habit of drinking, and usually dared to commit such crimes when they were drunk. The fact that Yanko had had no wounds on his body and the information about his previous criminal record also was substantiated by some çorbacıs among the village elders and notables. Given this information, the Supreme Council returned a guilty verdict and Yanko was sentenced to hard labour for fifteen years in Vidin. He escaped a death sentence because the victim's son asked for neither retaliation nor blood money.

Neighbours were witnesses to any crime much more frequently than other people. Most houses in villages shared at least one wall or a fence with other houses if one was not so isolated from the others and even some people shared the rooms of the same house. Of course, everyone knew each other in a small village, but neighbours always knew the details in each other's lives much more clearly than the others. Therefore, their testimonies became crucial for the courts especially in hidden crimes like poisonings and adultery. In domestic murder cases, the neighbours of the victim were asked about the relationship between the couple. Obviously, neighbours would hear or see what was going on next door. They would know better than any other person if a woman had had a relationship with another man, if some strangers had visited the house or if a husband was of bad sort and had treated his wife violently. Such information usually was sufficient for the courts to establish the circumstances of a crime. Neighbours, especially for village women, were sometimes an important source of support and help, as will be seen in poisoning cases. Since they unavoidably witnessed or eavesdropped on quarrels or the sufferings of women at the hands of violent husbands, they sometimes provided

the mistreated party the necessary means to get rid of husbands. Therefore, they almost always appeared at criminal poisoning trials either as witnesses or accomplices.

The Role of Circumstantial Evidence

Suspects often were arrested by the denunciations of the witnesses, but in many cases, crime scene investigations also helped to reveal the identity of a criminal. In şer'î courts, full proof could be found only in the testimony of two male witnesses or one male and two female witnesses if a confession could not be obtained. Moreover, the rules of evidence were even stricter in homicide cases and no female witnesses were allowed.[210] Of course, witness testimony never lost its significance in nizamiye courts. However, circumstantial evidence gained a much more prominent role in establishing guilt and even if the plaintiff could not substantiate his/her claim with witness testimony, verdicts for conviction, based on circumstantial evidence, released by the these courts. It became important especially in illuminating hidden cases which were committed at night, in secluded places with no eye-witnesses.

Plenty of cases in the archives show that circumstantial evidence played a crucial role in bringing the criminals to light. For example in 1858, when two peasants from Uğurçuk village of Lofça, Kobo and his wife Sone, were murdered, the alleged criminal was found out owing to the pipe bowl (*lüle*) he had left at the crime scene along with other evidence.[211] When the villagers including the zabtiye

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[210] Akman, p. 88 and Rudolp Peters, "Murder on the Nile: Homicide Trials in 19th Century Egyptian Sharia Courts," *Die Welt des Islams* 1, no. 4 (1990), p. 113. When the guilt could not be established according to the rules of şer'î law even though there were strong circumstantial evidence against him/her, suspects were usually tortured in order to elicit confession. Mere accusations were never considered sufficient to justify claims. See Heyd, p. 252.

[211] BOA., İ.MVL, 429/18864, 12 Ş 1276 (5 March 1860).

and the çorbacıs went to the crime scene in order to investigate the case, not only did they conduct a post-mortem examination, but they also collected the pipe bowl they had found by the side of Sone. According to the deposition of the çorbacı Çeno, it was clear that Üstüyo was the murderer:

> We found a pipe bowl near Sone and we thought that it must be the pipe bowl of the man who murdered them. Then we collected it and came to the village… We delivered it to the rural sergeant (*kır çavuşu*) and all pipes (*çubuk*) in the village were picked up from the peasants and their pipe bowls were measured but none of them were found fit. When Üstüyo's pipe was checked, we saw that there was a new pipe bowl on his pipe which was not used and the pipe bowl matched only with his pipe.[212]

Evidently, the fact that the pipe bowl only suited Üstüyo's pipe convinced the villagers so much so that they all claimed that they did not want him in the community anymore. Even his father stated that he could not provide bail for his son and he would not part from his fellow villagers.[213] The case, which is mentioned here very briefly, concluded with the death sentence of Üstüyo released in 1860 in spite of the fact that he had continued to deny his role in the murders.

In another case from Zağferanbolu, when Çimenderoğlu Todori's son and daughter were slaughtered on an October night in 1869, he pleaded against his stepbrother Nikola since he had been after his money for a long time. Nikola and his alleged accomplice Köseoğlu Mehmed were apprehended immediately. What led to the strengthening of suspicions against them was actually a cigarette case and a few strands of hair which were found at the crime scene by two officials employed for

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[212] *"…karısının yanında dahi bir çubuk lülesi bulunub bu lüle bunları öldüren adamın lülesi olduğu anlaşılarak lüleyi dahi beraber alub köye geldik… lüleyi kır çavuşuna vererek karye ahalisinin kaffesinin çubuklarını getirib lüleyi ölçtü olmadı Üstüyo'nun çubuğunu getirdiğinde yeni bir lüle takılmış ve yanmamış onun çubuğunu ölçtüler tamam geldi…"*

[213] *"S: Sen oğluna kefil olur musun / C: Olamam / S: Ne içün olamazsın fena adam mıdır / C: Ben fenalığını görmedim lakin köylü bu adamları öldürdüğünü söylüyorlar fakat köylüden ayrılmam"*

investigation. Many well-respected persons from the community testified that the cigarette case actually belonged to Nikola. The hair strands detected on the timber ceiling, which was low and not shaved, on the other hand, were white just like the hairs of Köseoğlu Mehmed. Furthermore, the stains on Köseoğlu's garment were not from walnuts contrary to what he had claimed but blood stains. Owing to the strong evidence found against them, their denials were declared null and void (*inkârları vâhi*) and they were sentenced to death.[214]

Like the pipe bowl and strands of hair found at the crime scene, some marks left on the offenders by the victims by biting, hitting, or scratching the assailant sometimes proved to be useful as circumstantial evidence. When Nesibe from Kandiye was raped and stabbed thirty-three times by a zabtiye soldier Çelebi in June 1870, she had spelled the name of the rapist and murderer before she died. Moreover, she had said that she had bitten the scabbard of his bayonet (*kasatura*). The bite marks were really found on Çelebi's scabbard. Moreover, contrary to the claims of the murderer, the blood stains on his underpants and shirt were not due to the pustule on his foot as it came out that there was no pustule. In spite of his denial, he was sentenced to fifteen years hard labour.[215]

Indeed, in many cases, what gave away the murderer were mostly blood stains found on his/her clothes. Peasants usually did not have more than one garment

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[214] BOA., İ.DA, 13/533, 19 R 1291 (5 June 1874). *"…ve merkum Köseoğlu kır sakallı olub Çimenderoğlunun köşkü muayene ve taharrî olundukda odanın tavanı insan başı dokunacak derecede alçak olub …(?) dahi rendesiz olduğundan tavana yapışmış çend aded kırca saç teli görüldüğü memuren mahal-i mezkura izâm kılınan Mustafa Efendi ve Hasan Onbaşı taraflarından haber verildiği…"*

[215] BOA., İ.DA, 11/392, 5 S 1290 (4 April 1873). *"...merkum hastahanede tedavi olduğu esnada merkum Çelebi kendisine cerh ederken hayli çabalamış ise de bir şey yapamayub fakat kasaturanın kınını ısırmış olduğunu söylediğini haber verip merkum Çelebi'nin kasaturasının kınında diş alâmetleri görülmesine ve merkumun ayağında çıban olmayub topuğunda kunduranın sürçmesinden hâsıl olmuş bir nişan var ise de bundan kan çıkmayacağı… anlaşıldığı halde merkumun gömleğiyle donunda ve uçkurunda eser-i dem bulunmasına nazaran merkum Çelebi'nin inkârı vâhi olarak…"*

and when the blood stains could not be removed, they had nothing to do but to fabricate stories about a pustule or a wound as a cause for those stains or about walnuts and other things, as seen in the Köseoğlu's case. Given the limitations of forensic medicine around the mid-nineteenth century, detecting the victim from the hair or blood collected from the crime scene was obviously impossible.[216] Nonetheless, these evidences strengthened the hands of the community and the courts to substantiate claims against the alleged murderers for prosecution and conviction.

In this chapter, the impact of the Ottoman government's rising concern over centralization in the Tanzimat period was shown. With its various actors from the local elites to the ordinary Ottoman subjects, the countryside was not a passive receiver of the social and legal transformations introduced during the period and challenged the centralization efforts of the government. That is why the reception and perception of these transformations on the everyday level provide a different picture than assumed by the central government. It was assumed that the new legal system with standardized codes and regulations would curb the power of the local elites and take them under control while turning the central authority and power into

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[216] Compare it to the article published in *Hekim Dergisi* in 1922 and written by Sabit, the head physician (sertabib) of the Police Department. The article reveals the confidence of the head physician in forensic science and medicine. In the article, Sabit claims that even a strand found in the fingernails of the victim or blood stains could easily give away the murderer. He further states that witnesses could mislead the justice but forensic medicine never. *"...yalnız şûhûd ile iktifâ etmeyüb terakkiyât-ı asrıyyeden haberdar olarak fen adamlarından layık olduğu derecede istifade etmek müdde-i umumilerin ve müstantiklerin en ulvî ve mucib-i menfaat vazifeleri cümlesindendir. Zira bir mütefennin eşhâsın ifadâtını almak kudret-i fenniye taht-ı tesisinde ecsâmın dahi ifadesini alabilir. Ekseriya bir tek düğme bir caniyi, bir katili ızhâr ettirecek derecede lisan-ı hale getirebilir. Bir bakla yaprağı üzerindeki bir kan izi maktulü keşf ettirir. Tırnak arasında kalan bir saç parçası katilin kim olduğunu söyler... Elde edilen bir tek mendil sahibini bulur. Bilhassa hurda beyni tedkikat şüphesiz bir çok esrarengiz vakayı meydana çıkartır. Onun için cürm-ü meşhûdlarda müddei umumilere, müstantiklere, zabıta memurlarına ve tabib-i adlilere düşen vazife pek mühimdir... Artık bilinmelidir ki bugün herkesin bir gözü fakat mütefennilerin bin gözü vardır. Herkesin göremediğini erbâb-ı fen vesait-i mükemmele sayesinde görür ve görebilir."* See Sabit, "Esrarengiz Bir Cinayet," *Hekim Dergisi*, no. 2, (Kânûn-i sânî 1338) (1922).

something visible and tangible in the eyes of the subjects more than ever. However, the new legal procedures mostly were seen as an obstacle before the implementation of justice in the provinces. Local customs were, in fact, a much more effective means of settling disputes than the top-down imposed Tanzimat penal codes and they reflected the perceptions of the local communities about law and justice. In this regard, the new legal system could not come into force in the localities at once and encountered many challenges. What seems to be a challenge, in fact, was not an indifference to law by the local population, but it was due to the availability of other forms of extrajudicial methods which proved useful in settling conflicts and implementing justice.

Besides the reception and perception side of the story, I delineated a picture about the judicial procedures at the nizamiye courts, how things worked in these new courts and how the community, neighbours, and circumstantial evidence played a role in this process. In doing so, I highlighted the dependency of the new legal system on the community's cooperation with the state. Penal codes and nizamî procedures could be effective only if the community was willing to cooperate as clearly will be seen in the arson cases below.

The next part of this dissertation examines how fire in the Ottoman countryside was a medium or a "form of speech" among peasants with a function to chastise the opposite party without having recourse to law. Peasants in these cases took justice into their own hands and settled their individual scores when they were wronged. Law with its slow, bureaucratic, and expensive procedures was the last resort in minor disputes among peasants. Disputes usually were settled outside the courts either by peaceful negotiation or violent action. As a violent crime against property, rural arson cases reveal the disputes among peasants on the everyday level,

the specific solutions they produced to their own problems at the local level, and the Ottoman state's attempts to detect and punish these transgressors by law.

PART II

JUSTICE AND VENGEANCE: INTRA-PEASANT CONFLICTS AND RURAL ARSON

Rural arson has been an important research topic for historians of rural crime for a long time, especially for those studying rural protest in Britain. From Edward P. Thompson, Eric J. Hobsbawm, George Rudé, and David Jones to Douglas Hay and John E. Archer, many prominent historians have focused on the social history of rural crime, specifically on incendiarism as a tool of covert rural terror.

Over the course of the eighteenth and early nineteenth centuries, incendiarism was a "traditional form of rural protest," "a means of redress," and "a guerilla tactic" adopted by labourers and a "traditional weapon of the powerless" in their struggle against the upper classes.[217] The labourers resorted to arson for many reasons, including low wages and living standards, unemployment or underemployment, and the use of machinery in the farms. In a society in transition where old paternalistic modes of economic relations were leaving their place to another one based on the values of the free market, arson was one of the most favourite weapons of rural labourers which was appealed for making the opposite party pay for its wrongdoings. Arson was also a major threat used by disgruntled

[217] See respectively David Jones, "Thomas Campbell Foster and the Rural Labourer; Incendiarism in East Anglia in the 1840s," *Social History* 1, no. 1 (January 1976), p. 5; A. J. Peacock, "Village Radicalism in East Anglia 1800-50," in *Rural Discontent in 19. cc. Britain*, ed., J.P.D.Dunbabin (London: Faber & Faber, 1974), p. 61; Douglas Hay, "Poaching and the Game Laws on Cannock Chase," in *Albion's Fatal Tree* (London: Allan Lane Penguin Books, 1975), p. 253. According to John E. Archer, farmers were the chief victims of incendiaries because in the eyes of labourers, not the landowners but the farmers were their real enemies who had the power to control and direct their living circumstances. See John E. Archer, *By a Flash and a Scare: Incendiarism, Animal Maiming, and Poaching in East Anglia 1815-1870* (Oxford: Clarendon Press, 1990), p. 147.

labourers who attempted to express their collective grievances by anonymous letters about matters such as food and marketing prices, illicit trade unionism, enclosure, gleaning, and local customs.[218]

As Douglas Hay noted, peasants in Britain were deprived of certain customary rights by the enclosure movement and the new criminal legislation of the period, the Waltham Black Act of 1723. With this encroachment, their daily survival strategies and customary rights were criminalized as offences against rural property.[219] The important point here is that there appeared two conceptions of justice which did not correspond to each other since crime as defined by laws was completely different from the definition of crime by the popular classes. Given this context, as Douglas Hay mentions, arson along with other "crimes" such as poaching, maiming, and pilfering, came to the fore as "a protest... against a concerted attack on their economy and what they knew to be their rights."[220] These "crimes" were legitimate for labouring classes who attempted to carry out their own definitions of justice against a threat on their "moral economy." This wave of arson as part of a social movement continued until the mid-nineteenth century. It was

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[218] E.P.Thompson, "The Crime of Anonymity," in *Albion's Fatal Tree* (London: Allan Lane Penguin Books, 1975), pp. 273-279. The Appendix of Thompson's article offers the reader many examples of threatening letters like this. Here is one of them: "Sir, we have inquired into your tithes, and we have determined to set fire to you in your bed if you do not lower them. You receive from Fletching £500 a year, and give your curate only £100 a year, and you starve your labourers that works for you, you old canibal. You parsons have fleeced the country long enough. Strain, if you dare. You and your daughter shall be burned in your beds if you do. We shall tell all the people in the parish not to pay you, for we are determined and our names are legions of liberty. Deem this as friendly, and consider that we would not burn you up without notice. Y.Z.X" This threatening letter, dated as 22 December 1830 (during the Swing Riots), was sent to the Reverend George Woodward of Maresfield and published in *The Times*. See pp. 315-316.

[219] Douglas Hay, "Crime and Justice in 18th and 19th Century England," pp. 46-51.

[220] Ibid., p. 51.

appealed to as a weapon of protest widely by the rural poor during and especially after the Swing Riots of the 1830s which made its peak in the 1840s.[221]

It would suffice to say that legal reforms in the Ottoman Empire initiated following the imperial rescript of Tanzimat basically did not intend to criminalize rural attitudes and norms integral to peasants' daily lives, but rather aimed at curbing the power of local elites and diffusing the power of the central government to distant provinces.[222] Although the Tanzimat reforms induced considerable tension in the countryside with the introduction of a new tax regime which created in public a chimerical expectation about the abolition of tax obligation and therefore culminated in many tax riots having new tax-collectors (*muhassıl*s) appointed by the government as their targets, arson never came to the fore as a popular weapon of social protest neither during these riots nor throughout the Tanzimat period.[223]

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[221] Captain Swing or the Swing Riots is the name given to the "spontaneous" and "unorganised" uprising of 1830s in rural England. Started especially in the low-wage counties of the South and East such as Norfolk, Suffolk, Essex, Kent, and Hampshire where rural population was predominant, it was a rural upheaval protesting the penetration of market relations into the traditional and paternalist society. When the rural worker was proletarianised and dispossessed of his customary rights, it started as a movement against rural capitalism. As Hobsbawm and Rude mentions, the aim of the rebellions was not revolutionary but economic. The weapons they used were usually machine-breaking and incendiarism and the latter in fact was usually the prevalent weapon of protest only after 1830. See E. J. Hobsbawm and George Rude, *Captain Swing* (Lawrence and Wishart, 1969), pp. 12-19.

[222] Miller, "From Fıkh to Fascism," pp. 46-52.

[223] People usually wanted to prevent the censuses that would fix the amount of taxation. In this process, *muhassıl*s, as tax-collectors, became symbols of cruelty. In 1840, Muhassıl Hilmi Efendi was lynched and his dead body was dragged along the streets in Tokat. In Amasya and Burdur, people representing the government were lynched in similar riots. For the tax riots in Tokat, Amasya and Burdur after the proclamation of the Tanzimat, see Uzun. Besides these tax riots, Ottoman subjects also rioted against the quarantine measures of the government. Halil İnalcık, for instance, in his work on the application and the social effects of Tanzimat, cites an incident from Amasya. He very briefly tells the story of a lynching instigated by the *ulemâ* in which a group of people "killed the quarantining doctor in a protest against a government-enforced quarantine." See İnalcık, "Application of the Tanzimat," p. 111. In her article on the riots against the quarantine in the nineteenth century, Nuran Yıldırım also cites several examples in which the crowds killed the quarantining doctors and supervisors. See Yıldırım, "Karantina İstemezük!," pp. 22-23 and 25.

Nonetheless, the fact that the collective grievances were not often expressed with fire does not mean that arson was a rare occurrence in the Ottoman landscape. On the contrary, villages never stayed out of the reach of blazes. Fire played a significant role in the everyday lives of peasants as a weapon of vengeance and sometimes was resorted to desperately to disguise another major crime. In most cases, arson was an everyday manifestation of intra-peasant disputes, a way of squaring scores without resorting to the law, and a kind of extralegal punishment exerted on the fellow villagers by the perpetrators. For the Ottoman state, on the other hand, it was an urgent question to be addressed and a huge threat against the security of life, property, and well-being of the subjects which had been promised by the Tanzimat. Owing to its devastating effects with haphazard outcomes, arson was a capital offence taken by the state as seriously as other crimes such as highway robbery, banditry, blasphemy, and premeditated murder, all of which called for the death sentence. For that reason, rural arson remained on the agenda of the Ottoman state as a concern especially from the mid-nineteenth century onwards and galvanised governmental responses to eradicate this malicious crime.

CHAPTER 3

VILLAGE NORMS, KASAME, AND THE TANZİMAT

> As long as the peasants do not burn the farms, do not murder, do not poison, and pay their taxes, we let them do what they want among themselves…[224]

Arson: A Rural Crime

Given that the urban setting always has provided plenty of evidence and material to researchers on any subject of study, it should come as no surprise that rural crime has hardly received a level of scholarly attention especially when compared to urban crime. As the British historian John E. Archer claims, the prevailing tendency among historians of crime until recently has remained within the confines of urban crime which has proved unquestionably attractive when the expanding towns and cities produced "juvenile delinquency and the 'criminal classes' among other subjects." "This," he states, "has given historical criminology a lopsided look."[225]

In a similar vein, Nadir Özbek takes attention to a similar propensity in Ottoman historiography. In spite of the rising interest in urban crime, punishment, policing institutions, surveillance practices, and so on, "nineteenth century Ottoman historiography yields little on the practices and institutions of rural social control or changing conceptions of crime and justice in the rural milieu". For that reason, the priority of urban history over the rural, according to Özbek, reflects an "urban

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[224] *Les Paysans* quoted by Tommaso Astarita in *Village Justice*, p. xiii.

[225] Archer, p. 9.

bias."[226] This chapter aims to overcome this bias and enrich our understanding of the Ottoman countryside while attempting to fill one of the many lacunas in Ottoman history.

Rural arson in the Ottoman countryside was not an indicator of social tensions bringing out the *collective* grievances of the labouring classes into the open as happened in Britain, which was swept by incendiary fires throughout the eighteenth and nineteenth centuries. Neither was it a phenomenon that affected the Empire thoroughly in a way that devoured rural Russia in the late nineteenth and early twentieth centuries during which the Ministry of Interior Affairs received more than 200,000 incendiary fire reports from forty-nine provinces.[227]

Although arson never reached epidemic proportions in the Ottoman Empire as such, it was evidentially an important phenomenon, notable for its regularity in the villages of the Anatolian and Rumelian towns and districts. The promulgation of the Provincial Reform Law and the foundation of a new province, namely the Province of Tuna in October 1864, which was immediately pursued by the institutionalization of the new nizamiye judicial bodies can certainly explain the frequent appearance of rural arson cases in the archives form the Rumelian provinces.[228]

The Province of Tuna was founded with the efforts of Ali and Fuat Paşas, together with Midhat Paşa, as a model to test the 1864 Provincial Reform Law. The

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[226] Nadir Özbek, "Policing the Countryside," pp. 49-50. Also see Özbek, "Osmanlı İmparatorluğu'nda İç Güvenlik, Siyaset ve Devlet, 1876-1909," *Türklük Araştırmaları Dergisi*, no. 16 (Güz, 2004), p. 63.

[227] Frierson, *All Russia Is Burning,* p.106.

[228] For that reason, Rubin acknowledges the 1864 Provincial Reform Law "as a defining moment in the emergence of the nizamiye system." See Rubin, "Ottoman Modernity," pp. 43-45. Also see Demirel, *Adliye Nezareti*, pp. 16-17.

former districts of Niş, Vidin, and Silistre were brought together to make up the new province where Rusçuk (Ruse) had been chosen as the provincial centre and Midhat Paşa as the governor.[229] The new province would be the litmus test for the provincial reforms which would eventually pave the way for the General Provincial Law in 1867. Besides a new hierarchical organisation in the administrative system, new judicial bodies were established in the province. This new system along with the foundation of the new province under the rigorous administration of Midhat Paşa may obviously be acknowledged as a reason behind the abundance of reported criminal cases from the region in general[230] and rural arson cases in particular.

According to Cathy A. Frierson, the introduction of the *uriadniki*, the local police, in rural Russia in 1878 was one of the reasons for the increasing number of arson cases reported to the government during the 1880s.[231] In the Ottoman context, not the local police but the institutionalization of the *nizamiye* courts after the proclamation of the Provincial Law can be regarded as an important motive that led peasants take their cases to be heard in these legal tribunals. Just at the very same time, rural arson turned into an urgent question for the local governments as it never had been before when the central government began to coerce them to bring these fires under control by means of law rather than local customs.

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[229] Petrov, "*Tanzimat* for the Countryside," p. 52.

[230] For example, in 1868, Tuna Province was the first among 22 provinces with 294 registers with regard to the official documents sent from the provinces to the Council of Judicial Ordinances (*Divân-ı Ahkâm-ı Adliye*) in a year. The Council received 123 registers from the Province of Edirne, 68 registers from the Province of Bağdat, and only 24 from the Province of Trabzon during that year. See İ.DA, 4/73, 26 M 1286 (8 May 1869). If these numbers, in a way, may indicate to or measure the efficiency of bureaucratic mechanism operating between the provinces and Dersaadet, then we can conclude that Tuna Province was the one which systematically reported the provincial affairs to the center, at least much more systematically than other provinces. The number of documents sent to the Council of Judicial Ordinances from the other provinces were as such: Hüdavendigar: 60, Aydın: 53, Hicaz: 10, Üsküp: 12, Bosnia: 117, Aleppo: 81, Yanya: 39, Ankara: 35, Diyarbekir: 26, İşkodra: 41, Trablusgarb: 13, Sivas: 51, Konya: 47, Suriye: 42, Erzurum: 43, Selanik: 76, Cezayir-i Bahr-i Sefid: 66, Kastamonu: 61, and lastly Dersaadet: 775.

[231] Frierson, *All Russia Is Burning*, p. 169.

The Motives, Victims, Perpetrators, and Targets

Unfortunately, arson almost never earns a mention by scholars in the rural history of Ottoman Empire. There is no study to date that has attempted to examine arson either as a "social crime," as a form of rural protest or as a manifestation of everyday conflicts in peasants' lives. Only a few cases of deliberate fire raisings by the enslaved have received attention by Ehud R. Toledano and later by Y. Hakan Erdem, but fires ignited by ordinary Ottoman peasants have remained out of scope.[232] This chapter specifically focuses on arson fires employed by peasants as a manifestation of personal malice. Given the archival evidence revealed by the examination of more than 150 cases, it argues that the nature and the context of the conflicts that triggered deliberate fire raisings in the Ottoman countryside was quiet different from the one that we see in the British rural context. Unlike Britain, arson was rather an individual action by the peasants, a means of implementing justice upon the wrongdoers similar to the cases in rural Russia and Germany.[233] On many occasions, simple quarrels between peasants of roughly equal standing engendered arson. In many others, peasants who appeared before the courts on charges of arson were farmhands (*rençber, hizmetkar*), day labourers, cultivators, and shepherds with grievances against their superiors like landowners, farmers, village headmen (*muhtar*s), Bulgarian notables (*çorbacı*s), or in some instances, administrative officers.

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[232] See Toledano, *As If Silent and Absent* and Erdem, "Magic, Theft, and Arson," pp. 125-146. Toledano's book was translated toTurkish by Hakan Erdem and published very recently. See *Suskun ve Yokmuşçasına. İslam Ortadoğusu'nda Kölelik Bağları* (İstanbul: Bilgi Üniversitesi Yayınları, 2010).

[233] See Frierson, *All Russia Is Burning* and Schulte, *The Village in Court.*

The motivation of the arsonist was mostly sheer malice stemming from the feeling of having been unfairly treated in some disputes over land or livestock, taxation, unpaid wages, and women (*kız maddesi*). Sometimes, the injured honour of the disgruntled perpetrator humiliated by the ill-treatment or reprehension of the opposite party came to the fore as a motive. Yet, in some other cases, arson was used by the strong against the weak for intimidation. Besides being a method of summary justice in homicide cases where the house of the murderer was torched by the villagers usually on the command of the local governors, as was briefly shown in the previous chapter, the strong or the superior party sometimes settled his score by setting the house of the weak on fire.

Arson also served to disguise other crimes like burglary and murder. Just as fire places did provide the best opportunities for plunderers[234] in big towns and cities with more heterogeneous and anonymous population, fire helped burglars, thieves, and murderers to conceal their crime by obliterating the *corpus delicti*. Intentional fire raisings with the aim of exploiting insurance payments, on the other hand, never came to the fore in the villages, unlike Ottoman cities, as there were no insurance companies operating at the village-level.[235] Even in İstanbul, only after the Great Fire of Pera in 1870 did the newly formed insurance companies (Sun,

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[234] Fatih Kahya, *Osmanlı Devleti'nde Sigortacılık* (İstanbul: Libra Kitapçılık, 2010), p. 200.

[235] In the 1870s, İzmir was another city where insurance companies operated. A document dated 1874 states that certain Greeks intentionally had ignited a fire in İzmir to receive payments from the insurance company. See BOA., A.MKT.MHM, 476/34, 27 R 1291 (13 June 1874). Fatih Kahya states that in 1863, the London Sun Insurance Company opened a bureau in İzmir and merchants insured their cotton depots against the threat of fire. In 1894, there were twenty-five companies in İzmir that worked in the field of arson insurance. By 1873, Trabzon had four insurance companies three of which specifically operated in the marine insurance. In 1894, Samsun, Mersin, Adana, İskenderun, Giresun, Ayvalık, Bandırma, Gelibolu, Çanakkale, Tekirdağ, İzmit, Sinop, Edirne, Bursa, Eskişehir, Ankara, Uşak and Nazilli were other towns and cities where some insurance companies opened agency bureus. See Kahya, pp. 101-105.

Northern and North British) start to insure buildings.[236] Since this chapter aims to examine rural arson, pragmatic self-arson cases or other forms of fire raisings employed by bandits and accidental fires are not included in the analysis. Though furious peasants sometimes uttered threats in public before setting fire to the property of the opposite party for intimidation, anonymous threatening letters which were a part of the English rural labourers' struggles, were also not commonplace in the Ottoman countryside.[237]

Since arson, by its very nature, was a covert crime, it was almost always committed at night under the cover of darkness.[238] It was a clandestine practice

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[236] Ibid., pp. 71-72 and 99. İlker Cörüt, in his thesis, examines some self-arson cases in İstanbul as a property crime ignited by the propertied classes for exploiting insurance benefits. See İlker Cörüt, "Social Rationality of Lower Class Criminal Practices in the Late Nineteenth Century Istanbul" (MA. thesis, Boğaziçi University, 2005), pp. 54-59. For a document that reveals the anxiety of the government about fires ignited to extract money from the insurance companies in İstanbul, see BOA., Y.PRK.ŞH, 2/15, 23 Z 1301 (14 October 1884). An article published in *Ibret Gazetesi* in June 1870 also shows that the insurance companies in İstanbul increased their fees due to the lackof measures taken by the government to prevent arsons. According to the article, the only exception to these companies was the Helvetia Company. See *İbret*, no. 8, 23 Ra 1287 (23 June 1870).

[237] In only two instances from İstanbul and Edirne (Adrianople), threatening letters were used not as a means of expressing collective grievances but simply for blackmailing. In 1861 in Büyükdere, a Greek pharmacist Yorgaki received a threatening letter written in Greek. The letter was thrown into his house from the window stating that his house would be set on fire if he did not give the money demanded. After the investigation, a certain Yamandi was taken under custody and confessed what he did in his interrogation. He was sentenced to hard labour for three years at the arsenal (*Tersane-i Amire)* according to Article 191 of the Ottoman Penal Code. See BOA., A.MKT.MVL, 131/88, 28 S 1278 (4 September 1861). In 1862, a grocer (*bakkal*) named Hristaki found an anonymous letter in his shop which stated that "You always meet Tanaş alone. Don't see him again. Otherwise we burn your shop and kill you together with the boy." (*Sen Tanaş ile daima yalnızca görüşüyorsun bir daha onunla görüşme sonra dükkanını ihrâk ve çocukla beraber seni itlâf ederiz*) Tanaş was one of the eunuch boys at the Church and apparently, Hristaki had a sexual conduct with the boy. He was often visiting Hristaki's shop which did not escape from attention in the neighbourhood. Subsequently, Hristaki received another threatening letter, this time delivered by a small kid, giving a second warning to the grocer: "We told you to come to the coffeehouse on Friday with Tanaş but you didn't. Furthermore, you continue to entertain with the boys in your shop everyday. You either put three hundred guruş in a rag into to the slot by the side of your shop's door or we set your shop on fire" (*Cuma günü Tanaş ile beraber kahveye gelmeni söyledik gelmedin ve daha sâir çocuklar ile hergün dükkanında eğleniyorsun ya üç yüz guruş ayırıb bu hafta mendil ile dükkan kapısının yanında olan deliğe bırak yahud dükkanını ihrâk eyleriz*). Since Hristaki did not consider the blackmail seriously, these threatening letters were soon followed by a fire that burned Hristaki's shop to the ground one night. After the investigation, the arson suspect was convicted with the help of the small kid and sentenced to five-year hard labour. See BOA., MVL, 954/51, 30 Ra 1279 (25 September 1862).

[238] This nature of arson crime was also underlined, without exception, by other scholars of arsons. See for example, David Jones, p. 14; Timothy Shakesheff, *Rural Conflict, Crime and Protest. Herefordshire, 1800 to 1860* (Suffolk: The Boydell Press, 2003), p. 179; and Albert C. Smith,

carrying a message of hatred. As Regina Schulte mentions, the immediate impact of fire on the victim had a "cathartic function" for the offender when he was in "unguarded feelings of hatred and revenge."[239] This psychological and emotional dimension implicit in hay burning explains the motive behind it since it was a crime with no material benefit to the perpetrator.

The most frequent targets for the disgruntled arsonist were hay barns, cowsheds and some other outbuildings called *zemlik* or *saye* (outbuildings). These structures were favoured objects of attack since they were easy to ignite and more significantly, often situated some distance from the dwelling-house of the victim. This provided the perpetrator time to escape and enabled him to take his revenge by only destroying the farm property, thus showing the limits of his intent. Obviously, the sole intention of the offender was to settle his score, not to make the victim pay the price for his wrongdoing with his life. In the eyes of the arsonist, the punishment he thought fit for his victim was equivalent to his wrongdoing and in this sense, legitimate. Nonetheless, on some occasions, the act of arson proved far more destructive for the victim going far beyond the arsonist's intention. Together with the hay barn or cowshed, fire sometimes destroyed the livestock or spread to adjoining buildings and turned into a runaway fire causing a disaster.

The arsonist's equipment for igniting fire varied. The perpetrators mostly preferred "Lucifer" matches. John Archer argues that Lucifer matches, which came into the market in 1830 in Europe, "opened up a whole new vista for the angry labourer" and increased incendiarism as it made the mechanics of starting a fire

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"'Southern Violence Reconsidered: Arson as Protest in Black-Belt Georgia, 1865-1910," *The Journal of Southern History* 51, no. 4 (November 1985), p. 560.

[239] Schulte, *The Village in Court*, pp. 55-56.

easier than other methods.[240] We do not know when exactly Lucifer matches started to be imported to the Ottoman Empire. An article published in *Mecmua-i Ebuzziya* in April 1883 states that Germany, Sweden, Austria, and Britain were the countries that produced and exported Lucifer matches in Europe, but it does not mention if the Ottoman Empire was among the countries which imported it.[241] Yet, nine among twenty-six arson cases show that Lucifer matches were available in the mid-nineteenth century. Other "weapons" from the most encountered to the least were tinderbox and flint, pipe, and hot coals or cinders carried in jugs. In fires set to the houses by domestic servants, the arsonists preferred hot coals due to their proximity to the hearth in the kitchen and sometimes candles.

The rest of this chapter first will focus on a customary practice, kasame, which was outlawed with the proclamation of Tanzimat but then reintroduced in the late 1860s in accordance with the suggestions of the local governments in Rumelia to cope with rural arsons with unidentified perpetrators. The circumstances that engendered the reimplementation of such a practice in Rumelia and the spread to and adaptation of it to other local contexts in Anatolia will be examined to show the extent to which the central government, in a period of centralization, was obliged to revisit its priorities while considering specific circumstances in different localities.

Bringing in the Tanzimat, Negating Customs

In late 1856, the Supreme Council received a memorandum (*tahrîrât*) from the Governor of Niş Province (*Eyalet*), Vasıf Paşa. The memorandum had been written

[240] Archer, pp. 73-74.

[241] See *Mecmua-i Ebuzziya*, "Kibritin Ellinci Sene-i İhtirâ'ı," no. 36, 15 C 1300 (23 April 1883), p. 1141.

in order to convey the requests of the İştib sub-district council in Köstendil (Kyustendil). According to the memorandum, the burning of haystacks, barns, and cribs in the villages by malicious persons was a cause of great anxiety for the local peasants. However, the very same peasants were reluctant to denounce the offenders since they were afraid of the arsonist's rage and a possible vendetta, which might soon find the informer as the next target. Obviously, what rendered the local authorities helpless in bringing the arsonist to light and making him reimburse the damage was this reluctance. Unable to feed their animals and rebuild their cribs, the victims of fire, *harikzede*s, were in complete desperation.

In the face of such widespread occurrence of arson, the local people asked for the implementation of collective financial retribution, kasame. In case the perpetrators could not be detected, they proposed the damage should be compensated by the village community, which would supposedly encourage the peasants who knew the offender to turn the arsonist in to the authorities.[242] The suggestion of the peasants and the request of the İştib council were reviewed by the Supreme Council, but found unacceptable. Collective financial retribution was absolutely against the "sublime justice" of the Ottoman Empire. What should be done in such cases was to conduct an investigation and find out the perpetrators so that they would make personal reparations for the damages they had induced and stand trial before the law.[243]

Subsequently, the Supreme Council received similar requests from other provinces as well. In 1857 when the house of Hasan Efendi was set on fire in Üsküp, he filed a petition and asked for compensation for his damages. When the authorities

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[242] BOA., MVL, 302/77, 3 R 1273 (1 December 1856).

[243] BOA., A.MKT.UM, 261/24, 21 Ra 1273 (19 November 1856).

failed to catch the arsonist, the local government decided to collect a certain amount of *akçe* from the villagers. However, when asked for permission, the Supreme Council rejected the administration of such a practice and ordered the local government to conduct a more thorough investigation to find the perpetrator.[244] In another memorandum sent by the Trabzon province in July 1860, the Supreme Council was informed that setting fire to inns (*han*) and mills was a crime that had been encountered frequently in the Acara sub-district for a long time. Selimoğlu Arif was a victim of arson. When his property had been destroyed by a fire raised by someone unknown, he submitted a request to the local government asking his damages be paid by the village community or that the arsonist to be found. The order of the the Supreme Council was again in the same direction. The perpetrator was to be brought and punished according to the Penal Code.[245]

Apparently, the Supreme Council was strict about the enforcement of law and showed no tolerance of local demands that were against the rule of law. This seems reasonable because it was the Tanzimat state which had declared that no one would be sentenced without standing trial and before the guilt was proven before şer'î and nizamî law.[246] In this regard, a procedure charging a whole village community responsible for a crime in which they had not been involved was unacceptable. Basically, the notion of individual was one of the key elements of the Tanzimat reforms. The introduction of a new system of tax assessment on individual incomes by which the subjects of the Empire would be taxed according to their

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[244] BOA., A.MKT.UM, 288/62, 4 Z 1273 (26 July 1857); MVL, 322/55, 11 B 1274 (25 February 1858); A.MKT.UM, 309/12, 18 B 1274 (4 March 1858).

[245] BOA., A.MKT.UM, 414/70, 27 Z 1276 (16 July 1860).

[246] Lütfi, p. 111. Also see the twelfth section of the 1840 Ottoman Penal Code in ibid., 126.

earnings can be regarded as a consequence of this principle.[247] The introduction of standard procedures and rules in nizamî adjudication also can be acknowledged as another facet of the same principle.

Of course, in şer'î law, too, each individual was responsible for his/her own criminal deeds.[248] Yet, there were certain exceptions to this rule, including the kasame (kasama, qasâma) or diyet-i kasame procedure. However, the meaning of *kasame* in Islamic law was somewhat different from the kasame procedure that was resorted to in rural arson cases. Diyet-i kasame was a canonical procedure, an "exculpatory oath" carried out in homicide cases by unknown perpetrators. It was one of the rare exceptions to the principle of personal responsibility and the personal nature of criminal liability.[249] According to the principles of Islamic law, if a person was murdered and the dead body was found in or near a village, the heirs of the victim, who were unable to prove the identity of the perpetrators, could ask for the oaths of fifty reliable men among the villagers that they had had no connection with the murder. Then the village community had to pay the blood-money to the heirs, since they had not been able to prevent a murder in their vicinity.[250] It was a

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[247] İslamoğlu, pp. 294-300. İslamoğlu states that "in the old surveys, the unit of recording had been the village…[and] payment of taxes (in cash and in kind) was the collective liability of the village". After the Tanzimat, tax-payment became an obligation of the individual. See p. 297.

[248] See Murielle Paradelle, "The Notion of 'Person' Between Law and Practice: A Study of the Principles of Personal Responsibility and of the Personal Nature of Punishment in Egyptian Criminal Law," in *Standing Trial: Law and the Person in the Modern Middle East*, ed., B. Dupret (London, New York: I.B.Tauris, 2004), pp. 236-239.

[249] Aybars Pamir, "İslâm ve Osmanlı Hukuku'nda Kasame Müessesesi," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 54, no. 4 (2005), p. 345.

[250] Ibid., pp. 350-51. See also Heyd, p. 251 and Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), p. 97. For the specific article about kasame procedure in the Old Ottoman Criminal Code, see Heyd, ibid., pp. 67 and 106.

procedure enacted to protect the rights of the heirs –the injured party.[251] Furthermore, it was a "social control mechanism" that shared the responsibility of furnishing security and order in a certain place among its inhabitants.[252] Kasame had a place in the old Ottoman Criminal Codes throughout the early modern period. However, Petrov claims that it "was rendered obsolete by nizamî investigative practices" in the nineteenth century, since nizamî investigation mostly managed to bring the offenders to light, invalidating the execution of kasame even when it had been recommended by the Şeyhülislam.[253]

Kasame as a conflict resolution mechanism in arson cases, on the other hand, had been an old custom as is evidenced by the archival registers. Gareth Popkins defines local custom as a "pattern of behaviour regarded as normal, right, and to a large extent obligatory in the familiar situations of daily life."[254] Given this definition, kasame was actually a local custom appealed to by peasants as a normal and obligatory practice in undetected arson cases. However, it was strictly forbidden for a certain period of time with the proclamation of the Tanzimat until the late 1860s, since it was regarded as a practice against the personal nature of criminal liability. Nevertheless, the correspondences between the central government and the provinces that will be examined below will show that kasame had become a legitimate practice in rural arson cases by the late 1860s, first in Rumelia and then in many other provinces presumably because the nizamî investigation process proved

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[251] Mustafa Avcı, *Osmanlı Hukukunda Suçlar ve Cezalar* (İstanbul: Gökkubbe Yayınları, 2004), p. 81.

[252] Pamir, p. 356. Collective liability that obliged the inhabitants of a county to pay the damages caused by any offence was also a method employed in Britain after the introduction of the Black Act. See E. P. Thompson, *Whigs and Hunters*, p. 22.

[253] Petrov, "*Tanzimat* for the Countryside," p. 279.

[254] Popkins, p. 410.

to be unable to bring the perpetrators of this hidden crime into the open, contrary to what Petrov claims.

As mentioned above, collective financial retribution was not a procedure executed solely in homicide cases, but it had been an ancient custom – *örf-i belde* or *usûl-i kadîme*- in the Rumelian countryside enforced in arson cases with unknown suspects.[255] We learn it from three memorandums submitted to the attention of the Supreme Council, one by the governor (*kaymakam*) of Üsküp in 1859, one by the governor of Niş in 1863,[256] and another one by the governor of Tuna Province in 1866.[257] These correspondences demonstrate clearly the local governments' heightened anxiety about the lack of means in preventing rural arsons and finding out the perpetrators. The problem, in fact, was not very different from the one that

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[255] Interestingly, collective responsibility in arson cases was also invoked by the Algerian government in the nineteenth century when the Algerians deliberately set the forests on fire as part of a resistance when the Algerian lands were massively expropriated by French colonisers, see David Prochaska, "Fire on the Mountain: Resisting Colonialism in Algeria," in *Banditry, Rebellion and Social Protest in Africa*, ed., D. Crummey (Oxford: James Currey Ltd., 2006), p. 244.

[256] In 1864 with the enactment of the Provincial Reform Law, Niş was encompassed by the newly found Province of Tuna as a district along with Silistra and Vidin. Before that, Niş was a separate *Eyalet* with its own administrative and bureaucratic structure.

[257] See BOA., MVL, 894/18, 9 C 1275 (14 February 1859); MVL, 969/73, 14 R 1280 (28 September 1863), and MVL, 1073/3, 7 S 1283 (21 June 1866) respectively. *"Anadolu'nun bir takım yerlerinde vuku' bulduğu gibi Rumeli kıtasının ekser yerlerinde dahi ahaliden yekdiğerine hasım ve adâveti olan kimselerin köydeki samanlık ve otluk mahalleri ve kırda kalan mahsulatı ihrâk edilmek eski kan davası misillü bir adet-i kerîhe olarak cereyan etmekde bulunmuş ve bu halin her yerden ziyade Üsküb tarafında vuku' görülmüş olduğundan orada bulunduğum esnada meclisce bunun esbâbı ve çaresi üzerine bahs olunarak eğerçe kanûn-ı cezâda bu makule if'alin her nevi üzerine mahsus ve …(?) cezâlar var ise de bu maddenin kesret vuku'uyla beraber kırda ve dağda ve hal-i mahalde olması cihetiyle failleri görülmek ve bulunmak ve kanûnen tahakkuk ettirilmek kâbil olmayacağına binaen zaruri haliyle kalub cereyan etmekde bulunmuş ve bunun önü kestirilmeğe bir çare olmak içün mukaddemce İştib kazası ahalisi beyinlerinde bil-müzakere bu makule ihrâk olunan ot ve harman mahalleri kangı karye dahilinde ise o karye ahalisi tarafından tazmin edilmesine beyinlerinde ittifak-ı umumi ile karar verilerek bu vecihle birkaç maddenin icrâsından sonra hakikaten önü kesilmiş olduğundan ve eğerçe bu suret nizâm ve kanûnun hükmüyle tevkif olunamaz ise de failleri bulunduğu halde yine haklarında hükm-ü kanûnun icrâsına mani olmayub … kabahatli kabahatsiz bir köy halkının umumen ve …(?) madde-i tazminden müşâreketi cihetle şurası ağır göründüğü halde bu da umumun muvaffakiyet ve rızasıyla yapılmış ve semeresi görülmüş şey olmasıyla mahzuru kalmayacağından Üsküb Sancağı dahilinde kalan sair mahaller ahalisi dahi razı oldukları halde bunun içün bir mazbata yapılub evvel-i emrde makam-ı aliden istizân edilmesi lazım geleceği Üsküb Meclisince beyan olunmuştu olvecihle yapılan bir kıta mazbata bu defa gelerek lef'en takdim kılınmış olmağla icrâ-yı icâbı…"* (from the *tahrîrât* of the Governor of Niş, dated 22 Ra 1280/6 September 1863).

had been stated nearly ten years earlier by the governor of Niş, Vasıf Paşa. Accordingly, intentional fire setting in the villages of Üsküp, Niş, and Tuna was a very common practice among peasants in order to exact vengeance. Reimbursement of the victim's financial damage by the whole village community, a longstanding local custom, had proved to be a deterrent for perpetrators as well as peasants who were hesitant to report the arsonists to the authorities. However, the implementation of the local customs must have been deemed improper and therefore prohibited by the central government sometime after the enactment of the Tanzimat, which explains the keen interest of the Üsküp, Niş, and Tuna governments in learning the judgement of the Supreme Council in such arson cases.

It is unknown if any ordinance prohibiting the implementation of local customs was issued or not after the Tanzimat. It also should be noted that there was no article in the 1840, 1851, and 1858 Ottoman Penal Codes disempowering local governments to carry out collective financial punishment in unidentified cases.[258] However, as the above-mentioned cases reveal, local governments were very well aware of the fact that the old customs were no longer valid, which is why they needed to ask the central government what to do when the perpetrators could not be detected and the victims demanded compensation for their financial damage.

As the Üsküp governor stated, the problem in such arson cases, which contributed greatly to the destruction of property in the villages, was the inability of the plaintiff, either Muslim or non-Muslim, to substantiate his claim before the şer'î law. When there was no şer'î evidence and because carrying out the *örf-i belde* was no longer valid, the victims of fire were helpless. For this reason, the governor asked

[258] For the texts of the 1840 and 1851 Ottoman Penal Codes, see Lütfi, pp. 114-147. For the 1858 Ottoman Penal Code see *Fihrist-i Kanûnnâme-i Cezâ*.

if there was any prescription enacted by the central government that would be followed in such cases. In response, the Supreme Council simply stated that what should be done was obviously to conduct a şer'î and nizamî investigation. Further, the local governor was reminded, "there [was] an article in the new penal code pertaining to this question."[259]

Of course, the prescriptions of the 1858 Ottoman Penal Code were meaningful if the perpetrators were at hand, but silent in cases with unidentified culprits. Precisely, there were five articles in the new penal code related to arson. The sixteenth chapter of the *Kanûn-ı Cedîd* and specifically articles from 163 to 167 were about the punishment of arsonists –*kundakçı mücâzâtı*. Article 163 was the harshest among all as it prescribed death sentence for the offenders who intentionally set fire to any building in towns and villages:

> Whosoever shall intentionally set fire to any building, whether inhabited or uninhabited, situated in a town, village, or hamlet; to any building situated beyond the boundary of the same and capable of being used for a dwelling; or to any ship, whether such building and ship aforesaid belongs or does not belong to him, shall be punished with death.[260]

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[259] BOA., A.MKT.UM, 338/7, 12 Ca 1275 (18 December 1858) and MVL, 894/18, 9 C 1275 (14 January 1859).

[260] *The Ottoman Penal Code 28 Zilhijeh 1274*, p. 70. Also see *Fihrist-i Kanûnnâme-i Cezâ*, p. 39 and *Düstur*, Cilt 1, p. 573: *"Şehir ve kasaba ve karye derununda meskûn ve gayrı meskûn her nevî ebniyeye ve haricde insana mahsus ve kabil-i süknâ ve isti'mâl olan binalara ve sefinelere kendi malı olsun olmasun amden ateş verüb ihrâk eden şahıs cezâ-yı idam ile mücâzât olunur."* In September 1889, the Tanzimat Chamber of the Council of State deliberated on articles 163 and 164 and proposed draft to the Ottoman Council of Ministers (*Bab-ı Ali Meclis-i Mahsus-ı Vükela*) for the modification of these articles. The Council stated that the death sentence stipulated in Article 163 and prescribed indiscriminately for arsonists who set fire to wooden huts in villages and for those who set fire to buildings in cities that caused great damage was far too severe and unjust. Therefore, the Council stated, the content of the article had to be modified and lifelong hard labour was to be added for the former. Moreover, arsonists who set fire to any building or ship but did not cause the death of any person would be sentenced to lifelong hard labour. Arsonists who set fire to their own buildings or ships but did not cause damage in another' property also would be sentenced to hard labour no longer than ten years. Accoring to Article 164 of the 1858 Penal Code, the penalty for the arsonists who intentionally set fire to buildings in a town, village, or hamlet, to ships, forests, felled timber, or standing crops was lifelong hard labour if the property did not belong to the arsonist. In the revised version, however, the penalty was modified to read, "lifelong or temporary hard labour." In addition, those who attempted to set fire to any property but could not succeed at starting a fire would be sentenced to temporary hard labour according to the modified version of Article 164. See BOA., ŞD,

This article was, indeed, very similar to the old statutes prescribed in the criminal code of Sultan Süleyman the Magnificent, roughly in 1539-1541, and Sultan Mehmed IV in 1680, which stipulated death sentence by hanging for arsonists whose guilt had been proven before the şer'î law.[261] Significantly, it proves that arson, when done intentionally, was considered one of the most heinous crimes that deserved death sentence before the law since the old *kanûnnâme*s.

The difference between the old *kanûnnâmes* and the new penal codes was that collective financial compensation in arson cases was somehow regarded as legitimate in the former. The old criminal code stipulated that the payment of a collective financial compensation should be reimbursed to the inhabitants of a quarter or a village where a crime of homicide, attack, injury, theft or robbery had been committed by an unknown suspect.[262] This statute does not specify "arson" as a crime that brought collective retribution on the villagers. However, as the archival evidence reveals, it was one of those crimes, like homicide and theft, for which the villagers were compelled to find the perpetrator or otherwise to pay compensation. Although Haim Gerber claims that there was no "absolute obligation of the people

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2550/25, 29 C 1307 (20 February 1890). The modified versions came into effect on March 14, 1890 (22 Receb 1307). See *Mecmua-yı Lahika-yı Kavanin*, pp. 101-102. For the articles 164, 165, 166, and 167 and the modified versions of Articles 163 and 164 see Appendix C.

[261] For the criminal code of Sultan Süleyman Magnificent and the related article, see Heyd, p. 81 and 119: *"Eğer bu kimse ahirin evine ve dükkanına od kosa dahi o dükkanda ufak tefek esbâb yansa şerîle sabit olsa bu kimesneye töhmet etseler tehdid ile hırsızı bulduralar eğer kasd ile etmiş ola salb edeler."* For Sultan Mehmed IV's criminal code, see Lütfi, p. 73: *"Şehirlerde ve köylerde evleri ateşe verenlerin, bunu kasten yaptıkları şer'an sabit olursa, bunları asmalıdırlar."*

[262] "If a person is [found] dead within a [town-]quarter o within a village, or if a sudden attack is made on a caravan and injury is [inflicted], or theft or robbery is [committed somewhere] between villages, [the people in the vicinity] shall certainly be compelled to find the criminals. And if [they are not found but] there are suspects, they shall be examined and compelled to pay compensation. If there are no suspects, the inhabitants of the quarter of the people of the village shall be compelled to pay compensation" (*…ve müteehhim kimesneler var ise teftiş edeler ve dahi tazmin ettireler eğer müteehhim yok ise ehl-i mahalleye ve köy halkına tazmin ettireler*). See Heyd, pp. 115 and (76).

of the neighbourhood to find the culprit at all cost" as stated in the *fetvâ* collections or at the court records of the early modern period,[263] the statutes in the old criminal codes are sufficiently clear in mentioning such obligation. This rule was evidentially effective until the proclamation of the Tanzimat. When the people failed to identify the perpetrator, they had to compensate the financial loss of the injured party. However, as mentioned above, the principle of personal liability for criminal acts and the new investigation and adjudication procedures introduced by the nizamî laws and courts suspended the practice of kasame temporarily. Yet, when the nizamiye courts fell short of detecting the culprits, the Tanzimat state was obliged to resuscitate the ancient customs, contrary to the previous insistence on the negation of the very same customs. As an important case yielding the nature of local conflicts and conflict-resolution mechanisms in the under-scrutinized history of Ottoman countryside, the reintroduction of the kasame procedure in the Tanzimat period demonstrates clearly the need for a dramatic revision of the existing history of Tanzimat applications.

The Return of the Kasame

In September 1865, the local bi-lingual newspaper *Dunav*/*Tuna* published a decree informing the public that the inhabitants of villages or towns who could not identify the perpetrators of crimes such as barn and rick burning or gave succour to rebels and boycotting the annual road-building labour duty would be punished by collective financial and penal retribution.[264] It was certainly a clear indication of an

[263] Gerber, p. 97.

[264] Petrov, "*Tanzimat* for the Countryside," p. 223.

increased concern for public order that was often disrupted by disobedience and crimes, probably the ones undertaken most frequently within the confines of the province. We do not know actually how effective the decree proved since the newspaper had approximately 1500 subscribers by the early 1866 and it could hardly have reached seven or eight of every one thousand residents of the province.[265] Yet, we know from the above-mentioned correspondence of the Supreme Council with the Tuna provincial government in 1866[266] that what was announced in the decree about the issue of collective retribution could not be administered until the early 1868.

The annual meeting of the Provincial General Assembly of Tuna (*Meclis-i Umumî-i Vilayet*) in October 24, 1867 can be considered as a turning point that led the central government to revisit its previous decision about the kasame. Having failed to convince the central government to issue the necessary permission for the reimplementation of collective punishment in arson cases, Midhat Paşa must have thought that a proposal signed by the delegates of the Assembly as a manifestation of the general will of all the districts in Tuna would be more compelling. The Assembly indeed was a "policy-making and policy-reviewing instrument" in which Midhat Paşa and the officials in İstanbul had a great confidence since local knowledge necessary for governing and policing the population was only possible with the contributions of the delegates in the Assembly.[267]

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[265] That is why, according to Petrov, the impact of *Dunav* as a propaganda tool was limited due to the size of the reading public. See ibid., pp. 130-131 and 263.

[266] See BOA., MVL, 1073/3, 7 S 1283 (21 June 1866).

[267] Petrov, "*Tanzimat* for the Countryside," pp. 174-75. For general information about the Provincial General Assemblies, see Musa Çadırcı, "Osmanlı Döneminde Yerel Meclisler," in *Tanzimat Sürecinde Türkiye*, pp. 297-301.

The proposal of the Assembly was submitted to the Supreme Council in early November and once more, Midhat Paşa asked for authorization to administer kasame procedure. The proposal highlighted several issues to justify the claim for kasame that are worthy of note here. First was the fact that intentional fire setting as expression of malice by the peasants that targeted the haystacks and barns of their fellow villagers was a customary practice in the Rumelian villages. Tuna Province especially stood out among other provinces in Rumelia with respect to the prevalent occurrence of arson, which also explains the frequent appearance of arson cases from Tuna in the Ottoman archives.

The reluctance of peasants to hand over the arsonists to the authorities, which rendered the local governments helpless, despite all efforts, in detecting arsonists was another issue put forth by the Assembly. The perpetrator was not an outsider but usually a member of the village community and the peasants' choice of remaining silent rather than reporting their neighbours or villagers to the authorities were due to a fear of further repercussions. Each resident of the village had a hay barn or pasture and hence, the risk of retribution was enormous that might make every individual peasant the next target. For that reason, the council proposed, compensation of the damages in arson cases with unidentified perpetrators should be reimbursed collectively by the village community. In fact, this practice was against the law. However, the inability to prevent these arsons was encouraging the perpetrators and seemingly there was no other way to prevent such a crime which was detrimental both for farming and husbandry.

In most cases, the total value of damage caused by the arson was a trivial amount between three or five hundred guruş, at most one thousand guruş. When it was allotted per person, every peasant would pay not more than three or five guruş,

which was indeed not considerable. Moreover, according to the information received from the villages, the peasants were quite willing to pay this money as the procedure of kasame had worked to protect villages from arson fires in the past.[268]

It is striking that the peasant community was willing to pay the damage caused by someone else rather than calling for the help of the police and justice. As Cathy A. Frierson suggests in the Russian context, "the problem with the imperial police and judicial systems was not that they were too invasive and punitive but that they were rarely there at all to police and protect against the rural communities' own malevolence."[269] Similarly, Ottoman peasants who were vulnerable to fires set by their malicious fellows knew very well that the arms of the imperial justice could not reach as far as their villages to protect them. In the absence of such protection, the kasame system provided an outlet to avoid further harm.

Consequently in December 1867, Tuna Province was authorized for the administration of kasame procedure. Diyet-i kasame was proclaimed as a legitimate practice; however on the condition that it would only be administered in intentional fire settings that targeted hay barns and pastures in the villages of Tuna Province.[270] In less than a month, this proclamation was announced to the public in Tuna.[271] In this way, a serious obstacle before the local government to implement justice in arson cases supposedly disappeared.

Though the Province of Selanik also was authorized to implement kasame in arson cases under the same circumstances mentioned for Tuna Province in July

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[268] BOA., İ.MVL, 582/26162, 21 Ş 1284 (18 December 1867).

[269] Frierson, *All Russia Is Burning*, p. 139.

[270] BOA., A.MKT.MHM, 397/16, 29 Ş 1284 (26 December 1867).

[271] See Petrov, "*Tanzimat* for the Countryside," p. 305, footnote 765.

1869, it was not administered until 1883 due to some complications in the procedures. In 1883, the Inspectorship of Justice (*Adliye Müfettişliği*) in Selanik informed the Ministry of Justice about the reason for their abstention in exercising kasame. The verdict the province had received in 1869 from the central government had been designed specifically for Tuna Province and though it had been ordered to be administered in Selanik, such an order could not have the force of law. Furthermore, because there appeared no provisions in the law books (*Kavanin-i Adliyye* and *Düstur*) afterwards, they hesitated to carry out the by-law in the Province.[272] Following this correspondence, the Council of State released in March 1883 a proclamation that announced the upper-limit of the compensation in arson cases as one thousand guruş.[273]

Not surprisingly, these correspondences between the central government and the numerous provincial governments did not put an end to the ongoing confusion and problems about kasame procedure. One of the major questions related to this practice was engendered by the amount of collective compensation. In October 28, 1891, Kosovo Province sent a telegram to the Ministry of Inferior Affairs and asked what to do if the financial damage in arson cases was valued at over one thousand guruş.[274] Apparently, this was a not a problem only for Kosovo since subsequent memorandums submitted by Selanik, Manastır (Bitola), Silistre, and İşkodra addressed the same question. Further, they requested to be authorized to administer kasame in arson cases which occurred outside the villages (*haric-i kurra*). The kasame procedure had been sanctioned as applicable only in those arson cases that

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[272] BOA., ŞD, 2463/29, 12 Ca 1300 (21 March 1883).

[273] *Mecmua-yı Lahika-yı Kavanin*, İstanbul, 1311, p. 10-11.

[274] BOA., DH.MKT, 78/10, 11 Ş 1311 (17 February 1894).

occurred within the villages. However, there were also many other fires destroying rural property outside the villages. The extension of the scope of this practice could be assumed to have been more beneficial and deterrent.[275] The propositions were discussed at the Council of State; however, the proceedings took some time and consequently in July 1893, a by-law was passed and dispatched to all provinces. Henceforth, the amount that would be paid by the village community in such arson cases would cover the appraised worth of the damage, which would reflect the actual value of the burnt structures.[276] Yet, this practice would stay to be confined to arson cases affecting villages. Kasame would no way be applicable to the fire raisings with unknown perpetrators that occurred outside the villages.[277]

Besides the questions mentioned above, several other issues related to the kasame procedure came on to the agenda of the government before the early twentieth century. For instance, one involved the confusions about the administration of this procedure. Apparently, which institution would be responsible to hear the claims for damages was not clear. Biga *Mutasarrıflığı* and later the Provinces of Edirne and Manastır pointed to the confusion claiming that in some places these suits were heard at the nizamiye courts while in some others it was under the jurisdiction of administrative councils. Following these memorandums, the local governments were informed that the nizamiye courts were the only

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[275] BOA., BEO, 345/25848, 8 B 1311 (15 January 1894).

[276] BOA., DH.MKT, 78/10, 11 Ş 1311 (17 February 1894). *"...yanan şeyler bin guruştan ziyade tazminatı mucib olması ihtimaline nazaran bu babda tayin-i mikdar icâb etmeyeceğinden muhrikenin kıymet-i hakikiyesi ne ise onun kâmilen köylüden tazmin ettirilmesi..."*

[277] BOA., BEO, 345/25848, 8 B 1311 (15 January 1894). *"...bir hayli faydası görülen bu usulün haric-i kurrada ihrâk edilecek otlak ve samanlık ve mezerruat yığınları hakkında dahi tatbiki ile tevsi' münasib olduğu dermiyan kılınmış ise de usul-i merkumenin haric-i kurradaki ihrâkata dahi teşmili muvâfık-ı maslahat olamayacağından karyeler haricinde vuku' bulan bu misillü ihrâkatın mütecâsirlerinin tayini hususunda tedkikat ve tahkikat-ı mükemmele ifâsıyla sahib-i cürm her kim ise meydana çıkarılarak hakkında muamele-i kanûniyyenin ifâsı münâsib görülmekle..."*

institutions competent to hear such cases and accordingly the damages.[278] Kosovo Province did not appreciate this decision, claiming that appealing to courts in such cases might engender some undesirable consequences due to the delay in the proceedings. However, the verdict was not revised. Hearing these cases in the şer'î courts[279] or handling them at the administrative councils, the Council of State declared, were clearly against the law and justice.[280]

While the Rumelian provincial governments were busy with the details of the kasame procedure, some other provinces were curious about whether this procedure could be applied in other rural contentions and areas as well. Kastamonu Province, for instance, asked if kasame could be administered in cases of arson which destroyed harvests. The claim of a certain Abdullah from Tortum sub-district in Erzurum was about a bundle of grain stalks (*zahire demetleri*) in his field that had been intentionally burnt down by someone unknown. Since he asked that his damage be compensated by the villagers, Erzurum Province was anxious to learn whether kasame was applicable in such a case. The peasants of Otlak village in Van asked to be exempted from the tithe that they had to pay for fodder (*giyah*) as it had been burnt to the ground. They claimed that they were poor peasants even unable to pay the livestock tax and would suffer if they were obliged to pay the tithe of the fodder which had been destroyed.

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[278] BOA., BEO, 345/25848, 8 B 1311 (15 January 1894); Y.A.RES, 78/66, 13 L 1313 (28 March 1896); ŞD, 2651/16, 20 N 1313 (5 March 1896); BEO, 2205/165312, 6 N 1321 (26 November 1903).

[279] Whether kasame procedure in arson cases could be regarded like *kasame-i maktul* (kasame procedure applied in homicide cases) was asked to *Fetvâhane* (the office for the issuance of fetvâs). The reply clearly stated that they were different and for that reason, the former could not be heard before şer'î courts.

[280] BOA., BEO, 2205/165312, 6 N 1321 (26 November 1903).

The problem in Jaffa district in Beirut, on the other hand, was somewhat different. Cutting olive trees for trivial reasons because of the longstanding hostility among peasants towards each other was the major means of retribution in Jaffa. According to the law, the penalty for such an offence was fifteen days imprisonment along with the compensation for the damage given to the trees. However, this penalty was too insignificant to be deterrent and the local government asked that the method of collective compensation be implemented upon the peasantry.[281]

In 1897, Trabzon Province asked to be authorized to carry out kasame procedure when hazel trees were destroyed in the villages since hazel trees were very important for the local treasury (*servet-i mahalliye*), just as olive trees were for other provinces.[282] The request of the *Mutasarrıflık* of İzmit was similar, but the subject of anxiety, this time, was berry orchards (*dut bahçeleri*) and silk worm sheds (*böcekhaneler*).[283] The local government of Halilülrahman district in Jerusalem, on the other hand, claimed that two hundred decares (*dönüm*) of vineyards were destroyed every year due to some insignificant enmities among peasants and asked for the application of kasame when fig orchards, olive groves, and vineyards were devastated.[284] These proposals were deliberated at the Council of State and all were agreed upon without exception. Further, plum and date palm orchards and acorn trees were included into the list of rural property that would invite kasame

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[281] BOA., DH.MKT, 78/10, 11 Ş 1311 (17 February 1894).

[282] BOA., DH.MKT, 2211/25, 5 S 1317 (15 June 1899). The Council of State deliberated on the inclusion of hazel trees in the procedure of kasame in August and approved it. The official sanction about the subject was published in *Ceride-i Mehakim* in December to be announced to all provinces. See *Ceride-i Mehakim*, no. 1059, 6 Ş 1317 (10 December 1899), p. 15261.

[283] BOA., ŞD, 2679/71, 30 Za 1315 (22 April 1898) and DH.MKT, 2089/89, 13 S 1316 (3 July 1898).

[284] BOA., İ.DH, 1359/1316B-17, 12 B 1316 (26 November 1898).

application in case they were set a fire or destroyed and the perpetrators could not be found.[285]

Setting fire to property was not the only method for peasants who sought to address individual grievances. Attacks on trees or the destruction of flora, which was called "plant maiming," was another method employed by disgruntled peasants as a manifestation of everyday conflicts. As Carl J. Griffin writes, this form of attacks on agricultural capital was "an ideal substitute for incendiarism" because "whilst an incendiary fire caused short-term destruction the mass destruction of trees would also have a long-term impact upon revenues: trees of whatever kind took time to establish themselves."[286]

Evidence shows that the means of retribution and unofficial justice among peasants through violent property crime might vary in accordance with the means of subsistence in a particular locality. The methods as well as the properties targeted might change, displaying the preferences of the perpetrators with regard to the dominant economic activity of the region. As shown above, hay barns and pastures were not the only rural property vulnerable to fires. Crops, grain stalks, and fodder in the fields along with fig, berry, and palm orchards, silk worms' sheds and vineyards were other objects subject to attack in the countryside. These properties were indeed vital for the sustenance of peasant life, not to mention the local economy, as seen in the cases of olive groves and hazel orchards. Any damage given to rural property would carry its effects beyond the peasant household and community and have a crippling impact on the imperial economy as well since these

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[285] BOA., DH.TMIK.S, 50/17, 18 L 1321 (7 January 1904) and Y.E.RES, 129/30, 18 L 1322 (26 December 1904). Also see *Ceride-i Mehakim*, no. 1069, 17 L 1317 (18 February 1900).

[286] Carl J. Griffin, "'Cut down by some cowardly miscreants': Plant Maiming, or the Malicious Cutting of Flora, as an Act of Protest in Eighteenth- and Nineteenth-Century Rural England," *Rural History* 19, no. 1 (2008), pp. 36-37.

peasants were the tax base of the Ottoman treasury. Therefore, the Ottoman government bent the rules in time owing to the features of rural circumstances to find solutions for urgent questions like arson. As a result and thanks to the efforts of local governments in Rumelia, kasame, an old practice and custom, was brought back to the countryside contrary to the general principle of personal liability in criminal cases.

After all, whether kasame propelled the peasants to report arsonists to the government and thus diminished the frequent occurrence of arson cases is still a question without a clear-cut answer since there is no statistical data that would make a comparison possible between the periods before and after the reintroduction of the kasame procedure. It can be presumed that it worked to a certain extent, at least by appeasing the victims' bitterness. However, arson continued to be a popular act of retaliation providing the peasants the means to settle their conflicts in their own ways. In this regard, arson cases can be acknowledged as a mirror that reflects the tensions and conflicts within village life, which also illuminates various forms of peasant agency that have received little attention unless the topic of research is peasant resistance or protest.

CHAPTER 4

READING THE UNWRITTEN: THE PEASANT AGENCY

The inclination among historians to examine peasant protests as the only way to affirm agency has been illustrated by some scholars. For instance, John Archer criticizes the historian's "temptation to romanticize" the agency and to hail those peasants as "the vanguards of the working class."[287] Likewise Archer, Cathy A. Frierson and Steve Poole criticize scholars who have been quite earnest to attach "resistance" and "protest" to "agency," which would be connected under the common denominator of "class" as if there were no other way to confirm peasant agency beyond resistance and protest. They claim that such perspective assumes a peasantry busy with daily conflicts with farmers and landowners who eventually transformed into a rebellious peasantry embracing class-consciousness and thus presents a teleological trajectory. By conforming to the analysis of arson in Great Britain starting with Hobsbawm and Rudé's "Captain Swing," this reductionism, according to Frierson and Poole, always underlines the "class nature of the crime" while paying scant attention to the other reasons of conflict beyond protest.[288] However, in Russia, as Frierson convincingly argues, the features of rural arson

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[287] Archer, p. 8.

[288] Frierson, *All Russia Is Burning*, pp. 103-104 and Steve Poole, "'A Lasting and Salutary Warning': Incendiarism, Rural Order and England's Last Scene of Crime Execution," *Rural History* 19, no. 2 (2008), p. 164.

were completely different from the pattern displayed by the cases in eighteenth and nineteenth century Britain.[289]

Cathy Frierson, in the introduction of her magnificent book, mentions rural arson as one of the most devastating experience in the nineteenth century Russian countryside. It was acknowledged by the contemporary educated observers as "the stigmata of backwardness" impeding the country's progress on its way to modernization and civilization. Criticizing this modernist conceptualization, she offers an alternative approach that places rural arson within its historical and cultural setting as a feature of rural daily life in which perpetrators and victims or the village community as a whole appear as agents who resorted to arson as a form of self-help (*samosud*), sometimes for vengeance and sometimes for insurance payments.[290]

> ...peasants were arsonists who did set fires against their neighbors. They most often aimed their incendiarism not against gentry landowners for the political reasons historians have usually sought in moments of social upheaval, but against their fellow peasants in all years and seasons in order to enforce community norms or to exact individual revenge in personal disputes... Arson in rural life was only marginally a product of peasant-gentry relations and thus of social, economic, or political protest...[291]

Like Frierson, Regina Schulte identified a similar pattern in arson cases in nineteenth century Upper Bavaria, Germany. She explores the fire raisings in

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[289] André Abbiateci also states that when he began his investigation on eighteenth century arsonists, his aim was to study rural arson "as an expression of social revolt." However, what he found out during his research was completely different. The insane, beggars, and tenant farmers appeared on the scene as the perpetrators with a great variety of motives from family quarrels and divisions within the village community to conflict between servants and masters. See André Abbiateci, "Arsonists in Eighteenth-Century France: An Essay in the Typology of Crime," in *Deviants and the Abandoned in French Society*, eds., R. Forster and O. A. Ranum (Baltimore: The Johns Hopkins University Press, 1978), pp. 157-179.

[290] Frierson, *All Russia Is Burning*, pp. 1-7.

[291] Ibid., p. 7. Parallel to Frierson, Stephen P. Frank also puts forward "revenge, enmity, and jealousy" together with "disputes with landowners, merchants, and employers" as the most common incentives motivating peasants to punish the opposing party by fire in rural Russia, only with the condition of excluding fires set during peasant uprisings from 1905 to 1907. See Frank, pp. 134-135.

relation to the peasants' living and working conditions that illuminate conflicts integral to peasant society and in this way aims to reach the "inner world of the Upper Bavarian peasantry."[292] This inner world, according to Schulte, can be seen by a close examination of court records.

> In order to better understand the norms and unwritten laws of peasant life, I sought out the courts as places where I could meet peasants in those moments where they had violated norms and stood accused of crimes. I proceeded here from the assumption that a culture's hidden norms, which have not left any explicit written record, become visible when they are violated, when the unspoken assumptions of the material and social order are exploded for a moment, and the peasant leaves the village to be questioned before a court of law. It is precisely this moment…which I attempt, as far as possible, to read as 'peasant texts'.[293]

Inspired by the works of Schulte and Frierson, I also aim to explore peasants' agency not necessarily when they rioted, but at the moments when they violated laws and appeared before the courts for their individual conflicts as defendants and plaintiffs. Peasants, in this process, come to the fore as active respondents to the problems posed by their immediate environment. However, before presenting a more detailed picture of Ottoman peasantry in their daily conflicts, I want to draw on a single case from Belene, a sub-district of İzvornik in the Province of Bosnia. This case is distinct from the others and very illustrative of how fire turned into a symbol upon which the animosity of the peasants against the soldiers was articulated collectively in a remote border town of the Empire.

Fire in Belene

[292] Schulte, *The Village in Court*, pp. 25-27.

[293] Schulte, "Civil Society, State Law and Village Norm," p. 75.

A Thursday night on August 7, 1863, a fire broke out in Belene at the pasture house adjacent to the house of Haydar Bey where Lieutenant (*mülâzım*) Abdi Ağa was the resident.[294] Unfortunately, it was a breezy night and the blaze driven by the wind, leaped to the other houses and cowsheds in the wink of an eye. Four houses were consumed by the fire that night. The Major of Infantrymen, Selim Efendi, also had his share of the runaway fire. He managed to rescue his wife and children from the blaze just before the house collapsed completely. In the end, the blaze was contained, but at that moment, no one knew that it would soon be followed by subsequent fires.

Next week at about eleven, another fire broke out, this time at Ahmet Bey's pasture house very near to the house of Süleyman Ağa, the Lieutenant of the Cavalry Regiments. He managed to save only some of his belongings together with his family while the house was completely consumed by the fire. However, this was not the end. That day from the early hours of the morning to the evening and the next day very early in the morning, four more fires appeared, one of which was very close to the barracks, consuming five houses and three barns in total. Drawing on the *şukka* (draft of a note) sent to the governor of İzvornik by the local council, the soldiers worked hard to bring the fires under control, but their efforts were futile since the conflagrations did not seem to have an end, erupting one after another.

Obviously, this was not an ordinary occurrence in Belene. First of all, Belene was a town on the frontier with Serbia, on the bank of Drina River, which was the border separating them. Since border security was one of the most important issues for the Ottoman Empire, a battalion of soldiers had been stationed there against the Serbian attacks and at the same time to prevent the Christian population's flight to

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[294] BOA., TŞR.BNM, 3/50, 27 S 1280 (13 August 1863).

Serbia.[295] However, it seems that the inhabitants of Belene were uneasy about the presence of soldiers in their town. As the correspondence between the Majors (*mirliva*) and the local government reveals, the soldiers were attacked by a group of local Muslim inhabitants when they were working to extinguish the fires. Furthermore the peasants armed themselves. In this chaos, one of the soldiers and then four more were caught by a mob of fifty people and accused of being the alleged arsonists. As one may guess, the local residents had a strong feeling that the consecutive fires in the town could not be accidental. If they were not accidental, then there must have been perpetrators who were responsible for the fires destroying many houses and outbuildings.

John Archer states that during the fires in the early nineteenth century Britain, Irish and foreign vagrants came under suspicion as outsiders since people thought that those fires could not be the work of someone within the community.[296] Similarly, John M. Merriman and David Jones mention that the usual suspects during the wave of fires in the 1830s in western France and during the incendiarism of 1840s in Britain, respectively, were again vagrants or outsiders since no one wanted to believe that such a crime could be perpetrated by native labourers.[297] Not surprisingly, the suspects were the soldiers (*asâkir-i şâhâne*) as the "outsiders" and

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[295] BOA., TŞRBNM, 6/71, 11 R 1280 (25 September 1863); TŞR.BNM, 15/110, 04 L 1280 (13 March 1864). Just before the incidents of Belene in August, a Christian girl converted to Islam, changing her name to Hanife probably because she had married a Muslim man. She was attacked in her house and killed by eight Christians. After the incident, her father Vasil left his village, Ravişte in Vişegrad sub-district, to flee to Serbia with his family, but the soldiers at the border confiscated his property and animals, leaving the family in a miserable situation. This case reveals, to an extent, both the tension between the Muslim and non-Muslim residents at the border towns and villages in Bosnia and at the same time the concern of the Ottoman state about its Christian population's flight to Serbia. See TŞR.BNM, 13/39, 22 S 1280 (8 August 1863).

[296] Archer, p. 100.

[297] John M. Merriman, "The Norman Fires of 1830: Incendiaries and Fear in Rural France," *French Historical Studies* 9, no. 3 (Spring, 1976), p. 462; and Jones, p. 19.

strangers for the people of Belene. Eventually the local notables recommended that the soldiers to leave town before a scandal broke out.[298] What is of concern here is that the Majors' suspicion about the community was as strong as the community's suspicion about the soldiers. According to their conspiratorial theory, the purpose of the Muslim community was to incite a tumult and attribute it to the soldiers,[299] since a soldier had been murdered prior to the fires erupted and his dead body had been found in a field. This terrific incident was the starting point for the consequent unrest and disorder in Belene.

Following this event in September, when a woman was raped by two soldiers and a sergeant in Zoviçe and afterwards lodged a complaint against the assailants, the event would be regarded as provocative by the local government aiming to defame the soldiers. The correspondence with the Grand Vizierate underlined that the woman raped was a whore and seemingly there had been no apparent coercion in the act. Therefore, it was quiet likely that this allegation was an outcome of the existing hostility against the soldiers in the district, presumably provoked by Luka.[300]

Nadir Özbek states that in the early 1860s the local residents of the villages on the frontiers of Bosnia and Herzegovina were permitted to bear arms with the

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[298] *"...itfâ'sına sây eden asâkir-i şahane üzerlerine ahali-i müslimeden bazıları gelerek ve boğazlarına sarılub darba mücâsir olduklarına ve bir yandan dahi silahlanmağa başladıklarına ve vücuh-ı belde tarafları dahi asâkir-i şahane derun-ı memleketten çekilsün ...(?) valla erazilden elbette bir sakatlık vuku'a geleceğini ilân ettiklerine binaen zabitan familyaları dahi derun-ı şehirden kaldırılub ..."*, BOA., TŞR.BNM, 3/50, 27 S 1280 (13 August 1863).

[299] *"...şu sırada ahali-i müslime bir arbede-i azamiyye çıkarmak ve sebebini dahi asâkir-i şahaneye atfetmek emelinde oldular ise de..."*

[300] BOA., TŞR.BNM, 7/13, 13 R 1280 (27 September 1863). Luka Vukavloviç was a famous chief of banditti who rose up against the government and provoked peasants of Zubçe during the war with Montenegro. He was influential in Bosnia and constituted a concern for Cevdet Paşa when he was appointed as the Inspector of Bosnia. See Cevdet Paşa, *Tezâkir 13-20* (Ankara: TTK Basımevi, 1991), pp. 269-272.

aim of securing the borders within a special "military border system" for which they were exempted in return from tax and military service.[301] In *Tezâkir*, Cevdet Paşa also mentions extensively the efforts he spent during his inspectorship in Bosnia to recruit *asâkir-i nizâmiyye* from among the inhabitants (*koloni militer usulü*). During the last forty years, he claims, whenever the government attempted to recruit soldiers in Bosnia, a riot broke out and prevented the implementation of *tensîkat-ı askeriyye*.[302] The old "military border system" in Belene, which had granted the villagers the privileges mentioned above, was now giving way to another system of security due to the governmental efforts at centralization. Peasants were forbidden to bear arms and the soldiers deep inside the heart of the countryside (*derûn-ı memleket*) were the rival powers depriving them of their privileges. The local council was astonished in the face of such incidents and also eager to find a way for a reconciliation between the soldiers and the people of Belene. The lack of confidence that had arisen between these two groups was very undesirable and should be eliminated.[303]

Distinctively, the feature of consecutive fires ignited in Belene was quite different from the general pattern of rural arson in the countryside. Apart from the fact that whether these fires were started by the soldiers or by the local people who wanted to repel the former, the hostility between the two groups was articulated through the idioms of fire. The military officials and the local administrators took the issue very seriously. In order to initiate an investigation about the incidents,

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[301] Nadir Özbek, "Policing the Countryside," p. 52.

[302] Cevdet Paşa, *Tezâkir 21-39*, pp. 33-35.

[303] BOA., TŞR.BNM, 3/50, 27 S 1280 (13 August 1863). *"...vukuât-ı muharrerenin cümlesi gayet çirkin şeyler olduğu gibi ırz ve canımızı muhafaza içün padişahımız efendimiz hazretlerinin tayin ve ihsan buyurdukları asâkir-i cenab-ı şahane ile ahali beyninde emniyetsizlik zuhuru cümleten fena bir keyfiyet olub ibtidâ-yı emrde şu tarafın emniyetsizliğinin ifâ-yı emniyete tahviliyle..."*

Sunullah Efendi, the head of the Meclis-i Tahkik, and the Brigadier General (*mirliva*) Ahmed Paşa were dispatched to Belene. The most urgent issue was to allaviate the distrust between the people and the soldiers by conducting a fair investigation to bring the truth to light. The investigation was carried out by a special commission made up of the superior military officials (*ümerâ-yı askeriye*), administrative officiers (*memurin-i mülkiye*), and some notable persons from the community (*muteberân-ı ahâlî*).[304] Eleven people from the community including the village headmen of various neighbourhoods, one zabtiye sergeant, and five soldiers who had been attacked by the people were interrogated by the commission. Two persons declared that they had seen two soldiers red-handed. The others were not eye-witnesses to the arson, had caught the soldiers as they had been told that those soldiers had been the arsonists. Only one person among eleven said that the community had caught the soldiers upon suspicion. According to the depositions of the soldiers, on the other hand, they had nothing to do with the fires, but were victims who had been attacked, seized and beaten by the community. They all were picked up and turned over to the local government when they were in charge of extinguishing the fires. Though the Lieutenant, the zabtiye sergeant, and the sub-district governor tried to disperse the enraged crowd and attempted to wrest the soldiers from their hands, they could not succeed as the people ignored the commands of the soldiers.[305]

Arson was indeed the most easily available weapon to express discontent while enabling the executors to stay under cover. This incident shows the extent to which the efforts of the central government to rule the countryside effectively were

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[304] BOA., A.MKT.MHM, 277/83, 8 R 1280 (22 September 1863).

[305] BOA., A.MKT.MHM, 278/24, 12 R 1280 (27 August 1863).

perceived as an intrusion by the local residents. As Nadir Özbek suggests, the "governmentalization" efforts of the Ottoman state during the Tanzimat period, which refers to the state's capacity to govern its population more efficiently or in this context the state's capacity to keep even its most distant provinces under surveillance by its soldiers, local administrators, or local courts through which the state gains corporeality, can be interpreted from another perspective as well, namely the "colonization of the countryside."[306] If we borrow this perspective, the incidents in Belene also can be conceptualized as a reaction to colonization which eventually culminated in tension against the soldiers.

Just as Cathy A. Frierson and John Archer criticize the propensity among historians to acknowledge "agency" only when it appears as a form of resistance or protest, James Scott highlights a similar point criticizing the overemphasis on peasant rebellions during which the peasantry come to the fore as "historical actors." What he suggests as "*everyday* forms of peasant resistance," on the other hand, refers to "the prosaic but constant struggle between the peasantry and those who seek to extract labour, food, taxes, rents, and interest from them." In this struggle, the "relatively powerless groups" utilize some ordinary weapons from foot dragging and pilfering to slander, sabotage, and arson which he calls as the "weapons of the weak". "These Brechtian forms of class struggle," according to Scott, "require little or no coordination or planning; they often represent a form of individual self-help;

[306] Nadir Özbek, "Policing the Countryside," p. 49. For another work appropriating this terminology, see Frank, pp. 7-8.

and they typically avoid any direct symbolic confrontation with authority or with elite norms."[307]

Arson was among the list of "weapons" Ottoman peasants used in Rumelia and Anatolia against their betters, but mostly against other peasants. In this sense, it was not part of a class struggle against the gentry initiated by peasants with class-consciousness, but part of a rural culture that gave the offended party a right to administer justice in order to chastise the offender. Fire-raising was not necessarily a means of resistance, but it was certainly a quick way to settle scores with the wrongdoer without having recourse to the authorities. The arsonists sought justice outside the official mechanisms and apparently found in arson an outlet for rebuke. The offender's guilt could be anything. Injured honour by a flick, unjust treatment, humiliation, a dispute over land, taxes, or livestock, problems with women (*kız maddesi*), and other minor affairs might trigger the act of retaliation that would make the opposite party pay for his wrongdoings. Hence, in a large portion of the cases, either the victim of fire was a fellow villager or a landowner; the motive of the perpetrator was revenge. The next section will focus on how the fury of the peasants arising from everyday conflicts on the community level was appeased by arson and the peasants carried out justice themselves.

[307] James C. Scott, *Weapons of the Weak. Everday Forms of Peasant Resistance* (New Haven and London: Yale University Press, 1985), p. 29.

Everyday Conflicts among Peasants: Arson as a Means of Retribution

Timothy Shakesheff, in his study on rural crime and protest in Herefordshire in the west of England, demonstrates the relationship between the rise in the frequency of acts of incendiarism and the periods of economic hardship during which the loss of employment and wage cuts turn into acute problems for farm labourers.[308] Frank also puts forward the impact of rising grain prices, harvest size, and the famines on property offenses in nineteenth century Russia.[309] Similarly, Smith, in his analysis on rural arson as a form of violent property crime, shows that two arson prone areas under his scrutiny, Baldwin and Terrell Counties in Black-Belt Georgia, the United States, were affected greatly by the economic depression and recession years. Still, he underlines the difficulty of measuring the precise impact of national fluctuations on a community level. Besides this factor, he also explores the impact of race, sex, and class of the perpetrators and their victims on deliberate fire settings that reveal the interracial, black-on-white characteristic of arson crime in these counties committed by persons with no property.[310] Further, he analyses the extent to which the seasonal patterns increased the propensity to arson. According to Smith's findings, the fall and winter months were the periods in which most arson cases occurred since the outrage of the labouring classes against agricultural employers and merchants increased during these months with the fall harvest in parallel to the increasing labour needs of the cotton economy.[311]

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[308] Shakesheff, p. 187.

[309] Frank, p. 137.

[310] Smith, pp. 538-542.

[311] Ibid., pp. 543-546.

Unfortunately, most of the archival records on cases of arson in the Ottoman Empire do not specifically reveal the exact date of the fire setting. They yield only the dates of the correspondences between certain government offices and/or the date of the judicial verdict. In the absence of this kind of data, it is not easy to determine the impact of seasonal patterns of agriculture on arson cases. Moreover, the lack of reference to the motives of the perpetrators in many cases and unidentified arson suspects in many others make it even harder to depict the impact of other variables such as gender and class. Especially the court records on incendiaries from the Anatolian provinces yield very little information about the details unlike the records from the Rumelian provinces. Nonetheless, there is ample evidence that tax assessment and tax collection were important occasions that fostered hostility among peasants against village headmen who were responsible for collecting certain taxes and assisting officers in the villages.[312]

On March 1865, the village headman of Piş village,[313] Vanço, fell victim to such vengeance.[314] Six months before the fire, the tax officer (*ağnam rüsum memuru*) had come to the village to survey livestock for the assessment of sheep tax (*ağnam vergisi*). However, not all peasants were willing to show their property, including Miladin, Metro, and Tepko. Three young shepherds hid some of their livestock from the tax collector, but Vanço did his job and informed the officer that these peasants had in fact more sheep than they had presented. Miladin's deposition

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[312] For the duties of village headmen and also the overtaxation administered by some village headmen see İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahalli İdareleri*, pp. 113-116. Also see Mehmet Seyitdanlıoğlu, "1871 Vilayet Nizâmnâmesi," in *Tanzimat Döneminde Modern Belediyeciliğin Doğuşu*, pp. 84-85.

[313] Piş was a village in Berkofça subdistrict in Tırnova district, Tuna.

[314] BOA., İ.MVL, 549/24636, 5 Za 1282 (22 March 1866).

at the court was clear in displaying his cooperation with his friends in the act of arson which aimed directly to punish Vanço for his whistle blowing.

> Six months ago, this Vanço informed the tax collector about our sheep. We assembled with friends and talked about setting fire to his zemlik. One night we entered into his zemlik which is separate from his house and torched it from the outside. It burnt down to the ground. We were paid twenty-four *kese* akçe for it.[315]

Unfortunately, the fire consumed not only Vanço's zemlik, but jumped to a neighbouring house and zemlik which burned to the ground. Although the worth of Vanço's zemlik was only two or three hundred guruş, the total value of damage was estimated as 27,000 guruş. Consequently, each shepherd was made to pay four thousand guruş and was sentenced to hard labour for four years.

In Eştice village of Priştine, Üsküp, when Kıbti Azim's wooden hut full of bricks was set fire in 1866, the alleged arsonist was another Roma (*kıbti*) from the village.[316] Kıbti Azim had been a village headman and during his office, he had had some problems with one of his fellow villagers, Kıbti Seydi, due to tax issues. Ostensibly, Kıbti Seydi was reluctant to pay his due taxes and the village headman had forced him several times to pay his taxes on time. According to Azim, this was a sufficient ground for Seydi to nurse a grudge against him. Though the alleged arsonist did not admit the crime before the court, there were witnesses who testified that Seydi had shared his secret with them after torching the property of the village headman. Consequently, he was found guilty and sentenced to hard labour for three years.

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[315] *"Altı ay evvel bu Vanço bizim koyunlarımızı mültezime haber verdi biz de arkadaşlarla laf ettik onun zemliğini yakmağa lakırdı ettik geceleyin hanesinden ayru olan zemliğine girüb dış tarafından ateşledik tekmilen yandı bunun içün bizden yirmi dört kese akçe aldılar."*

[316] BOA., İ.MVL, 568/25540, 10 Za 1283 (16 March 1867).

Beside tax issues, as showed in these examples, the motive behind the hostility of peasants against their fellows, in many cases, was the injured honour of the arsonist. Bad treatment by verbal or physical violence and the feeling of having been humiliated could engender fire that helped the peasants to square scores with the opposite party.

Restituting Honour by Fire:
Women (Kız Maddesi), Ill-Treatment, and Other Affairs

Especially for young peasants, being humiliated, ill-treated, or rejected by a woman was an important impetus that led them to seek revenge by fire. It was obviously a source of rage in the emotional worlds of these young men. In some other cases, the rivalry between two men for a girl created a source of tension for the party who vanquished in the competition. The examples below show clearly how fire turned into a symbol, "a form of speech,"[317] for the peasants who could find no other way to express their impotent rage when their feelings were hurt by women.

In December 1867, the barn of a certain Genko in the village of Pavradim, Plevne, started burning in the middle of the night. The fire was extinguished without spreading around and bringing about a catastrophe to the village as the peasants were soon ready there at the site of the fire. Dimitra, a sixteen-year old shepherd, was taken to the court since his friend, an eye-witness, informed Genko that Dimitra had been the one who had set his barn on fire. Dimitra initially denied the

[317] Schulte suggests to consider arson as a form of speech through which peasants attempted to articulate their rage in order to understand "what fire-raising –an excessive reaction to often seemingly banal conflicts- was really about". See "Civil Society, State Law and Village Norm," p. 82.

indictments claiming that Genko was slandering him because of his grudge on his father due to a land dispute. After a while, however, he admitted the alleged crime, saying that he had set the barn on fire since his feelings had been hurt by Genko's daughter. Genko's daughter had told him that he was not a good man. He was sentenced to five year hard labour owing to his young age and a clean previous criminal record as well as the trivial worth of the partially burned barn.[318]

What is significant about this case is the correspondence between the government and the *Mutasarrıflık* of Rusçuk in March 1869. We learn from the correspondence that setting fire to hay stacks and barns as an expression of spite quite often because of women or some trivial affairs had been like a provision of customary law. It states that "arsons like these always occur in the villages" as the arsonists were sure that they could anyhow go undetected and unpunished.[319]

When a certain Hacı Sulu's house in Plevne was set fire two months later following this event, it should come as no surprise that the anxiety of the local council about the prevalence of incendiarism in the villages was deepened. Although the house of Sulu was not completely consumed and the damage was only two hundred guruş, the village headmen and the council of elders were uneasy to see the difficulty of bringing the arsonists to light. Given the fact that the arsonists usually remained anonymous and never got what they deserved, the reason behind the increase in arson cases, according to the council, should have been the culprits' credence that their offence one way or another would have gone unpunished.

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[318] *"...vuku' bulan ziyan dahi cüzziyet kabilinden olmasına..."* See BOA., İ.DH, 1295/101736, 28 Za 1286 (1 March 1870).

[319] *"...bu misillû ihrâk her vakit köylerde vuku' buldukda ve mütecâsirleri meydana çıkmayub cezâ görmediklerinden bir cüzzi hususdan veyahud ekseriya vuku' bulduğu gibi kız maddesinden dolayı adâveten saman ve saye gibi şeyler ihrâk etmek adet hükmüne girmiş olduğundan..."*. The date of the correspondence is gurre Zilhicce 1285 (15 March 1869).

Therefore, they suggested the punishment of the arsonists "fiercely" when and if they could be caught.[320]

Similarly, two years later, in February 1869, in another village of Plevne, Tetko's barn was burnt by Kosto as he had been rejected by the victim's sister. Kosto, who had wanted to spend the night with Tetko's sister, could not attain his desire since she had decided to go with another man. Unable to control his fury, he set fire to her brother's barn to extinguish his rage. Very similar to Genko's case, the correspondence between Plevne court and the Rusçuk district disclosed how "it proved customary in villages to set the stacks and barns on fire because of very trivial matters or as happened quite often because of women due to hostility." The local court notified Rusçuk that the arsonist Kosto was to be put in jail immediately since "this kind of evil could be encumbered only if the malefactor was punished according to law."[321]

Apparently, disputes over women were not a less important motive than the relatively more serious reasons, such as land disputes or tax issues. In some cases, they came to the fore along with other disputes as a motive. In Tırnova (Turnova) sub-district, when the hay barn of Mikaviye was set fire on a December night in

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[320] BOA., İ.DA, 4/68, 5 M 1286 (17 April 1869). *"...karye-i merkumede pek çok harikler vuku' bulub faili meydana çıkarılamamış olduğu cihetle bunun önü giderilemediğinden bunların şediden tedibleri karye-i merkum muhtar ve ihtiyar meclisinin takdim eyledikleri mazbatada ifade ve istidâ olunduğundan..."* This case also supports the claim that disputes over women were most of the time the motivation behind the fires in the villages. While investigating the reason of the arson, the interrogator asks Vilo, one of the alleged arsonists, a twenty-three year old shepherd, whether the litigant Hacı Sulu had marriageable daughters or a daughter-in-law. *"S: Bu Seyid ile o Hacı Sulu'nun beyinlerinde bir kavgaları var mıydı sebeb ne idi böyle ateş götürüb evini tutuşdurdu Sulu'nun evine gündüz Seyid'in gittiği var mıdır Sulu'nun yetişmiş kızları yahud gelini var mıdır / C: Beyinlerinde kavgaları olub olmadığını bilmiyorum ve sebebini dahi bana söylemedi kızı gelini yokdur bir karındaşı vardır Seyid'in gündüz gittiğini görmedim".*

[321] BOA., İ.DA, 6/120, 14 Ş 1286 (19 November 1869). See also BOA., DH.MKT, 1310/6, 25 Ş 1286 (30 November 1869). *"...köylerde bir cüzzi hususdan veyahud ekseriya vuku' bulduğu gibi kız maddesinden dolayı adâveten saman ve saye gibi şeyler ihrâk etmek adet hükmüne girmiş olduğundan ve bu misillü fenalığın önü kestirilmesi ele geçen mütecâsirin kanûnen mücâzât görmesine ... (?) olduğundan merkum Kosto 84 senesi Şubatının 14. günü taht-ı tevkife alınmış..."*

1868, it came out soon that the motive was again a conflict over a girl.[322] The victim filed a lawsuit immediately after his property had been destroyed. Apparently, the damage was not insignificant. Though the worth of the hay barn was only five hundred guruş, the structure burned to the ground together with the hay, wheat, bitter vetch, and oat in it which is why the total value of damage reached over three thousand guruş. For three months, the perpetrator remained disguised but consequently, he could not guard his tongue and told a fellow villager that he was the one who had torched the hay barn.

The arsonist was a seventeen-year old boy called Peno. He admitted the alleged crime when he was brought before the council of elders and the village headmen for interrogation saying that he had been instigated for setting the hay barn on fire by Todor. According to Peno's deposition, Todor had a grudge against Mikave's son who had made great effort to hamper Todor's marriage to Vasil's daughter and for that reason; he had encouraged Peno to burn Mikave's property in order to take his revenge. However, it was apparently not the sole motive of arson. Mikaviye later claimed in court that Peno had been outraged against him since the young boy was very convinced that he had had cheated his father in a land transaction.

Not surprisingly, Todor denied all allegations, claiming that he had been at home with his family that night. Furthermore, he found some witnesses to substantiate his statement. His father and uncle testified that Todor had been sleeping at home when they had heard the rifles fired outside to announce the fire in the village. During the investigation process, four persons from the village council and two village headmen were questioned along with the plaintiff, defendants, and

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[322] BOA., İ.DA, 8/148, 28 Z 1286 (31 March 1870).

the father and uncle of Todor. Since there was no witness to the crime, the public opinion about Todor and Peno became important for substantiating the statements of Peno. Without exception, all peasants testified that both Todor and Peno were known as "good guys" in the village with no previous criminal record. Sanko, a forty-year old farmer and a member of the village council, claimed that "Peno is a good boy. We have not witnessed before that he was involved in larceny or any other evilness. He also never had burned a hay barn before. Somehow, he did such a thing now."[323] Todor, on the other hand, was a man busy with his work (*işine gücüne gider takımdan*), according to the testimony of the village headman Ahmed Ağa. The other village headman, Veco, also described him as a man with a good character (*ehl-i ırz*).

Given the village notables' statements testifying to his good character and the lack of evidence that would substantiate the allegations against him, the court returned a not guilty verdict for Todor. Later, at the upper court in the sub-district council of Tırnova, Peno revoked his previous confession saying that it had been obtained under duress in the village. According to his deposition, he had been beaten in the village by some persons whose names were unknown to him and forced to take the blame. He further claimed that he did not know what he had said in the village. However, when the village notables were summoned to the upper court and asked about this incident, all of them denied the beating. Sanko claimed that "no one beat Peno even with a flick."[324] Consequently, Peno was found guilty,

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[323] "*Peno güzel çocuktur hırsızlıkda ve sair türlü fenalığı yokdur görmedik ve böyle samanlık yaktığı dahi yokdur şimdi nasıl ise bir iş yapmış."*

[324] *"S: Peno'yu köyde kim darb eyledi ise allah rızasıyçün doğru söyle / C: Peno'yu köyde fiske ile bile hiç kimse darb eylemedi Peno kendi lisanıyla ikrâr eyledi efendim."*

unlike Todor, and sentenced to five years hard labour in spite of the testimonies that favoured his good character.

In Rusçuk sub-district, Yordan in February and Salih in October 1869 set fire to the hay barns of Deyso and Hasan, respectively. Yordan's honour had been hurt by Deyso's daughter, who had used foul language against him in public.[325] Salih, on the other hand, ignited the hay barn since the woman he was in love with had provoked him due to her grudge against Hasan.[326] In Priştina, Ahmed ignited the fodder of Bayram because the latter was the lucky one who had got married the girl with whom they both in love.[327] Further, he uttered threats to intimidate him while sending him messages through the villagers.

> Bayram got married to the woman I want but I showed a rifle to his farm labourers and set his fodder on fire and also shot the dog of his uncle Abdülrahman. If Bayram does not divorce his wife, tell him that I will bring much more evil upon him.[328]

Similarly, when Arif and his brother set the wooden hovel of Murat on fire in Prizren, it came out soon that there had been a longstanding hostility among these men in a dispute over a girl.[329] When Darba's wooden barn was burnt to ashes in 1872 in Tırnova, the arsonist Hristo admitted the crime, saying that he had set fire to the barn unconsciously as Darba's daughter had mocked him.[330] Another case from Mosul demonstrates that incendiary fires ignited by peasants due to some disputes

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[325] BOA., İ.DA, 5/80, 27 M 1286 (9 May 1869).

[326] BOA., İ.DA, 10/309, 24 Z 1288 (5 March 1872).

[327] BOA., MVL, 1038/13, 7 L 1283 (12 February 1867).

[328] *"Sizin köylü Bayram benim istediğim karıyı aldı fakat ben dövencilerine tüfenk endâht etdim ve giyahını ihrâk etdim ve amcası Abdülrahman'ın kelbini dahi urdum eğer Bayram aldığı karıyı boşamaz ise daha büyük fenalık edeceğim kendisine söyleyiniz…"*

[329] BOA., MVL, 1003/70, 21 B 1281 (20 December 1864).

[330] BOA., İ.DA, 13/517, 10 Ra 1291 (27 April 1874).

over women were not unique to the Rumelian provinces. In February 1860, when Abdülmevla's house was set fire by Ali and Halil, it came out soon that the tension and hostility among these peasants was due to the fact that the daughter of Abdülmevla's uncle had been abducted by Ali and Halil.

Though seemingly quite banal, the ordinary stories of petty hatreds due to disputes over women explain many of the quarrels within the community that culminated in fires, as seen above. Nevertheless, the motives behind the peasants' rage were much more diverse than the picture depicted by such disputes. The Ottoman archives are replete with cases showing peasants settling everyday conflicts with the opposite party through the most legible means of taking vengeance within the community, which is arson.

One night in May 1859, when the house of a certain Nikola was set ablaze in Zir-Tırnova village of Niş, it came out that the arsonist was a peasant named İsvatko. İsvatko previously had beaten Nikola's son and afterwards stayed in prison for a few days as Nikola had filed a complaint against him. The hostility between the peasants was apparently due to a grudge stemming from this matter. According to Nikola's deposition, İsvatko had uttered threats after being released from the prison, saying "You'll see what I'm going to do for you,"[331] which is why when his house was set on fire. There was no other suspect except İsvatko, who had a clear reason for vengeance.

Sometimes a simple squabble among peasants caused unexpected fires. In Peniçe village of Silistre, Dragani's sheepfold and hay barn were set on fire in

[331] BOA., MVL, 901/51, 19 Z 1275 (20 July 1859). "*Ben sana bundan böyle ne iş edeceğimi görürsün.*"

November 1868.[332] The arson suspect was a twenty-six-year old shepherd named Yovan, who had had a spar with Dragani's son Gorgi over a lamb. Gorgi wanted the shepherd to herd his lamb, but was rejected, which consequently sparked a confrontation between the two young men. They both used abusive language and the incident reached an even more violent level when the parties attempted to use their sticks as a weapon against each other. According to the testimonies of some witnesses, Yovan hurled threats, saying that he would burn down the house and the hay barn of Dragani. The village headman indeed made an effort to settle the affair in order to neutralize the tension between the parties in conflict but failed. Yovan rejected a peaceful settlement while Dragani was quite willing for reconciliation. Apparently, Dragani had reasons to fear as he had much to lose, but Yovan did not.

Shepherds were usually young, single men with no land or home. They had no strong ties with the village community since they spent most of their time in the wild with the sheep, goats, and cows. For example, Yovan had nothing except for forty-nine sheep. He always had his meals at the çorbacı's house and then returned back to the herd. Briefly, Dragani's fears in the face of Yovan's threats were not unwarranted. Not surprisingly, the threats were soon followed by blazes.

Yovan immediately was taken into custody as the alleged perpetrator. However, the fires did not come to an end. Interestingly, three subsequent fires broke out in the village while Yovan was in prison that burned down a stack house, two sheepfolds, and a hay barn. Apparently, there was another person outside playing with fire. Not long after, the alleged perpetrator coincidentally was seized by peasants patrolling the neighbourhood in the vicinity of the fires. Üstoyaku, a friend of Yovan and a twenty-eight-year old shepherd, was convicted as the arson

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[332] BOA., İ.DA, 7/135, 29 L 1286 (1 February 1870).

suspect since there were many reasons substantiating the suspicions against him. First and foremost, he made conflictive statements when he was caught and questioned. In addition, he had spiny cockleburs stuck to his clothing that, in the eyes of the peasants, obviously indicated his guilt as the fields around the burnt structures were thick with cockleburs. Moreover, Üstoyaku was a repeat offender who had been convicted four or five years earlier for setting fire to a cowshed in a nearby village that had been consumed with the livestock in it.

During the trial, it came out that Üstoyaku had been instructed to start the fires in the village by Yovan. According to his plans, if more fires broke out while he was in prison, the villagers and the court would think that he was innocent and he would be released. However, his plans did not work and both Yovan and Üstoyaku were sentenced to hard labour for four years.

As far as the archival records reveal, young shepherds and farm servants were particularly more prone to act on their anger and ignite fire than any other people. When these subordinates were badly treated, beaten, or castigated by their superiors, they found an outlet in fire to express their fury.

One night in March 1861, two friends, Loyit and Biço from Ragos village in Şehirköy (Pirot), set fire to the zemlik of Kosto located ten minutes away from the village.[333] Both were fifteen or sixteen-year-old peasants and native to the village. When it was detected that they were the arsonists and questioned in court, it came out that the motive behind their act was a simple grudge stemming from the acute ill-treatment by the victim.

Q: [to Biço] Why did you burn the zemlik of this Kosto?

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[333] BOA., A.MKT.MVL, 129/68, 9 M 1278 (17 July 1861).

> A: This winter I went to the wedding ceremony of one of our villagers, Vaçe. There were many families. Kosta's father Kristo and his sister were also there and they were dancing. Pison oğlu Rangel took the kerchief of this girl from her head. Kristo, the girl's father, thought that I did it and he hit me on the head with the vine pot. Then he attempted to take out a knife, but I escaped. Before that, my friend [Loyit] had taken two corns from his field and cut a ... (?) from his wood. For that reason, Kristo had beaten my friend with an axe and whenever he saw him he mocked him, saying that I disciplined you well. So we both had resentment toward Kristo. One month ago while I was going to prune a vineyard with my friend, we started to talk about it. I told my friend that this man did many things to us, let's go and set his zemlik on fire, to which he consented. That night while I was waiting at the door to be sure that no one was coming, my friend burnt it.[334]

Being badly treated several times in public by Kristo had apparently injured the honour of these boys. Arson was the sole weapon that they knew how to use and an invaluable means of satisfying a sense of justice by inflicting punishment on the wrongdoer. Regina Schulte states that "The unassimilated, pent-up feeling of having been unfairly treated and humiliated developed into an inner compulsion to achieve by means of revenge some kind of compensation not provided for in law."[335] Probably the feeling that the law could never help them to restore their injured honour was the reason why Loyit and Biço did not prefer to file a complaint with the authorities. Maybe for that reason they could not explain to the interrogator why they did not prefer it.

> Q: You say that Kosto's father Kristo had beaten you and you set the zemlik on fire for that reason. If Kristo had actually beaten you,

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[334] *"S: Bu Kosta'nın zemliğini yakmanıza sebeb ne ola / C: Ben bu kış bizim köylü Vaçe'nin düğününde idim bir çok familya var idi bu Kosta'nın babası ve karındaşı dahi orada oyun oynar idi Pison oğlu Rangel bu kızın başından yemenisini kapdı kızın babası Kristo da bunu ben yapdım zannederek şarab çutrasını kapub benim başıma urdu sonra bıçağını çeküb beni uracak idi ben de kaçdım arkadaşım benden evvel bunun iki mısırıyla korusundan bir ... (?) kesmiş bunun içün Kristo arkadaşımı balta ile döğmüş ve gördüğü yerde seni eyü terbiye ettim deyu maytab edermiş bundan dolayı ikimizin de Kristo'ya husumetimiz var idi bundan bir ay mukaddem arkadaşım ile bağ budamağa gider iken bu lakırdı açıldı bu bize bu kadar şey yapdı haydi gidelim şunun zemliğini yakalım deyu ben arkadaşıma söyledim o da razı oldu o gece gidüb ben kapuda durdum kimse gelmesin arkadaşım yakdı."*

[335] Schulte, *The Village in Court*, p. 44.

wouldn't it be better to complain about him to the government instead of doing like that?

A: Indeed it would be better. We behaved in an inexperienced way. Thus far we have never seen where the government office is. Now we see.

Q: Didn't the rural sergeant come to your village? Why didn't you tell him?

A: I don't know why we didn't tell him. The sergeant comes [to the village].[336]

Similar to Loyit and Biço, many young peasants resorted to arson to restore their injured honour. When a fourteen-year-old Bojo set fire to the house of Don Pravine, a subject of Austria, in Maden sub-district of Bihke, Bosnia, the young boy claimed at the court that he had been beaten several times by Don Pravine without any reason which is why he left a match in the thatch covering his house.[337] İstanko was another young farm servant from a village of İslimye (Sliven) convicted for deliberately igniting a fire in 1866. According to his deposition at the court, he had taken a beating from Vasil for a trivial reason, which had led him to burn his hay barn.[338] In November 1867, when a twenty-year-old shepherd Tanco from Boyacık village in İslimye deliberately set the hay barn of Hacı Yovan ablaze, the motive of his act was a simple grudge.[339] Though initially he denied his primary role in the act,

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[336] *"S: Bu Kosto'nun babası Kristo bizi döğdü de biz onun için bunun zemliğini yakdık diyorsunuz bunu böyle edeceğinize hakikaten Kristo sizi döğdü ise hükümete şikayet eyleseniz daha eyü olmaz mıydı / C: Hakikaten böyle daha eyü olur idi acemilik etdik biz daha şimdiye kadar hükümet konağının nerede olduğunu görmemiş idik şimdi gördük / S: Köye kır çavuşu gelmez mi idi ona ne için söylemediniz / C: Ben de bilmem niçün söylemedik filhakika çavuş gelir."*

[337] BOA., İ.MVL, 518/23301, 6 Ca 1281 (7 October 1864).

[338] BOA., MVL, 1037/57, 27 C 1283 (6 November 1866). *"Efendim yalan olmaz ben Vasil'in bahçesinde otururdum Vasil beni kuzu almağa gönderdi ben de gidüb çobandan istedim ise de parasız vermem deyu cevab verdi ben de Vasil'e haber verdim ertesi günü beni bulub döğdü ben de onun için koynumdaki çakmak ile kav çaktım samanlığın arkasından tutuşturdum gece olduğundan dönüb bahçeye geldim yattım böylece oldu."* A further investigation was carried out after the incident which revealed that the burnt hay barn was not inside the village but in the harvest area and the arsonist was only twenty-years old.

[339] BOA., İ.DA, 3/37, 11 B 1285 (28 October 1868).

accusing his friend as the instigator, he later confessed that he had set the barn on fire to take revenge.

> Q: Why did you burn down the hay barn, my dear? Had there been a longstanding hostility between you and him?
>
> A: Sir, I was holding a little grudge against that Yovan.
>
> Q: Why did you have a grudge?
>
> A: My sheep got into Yovan's corn field. At that time Yovan saw it and beat me. That is why I had hostility. I went there and burnt it and somehow did something wrong. I request you to forgive me only this time.[340]

In January 1868, this time, Said Ağa's hay barn was set on fire by his farm servant Mehmed in Edirne. It came out that he had lit the fire with a cigarette in a fit of pique after he had been castigated by his master. He was an eighteen-year-old, simple-minded boy who ostensibly had a feeling of being ill-treated after his master had yelled and used bad language at him just because he had returned to the farm late from his assignment, cutting fire wood. He hid in the hay barn for three days and consequently set it on fire.[341]

Apparently, all these cases demonstrate that the location of the burnt structure and the age of the perpetrator were important factors for the courts. For example, in İstanko's case, mentioned above, the provincial council asked for further investigation in order to learn the details about the case. Consequently, it came out that the hay barn was not inside the village, but in the harvest area and the

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[340] "*S: Niçün yakdın samanlığı kuzum onun ile senin aranızda bir nefsâniyyet var mı idi / C: Efendim benim o Yovan'a azıcık garezim var idi / S: Neden dolayı garezin var idi / C: Onun mısır tarlasına benim koyunlarım girmiş idi o sırada Yovan görmüş geldi beni döğdü onun için nefsâniyyetim var idi gittim yakdım her nasıl ise bir kabahat etdim bu defa affetmenizi rica ederim.*"

[341] BOA., İ.DA, 2/26, 8 Ca 1285 (27 August 1868).

perpetrator was a twenty-year-old man.[342] Though we do not know the sentence given for İstanko, these factors would probably determine his fate in hard labour. In Tanco's case, the interrogators conducted an investigation to understand whether the target of arson was in the village near to the dwelling-houses or not. Similarly in Mehmed's case, the court released a sentence of hard labour for three years instead of a harsher sentence stipulated by the penal code since Mehmed was only eighteen and the fire did not spread to the vicinity.

The seriousness of the crime committed was closely related to the object of attack and its location. Though non-residential structures were the target in most cases, the thatched roofs of the rural dwellings easily caught on fire anytime a fire broke out near the village. For that reason, a fire that occurred in or near a village was much more threatening compared to a fire ignited in the isolated barns, fields, or somewhere at a distance from the rural dwellings. The proximity of the fire to the dwelling-houses had absolutely more potential to destroy the whole village if the fire could not be contained. In the absence of fire services, the efforts of the peasants sometimes fell short of extinguishing a blaze if the breeze was strong. For that reason, at least in the Rumelian provinces, the peasants were careful to construct their hay barns and granaries away from their homes. However, as far as the bill (*ilannâme*) announced in the Kastamonu provincial newspaper in December 1889 demonstrates, this was not the case in the Kastamonu villages.

Apparently, the villages in Kastamonu province were more prone to accidental fires than arson. An examination of the newspaper's issues available in the *Hakkı Tarık Us* Collection at the Beyazıt Library yields many cases of accidental fires which consumed houses, hay barns, granaries, and livestock, together with the

[342] BOA., MVL, 1038/4, 4 L 1283 (9 February 1867).

donations collected for the victims of runaway fires. Though accidental fires are not the subject of this chapter, the bill published in the local newspaper is worth considering as it clearly reveals the conditions leading up to fire disasters as well as the government's increasing concern in pursuing a solution to prevent these fires.

As indicated by the bill, the homes of the period in Kastamonu villages were full of combustible materials like corn stalks, brown rice stalks, dry fodder, and hemp. It was common to keep such combustible materials underneath the houses, in the yards or near the hearths in order to dry them. Juniper bushes were also among those combustibles that were mostly placed over the doors and fences. Most fires in the villages were caused by a spark that jumped to these materials from the hearth. For that reason, leaving the home when the fire in the hearth was still alive was dangerous and strongly forbidden. Careless strolling around the barns or hayricks with burning fire wood was as dangerous as the sparks jumping from the hearths and forbidden as well. Henceforth, the bill proclaimed, the combustible materials would not be kept inside the houses, but would be stacked somewhere away from the houses.[343] Naturally, the bill did not have an immediate effect. After it was published, the next issue of the newspaper announced that a fire had occurred in Sinop that had been caused by a spark that had jumped to the brown rice stalks near the hearth which justified the proclamation of the bill once more.[344]

The local newspaper published only one arson case in November 1889. Among the twenty-one fires that appeared in the pages of the Kastamonu newspaper

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[343] *Kastamonu Vilayet Gazetesi*, no. 814, 9 R 1307 (3 December 1889). Throughout the nineteenth century, the Ottoman state issued many regulations –*Ebniye Nizâmnâmesi*- as a measure against the fires, especially the fires in İstanbul. In these regulations, the construction of stone and brick buildings was proposed by the government. See Barış Taşyakan, "The Volunteer Firefighers of İstanbul, 1826-1923" (M.A. thesis, Boğaziçi University, 2008), p. 124.

[344] *Kastamonu Vilayet Gazetesi*, no. 815, 16 R 1307 (10 December 1889). *"…İşbu harik dahi çeltik sapından zuhuru mezkur ilannâmenin neşri hususundaki esasiyeti bir kat daha teyid etmişdir."*

from March 1889 to March 1890, only the fire that had broke out in Koşkara village of Akkaya had been arson. The hemp near the house of a certain Hüseyin Pehlivanoğlu Osman was set on fire and it spread to the neighbouring house, consuming the property of Emin Bekiroğlu Mehmed's house as well.[345] The editors of the newspaper reported this case just as they reported the other accidental fires, devoting it not too much newspaper space in a column. Contrary to this, they gave more space to donations made per person for the fire victims which were organized by charity commissions.[346] Besides that, in some cases, the individual efforts of the district governors, officials, and local notables to extinguish a fire were reported in detail. For example, when a fire occurred in Tahir's house in Taşköprü and spread to other houses, the newspaper announced that *defter-i hâkanî* (Head of the Imperial Registry Office) Reşid Bey, the district governor İsmail Efendi, and a certain Şemsizade Mehmed Bey from the local notables (*eşraf*) were ready there and worked hard to extinguish it.[347] In this way, the space devoted to fires in the newspapers turned into an arena where the benevolence of the authorities was underlined. As Nadir Özbek suggests, these charity commissions can be regarded as the "social welfare branches" of the central government through which an image of the paternalistic state and the legitimacy of the political power were reconstructed.[348]

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[345] *Kastamonu Vilayet Gazetesi*, no. 820, 21 Ca 1307 (13 January 1890).

[346] See for example *Kastamonu Vilayet Gazetesi*, no. 800, 29 Z 1306 (26 August 1889) for the works of the charity commission organized after the fires in two Tosya villages.

[347] *Kastamonu Vilayet Gazetesi*, no. 816, 23 R 1307 (17 December 1889).

[348] Nadir Özbek, *Osmanlı İmparatorluğu'nda Sosyal Devlet. Siyaset, İktidar ve Meşruiyet 1876-1914* (İstanbul: İleşitim Yayınları, 2002), pp. 257 and 264.

The fact that there are no published statistics that provides the number of accidental fires and the arson cases brought before the courts makes it difficult to make a precise elaboration about the severity of the impact of fires in the Ottoman countryside. The newspaper reports do not always mention the origin of fire, which makes it impossible to differentiate accidental fires from deliberate fire settings.[349] The dark figure of unreported crime adds further to the problem. In the absence of such data, court registers come to the fore as an invaluable source to examine this crime with clandestine nature and its tangible impacts in the village community.

As the foregoing cases suggest, arson was a way of summary justice for peasants who attempted to settle petty scores with the opposite party. In some of these cases, personal enmities stemming from labour disputes triggered hostility against the landowners and employers. Below, cases which show the farmhands and day labourers in action against their economic superiors will be examined. These cases have some common characteristics with the incendiary fires in Britain in regard to the motives behind the incidents, but yet they are not entirely similar. Even though the peasant labourers who were fired, unpaid or paid less than they deserved, and unjustly treated by their superiors resorted to arson, these cases mostly did not reflect collective tension against the gentry landowners, unlike in Britain, but rather showed the personal frustrations of individual peasants stemming from unjust treatment.

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[349] For instance, Tuna provincial newspaper reported in May 1865 that a fire that had occurred in Tenve (?) village of Rusçuk subdistrict started in a sheep fold and spread to the vicinity while consuming thirty-two houses and taking the life of a twenty-two-year old reaya girl. The report includes no additional information about whether the fire was accidental or a suspected arson case probably due to the fact that it was unclear. See *Tuna Vilayet Gazetesi*, no. 9, 14 Z 1281 (10 May 1865). When it was clear that the fire was accidental, it was always mentioned briefly. See for example, *Tuna Vilayet Gazetesi*, no. 23, 23 Ra 1282 (16 August 1865). *"Şumnu'da Kalan çarşusunda Haşim Beyin samanhanesinden kazaen zuhur eden ateş etrafına sirayetle üç bab dükkan muhterik olduğu halde asakir-i şahanenin ve memurin-i mahalliyenin ikdamıyla basdırılmışdır."*

Peasants against Their Betters

In December 10, 1866 before dawn, Hocazade Ahmed Efendi's hay barn in Aharbanlı village located one hour away from Filibe, started to burn.[350] Awakened from his bed by the howling dogs, Ahmed Efendi went outside and saw his hay barn in blazes. The villagers had already arrived to extinguish the fire, which proved impossible to contain since the hay barn had been torched from three separate places.

Ahmed Efendi immediately sent two peasants on their horses to look for the perpetrators. One of the two alleged arsonists, Marin, the farmhand of Büyük Arif Ağa, was caught by the peasants, but the other one, Dimitri, managed to escape. When Marin was brought and questioned before the community and then before the court, he denied his role in the incident and claimed that his friend was the real perpetrator. According to his deposition, Dimitri had been nursing a grudge against Ahmed Efendi. Both Marin and Dimitri had worked for a while as labourers[351] at the aforesaid gentry's farm and when they quit job, Ahmed Efendi had not paid Dimitri two hundred guruş allowances. On the night before the incident, Marin claimed, Dimitri had made him drunk and taken him to the farm, but he had only watched his friend from a distance while he torched the hay barn.

After a few months, Dimitri was seized in Edirne and not surprisingly his version of the story was completely different from Marin's statements. According to Dimitri, Marin's father had charged them to burn the hay barn.

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[350] BOA., İ.DA, 1/3, 6 M 1285 (29 April 1868). Also see A.MKT.DA (DES), 2/27, 16 M 1285 (9 May 1868).

[351] When Dimitri and Marin were asked about their occupations at the court, the former stated that he was a farmhand (*ırgat*) while Marin said that he was a servant (*hizmetkar)*.

> Because Hacı Ahmed Efendi had sworn at the father of my friend Marin, who is now in prison, and broken his ploughs, he had been nursing a grudge against Hacı Ahmed Efendi. He butchered a beast [pig] and called me. That night I went there and we ate and drank. He made me drunk and then charged his son Marin and me [to burn the hay barn]. As we were drunk, we went there and burned it.[352]

It is striking that Dimitri's story was also a narrative of cruelty that depicted Ahmet Efendi attacking on a peasant's means of subsistence, his ploughs. Upon this statement, Marin's father was summoned to the court, but denied the story told by Dimitri. Even when Marin and Dimitri were confronted, they insisted on their own claims, putting the blame on each other. Consequently, Dimitri was found guilty of setting fire to the hay barn and sentenced to hard labour for seven years according to Article 164. Though there was no article in the Penal Code for those complicit in arson, Marin was sentenced to three years hard labour according to Article 230.[353] What made the court give a harsher sentence to Dimitri was the fact that he had fled following the incident which, for the court, was a clear indicator of his primary role in the crime.[354]

Another case from Tekfurdağı (Tekirdağ), Edirne, is also revealing in displaying the role of labour disputes in arson cases.[355] The victim was a prominent landowner in Demirli village, Edhem Bey and the alleged arsonist was a casual

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[352] *"Bu hapiste olan arkadaşım Marin'in babasına Hacı Ahmed Efendi sövmüş ve onun sabanlarını kırmış olduğundan merkuman Hacı Ahmed Efendi'ye garez edüb bir canavar kesüb beni çağırmış o gece oraya gittik yedik içtik beni sarhoş etti oğlu Marin ile beraber ikimizi yolladı biz de sarhoş olduğumuzdan gidüb yakdık."*

[353] Addition to Article 230 states that: "Persons knowingly assisting those guilty of a larceny punishable with hard labour, or who have concealed goods stolen by such persons as aforesaid, shall be punished with hard labour for from three to fifteen years. Those who shall knowingly assist those guilty of a larceny punishable with imprisonment, or who shall conceal goods stolen by them, shall be punished with the penalties to which the thief himself is liable." See *The Ottoman Penal Code*, p. 101.

[354] *"İyi ya madem ki sen yakmadın niçün öyle Edirne tarafına kaçdın ve altı yedi aydır kaçıyorsun işte demek olur ki bu ateşi asıl yakan sensin şunu doğruca söyle."*

[355] BOA., İ.DA, 7/142, 3 Z 1286 (6 March 1870).

labourer, Hristaki, working on his farm. Hristaki was caught red-handed in February 1869 when he attempted to torch the hayricks near the mill in order to burn the farm. One week before this incident, Edhem Bey's hay barn had been burnt down, but fortunately extinguished without spreading. For that reason, Hristaki was accused of being the alleged perpetrator of that fire as well. Though he admitted his role in the failing attempt to torch the farmstead for two hundred guruş promised by Nefise Hatun and her son Mehmed Ali, he was not responsible from the previous fire which had been set by aforesaid persons.

According to Hristaki's deposition at the court, he had no grudge against Edhem Bey, but Nefise Hatun and her son did. Nefise Hatun and Mehmed Ali were from Demirli village and had been employed at Edhem Bey's farm for nearly five months. Nefise was a domestic servant (*odacı*) and her son was a farmhand. They would receive 650 guruş salaries in return for six months employment;[356] however, they were dismissed before the term of the contract had expired as they supposedly had avoided work. According to Hristaki, this was the reason for the grudge Nefise and Mehmed Ali held against Edhem Bey.

> In the summer, there was a woman on the farm working as a servant. She was fired by the farm custodian (*nâzır*). A week ago, she set fire to the hay barn and intended to burn the farmstead too, but was unable to find a way to get into the farm, she called me to her house and said "I burnt the hay barn a week ago. Since no one heard, I want to burn the farmstead as well but I can't get inside. I will give you two hundred guruş, burn the farm." Later, she called me again and said "Why are you lax? Edhem Bey hurt one thousand people; go and hurt him in return. I burnt the hay barn as a woman. You are supposedly a man, can't you manage it? Take these two hundred guruş and do it." I yielded to the

[356] An article published in Karesi newspaper in May 1886 states that the annual wage of a farm servant (*çiftçi hizmetkarı*) in the province was 1100 to 1200 guruş. According to the agreement between the parties, the farm servant would also be provided with a woolen cloth (*aba*), two boots (*çizme*) for summer and winter months, *ayak yemenisi*, *öküz bezi*, and one *kıyye* soap (1 kıyye=1282 gr.) which would cost approximately two hundred guruş. The farmer would also spend 480 guruş for the bread and food. Therefore, the total expenditures of a farmer paid per farm servant would reach to 1880 guruş. See *Karesi*, no. 10, 15 Ş 1303 (19 May 1886).

> devil... if the labourer (*öküzcü*) did not see me; I would yield to the devil and burn the farm by adoring two hundred guruş.[357]

Hristaki was a poor, forty-year-old man with no property except for a ruined cabbage yard (*kelem bağı*). He was not a native in the village and was married with two children. As a casual labourer, he was not employed at a fixed salary, but had harrowed fields the previous year and now was cultivating corn for himself in return for doing some routine work such as feeding animals. Apparently, two hundred guruş was a substantial sum of money for such a man. This amount was approximately equal to the two-month wages of a domestic servant and a labourer. In this respect, his story was meaningful. Furthermore, it amounted to a reality consistent with the depositions given against Nefise Hatun at the court by her fellow villagers.

During the trial, along with Hristaki, Edhem Bey, Nefise Hatun, and Mehmed Ali, three witnesses from the community were summoned to the court and were basically questioned about the reputation of Nefise Hatun. The village headman Hüseyin was especially grumbling about the woman's bad character.

> Sir, when we say [to Nefise] that your ox get into the meadows and your geese get into the fields, keep them out, she says nasty words. She used to say "I will burn this village". Even though I am a village headman, God knows, due to my fear I can't ask her to pay her debt to the local treasury (*mal-ı mîrî*).[358]

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[357] *"Yazın çiftlikte odacılık eden bir kadın var idi muahharen nazır kovmuş idi bundan bir hafta evvel mezbûre samanlığı yakmış ve çiftliği dahi yakacak ise de yol bulub çiftliğin derununa giremediğinden beni evine çağırdı bundan bir hafta evvel ben samanlığı yakdım kimse duymadığından çiftliği dahi yakacak isem de içerüye giremiyorum sana iki yüz guruş vereyim şu çiftliği yak dedi ve muahharen bir defa daha çağırdı ne gevşek davranıyorsun Edhem Bey bin kişinin canını yakmış sen de şunun canını yak ben karılığımla samanlığı yakdım sen erkek olacaksın bir iş göremez misin al iki yüz guruş da işin gör dedi ben de şeytana uydum…eğer öküzcü görmemiş olaydı şeytana uyub ve iki yüz guruşa tapıp çiftliği yakacak idim."*

[358] *"Efendim öküzlerin çayıra ve kazların tarlaya girer canım hayvanlarını kollasan demiş olsak söylediği laf pek edebsizdir ve her lafında dahi ben bu karyeyi yakarım der idi hatta ben muhtarım allah bilir havfımdan mal-ı miriye olan borcunu isteyemiyorum."*

Apparently, Nefise Hatun was an ill-reputed woman in the community as she had quarrelled many times with the villagers and hurled threats on every occasion that aroused fear. In fact, the villagers were not surprised to hear that Nefise had started the blaze at Edhem Bey's farm. However, there were no eye-witnesses to the crime that would substantiate Hristaki's indictments against Nefise and her son. Moreover, Hristaki had been caught red-handed, which left him in a desperate situation. Mehmed Ali further claimed that Hristaki had a grudge against Edhem Bey as he had made a cut from his allowance. In spite of the witnesses' statements about Nefise that established a strong ground for suspicion, nobody was able to prove anything against this woman and her son. Consequently, the court returned a non-guilty verdict for them as they did not confess to the crime. Hristaki, on the other hand, was found guilty for burning the hay barn and sentenced to hard labour, where he would suffer for five years.

Broadly speaking, when peasant labourers were deprived of their means of subsistence, fired, or not paid by the gentry, they did not have many choices available to them except for settling their scores by arson. It was not a crime in the eyes of the perpetrator, but a means of exercising justice upon the wrongdoer. As Regina Schulte writes,

> [The arsonists] wanted everybody to see, to know, and finally to understand when the fire blazed up over the village in the dead of night. The scene of the fire was the place where the villagers finally identified the incendiary, but also the place where they paused for a moment to think about justice and injustice, because the fire implicated not only a perpetrator, but also the accused...To this extent, the incendiary's fire was a public declaration, a theatrical staging of farm conflicts . . . The fire had apparently had a cathartic effect, consuming the hatred they felt and re-establishing their inner equilibrium. And the entire village had been there to witness the settling of the score.[359]

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[359] Schulte, "Civil Society, State Law and Village Norm," p. 83.

For that reason, in many cases, the arsonists admitted explicitly either before the court or their fellow villagers that they had set the fire maliciously to take revenge and re-establish their honour. When a certain Mehmed Ali deliberately set the hay barn of Hacı Hüseyin ablaze in Kuruveli village in Tırnova, he was detected and caught easily since he had told two villagers, after the incident, how he had set fire to the property of Hacı.[360] Like Mehmed Ali, a twenty-two-year old cultivator named Veli in Kanlıbucak village of Tulça (Tulçea), also was eager to publicize his act after he had set fire to the Çorbacı Hacı Toncu's hay barn. Veli had a grudge against Toncu since the çorbacı's son had not given him a lamb when he had asked for it. He uttered threats in public saying that he would give him trouble. There were witnesses not only to his threats, but also to his confession. When he torched the hay barn, he did not abstain from telling how he had set the hay barn of the reaya on fire before his two fellow villagers, which subsequently led to his conviction.[361]

The shepherd Nikola was also unreserved in taking the blame in court. Very similar to the motivation of the aforesaid Dimitri, the shepherd Nikola's grudge was due to a labour dispute stemming from an unpaid 150 guruş by the çorbacı.[362] Nikola had worked for a while for çorbacı Angel oğlu Dimitri in Sariçe village of Silistre, but then quit. Unable to get his wages, his rage was still alive though four years had passed since the incident. One October night in 1865, he set the çorbacı's hay barn on fire and fled right after that as he was afraid of being beaten. When he was arrested, he was very clear in his reply to the questions asked by the

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[360] BOA., İ.MVL, 580/26059, 7 B 1284 (4 November 1867).

[361] BOA., İ.DA, 2/30, 10 C 1285 (28 September 1868). A witness to Veli's confession stated that he had said *"reayaların analarını filan ettim yaktım bu gece samanlıklarını."*

[362] BOA., İ.MVL, 579/25998, 14 C 1284 (13 October 1867). See also BOA., MVL, 1077/5, 5 C 1284 (4 October 1867) and *Tuna Vilayeti Ayniyat Defteri* 919, no. 456, 22 C 1284 (21 October 1867).

interrogator: "Q: Why are you imprisoned and brought here? / A: I asked for my wages from the çorbacı but he did not give it and beat me. So I burnt down his hay barn."[363]

Admittedly, these were sufficient motivations for a peasant to nurse a grudge which could be appeased only by retribution, in this case, by fire. The intention was obviously not to destroy the wrongdoer but to settle scores. For that reason, in many cases, the major targets for the arsonists were hay barns, cow sheds, harvested grain, or other outbuildings that mostly were isolated from the residential structure. E. P. Thompson states that in the eighteenth century Britain, the rural arson almost never took any human life and very rarely took the lives of livestock.[364] In the Ottoman countryside too livestock rarely burned within the cow sheds or barns and the fires almost never took human lives. Whether the wrongdoer was a peasant or a local notable did not have any impact on the arsonists' choice of target. As seen in the above-mentioned cases, the arsonists mostly chose to burn hay barns that were made of wood and covered with straw. However, this choice had no meaning before the law until 1890 since the articles about arson in the 1858 Ottoman Penal Code did not make any differentiation between setting fire to residential structures and other outbuildings. This problem was overcome by referring to Article 47, which gave the Sultan an absolute authority in commuting a sentence to a less severe one. It stated that "no punishment may be excused, commuted, or mitigated except by special order of the Sovereign." Accordingly,

> The punishment of death may by special command of His Imperial Majesty be commuted to one of hard labour; the punishment of hard

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[363] *"S: Seni niçün haps ederek buraya getirdiler / C: Çorbacıdan hakkımı istedim vermedi ve beni dövdü onun için samanlığı yaktım."*

[364] E. P. Thompson, "The Crime of Anonymity," p. 278.

> labour to one of incarceration; the punishment of incarceration for life, to one of exile for life; the punishment of incarceration for a term, or imprisonment for a term, to one of exile for a term.[365]

This sentence served the local councils to suggest mitigation in such arson cases that consumed property with trivial damage and saved many arsonists from the hanging tree. Nikola was also among those arsonists who benefited from this article. Sentencing Nikola to death according to Article 163, the local court stated in its memorandum, was not appropriate or fair since the worth of the burnt hay barn was not more than three or four hundred guruş. Furthermore, Nikola was a gullible shepherd not conscious of what he had done and deprived of any knowledge of the rule of law.[366] Consequently, he was sentenced to hard labour for seven years in Vidin along with compensation for the çorbacı's damage.

Excuses and Mitigating Factors: Drunkenness, Gullibility, and Senility

On 9 March 1871, in Tırnova sub-district of the Province of Tuna, a certain Hüseyin's wedding ceremony in Kosova-ı Sahra village ended with a fire.[367] The men of the village gathered in a room for entertainment, probably drank a lot, but a man among them, Davud, was the worse for drink in such a way that he began to irritate the others. Although he was warned several times and even tied with a rope by Hacı Hatib Efendi, he did not give up his nasty behaviour and in the end he was put in front of the door. Before he was kicked out, however, he was heard to mutter

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[365] See *The Ottoman Penal Code*, p. 18.

[366] *"…çoban makulesinden sersem ve bîşuur olub ahkâm-ı kanûniyeyyi bilemeyeceği cihetle idamı münasib görülmediğine…"*

[367] BOA., İ.DA, 11/394, 29 S 1290 (27 April 1873).

that Hacı Hatib Efendi would regret this. He uttered words threatening him with murder and arson in front of many people as he was the one who had tied and kicked him out.[368] It is not surprising that the suspect was Davud when the hay barn of Hacı Hatib Efendi was set fire a half an hour following his threats. Many people from the community testified against Davud at the court including the village elders, though he did reject all allegations. Presumably because of his fear of the arsonist's grudge or maybe for his pity, the victim did not ask for the compensation of his damage and Davud was sentenced to three years hard labour.

Apparently, drunkenness was an important element encouraging the peasants to employ arson as a means of revenge. When a certain Menko from Tırnova set fire to Kosta's hay barn in April 1868, he was just coming back to his home from a wedding ceremony in his village, quite boozy probably from too much *rakı*. If we are to believe what he said, there was no hostility between Kosta and himself that could be counted as a reasonable motive. However, his unthinking for nothing cost him three years of his life during which he would suffer hard labour.[369] Needless to say, drunkenness was not an excuse before the law. It was even not accepted as a mitigating factor as mentioned by a nineteenth century jurist, Hüseyin Galib.

> As drunkenness, which is against morality and good manners, does not abrogate culpability, it even does not bring about mitigation. It should also be considered carefully that if a man gets drunk on his will just to avoid the effect of his self-conscience and mind, the crime is apprehended as having been committed deliberately.[370]

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[368] *"...merkum Davud karye-i mezkureli Koca Mustafa oğlu Hüseyin'in velime cemaatinde sarhoş olduğu halde edebsizlik ederek cemiyet-i mezkurda olanları iz'âç eylemesi üzerine ırz ve edebiyle oturması tenbih olunub muahharen cemiyet-i mezkureden def edilmesi ....(?) olub hatta merkum Davud cemiyetden gider iken efendi-i merkuma hitaben seni katl ve samanlığını ihrâk ederim dediği..."*

[369] BOA., İ.DA, 10/297, 18 Z 1288 (29 January 1872).

[370] *"Sarhoşluk zaten ahlak ve adaba mugayir olduğu cihetle mücrimiyeti imha etmediğinden mâ'dâ cezanın tahfifine dahi sebeb olamaz. Şurası da nazar-ı dikkatten dûr edilecek mevâddandır ki bir adam bir cürm işlemek niyetiyle hissiyât-ı vicdaniye ve akliyesinin tesirini men etmek içün amden*

Many peasants, especially the younger ones, found the courage to settle previous scores which had made them nurse a grudge against a wrongdoer in a state of intoxication. In the case of twenty-two-year old Veli, alcohol was only a heartening element facilitating the arson as the real motivation for him to set fire to Hacı Toncu's hay barn was a simple grudge against the çorbacı due to a dispute over a lamb.[371] Similarly, the shepherd Tanco from İslimye was also drunk when he set fire to Yovan's hay barn. When he appeared before the court, he first denied the allegations but later, during the second interrogation, admitted his crime after being compelled to confess, saying that he "was so drunk that night while herding the sheep" before setting fire to Yovan's stacks.[372]

As is clear from the evidence, weddings were usual but not the sole occasions for sprees. Drinking was a part of rural daily life since peasants were drunk on every occasion, at home or while herding the sheep.[373] Visiting taverns (*meyhane*) and prostitutes were ordinary routines especially for single male peasants. Before Süleyman and his brother Ali set fire to the harem section of their

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sarhoş olursa işlenilen cürm kasden işlenmiş ad olunur." Hüseyin Galib, *Nazariyât-ı Kanûn-ı Cezâ* (Bâb-ı Ali, 1879), pp. 86-87.

[371] BOA., İ.DA, 2/30, 10 C 1285 (28 September 1868).
[372] BOA., İ.DA, 3/37, 11 B 1285 (28 October 1868). *"Efendim doğrusunu söyleyeceğim... o gece koyun güder iken ben gayet sarhoş idim arkadaşıma dedim ki su içmeğe gideceğim ben sen koyunlarımı gözet ben dahi su içtikten sonra doğruldum Yeniköy'e gittim Obalı Yovan'ın samanlığını kav çakub yakdım."*

[373] Two reports published in the Tuna provincial newspaper are significant in this respect. In March 1865, the newspaper announced that ethyl alcohol (*ispirto*) produced from rotten cereals and rye in Eflak was widely consumed by Bulgarian peasants like *arak* (*rakı*) as it was cheap. However, such unlicensed alcohol was dangerous since it contained fatal chemicals that sometimes caused illness and even led to death. Importation of such substances had been forbidden by the goverment, but it was still available in the market. Peasants were warned not to consume unlicensed ethly alcohol which could be detrimental to health. See *Tuna Vilayet Gazetesi*, no. 1, 16 L 1281 (14 March 1865). In another report, the newspaper announced that a certain İstefanoğlu Yordan from Rusçuk had died as he had drunk a half an *okka* of ispirto. The reason for that was a bet between friends for four guruş. See *Tuna Vilayet Gazetesi*, no. 12, 6 M 1282 (1 June 1865).

master Asım Efendi's farm house in Bosnia in 1867, they had got drunk in a tavern and then gone to a neighbourhood where they enjoyed themselves with women. Although the stimulating factor for arson was Süleyman's grudge against Asım Efendi due to a quarrel they had had, intoxication, too, should have encouraged them to resort to arson.[374]

Apparently, in none of these cases was alcohol accepted by the courts as a mitigating factor for the committed crime though the defendants used it as an excuse in their defences. All arsonists convicted were sentenced to hard labour from a minimum three to maximum seven years.

Yet there were some occasions which could be acknowledged as mitigating circumstances but, indeed, were not enough to save the arsonist from punishment at all. Not alcohol but gullibility and senility were those two occasions which made the courts consider once more the verdict the culprit deserved.[375]

In November 1870, in Radofçe village of Tırnova sub-district, a certain Raşeko was caught red-handed by three villagers while setting fire to the hay barn of his brother-in-law, Üstoyan. The hay barn, unable to be saved from the blaze, burned to the ground with the stacks in it. Despite the slow trial procedure –since the trial came to a conclusion after two years following the date of the incident- Raşeko eventually was sentenced to five years hard labour in Vidin. What is of concern here is the content of the verdict made by the court. In the verdict, there were two reasons mentioned for commuting the capital sentence to hard labour. The first one was typically about the trivial value of the burnt building, which was only four hundred

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[374] BOA., İ.DA, 1/2, 5 M 1285 (28 April 1868).

[375] The fact that drunkenness was never mentioned in the final verdicts (*tezkire*), but only mentioned by the offenders in their depositions contrary to dazedness or senility can be put forward as proof of either the validity or invalidity of these excuses.

guruş. The second reason, on the other hand, was the arsonist's state of mind. Raşeko was a little bit feebleminded and therefore could not totally be held accountable from his wrongdoings.[376] Unfortunately the archival record about this case does not provide us the interrogation reports of the arsonist, the victim or the witnesses so that we could learn whether Raşeko used his state of mind as a "gullibility defence" or not.

Petrov, leaning on the information gleaned from the archives, highlights a significant feature of peasants' defence strategies. He states that peasants mostly portrayed themselves as "gullible rather than malevolent and their actions as misguided rather than outright criminal" in court.[377] The only thing that is clear from the records is that Raşeko's state of mind was set forth as an excuse by the court to commute his sentence from capital punishment to hard labour, just like the case of Yovan.

Yovan who was put in jail in December 17, 1869 for setting Rüstem Ağa's hay barn on fire was an eighteen-year old young peasant from Semizali village of Varna, in the Province of Tuna. When Rüstem Ağa sued him and demanded compensation for his 15,000 guruş loss, it became clear that this was not the first time that Yovan set fire to his hay barn. Three years before the case, Yovan had been beaten by Rüstem Ağa's son, Himmet for a reason. Moreover, Himmet had also threatened him with a knife. This was the ground for Yovan's malice which impelled him to resort to arson. Rüstem Ağa had built a new hay barn following the previous incident but not filed a lawsuit against the perpetrator. However when the

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[376] BOA., İ.DA, 11/360, 21 L 1289 (22 December 1872).

[377] See Petrov, "*Tanzimat* for the Countryside," p. 293.

new hay barn was burnt down again for the second time by the same person, the Ağa sued him.

Similar to Raşeko's case examined above, Yovan's case provides evidence about the extent to which being "young, simple-minded, and gullible" had an impact on the leniency of the final verdict. However, this time, the value of the financial damage given to the victim was not so insignificant. Furthermore, the same person had set fire to the same outbuilding for the second time. In spite of all these aggravating factors, the mitigating factors would save Yovan from the gallows although they proved to be insufficient for him to go unpunished. Yovan was very young and further, simple-minded. His gullibility was apparent from his face as mentioned in the memorandum of the local court.[378] Eventually Yovan was sentenced to ten years hard labour although the local court's verdict suggested only five years for the crime because of his impudent act to commit such an offense twice, which means five years for each fire.

According to Petrov, the "gullibility defence" was a discursive strategy resorted to by peasants in court during interrogations to convince the court members that they were "incapable of foreseeing the consequences of (their) actions" with the expectation of a moderate punishment.[379] In that light, it is also possible to suppose that a similar strategy was appealed to by Raşeko and Yovan if they were, indeed, not gullible or simple minded. Since we do not have the interrogation reports of these cases, we cannot assert convincingly whether the offenders used this strategy to discard the possibility of harsh punishment or not. However, a case from the mid-

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[378] BOA., İ.DA, 8/177, 1 R 1287 (1 July 1870). *"...merkum Yovan'ın genç ve sadedil idüğü nâsiye-i halinden nümâyân ise de..."*, "*Yovan'ın idamı lazım gelür ise de kendisinin ayla ve sadedil olduğu anlaşıldığından idamı münasib olmayacağından..."*

[379] Petrov, "*Tanzimat* for the Countryside," pp. 293-295.

1860s İzmir reveals clearly how the gullibility defence was appealed to by the litigants and then resorted to as a mitigating factor by the court as well to commute capital sentence to imprisonment. Though this case cannot be considered as an example of rural arson, the case of Dellal Fatma from Midilli will be examined briefly to illustrate how femininity[380] was presumed as an indicator of gullibility before the law.

One December evening around six o'clock, a fire broke out in the house of Reşid Ağa, who was probably among the wealthy oil merchants of İzmir that could afford to employ domestic servants.[381] Before the fire devoured his house completely, it also leaped next door, consuming the house of the alleged arsonists as well. They were soon brought before the court for interrogation. The suspects were a couple, a woman named Dellal Fatma and her husband, Hacı Ahmed. Fatma was a broker (*dellal*) and also working as a domestic servant at Reşid Ağa's house. Her husband Hacı Ahmed, on the other hand, was a customs officer (*gümrük kolcusu*) at the dock.

When the interrogations proceeded, it came out that Hacı Ahmed had been heavily indebted and asked his wife to find some cash to pay his debts. The address that came to her mind was Reşid Ağa. Fatma went to Reşid Ağa to request a loan but she could not get the answer she expected because, unable to sell his oil, the Ağa was also pressed for money. However, Fatma was not completely desperate about finding the money her husband needed since, as a domestic, she had an intimate knowledge about the valuables of Reşid Ağa, the gold and other kind of precious stuff, if not the cash.

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[380] Femininity, here, should be considered as having no sexual connotations.

[381] BOA., İ.MVL, 555/24903, 6 S 1283 (20 June 1866).

Fatma told incompatible stories during her interrogation process. According to one story, she had been provoked by her husband to break into the house and steal the goods and then set a fire there to cover up the burglary. According to another version, she was completely innocent. Her husband was the arsonist and the one who had robbed the house. Eventually, the court released a guilty verdict for Fatma whose death sentence was substituted by fifteen years imprisonment at a place suitable for women while her husband Hacı Ahmed got off cheaply, sentenced to one-year imprisonment for concealing his wife's offence despite his knowledge of it.[382]

What is significant in this case, without question, is that the arsonist was a woman. However, more important still is the fact that gender here was appealed to by the litigants and the court as an excuse to reduce the penalty associated with the crime, although Fatma's crime was a capital offence according to Article 163 of the Ottoman Penal Code. Her sentence was commuted to imprisonment since "she [was] a woman who [was] naturally unable to comprehend the consequences of committing such a crime."[383]

In court, Fatma initially admitted the crime. However, later, she denied the allegations and also negated her previous confession. Her testimony brings out how gender played a role in the court.

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[382] *"...hususiyet-i hali cihetiyle mezbûrenin bilâ-teşhir mahallinde nisâya mahsus mahbeste on beş sene müddetle habs edilmesi ve zevci merkumun eşya-yı mesrûkaya malumatı olduğu halde ketm etmesine ve madde-i ihrâkta dahi refakati maznûn bulunmasına göre bunun dahi tedibi lazım geleceğinden töhmet-i sirkatte fail-i müşterek addiyle merkumun dahi adi sârik cezâsına tevfîkan bir sene müddetle habs olunması..."*

[383] *"...fakat mezbûre nâkısat-ül-akl olan tâife-i nisâdan olub şu kabahatin neye müncerr (?) olacağını idrak eder makuleden olmamasına ve idam cezâsının bil-irade-i seniye küreğe tahvili dahi kanûn-ı mezkurun 47. maddesi hükmünce mücâz idüğüne binaen..."*

> Q: You confessed in your previous interrogation saying three times before the council that you had burned it. Now why do you deny it and say that your husband burned it?
>
> A: Sir, my husband instructed me to speak like that saying that you can get out of it since you are a woman, but I cannot and I said like that.[384]

Whether Fatma was the real perpetrator or just employed by her husband as she claimed at the court, she indeed managed to escape from the gallows just as her husband had presumed.[385] In fact, we do not know whether Hacı Ahmed would have been hanged or not if he had been found guilty instead of his wife. But at least we know that "to be a woman" was viewed as a mitigating factor by the court. Apparently, women were perceived as ignorant, weak-minded, and gullible subjects (*nâkısat-ül-akl*) who could not be held totally accountable for what they did. Nonetheless, it is ironic that those who were sentenced to death in arson cases were all women in spite of their "excuse" of being gullible.

In at least one instance, senility was also accepted as an indicator of gullibility by the court in addition to "being a woman." The case of Stafina from Karinabad displays how senility was associated with being unable to differentiate right from wrong which is why the perpetrator was acknowledged as *gayr-ı mümeyyize*. Stafina was a very old woman, indeed over her seventies, and set the barn of her neighbour Angeli on fire for an unknown reason. Owing to her old age,

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[384] *"S: Sen evvelki istintâkında üç defa meclis huzurunda ben yaktım deyu ikrâr eyledin şimdi ne içün inkâr ediyor ve kocam yaktı diyorsun? / C: Efendim sen karısın kurtulursun ben kurtulamam sen böyle söyle deyu kocam beni emretti ben de söyledim."; "S: Sen diyorsun ki kendisi yaptı ve sana tarif etmiş kendisi yaptığı halde sana niçün tarif etsin ve ne tarif etti / C: Tarif sen nisâ tâifesindensin bir şey olmaz söyle dedi."*

[385] After staying in prison for a while, Dellal Fatma went insane and was sent to İstanbul to receive a treatment. As soon as she recovered, she was put in prison again in Haseki Prison. While in Haseki, she filed a petition to the Sultan and asked for mercy claiming that she was an old woman in misery. Fatma had been in prison for five years and six months at the time she filed her petition. Unfortunately, we do not have any information about the rest of the story. We do not know whether her sentence was remitted by the Sultan or she continued to stay in prison. See BOA., A.MKT.DA (DES), 10/93, 23 N 1288 (6 December 1871).

senility and gullibility, she did not receive a death sentence, but instead, was sentenced to temporary hard labour, the time span of which is not clear from the archival registers.[386]

Conclusively, drunkenness was a frequently used excuse by the arsonists. However it was never stated in the verdicts which demonstrate that it was not considered by the court as a valid excuse. Therefore, it should be regarded as an element that encouraged offenders in the crime of arson rather than as a mitigating factor. On the other hand, once the gullibility of the malefactor was established by the court through interrogation, it certainly meant that the arsonist's retribution would be lighter, at least lighter than capital punishment. Any person could be qualified as gullible for various reasons; however gender and age in addition to class in some cases were the most important agents that established gullibility.

There is also another important point that should be noted. In the final verdicts released by the courts, there are no indications that can illustrate the level of significance of the mitigating factors. It is quite impossible to suggest which factor became more effective than the others to save the culprit from the gallows: the financial damage given to the victim, the type of the building that was set on fire (a hay barn, ricks, or a home), whether the blazes spread to the property of others by turning into a runaway fire or not, the gullibility and/or the age of the arsonist.[387] The most precise information we get from those verdicts is that in spite of Article 163 of the Ottoman Penal Code, which stipulated capital punishment for arson, very

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[386] BOA., İ.DH, 961/75995, 7 Z 1302 (17 October 1885).

[387] According to the Penal Code, a child who was below twelve could not be held responsible for a crime he/she committed unless it was proved by the litigant that he/she had committed the crime conciously, knowing what he/she was doing. Contrary to senility (*şeyhûhet*) which was not a sufficient apology before the law to be exempted from criminal responsibility, dementia was an acceptable excuse since it conveyed the person to a child's level. See Hüseyin Galib, *Nazariyât-ı Kanûn-ı Cezâ*, pp. 80-83.

few arsonists were sentenced to death. Strikingly, as mentioned above, all of the arsonists hanged were women.

Alternative Ways of Settling Disputes

Since arson was a nocturnal crime usually with no eye-witnesses, low indictment and conviction rates for this crime were universal. Of course, we do not have any means to prove the veracity of this claim in the Ottoman example as there are no criminal statistics that can reveal the place of arson among the overall rates of violent crime. Yet the concern of the provincial governments in Rumelia about the villagers' reluctance to give away the perpetrators of arson indicated before can be accepted as evidence to support this claim. It seems likely that many fires were never reported and thus remained out of sight. Therefore, it is necessary to underline the fact that the cases at hand are those arson incidents the perpetrators of which the courts secured conviction. It absolutely means that we are dealing only with the tip of the iceberg. This fact highlights "the dark figure of unrecorded crime"[388] which always prevails in any study on crime and has the potential to distort the image we have constructed. When the subject is a hidden crime like arson, the court records under scrutiny naturally present only a fraction of the true number just as it in poisoning cases.

"The code of silence" that operated on the village level also can be referred to as an important factor augmenting the darkness of "the dark figure." Steve Poole explains the "code of silence" in arson cases among the peasants in Britain with the

[388] This phrase is borrowed from Archer, p. 19.

"social stigma" attached to the informers. In spite of the rewards offered, informing was a kind of "social stigma" which granted the local people a legitimate right to condemn the informer by mobbing or rough music.[389] Since arson was a form of protest in Britain that indeed reflected the rage and resentment of the whole village community to the farmers and employers who turned into "dreadful landlords" with the enclosure movement, the arsonists were quite safe from detection. "The code of silence" was a kind of silent agreement among the peasants to protect the arsonists from being reported to the authorities. Further the punishment reserved for informers was really harsh.[390] In the Ottoman countryside, on the other hand, the reason behind the "code of silence" in arson cases was not the peasants' fear of the community rage, but a fear of being the next target, as elaborated before. More importantly, there were other ways to settle disputes within the village through informal community mediation. It can be assumed that many cases went unreported owing to the efforts of the community to resolve the conflicts between the parties out of court. One of the cases from *İradeler* catalogue of the Council of Judicial Ordinances sheds considerable light on this informal procedure and the code of silence while providing clues about the popular perception of this crime in the village.

Community Mediation in Settling Disputes

One early April night in 1869 the hay barn of a certain Mustafa, a forty-five year old farmer living in the village of Nakaz in Selanik, was set on fire. Soon

[389] Poole, pp. 170-171.

[390] Peacock, pp. 52-53.

afterwards, suspicion fell upon Osman oğlu Memiş who was immediately put in prison and subsequently questioned by the interrogators. We do not know how and why suspicion was directed toward Memiş, but he did not deny his offense. He was a sixteen-year old boy, reportedly a little bit dim-witted, who had been working as a farmhand for Halil oğlu Memiş for two months. The story he told in court indicated his employer as the instigator of his act. According to Memiş and also the plaintiffs' statements, two nephews of Halil oğlu Memiş had stolen two sheep a few months earlier which had led their arrest. When uncle Memiş learned that his nephews were in jail, he had rushed there and taken them out. However, he was reported to the superintendent and consequently put in jail for two hours.

It is not surprising to see that the informer was Mustafa. Mustafa alleged that Memiş had been nursing a grudge against him simply for that reason. However, needless to say, Memiş denied all charges by claiming that he had never acted in his life in such a nasty way and asked the interrogators to investigate his reputation for uprightness by asking the villagers who knew him as a decent man. The interrogators did not spend so much time making him accept the allegations, but instead they attempted to settle the dispute between Mustafa and Memiş in another way.

> If you know anything about this incident [arson], accept it. Pay a few guruş [to Mustafa] so that the lawsuit will not be sent to the government and your servant [farmhand] will not be sued.[391]

Actually, even before the case was brought to the local court, five persons from the village –Hüseyin and Ali from the council of elders, a certain Bayram, Durmuş Ağa, Muhtar Selim and Hüseyin Çavuş from the asâkir-i zabtiye- had made a futile effort for negotiation by persuading Memiş to pay Mustafa his damage.

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[391] "*Eğer haberin var ise bu işten gel kail ol birkaç guruş veresin hükümete dava olunmasın bu hizmetkarın dahi dava olunmasın".* See BOA., İ.DA, 6/118, 2 Ş 1286 (7 November 1869).

This case illustrates two important issues about the process of dispute resolution in the Ottoman countryside. The first is about the "code of silence" within the community. The code of silence was presumably due to the insignificant value of the burnt structure. Apparently, the hay barn of Mustafa was a trivial structure the walls of which were made of mud and stone with a thatched roof with a value of only six hundred guruş. It is clear that the village community was reluctant to hand the young farmhand over to the law for such an insignificant fire which had not taken any life or caused an inconsiderable amount of financial damage. Of course, it does not mean that the peasants were ready to ignore such a crime committed by one of their own fellow villager, but they were just half-hearted about delivering him to the authorities, especially when there were alternative ways to resolve the problem which will now take us to the second issue.

Second and closely related to the former, this case demonstrates the existence of "unofficial sites for dispute resolution" in the village. Boğaç Ergene depicts alternative sites of dispute resolution in the Ottoman countryside while examining the judicial and administrative operations of the Çankırı and Kastamonu şer'î courts in the seventeenth and eighteenth centuries. He uses the expression "unofficial sites for dispute resolution" for the process that was appealed to by the community to settle disputes within the village without having recourse to higher authorities.[392] As the above-mentioned case reveals, it was still an option for the peasants, in the second half of the nineteenth century, to handle a dispute within the rural community on their own terms without having recourse to the law as Ergene showed for şer'î courts.

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[392] Ergene, *Local Court,* p. 177.

Previous studies focusing on şer'î court registers demonstrate that there were some legal processes that occurred outside the courts. Fetvâ and the amicable settlement (*sulh*) were two main legal processes that took place without having recourse to the şer'î institution.[393] Işık Tamdoğan in an article about sulh cases in eighteenth century Üsküdar and Adana şer'î courts, presents how Ottoman subjects sought legal solutions for their conflicts outside formal dispute resolution mechanisms. Sulh negotiation was a way of establishing an settlement between parties either outside or inside the court. However, it is clear from her examination of şer'î registers that most settlements were negotiated out of court.

> Whether or not *sulh* agreements were achieved in an amicable atmosphere, one thing is clear: they were often brokered out of court. Some people may have chosen this path because the services of the *qadi* were too expensive or because the court was located too far away... A more important consideration would have been the fees charged by the courts. Under these circumstances, some people may have preferred to resolve their conflicts out of court.[394]

It is noteworthy that the effort made by the intermediaries to find a solution out of court in Memiş's case shows some similarities to a sulh procedure. Eyal Ginio, citing Marcus, emphasizes that sulh was a compromise through mediation when neither plaintiffs nor litigants could bring any proof before the court to support their claims which required, according to the şer'î law, two eye-witnesses to crime.[395] In

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[393] Haim Gerber, "Sharia, Kanun and Custom in the Ottoman Law: The Court Records of 17th Century Bursa," *International Journal of Turkish Studies* 2, no. 1 (Spring-Summer 1981), pp. 132-133.

[394] Işık Tamdoğan, "Sulh and the 18th Century Ottoman Courts of Üsküdar and Adana," *Islamic Law and Society*, 15 (2008), p. 71. Eyal Ginio who examines 18th century *kadı* registers of Salonica also claims that sulh agreement was a frequently resorted way of handling disputes in the Ottoman Empire and in 18th century Selanik as well. See Eyal Ginio, "The Administration of Criminal Justice in Ottoman Selânik (Salonica) During the Eighteenth Century," *Turcica*, no. 30 (1998), pp. 204-205. Ergene, too, states that settling a dispute between conflicting parties through negotiation was frequently encouraged by the courts. See Ergene, *Local Court*, p. 201. Haim Gerber highlights the same issue for the cases recorded in the *kadı* registers of Bursa. See Gerber, p. 133.

[395] Ginio, p. 206.

our case neither the alleged instigator Memiş was able to prove his innocence nor was the plaintiff Mustafa able to present conclusive evidence to prove Memiş's complicity in the crime. Although the arsonist was at hand and explicitly confessed his crime, it was not easy to prove his allegations against his employer. Additionally the suggestion the interrogators made to Memiş to pay a "few guruş" to Mustafa also supports this claim since bedel-i sulh, which is the money that would be paid in case of such a settlement was not fixed unlike blood-money, but always left to the agreement made between the parties.[396] Briefly, either we call it sulh in accordance with the şer'î law or community sanction, the villagers were willing to foster such a negotiation out of court before the lawsuit was brought before the nizamiye court.

Violent Ways of Settling Disputes

The way of settling a dispute in most cases was dependent on the seriousness of the crime committed. Sometimes it was rather peaceful, like in Memiş's case, when the intent and the consequences of the crime were not perceived as severe by the local community. However, sometimes it could be brutal, like the cases in rural Russia where peasants had recourse to violent retribution against those wrongdoers who in their eyes deserved immediate summary justice.[397]

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[396] Heyd, p. 249.

[397] *Samosud* was the generic name given to those kinds of unofficial punishment methods which were occasionally brutal depending upon the crime itself. Samosud was a "rural practice through which peasants took matters into their own hands and settled with a suspected offender through physical punishment, shaming or exacting compensation." Frierson mentions that arson was also such a crime that required physical punishment if the arsonist was caught red-handed. She states that it was even possible for the peasants to throw the arsonist into the blaze to burn alive. Frierson, "Crime and Punishment in the Russian Village," pp. 55-66; and also see *All Russia Is Burning*, p. 135. Not only the Russian but also the Irish had alternatives to official courts. Carolyn A. Conley mentions that the secret societies founded for policing the community in Ireland during the late 18th and 19th centuries

Not arson but an exceptional poisoning case from 1867 shows clearly how violent and brutal an unofficial way of settling a dispute and implementing justice might be. A woman named Simane from Zubçe, a village of Hersek in the Province of Bosnia, was convicted of allegedly poisoning her husband Rade and sentenced to death. However, long before her official punishment was initiated in March 1867, just three days after the death of Rade in 1864, she had been taken to a square in front of the Church where approximately a hundred people had gathered at an assembly to hear the inquisition along with the bishop and the other ecclesiastical authorities in the village. Since she had not denied the allegations but admitted her crime, saying that she had "yielded to the devil" and poisoned her husband, the Zubçe community decided on the punishment she deserved. According to the testimony of a witness, the villagers first decided to pile up stones on Simane's body. One of them even suggested tying her to a horse and tearing her to pieces.[398] Luckily, another villager managed to persuade his fellows not to resort to such an act and instead expel her from the village.[399]

Another significant point in Simane's case is the answer Toma –the plaintiff who was the brother of Rade- gave to the interrogators when he was asked why they (the community) had not informed the government about the incident. Toma said

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had a "tradition of extralegal sanctions which often held considerably more power in local communities than did the government." Just like in Russia, extralegal punishment such as arson, vandalism or maiming livestock was preferable to legal procedure. Carolyn A. Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (New York&Oxford: Lexington Books, 1999), p. 150.

[398] *"...ahali toplanub üzerine taş yığmaya karar verdiler sonra Karahovalı birisi orada var idi bunu bargire (beygire) bağlayub da parçalayalım dedi..."* See BOA., İ.MVL, 568/25540, 10 Za 1283 (16 March 1867). Admittedly, the extralegal punishment that Zubçe community deemed proper for Simane looks very similar to *samosud* cases in the Russian villages.

[399] *"... ahali toplanub bunun üzerine taş yığalım deyu karar verdiler sonra içlerinden birisi geliniz bunun üzerine taş yıkmayalım zira pek namussuzluk olur kendisini içimizden tard edelim dedi ve ahali de olsuretde karar verdi."* See ibid.

that they had not because "they were not going to the government those days," which means that they had no relation with the government.[400] What becomes clear from Toma's answer is that in spite of the central government's efforts to govern efficiently even its most distant provinces after the Tanzimat, *hükümet* (government) was still something alien in the countryside that could be disregarded in the internal affairs of the community. If the zabtiyes, gendarmerie, and the local courts were the main corporeal agents spreading the state into the countryside and representing the "impersonal authority of (state's) abstract law" there, as Clive Emsley writes,[401] then it is obvious that there was either no agent of the central authority in Zubçe or the rules of community control were much more stronger than the rule of law in the village. Presumably, just like in nineteenth century rural Russia, the central power and authority with its judicial and administrative apparatuses was not there at all to keep the countryside under surveillance, which obviously was the basic reason for the hegemony of community law.[402]

Doubtlessly, we would not be able to know the fate of Simane if she had been unofficially punished and killed by her fellow villagers since it would probably have left no trace in the official records for researchers. Because she came back to her village from *Nemçe* (Austria), to which she had fled or been expelled, and because the litigant Toma had filed a suit against her in the *nizamiye* court, we know Simane's sad destiny in the gallows.

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[400] *" S: Tamam o vakit mezbûreyi hükümete niçün teslim etmediniz / C: O vakit henüz daha hükümet-i saltanat-ı seniyeye gelüb gitmediğimizden o cihetle teslim etmedik"* See ibid.

[401] Clive Emsley, "Peasants, Gendarmes and State Formation," in *National Histories and European History*, ed., Mary Fulbrook (London: UCL Press, 1993), p. 72.

[402] Cathy Frierson points out that the real problem the peasant victims of rural arson had in Russia was not the overly invasive and punitive imperial police and judicial systems but lack of policing and protection against malevolent persons inside the community. See *All Russia Is Burning*, pp. 138-139.

If compared to Simane's premeditated crime of poisoning her husband, setting fire to a barn which did not give rise to any runaway conflagration should have been pretty insignificant from the view point of peasants. Apparently, the mechanisms for settling disputes and the form and severity of unofficial punishment that offenders deserved were different for each case depending on the severity of the crime committed. Personal harm also must have been an important criterion for the peasants. Since the tangible damage in Osman oğlu Memiş's case was six hundred guruş which means that it was only one-tenth of a district nâib's monthly salary of six thousand guruş and less than half of a fifth grade sub-district nâib's monthly salary of 1500 guruş, personal harm should not really have been considerable.[403] Nevertheless Halil oğlu Memiş could not be persuaded by the mediators to make a bargain with Mustafa. What might the reason have been for his obstinacy in rejecting his association with the crime, if the financial retribution was so small and the village elders, notables, and even the official agent of the government in the village -zabtiye sergeant- were so keen on finding an unofficial solution to settle the dispute without having recourse to law?

Leaving aside the question of whether he was really the instigator or entirely unaware of Memiş's deed, we can maintain two reasons. The first is about reputation and credibility. Accepting the allegations just for the sake of saving his servant from punishment would cost Halil oğlu Memiş loss of reputation and credibility in the community. Maybe it was not a big issue for that moment, but it might be in future cases that could befall him. Ergene argues that in the seventeenth

[403] These figures represent the monthly salaries of naibs in the Province of Danube in 1864 and are taken from Jun Akiba. See Jun Akiba, "From Kadi to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies* (Vol 1), eds., C. Imber and K. Kiyotaki (London and New York: I.B.Tauris, 2005), p. 59.

and eighteenth century Anatolian şer'î courts, the reputation and hearsay about the defendants were "proof of their guilt" when the alleged guilt could not have been established.[404] As demonstrated in the Chapter Two, there is ample evidence in the archives that the reputation of defendants before nizamiye courts was as much important as it was for şer'î courts.

When the Secretary of the Bosnia Administrative Council Asım Efendi's farm house in Saray district was set fire in October 1867, his servant Süleyman and his brother were arrested as alleged criminals since Asım Efendi had filed a complaint against Süleyman after they had had a quarrel. Apparently the motive of the arson was the servant's grudge against Asım Efendi, but there was one more reason strengthening the suspicions about him and his brother. They were simply unreliable and suspected persons –*mazanne-i sû' takımından*- and this was a sufficient pretext to justify the claims against them.[405]

In another incident that took place in early 1862 in Pazarcık, a sub-district of Varna, a certain black slave of Süleyman, Zenci Reyhan, set Mehmed's house on

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[404] Ergene, *Local Court*, p. 157.

[405] BOA., İ.DA, 1/2, 5 M 1285 (28 April 1868). Furthermore, not only the reputation of the defendants, but the reputation of the victims and the witnesses were also very important for the jurisdiction, just like in the Islamic legal process. For example, when the hay barn of a certain Hacı Toncu, a Bulgarian çorbacı in Kanlıbucak village in the Province of Danube was set fire on October 2,1867 by the twenty-two year old peasant Veli, the reputations of the informers and the witnesses, that is whether they were good men or not, were asked of the peasants since Veli repudiated the validity of their testimonies against him. *"...Sen kabul etmez isen köylüden o adamları tezkir ederiz böyle eyü adamlardır derler ise o vakit biz kabul ederiz senin kabul etmemen faide vermez"; "...Biz bunları köylüden tahkîk ederiz bunlar şimdiye kadar kimseye iftira ettiler mi ve yalan şahitlik ettiler mi böyle şey etmemişler ise bunların ifade ve beyanlarını biz kabul ederiz..."* See BOA., İ.DA, 2/30, 10 Ca 1285 (28 September 1868). In another case from Tırnova, the hay barn of a certain Hacı Hüseyin was set fire by Mehmed Ali. He confessed his crime in front of Çolak Süleyman and Ahmed, who reported the incident and the arsonist immediately to the government. However, before giving credence to their statements, the local government investigated the informers' reputation and characters. See BOA., İ.MVL, 580/26059, 7 B 1284 (4 November 1867).

fire with a pipe (*tütün çubuğu*).[406] Mehmed and Reyhan were probably friends as they had stolen beehives together, but only Reyhan had been punished with imprisonment since Mehmed had denied the offense in court. Indeed this incident must have brought an end to their good relationship since people began to mock Reyhan, asking "Was the honey sweet?" which humiliated and angered him. Recourse to arson was obviously an attempt to punish Mehmed who had gone unpunished before and to take revenge for the mockery he was exposed to while restoring his honour. Because he explicitly admitted the guilt before the court, he was sentenced to death according to the related article of the penal code. Süleyman was quick to start negotiations with the victim of fire in order to save his slave from his fate at the gallows. Süleyman and Mehmed settled for five hundred guruş. Further Süleyman became a guarantor for his slave and gave a testimony stating that he was a good person who could not give any harm to anybody.[407] However, since the lawsuit was heard before the nizamiye court, neither the settlement between the parties nor the testimony of Süleyman was sufficient to save Reyhan from punishment, but apparently worked to save him from the gallows. At the last instance with the Sultan's order, his sentence was commuted to hard labour for seven years. As became evident, for the one who was charged with an alleged crime, his/her reputation and credibility and the statement of a guarantor testifying in favour of him/her was very important to avoid severe punishment and even in some occasions to evade death.

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[406] BOA., İ.MVL, 463/20924, 8 Ş 1278 (8 April 1862). This court record is examined by Ehud R. Toledano in *As If Silent and Absent*, pp. 178-79.

[407] *"...ve sahibhane-i (?)merkum vereseye gelerek merkum Reyhan'ın bir fena işte bulunamayacağına ağası merkum Süleyman kefil olduğundan..."*

Another reason for Halil oğlu Memiş's stubbornness to reject any settlement and deny the claims might have been his awareness of and knowledge about the stipulations of the law. Indeed, if he had accepted the allegations of being the instigator of the arson, he would have been put in prison regardless of what the interrogators had promised him. Unfortunately, we do not have any means to explain how a peasant living in a small village of Selanik could have had such an awareness and knowledge of the law. That is why it will remain, at the moment, as a speculative explanation that is worth thinking about.

In the above-mentioned case, for example, Süleyman became a guarantor for his slave Zenci Reyhan and even managed to make a bargain with Mehmet by paying him the damages. Apparently, the problem was over for all parties. It is clear from the evidence that it was common for alleged arsonists to deny all charges when they were brought before higher courts although they did not hesitate to admit the crime in the village; however Reyhan never attempted to deny the allegations as he presumably relied on the settlement between his master and Mehmet. The one thing they overlooked was that Reyhan's case would be heard before the nizamiye court.[408] This case shows that once any case was brought before the nizamiye court, it was not likely for anyone to avoid the consequences of judicial process.

Memiş was probably aware of it just like he knew that the interrogators' commitments were frivolous. Tanco's case, which was mentioned very briefly before, can be considered as an example displaying the tactics of the interrogators at the court. Tanco was caught red-handed when setting fire to Yovan's hay barn in November 1867. During his first interrogation he denied the charges, putting the blame on his friend Petri who, according to his statement, was the instigator giving

[408] BOA., İ.MVL, 463/20924, 8 L 1278 (8 April 1862).

him a piece of rag and telling him to throw it into Yovan's hay barn. For an unknown reason he decided to confess his crime in his second interrogation, but before that Petri also had been convicted and interrogated. When Petri denied Tanco's allegations against him, the tactic of the interrogator to make him say the truth is crucial for our efforts to understand the motivation of Memiş in his insistence to reject any reconciliation:

> My dear let's tell the truth because your friend [Tanco] told us the truth and now we will let him go. If you also tell us the truth, we can find a solution. Otherwise a man telling lies can never get out of here.[409]

In spite of the interrogators' commitments Petri was consistent in court. Eventually he was released, but Tanco was sentenced to five years hard labour.

Obviously, neither the commitments made by the interrogators at the court nor any effort of reconciliation out of court was useful to evade punishment once any case was heard at the nizamiye courts. Yet disputes usually were settled outside the courts either by peaceful compromise or violent action. Reconciliation was a preferred method to settle disputes within the community since it could save the litigant from the slow, expensive, and exhausting process of adjudication which might have taken longer than a year to come to a conclusion and also the defendant from imprisonment or hard labour. The law was the last resort in minor disputes among peasants. The power of the local customs was apparently stronger than the official law's sanctions that it kept peasants from having recourse to the government, which sometimes materialized as "outsiders" from the perspective of peasants and even mostly did not exist at all.

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[409] BOA., İ.DA, 3/37, 11 B 1285 (28 October 1868). "*Be kuzum sen bunun doğrusunu söyle zira arkadaşın söyledi onu şimdi saluvereceğiz sen dahi doğrusunu söyle ne ise senin dahi bir çarene bakalım yoksa yalan söyleyen adam hiç bir vakitde buradan kurtulamaz."*

Conclusively, arson in the villages was part of a rural culture which had lot to do with the concepts like reputation, honour, and vengeance. Arson demonstrates the everyday conflicts within the community and peasants' unique ways of settling these disputes. It also renders the peasants' perception of justice visible. The peasants apparently were not indifferent to law as the number of arson cases that came before the courts shows. However, arson was an invaluable means of satisfying a sense of justice by inflicting punishment on the wrongdoer without delay that could never be provided by law. That is why the peasants preferred to take the law into their own hands when their honour and reputation were at stake.

As several correspondences between the local governments and central government demonstrate, settling scores by arson was a customary law resorted to in minor disputes. Every single person knew the meaning of it and the victims got the message clearly when their hay barns or cowsheds were set on fire. After that, the financial damage was silently shared among the peasants. Peasants managed to settle the disputes within the village without inviting any help from the government. However, when the Tanzimat state intruded in the local customary practices by imposing itself as the sole agent holding a monopoly on dispensing justice, then came the problems. In the face of failing attempts to restore justice in the countryside by means of nizamiye courts and penal codes, the Ottoman state desperately turned to the old customs. Yet, this chapter could not have been written if the central government had become totally unsuccessful in bringing in the Tanzimat to the countryside and interacting with the customary law. While many cases were settled within the community and thus went unreported leaving behind no trace except for some correspondences and clues, many other peasants took their cases to the nizamiye courts. Only by this means was I able to construct the conflicts

of these peasants among themselves, their interactions with the law and authorities, and their lost voices.

CHAPTER 5

FEMALE ARSONISTS

Crime history has come to be criticized by feminist scholars due to the lack of attention it pays to gender. Besides recognizing very little the importance of gender, historians of crime fail to notice the experience of the ordinary women who came before the courts for crimes other than those labelled specifically as "feminine," such as abortion, infanticide, witchcraft, and prostitution. This failure has been explained with "the preponderance of male theorists in the field"[410] and more importantly, with "the tendency of social history to universalize the male experience."[411] The contemporary anxieties over moral and public disorder engendered by these "female crimes" and the medicalized discourse of the nineteenth century on gender has made them receive attention while leaving other women perpetrators out of sight. Furthermore, due to this ignorance women appeared in history usually as victims rather than perpetrators.[412] They have been underrepresented in crime statistics and regarded as more law-abiding than men. However, as Stephen P. Frank has disclosed, this underrepresentation or invisibility, at least in nineteenth century Russia was due to the biased nature of crime statistics. Crimes and petty offences committed by women and tried before the lower courts

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[410] Margaret L. Arnot and Cornelie Usborne, "Why Gender and Crime? Aspects of an International Debate," in *Gender and Crime in Modern Europe*, eds., M. L. Arnot and C. Usborne (London: UCL Press: 1999), p. 1.

[411] Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: CUP, 2003), p. 3.

[412] Ibid., p. 75.

were, in fact, much larger in proportion than the ones heard before higher courts on which statistical examinations have been grounded.[413]

Whilst criminality in general appears to be a masculine domain, popular and traditional stereotypes that depict women as obedient and passive in contradistinction to aggressive and dominant masculinity also have reinforced the tendency to underestimate women's roles as perpetrators and thus, discounted their agencies. Yet, many historians have sought to address the question of gender in crime history and brought forth diverse experiences of men and women with the law. In this regard, the court has emerged as a space where the specific agencies of women and men materialized in the form of their diverse claims over property, sexuality, and honour.

Ottoman historians, too, have studied legal cases of marital conflicts, sexual violence, and inheritance disputes involving ordinary women usually by appealing to şer'î court records in the early modern context. As early as 1975, Ronald Jennings, for example, showed the women's participation in public life by scrutinizing the seventeenth century Kayseri şer'î court records. Haim Gerber disclosed how women were freely involved in property issues by selling and buying real estate in the seventeenth century Bursa.[414]

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[413] Stephen P. Frank, "Women and Crime in Imperial Russia, 1834-1913: Representing Realities," in *Gender and Crime in Modern Europe*, eds., M.L.Arnot and C.Usborne (London: UCL Press, 1999), pp. 96-97. According to Frank, not only were women underrepresented in published judicial statistics, but rural crime was also characterized inaccurately as "bloody crimes" perpetrated by "poor, ignorant, superstitious, increasingly immoral" villagers prone to violence. While property crime was depicted as having an urban and civilized character due to greater concentration of wealth and poverty in towns and cities, violent crime was assumed to be a rural phenomenon. However this perception was due to the inaccurate assessment of judicial statistics which did not include lower court prosecutions. See Frank, *Crime, Cultural Conflict, and Justice in Rural Russia*, pp. 58-66.

[414] Ronald Jennings, "Women in Early 17th Century Ottoman Judicial Records: The Shari'a Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient*, no.18 (1975), pp. 53-114; Haim Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," *International Journal of Middle East Studies* 12, no. 3 (1980), pp. 231-244.

Without doubt, research undertaken for writing women into history has added greatly to our understanding of women's involvement in Ottoman public life and their roles in disputes as active agents. Yet, crimes committed by women such as infanticide and prostitution have only recently begun to attract scholarly attention while the perpetrators of more violent crimes have largely eluded historians. In this regard, court registers about female arsonists, like poisonous wives, create an interesting case in Ottoman historiography as they help us to make the complexities of women's experiences visible and provide a new perspective from which to examine women's agency.

Peasant Women and Vengeance

Though not very often, archival evidence shows that women, like their male counterparts, knew how to use fire as a weapon of vengeance. Rural arson, by its very nature, was overwhelmingly a male crime, unlike poison murder. Because it was an offence mostly committed at night outdoor, which was reserved for men, women were not the usual suspects when a fire broke out in the villages. Among all arson cases examined thus far, sixteen women were mentioned as convicted arsonists. Most notably, only four of these women were peasants while most of the others were black enslaved servants (*cariye*) who had committed this offence with hostility against their masters or to conceal another crime, namely larceny.[415] Not surprisingly, in the latter case, the domestic household was the major target which,

[415] In one case, the arson was perpetrated by two peasant women, Şerife and Penbe.They set the house of their neighbour, Zeliha Hatun on fire but only the timber of the door conflagrated. Four of the female arsonists acted in conjuction with male companions. In one case, the accomplice of the offender was another female black *müttekâ* (a manumitted former slave). Also see Appendix D.

for the disgruntled women, appeared as the symbol of their enslavement and injustices. Before drawing on the examples of female servants, two cases of rural arson will be elaborated below. These cases clearly show the fragile position of women before the law as they received relatively harsh sentences when compared to male arsonists.

One night in January 1867 when a certain Lazar's hay barn was set on fire, the suspicions of the Zavi[416] villagers fell upon a certain Mika Hatun and a village priest named Meyto.[417] According to Lazar's deposition at the court, there was an illicit sexual relation between this woman, who was married, and the priest, which had come out when they were seen *flagrante delicto* by his wife somewhere near the village. Since his wife told the scandal to him and some other persons in the village, the actors of this scandal must have been the malefactors who set his bay barn on fire. Both Mika Hatun and the priest were convicted to be questioned as the alleged arsonists. The priest Meyto denied the allegations saying that at the night of the incident he had even not been in the village and somehow proved his claims. On the other hand, Mika Hatun, a twenty-year-old woman, admitted the charges while giving another name as her accomplice.

> While I was taking bread to my husband, the priest Meyto caught up with me and we walked together. We encountered some peasants from Reskok. They don't like the priest and that's why they slander him. Then Zavili Meyto came and said that the people of Zavi slander you and the priest, let's go and burn the hay barn of Lazar. Together with Meyto, we obtained a fire and ignited it around two o'clock at night.[418]

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[416] A village in Şehirköy (Pirot) sub-district of Niş district, Tuna.

[417] BOA., İ.MVL, 576/25852, 26 R 1284 (27 August 1867).

[418] "*Ben kocama ekmek götürür iken Papaz Meyto bana yetişüb beraber giderken Reskoklular bizi karşıladı papazı beğenmeyüb iftira ediyorlar Zavili Meyto dahi geldi bu papaz ile sana Zavili iftira ettikleri içün gel senin ile Lazar'ın samanlığını yakalım dedi biz dahi beraber ateş alub gece saat iki sularında Meyto ile gidüb yakdık."*

Not surprisingly, Meyto, a forty-year-old Bulgarian farmer, denied his role in the incident. According to his claims, Mika was slandering him due to a grudge as she had a previous score with his wife. However, during the investigation process, it came out that Meyto did not have a good reputation in the village at all. Five years earlier, he had been sued by his brother Filib as the alleged arsonist of his hovel (*kuşara*), but had not been convicted as no evidence was furnished against him. When Filib was summoned to the court, he claimed that the hostility between him and his brother was due to an inheritance matter. When their father had passed away ten years earlier, he had inherited that kuşara, which was later allegedly burnt down by Meyto. At the night of the incident when the hay barn of Lazar was set on fire, Filib's hay barn was also ignited, but luckily extinguished without burning to the ground. According to Filib, the suspect was obviously his brother: "He is always angry with me and his sole intent is to ruin me. For eight or ten years, we have been like that."[419]

The court questioned six persons from the village notables (çorbacıs) in order to learn the intra-family disputes between Filib and Meyto as well as the public opinion about Mika Hatun. The notables approved Filib's story and further claimed that Mika was a woman of ill-repute: "That woman is such a woman who goes astray. She has been in an illicit relationship both with the priest and Meyto."[420] They had no suspicion about the identity of the offenders who, according to them, were doubtlessly Mika and Meyto. Mika's role in the incident was clear for the court as well since she admitted the crime. However, it was impossible for a

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[419] *"Daima benimle kavgalıdır ve muradı beni kül etmekdir sekiz on seneden beridir halimiz böyledir."*

[420] *"S: Demek ki bu Mika kendi halinde gezer avrat değildir / C: Evet o avrat fena yolda gezer bir avratdır hem papaz ve hem de Meyto ile çok lisana gelmişdir."*

woman to go out alone and start a fire in the dead of night.[421] It was obvious that she had had an accomplice. Yet, the evidence furnished against Meyto was not found sufficient to pronounce a guilty verdict. He was released without getting any punishment while Mika Hatun was sentenced to imprisonment for ten years together with the reimbursement of the damage which was only three hundred guruş. The court records state that the death sentence stipulated by Article 163 was commuted to imprisonment due to the fact that "she is a woman without any knowledge about the responsibility fell upon such criminals by law."[422] This was obviously a formulaic explanation very often used in the final verdicts when the culprit was a woman just as we have seen in Dellal Fatma's case. Supposedly, it was an idiom that confirmed the lack of responsibility women held before the law. This idiom was also preferred by the court to commute the death sentence Mika would receive in accordance with Article 163 of the Ottoman Penal Code to imprisonment. Though it seems that Mika Hatun got a less severe punishment than she deserved, still, ten-year imprisonment for a barn burning was a heavy penalty, especially if it is compared to the other cases in which the majority of the arsonists went only with five years hard labour at most. Arguably, the relatively severe punishment she received may be related to the location of the hay barn. Though the value of the hay barn was quite trivial, the barn was inside the village adjacent to the dwelling-houses. As the notables claimed, if there had been a wind that night, the whole village would have burned to ashes.[423] This explains, to a certain extent, the severity

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[421] *"Karı kendi kendine gece gidüb yakamaz."*

[422] *"...mezbûrenin tâife-i nisâdan olarak ahkâm-ı kanûniyeyyi bilememesi mücâzât-ı ... (?) tahfif eder esbâbdan olduğuna mebnî..."* See *Tuna Vilayeti Ayniyat Defteri* 919, no. 293, 17 Ca 1284 (16 October 1867).

[423] *"S: Yanan samanlık köy içinde mi yoksa kenarında mı idi / C: Köy içinde evler yanında idi eğerçe havada rüzgar olaydı cümleten yanacak idik."*

of the penalty reserved for Mika Hatun, but yet remains insufficient to explain Ayşe Hatun's sentence in the case below.

Ayşe Hatun was also one of those peasant women who was convicted for arson. In July 17, 1871, she set fire to the hay barn of Yavaş Ömer in Okçular village of Hizergrad sub-district, Rusçuk.[424] While the motive driving her to such a furious act was a simple grudge against Yavaş Ömer's wife, the longstanding antagonism between these two women was common knowledge in the village. Apparently, they had been in a conflict for a while revolving around a contested territory that marked out a yard or a field. When the wife of Yavaş Ömer cut a branch from a willow tree from that contested property and moreover said, out of spite, "Here I cut it. What will you do?,"[425] she should have guessed that her act would trigger a further evil.

Ayşe Hatun, having been provoked by these words, took a stick and chased her while swearing at her and uttering threats about arson in public. She was later seen with a bunch of matches in her hand while going to the hay barn of Yavaş Ömer. Though her mother attempted to prevent her, she paid no attention and apparently appeased her fury by starting a fire. Going beyond her intent, the blazes consumed not only the hay barn of her foe, but also the hay barn and plum orchard of another neighbour, Koç Ömer. Owing to her confession before her people in the village, she was convicted immediately after the incident and sentenced to imprisonment for ten years. Of course, it is not a relief to see that she was not hanged since a ten-year imprisonment was quite harsh for barn burning. We do not know whether the hay barns and the plum orchard were inside or outside the village,

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[424] BOA., İ.DA, 11/405, 23 R 1290 (14 November 1873).

[425] "*İşte kesdim ne yapacaksın."*

but the fire did not go out of control and take any life. Furthermore, the total damage was only one hundred guruş. Given the period of sentences that were meted out for other barn burnings, Ayşe Hatun was sentenced to imprisonment for a period disproportionate to the crime she had committed, just like Mika Hatun.

Cathy A. Frierson states that "fires set by peasant women within their own communities were the most alarming of all fires to educated observers" in nineteenth century Russia. The assumed "female stupidity", "loss of reason" or "the woman's imprisonment in 'passion'" were among the basic reasons that made them propose a close association of women with fire.[426] Given the rare appearance of peasant women as arsonists in the Ottoman court registers, we can suggest that peasant women could not have been a source of anxiety as much as they were in the Russian case. Nevertheless, the similarity between the perception of the Russian educated elite about women arsonists and the formulaic expression used to describe female offenders in the Ottoman courts' verdicts is striking. *Tâife-i nisâ* was obviously a special category that should have been treated differently than male culprits before the law. "Tâife-i nisâdan olmak" meant to be *nâkısat-ül-akl*, weak-minded or ignorant. This allowed the courts to mitigate sentences with reference to female's lack of understanding or ignorance of the law. Such a discourse was of course not particularly reserved for female offenders. As the foregoing evidence indicates, young shepherds and peasants also were deemed incapable of comprehending the consequences of their criminal actions while enjoying the privilege bestowed to them by receiving lenient sentences.[427] Nevertheless, the

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[426] Frierson, *All Russia Is Burning*, pp. 129-134.

[427] Here I am inspired by Stephen P. Frank's argument on the peasants' "cultural backwardness" in Russia. He states how peasants "took advantage of the law's patriarchal forgiveness of their 'backwardness'" since they were not held totally accountable for their crimes before a paternal

female offenders, especially the women arsonists, were not as lucky as those young shepherds. Whilst they were perceived as weak-minded with a lack of understanding of the law, still, they received harsher sentences than their male counterparts, which shows the ambivalence of the Ottoman courts toward women.

The Disgruntled Female Insiders

As the archival evidence demonstrates, peasant women were rarely indicted or convicted as arsonists in the Ottoman countryside. Strikingly, the great majority of the female convicts for arson were black enslaved servants (*zenciye cariye*). Two cases of arson by these slaves, namely Dilferah and Feraset, have been examined previously by Ehud Toledano and Hakan Erdem, respectively.[428] Both women were African-origin domestics who dared to commit such a crime in order to conceal another crime and further in an expectation that they could obtain their emancipation. They had stolen money and jewellery from the mansions of their masters and both had accomplices in the crime. In the former case from Selanik, Dilferah was instigated by Ahmed, a young servant working at Mehmed Ağa's mansion for a thirty guruş monthly wage, who had promised her freedom and marriage if they could have got the money and escaped somehow together. Dilferah stole four *mecidiye* golds, three Egyptian gold, thirty-two silver *beşlik*, and two

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criminal law that presumed ignorance, superstition, or backwardness as a mitigating factor. See Frank, *Crime, Cultural Conflict, and Justice in Rural Russia*, pp. 24-30.

[428] See Toledano, pp. 179-181; and Erdem, pp. 125-147. Also see BOA., İ.MVL, 462/20803, 14 Ş 1278 (14 February 1862); MVL 942/38, 26 B 1278 (27 January 1862) and İ.MVL, 574/25777, 2 S 1284 (5 June 1867). In Erdem's article, the folio number of the archival document about the case is stated as "25557" incorrectly. The correct number should be 25777.

watches from the drawer inside the harem section of the mansion and then, set fire to the room to cover up the crime.

In the latter case from İzmit, Feraset was instructed to steal the jewellery of her master and burn the house to conceal it by a companion of her, a manumitted black slave named Selime, who told her that she could have been manumitted too if she did it.

According to the Islamic law, the responsibility of punishing slaves in case of any transgression belonged to slaveholders. Toledano states that the Tanzimat changed the status of enslaved persons with regard to the law. In 1845, the Tanzimat state brought forth a new regulation and took this right from slaveholders by denouncing that "enslaved persons should be liable to the same penalties as the free subjects of the sultan."[429] Therefore, both Dilferah and Feraset stood trial in accordance with Article 163 of the Ottoman Penal Code. Strikingly, both were sentenced to death by hanging with the consent of Sultan Abdülaziz. As a formulaic expression, the final verdicts stated that the punishment aimed to be a deterrent example for others.

No doubt, Article 163 alone does not explain the harsh sentences these black *cariye*s received as the courts prescribed much more lenient sentences than capital punishment for many of the arsonists in spite of the provisions stipulated by the penal code. The article was indeed very sweeping in describing the details about the type and location of the burnt structures that were deliberately ignited. Whether inhabited or uninhabited, if any building within the cities, towns, and villages was deliberately set on fire, the perpetrator would be punished with death even if the property did not belong to him/her. There was no distinction in the article with

[429] Toledano, p. 153.

regard to the value of the buildings or the effect of the fire upon its vicinity but arson was considered as a threat to public order and security if it occurred within the settlements.[430] Thus, the sole distinction stipulated by law remained between the buildings inside and outside the villages, towns, and cities. The prescribed punishments increased or decreased in severity according to this distinction and in many instances, according to the arbitrary judgment of the courts about the arsonists.[431]

It is clear from the archival evidence that offenders involved in barn or rick burning and even those who burned houses like Dellal Fatma did not receive death sentence although they were judged according to Article 163. Death sentences, in these cases, were commuted to hard labour for men and imprisonment for women. One can argue that the effect of the fire could be an important criterion to determine the severity of the sentence. Though it certainly influenced the decision of the courts in some occasions, as we will see below in Zeyneb's example, it was not always the case, which brings to mind other reasons about the status of enslaved persons with regard to their racial origin in the Ottoman Empire. Neither the fire in Selanik nor the one in İzmit was a runaway fire. They only consumed the mansions set on fire and did not cost any life. Yet the arsonists were sentenced to death. In August 1861, however, the fire ignited by Zeyneb in Alaiye (Alanya), Konya turned into a disaster going far beyond the intentions of its perpetrator.[432]

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[430] Arson was one of those crimes categorized among the offences committed against the state in the 1858 Penal Code.

[431] In 1890, the articles 163 and 164 on arson were modified. The modified codes were more detailed than the first versions with regard to the punishment reserved for the arsonists. See BOA., ŞD, 2550/25, 29 C 1307 (20 February 1890).

[432] BOA., İ.MVL, 458/20539, 25 Ca 1278 (28 November 1861). For the interrogation report of Zeyneb see Appendix E.

Zeyneb bint Abdullah was a black enslaved domestic of Emin Efendizade Mustafa Efendi who was a nâib in İbradi sub-district. Though we do not know her age, she must have been at her early twenties by the time she committed the crime as she had been married to the *gulam* (the black male slave) Seyid of the same Mustafa Efendi for six years and had a five-year old daughter. All the misfortune started for Zeyneb when Mustafa Efendi was appointed to the office of nâib in Karaağaç sub-district. He took Seyid to accompany himself and later made him divorce his wife. For a while, Zeyneb was hopeful that Seyid would marry her again and indeed he had the intention to do so. However, Mustafa Efendi did not give consent to their marriage as he had plans to sell Zeyneb because of her disobedience and misbehaviour (*adem-i itâat ve serkeşlik*). Apparently, he was not pleased with his *zenciye cariye* (black female slave) and giving her blows every day according to Zeyneb's deposition at the court.[433] In the end, the poor woman was sent to the house of İbrahim Efendi, the brother of Mustafa Efendi, where she would wait to be sold to another person. In fact, the African slave trade had been banned in 1857, but it did not change the legal status of the black slaves in the Empire as the slave owners continued to hold their rights on the enslaved.[434] Hence in 1861, Zeyneb was still a slave without any right on her own life in spite of the abolition of the slave trade.

After staying eight days at İbrahim Efendi's residence, Zeyneb decided to take revenge. In August 20, 1861 around six o'clock, she went to the house of Mustafa Efendi in Sağlı neighbourhood, ignited a piece of firewood with ethyl

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[433] *"...beher gün beni döğer bir güna rahat vermezdi."*

[434] Y. Hakan Erdem, *Osmanlıda Köleliğin Sonu 1800-1909* (İstanbul: Kitap Yayınevi, 2004), pp. 141-44.

alcohol, and left it in the barn on to the dry fodder. Apparently, the barn was adjacent to the house and the blaze quickly spread to the dwelling and burned it to the ground. Unfortunately, the fire could not be contained and soon turned into a disaster. The fire engulfed more than 130 houses along with the mosque, *mescid*, school, and water cistern in the neighbourhood.[435] Moreover, Mustafa Efendi's pregnant sister Celime Hatun tragically died in blaze.

Zeynep stood trial before the şer'î and nizamî courts. When questioned, she confessed the crime saying that she "yielded to the devil and burned the house" but her intention was not to give harm to any other mansion. It was beyond her ken that the fire would ravage that much people.[436] Since the confession of the culprit was obtained, no witness testimony was needed by the court to refer the case to the upper court. The memorandums of the local councils were submitted to the Supreme Council along with the interrogation report of Zeyneb, her letter of confession, the complaint petition of Mustafa Efendi, and another petition filed and signed by fifty-five people that indicated the every single burnt structure in the quarter. The government took the issue very seriously. The fact that the fire spread around while destroying the quarter completely and further, caused death (*telef-i nefs*) was considered as an aggravating element. Zenciye Zeyneb, according to the memorandum, could not be forgiven from capital punishment. The Supreme Council decided her to be hanged to be deterrent for others, especially for those who were foolish (*sebük-magzân ahali*) to bring forth such fires without knowing the severity

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[435] İbradi had another disastrous fire in 1889 that destroyed more than eight hundred houses. However, the 1889 fire was accidental unlike the one ignited by Zeyneb. See *Kastamonu Vilayet Gazetesi*, no. 817, evâhir R 1307 (23 December 1889).

[436] *"S: Bu kadar konağı niçün yakdın / C: Muradım başka konak yakmak değil fakat efendimin konağını yakmak idi lakin böyle oldu / S: Bu kadar konak yanar mı niçün etdin / C: Efendim şeytan sözüne uyub yakdım."; "...fakat bütün aleme mazarratı olacağına aklım ermeyüb yüzümden bu kadar telefat oldu..."*

of the law. Zenciye Zeyneb was hanged on a huge chestnut tree which still survives in İbradi and is named as "Arapastık,"[437] sometime between November 28 and December 19.

In order to enhance the deterrence of the capital sentence inflicted, the Council ordered that

> ...since such catastrophic acts are usually caused by ignorant people and enslaved domestics unfamiliar with the provisions of law, the punishment prescribed for this severe crime by the penal code should be announced to the public in the countryside with an admonition and is also to be published in *Ceride-i Havâdis*.[438]

Soon after the memorandum of the Supreme Council had been released, 1500 copies of the admonition were sent to the provinces.[439] In addition, in December 19, 1861, it was announced to the public in the pages of *Ruznâme-i Ceride-i Havâdis* as follows:

> The most necessary thing for humankind in this world is to live with honour and propriety without acting in a manner that would be harmful for other people and committing acts that would be against the shari'a and sublime law. One should refrain from acts that would endanger his/her fellows and neighbours' lives or his/her own life. Like those who dare to commit such acts against the şer'î şerif and sublime law and suffer the consequences of their deeds, in İbradı sub-district Mustafa Efendi's black cariye Zeyneb was executed in accordance with Article 163 of the Penal Code... as she set the house of her master on fire which also consumed her neighbours houses and caused the death of a pregnant woman who could not go out from the burning house. Here you see the

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[437] A local historian, Mustafa Üstün, was first to explore the story of Zeyneb in the archives. I could not find any scholarly work written by him about the fire in İbradı and the arsonist Zeyneb. But he gave some interviews about and told how the story of Zeyneb and the tree she was hanged on is remembered in İbradı. See "900 Yaşındaki Ağacın İlginç Hikayesi," 29 September 2008, http://www.samanyoluhaber.com/h_211622_900-yasindaki-agacin-ilginc-hikayesi.html. Also see "Arapastık Kestanesi" published in the webpage of İbradı Municipality, http://www.ibradi.bel.tr/cografi-yapi/arapastik-kestanesi.html.

[438] *"...ve böyle harekât-ı fecîa ekserî kanûnun ibaresinden ve hükmünden gafil olan cühelâ-yı ahâlîden ve cevârî takımından zuhûr eylemekde olduğundan bu cinâyât-i azîmeye kanûnen tertîb eden mücâzât-ı şedîdenin tafsîlini mübeyyin kaleme alınub lef'en takdim kılınan tenbihnâmenin takdim ve ... Ceride-i Havâdis nüshalarına tabıyla beraber taşralarca dahi neşr olunmak üzere ... irsâl kılınması..."* (dated 12 Ca 1278/15 November 1861).

[439] BOA., A.MKT.MVL, 137/14, 5 C 1278 (8 December 1861).

> punishment for setting a building on fire. Everyone should draw a lesson from the aforesaid Zeyneb and those who are literate should read the punishment reserved for this crime and tell it to the others who cannot read. This admonition is announced so that the people will learn to abstain from getting involved in arson and other deeds precluded by the imperial law.[440]

Among eight *cariye*s, seven of African origin and one of Circassian who were convicted for arson between 1858 and 1873, three of them only were sentenced to death. Dilferah, Feraset, and Zeyneb were the unlucky ones who met their ends at the gallows while Kadem Hayr and Vüruşerif from İstanbul, Gülfidan from Vidin, another Feraset from Tuna and Hatice from Cyprus were luckier.

In 1848, Kadem Hayr set fire to the mansion of her mistress Saraylı Hatice Hanım in Sultanahmet.[441] In 1870, Hatice set the storehouse of her master Mehmed Ratıb Efendi on fire in Cyprus, Değirmenlik.[442] Like Zeyneb, Kadem Hayr and Hatice were disgruntled as they would be sold by their owners. Though the information gleaned from the archives about Kadem Hayr is very limited, the documents about Hatice's case are a little bit more comprehensive and reveal the reason for the court's lenience about her sentence.

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[440] *"Dünyada insaniyete en ziyade lüzum olan şey daima ırz ve edebiyle oturub hiç kimseye zarar ve ziyanı mucib olacak hal ve harekette bulunmamak ve şeriat-ı şerifin ve kanûn-ı münîf-i padişahinin men' ettiği hareketleri irtikâb eylememek kaziyyeleri olub öyle hemşehri ve komşusuna zarar verecek veyahud kendi nefsince mühlikeye uğrayacak hallerden uzak durmak pek elzemdir şer'i şerif ve kanûn-ı münîfin men' ettiği kabahatlere cesaret edenler cezâsını görmekde oldukları misillü İbradı kasabası sakinlerinden Mustafa Efendi'nin Zeyneb nam siyah cariyesi efendisinin evine ateş vermesinden ve komşularının hanelerini yakmağa ve hususen esna-yı harikde hamile olduğu halde bir hatunun dahi içinde kalarak biçarenin telefine sebeb olmasından dolayı mukaddema her tarafa gönderilen cezâ kanûnnâme-i hümâyûnunun 163. Maddesi mucebince selb-ü idam olunmuşdur işte bir mahalle ateş ve kundak bırakmanın cezâsı böyle olmağla mezbûre Zeynebden herkes ibret alub ve kanûn-ı cezâyı okumak bilenler layıkıyla mütala' ile bilmeyenlere dahi anladub gerek bunun gibi harikden ve gerek kanûn-ı padişahinin men' ettiği sair her türlü hallerden ictinâb eylemeleri iktizâ edeceğinden mûcebi ittihâz ve intibâh olmak içün ilan-ı keyfiyet ibtidâr olundu."* See *Ruznâme-i Ceride-i Havâdis*, no. 286, 16 C 1278 (19 December 1861) (See Appendix F).

[441] BOA., A.MKT, 153/82, 13 S 1264 (19 January 1848).

[442] BOA., İ.DA, 11/369, 5 Za 1289 (4 January 1873).

When Hatice set the storehouse full of cotton ablaze and caused financial damage of 19,000 guruş, she was totally upset as she would be sold to a certain Lefkoşeli Yorgancı Mustafa due to her "bad attitude" (*sû'-i hareketinden dolayı*). We do not know what her alleged "bad attitudes" were, but her master was apparently not pleased with her. At the time of her trial, Hatice appeared at the court with a two-year-old child whose father, according to her claims, was Mustafa Ratıb Efendi. Not surprisingly, Mustafa Ratıb Efendi denied these claims and Hatice could not prove anything. The court's verdict mentions that Hatice's sentence was commuted from death sentence to imprisonment for fifteen years because she committed the crime when "she recognized that she would spend the rest of her life under servitude rather than being manumitted with a two-year old child" in spite of the fact that "she has been enslaved for twelve years." Under these circumstances, the death sentence was regarded as unfit with respect to her crime and she was sent to prison instead of gallows.[443]

Apparently, Hatice's grudge against Mustafa Ratıb Efendi was related to the period of her enslavement. Hatice had been enslaved for twelve years. According to the provisions of Islamic law, which were accepted as a norm in the Ottoman Empire, it was her right to be manumitted after seven years servitude. For a black slave, the legal period of enslavement was restricted to seven years while it was nine years at most for a Circassian slave.[444] This also explains the motive of the court to commute Hatice's sentence from capital punishment to imprisonment by referring to the period of her servitude.

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[443] *"…on iki sene esarette kalmış olduğu halde âzâd olacağı yerde bilakis satılub bakiye-i ömrü dahi esaretle geçeceğini anlamasından… ve iki yaşında dahi bir çocuğu olduğu anlaşılması cihetiyle idamı muvâfık-ı muâdelet olamayacağına…"*

[444] See Y. Hakan Erdem, *Osmanlıda Köleliğin Sonu*, pp. 194-95.

Of course, we can never know whether the child's father was Mustafa Ratıb Efendi or not. However, it is quite understandable why Hatice claimed that her master was the one who had impregnated her. Ehud Toledano states that "an enslaved woman impregnated by her owner could not be sold, her offspring were considered free, and she herself was freed upon the death of her master."[445] Presumably she aimed to show how she had been wronged by her master and had committed arson due to this reason or just wanted to rescue her child from bondage. In this regard, the reason why she preferred to burn the storehouse rather than her master's home is also meaningful. If she could convince the court that Mustafa Ratıb Efendi was the one who had impregnated her, at least her child would continue to stay in that house as a freeborn person.

Yet, except for Hatice, the target for all other enslaved domestics was the house as "the source of a deep grievance, the locus of grave injustice and humiliation, or the symbol of the suffering."[446] In December 1859, Gülfidan set the house of her master on fire in Vidin because her feelings had been hurt by the household members.[447] The incident occurred when the master, Osman Ağa, a major in the Rumelian Army, was away from home in Belgrad. The arsonist's rage must have been so grave that she had locked the doors before setting fire to the house where her master's wife, mother, and three children were sleeping in and further, hit them all on the heads with a club. Though the neighbours saved the lives of the household members from the fire by breaking down the windows, the wife of Osman Ağa, Ümmügülsüm Hatun, soon died from the injury caused by the hard

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[445] Toledano, p. 12.

[446] Ibid., p. 178.

[447] BOA., İ.MVL, 428/18827, 4 Ş 1276 (26 February 1860).

blow she had received to the head. Gülfidan was sentenced to retaliation according to the şer'î law as the murderer of Ümmügülsüm Hatun, but we do not know the nizamiye court's verdict for her.

Similar to Gülfidan, when Hatice, the foster-daughter (*besleme*) of Hacı Resmi, started a blaze in the house of her master in Vidin, it came out soon that the motive of her attack was the fact that she had been badly treated and reprimanded by Hacı Resmi's mother.[448] A foster-daughter's legal status was in fact different from that of an enslaved domestic, but adopting a besleme was a practice that served to provide unpaid domestic labour for relatively rich households, like holding slaves. As Nazan Maksudyan mentions, these foster-daughters were used as domestic servants in return for food and shelter and "their employment was regarded as a form of charity" by the house lords.[449] Not surprisingly, in many instances, charity brought forth abuse, exploitation, and even molestation. These beslemes attempted to avoid abuse in many ways, sometimes by escaping from the locus of their suffering, filing complaint petitions to the authorities, and as a final resort, committing suicide.[450] Apparently, Hatice preferred another method and took her revenge by torching the house of her foster family.

As far as the evidence suggests, the female arsonists resorted to arson when they had been ill-treated or feared that they would be sold to other slave holders. Of course, the desire to be free was another strong motive that led them to start fires. Even when the houses of masters were torched to conceal burglary, the basic motive

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[448] BOA., A.MKT.MVL, 84/82, 26 C 1273 (21 February 1857).

[449] Nazan Maksudyan, "Foster-Daughter or Servant, Charity or Abuse: *Beslemes* in the Late Ottoman Empire," *Journal of Historical Sociology* 21, no. 4 (December 2008), p. 489. For another work on the vulnerability of *cariye*s and foster-daughters in the Ottoman households see Ferhunde Özbay, "Evlerde El Kızları: Cariyeler, Evlatlıklar, Gelinler," in *Feminist Tarihyazımında Sınıf ve Cinsiyet* , ed., Ayşe Durakbaşa (İstanbul: İletişim Yayınları, 2002), pp. 13-47.

[450] Maksudyan, p. 490.

behind the act was always emancipation from the bonds of enslavement. For instance, when Dilferah torched the mansion of Mehmed Ağa, her single aim was not just to cover up the burglary, but mainly to be saved from slavery by Ahmed, who would supposedly buy her from Mehmed Ağa with the money they had stolen together before burning the house and marry her. Similarly, when Feraset set Şükrü Ağa's mansion on fire after stealing precious items from the house, she also hoped that she could be manumitted by her master going desperate because of the fire.

Likewise Dilferah and Feraset, Vüruşerif, a twenty-one-year old Circassian enslaved domestic, torched the house of Ahmed Efendi, the commissioner of the renovation department of charitable foundations (*Evkâf-ı Hümâyûn Tamirat Müdürü*), as she had been instructed and instigated by a certain Mehmed from Crimea to steal the jewellery in the house and then set it on fire in order to conceal it.[451] Her intention was to elope with Kırımlı Mehmed after the incident since he had promised her freedom saying that he would take her to his hometown.

Vüruşerif was the former slave of the Army Marshal of Arabia and had been sold to Ahmed Efendi fourteen months earlier. The reason for it was that she had committed adultery with Kırımlı Mehmed, who had also been, at the time, a servant in the same household. As soon as the incident had become public, Vüruşerif had been sent to the house of Esirci Emine Hanım,[452] while Mehmed had been convicted and sent to *Bâb-ı Zabtiye* (the Police Station) where he had suffered from bastinado

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[451] BOA., İ.MVL, 457/20484, 10 Ca 1278 (13 November 1861); A.MKT.NZD 397/10, 3 Ş 1278 (3 February 1862).

[452] Though *Esir Bazarı* was the central slave market in İstanbul where slaves were sold to the customers, the sale of white slaves was usually conducted in private homes. See Madeline C. Zilfi, "Servants, Slaves, and the Domestic Order in the Ottoman Middle East," *Hawwa* 2, no. 1 (2004), p. 7. Esirci Emine Hanım must have been one of those private dealers who was carrying out her business in her home.

and paid more than six thousand guruş compensation for the defloration to get out of prison.

Vüruşerif's story is full of details which reveal her emotional attachment to Mehmed. Apparently, she aimed to start a new life with him and therefore, listened to his instructions about stealing the jewellery, precious diamonds with a value of forty thousand guruş, and setting the house on fire. However, she could not manage to escape with the diamonds and other stuff since walking in the streets of İstanbul in the dead of the night was an impossible task for a woman. When the fire started, she went out with the other household members, but then disappeared among the crowd assembling around the burning house. She found a street porter to accompany her and carry the stuff to the door of Bayezid Hamamı but then, a man with a beard stopped her and asked where she was going. When she said that she was going to the stone mansion (*taş konak*), he did not let her go her way, saying that there was no stone mansion in that direction. Thereupon, she desperately turned back to the mansion in Buğdaycılar Kapısı and delivered the stuff to her mistress saying that she had saved them from the fire. But that was not enough. The drawer containing the jewellery was missing and the suspicion fell upon Vüruşerif immediately as the mistress somehow found the diamond ring of her child on Vüruşerif. She said that she had just forgotten to put it into the drawer before the fire and did not know anything about the drawer. Thereupon, the mistress decided to sell her and called Esirci Emine Hanım. Before delivering her to Emine Hanım, her clothes and body were searched and some pieces of diamonds were found in her waistband.

During her interrogation, she confessed to the crime and told everything, but as usual, the instigator, Kırımlı Mehmed, did not. In spite of his denial, he was sentenced to hard labour for fifteen years in the arsenal (*Tersane-i Amire*). The

testimonies of witnesses who had seen Vüruşerif and Mehmed talking and their previous relationship which had ended, for Mehmed, in prison should be an important factor that led the court to give a guilty verdict against Mehmed. Vüruşerif, on the other hand, would be sentenced to death according to Article 163 of the Ottoman Penal Code but the death sentence was commuted to imprisonment for fifteen years since she was a woman unable to comprehend the consequences of the crime she committed and had been instructed to do so by Mehmed. Further, the fact that she had not concealed any information before the court was accepted as a mitigating factor.[453]

Vüruşerif's case is indeed very similar to Dilferah and Feraset's cases with respect to the motive of the arsonists and the circumstances of the crime. The victims in all three examples were urban elites and the structures set on fire were their mansions within the city. The perpetrators committed the crime with the intention to obtain their emancipation as promised by the instigators or accomplices and they all stole some money and jewellery before starting the fire. None of the fires spread to the vicinity and all gave damage only to the objects of attack. Then, why were Dilferah and Feraset executed while Vüruşerif's death sentence was commuted to imprisonment? Did race play a role for the courts in releasing lenient or harsher sentences? Vüruşerif was a white Circassian slave while Dilferah and Feraset were black slaves of African-origin. Though we do not have any strong evidence about it, we can assume that racial discrimination or at least the hierarchy among the female slaves from different origins did play a role in the severest penalty

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[453] *"...hakkında hükm-ü kanûnun icrâsı lazım gelür ise de kendisi nisâ tâifesinden olub işleyeceği fiilin cezâ-yı kanûniyesi bu vecihle idam olduğunu bilmediği halde merkumun iğfal ve talimi üzerine buna cesaret etmiş ve muahharen istintâkında töhmet-i vakasını ketm etmeyerek tamamıyla söylemesi dahi bu mütala'yı müeyyid görünmüş olduğundan... idam cezâsının küreğe tahvili irade-i seniye ile mücâz bulunduğundan..."*

meted out for Dilferah and Feraset.[454] Another explanation, though not more convincing than the former, might be that Vüruşerif admitted the crime when she was questioned at the court while Dilferah and Feraset denied everything during their first interrogations and later accepted the allegations. Since the Supreme Council mentioned Vüruşerif's confession as a mitigating factor in its final verdict, this should also be taken into account as a legitimate ground that determined these cariyes fate before the law.

As is evidenced from the above examples, ill-treatment and the fear of being detached from the household to which a female slave had a kind of emotional attachment and resold to another person was an important motive that made her nurse a grudge against the master and set the very same household on fire. With no kin or family ties in this world, away from the homeland, the house she was enslaved in must have had a symbolic value for her. When her sense of belonging was threatened, she resorted to arson to destroy physically the symbol of that attachment and take her revenge.

The desire to have a new life outside the bonds of enslavement, on the other hand, was a motive as important as the former for female enslaved arsonists. Theft played a leading role in these arsons, but unlike other cases in which arson had been undertaken by free persons to disguise burglary; it was indeed seen as an outlet leading to freedom, an opportunity for those slaves who aimed to obtain their

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[454] As Toledano states, the Circassian and Georgian female slaves were at the top of the hierarchy while the Africans were at the bottom. The white slaves were more expensive than the Africans. Further, the Africans were usually employed in menial jobs while there were other opportunities for the white slaves, like marriage to the masters. See Ehud R. Toledano, *Slavery and Abolition in the Ottoman Middle East* (Washington: The University of Washington Press, 1998), p. 13. Citing from *Cabî Tarihi*, Madeline C. Zilfi gives two examples of female servants, one was Circassian and the other one was African, who were hanged in İstanbul publicly as they both had stabbed their mistresses to death in 1762 and 1810, respectively. As far as these two cases display, racial discrimination by the Ottoman State was not an issue at least in the late 18th and early 19th centuries. See Madeline C. Zilfi, *Women and Slavery in the Late Ottoman Empire* (New York: Cambridge University Press, 2010), pp. 176-178.

emancipation. Toledano mentions that it was a rare occurrence that enslaved persons stole from their house lords since they were almost always "the usual suspects" even when they were not involved in the crime and for that reason, the risk of being caught was very high. Further, "to be able to profit from stealing, the enslaved perpetrators had to find a safe way of turning the loot to cash; they needed accomplices who would receive the stolen goods and either sell them or exchange them on their behalf."[455] In our cases examined above, it is apparent that these enslaved domestics were abused and encouraged to start fires by others who wanted to profit from the intimate knowledge these women had about the valuables in the house by promising them marriage and freedom. They must have really thought that they would not be accused as arsonists, would go unpunished and would even be saved by their accomplices from enslavement with the money stolen. However, when these women were caught after setting fire and confessed before the courts, the accomplices or instigators did not admit their role in the crime and thus, got off very lightly with respect to the penalty, death sentence, meted out for the real perpetrators.

Apparently, a big fire that could consume a house to the ground might be an effective way to conceal theft. For those in deprivation, it was an opportunity indeed. When the victim and the neighbours were busy with extinguishing the fire, the perpetrator could escape with his/her pillage without attracting too much attention. With the house burning to ashes, everyone might assume that the money, jewellery, and whatever the valuable items must have also burned. The court registers we have examined thus far about this pattern of arson show that these perpetrators who committed arson to conceal theft and got caught after the incident

[455] Toledano, pp. 157-58.

were usually subordinates or insiders with an intimate knowledge of the household like, Dilferah, Feraset, Vüruşerif and Dellal Fatma.

Emine Hatun, for example, was the former wife of Kurukahveci Reşid Efendi's brother and had been living in the house since she was a poor woman with a child. Before she set fire to the house in 1847, she had stolen four thousand guruş and some valuable items due to her deprivation. As she regretted her act, she returned to the fire place to leave the stolen items there, but was caught.[456] İbrahim and Valdin were the brother and cousin of Yakub, respectively, and they had been caught with the goods they had stolen before they set fire to the house of Yakub in Yanya.[457]

When a certain Künefeci Ali's house in İstanbul burned to the ground in Davut Paşa quarter in İstanbul, it came out soon that the arsonist was his foster son (*süt oğlan*), Şaab. He was a thirteen-year old boy who lived with his family, but had been visiting the house frequently and thus, had knowledge about the hiding places of valuables. He stole more than four thousand guruş before setting fire to the house, and gave the money to his step-mother. Soon the suspicion fell upon him and he admitted the crime.[458] In 1859, when Köleoğlu Ali set fire to the mansion of the sub-district governor Osman Bey in Sinop, he stole the money from the drawer before committing arson. Ali was a zabtiye soldier and worked at the mansion as the mansion was both a house for the sub-district governor and the government office. The money he stole was not the personal property of Osman Bey, but the tax

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[456] BOA., A.MKT.MVL, 5/18, 23 Ca 1263 (9 May 1847). Emine Hatun was sentenced to life imprisonment at Haseki Insane Asylum.

[457] BOA., A.MKT.UM, 9/82, 18 R 1266 (3 March 1850).

[458] BOA., MVL, 216/35, 1 Za 1272 (4 July 1856). Since Şaab was a child, he was not sentenced to imprisonment or hard labour but exiled to Balıkesir with his step-mother Nefise.

collected from Ginolu sub-district.[459] Hüseyin set fire to the house of his uncle, Emin Efendi, in Siroz, after stealing some valuables.[460] Petro, a servant, burned the house of his master Kostan Efendi in İstanbul to conceal theft.[461]

Most of these arsons, committed with the aim of concealing theft by the intimates or subordinates to the victim, occurred in the urban centres. But in none of these cases were the perpetrators sentenced to death, except for Dilferah and Feraset.[462] Ehud Toledano finds the punishment –death sentence- meted out for Dilferah very "cruel and unusual".[463] Hakan Erdem, on the other hand, argues the death sentence released for Feraset with the Ottoman state's concern about fires. He states that the harsh sentences meted out for these slaves were not because they were considered as "a threat to the social order," but because fires "did great havoc in Ottoman cities, mostly built of timber."[464]

Though the Penal Code made no discrimination between slaves and free-born Ottoman subjects, as Hakan Erdem states, with respect to the penalties given in cases of arson, some slaves were hanged while others received less severe sentences. The death penalty stipulated in Article 163 for arsonists was commuted to imprisonment or hard labour in the great majority of the cases by the Sultan's will with reference to Article 47 of the Ottoman Penal Code, which gave the Sultan an

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[459] BOA., İ.MVL, 424/18592, 15 R 1276 (12 October 1859).

[460] BOA., İ.MVL, 565/25424, 17 Ş 1283 (25 December 1866).

[461] BOA., İ.DA, 14/578, 4 B 1291 (17 August 1874).

[462] I do not mention the name of cariye Zeyneb here, because the death sentence meted out for her was obviously a consequence of the disaster and death she had caused.

[463] Toledano, p. 180.

[464] Erdem, "Magic, Theft, and Arson," p. 138.

absolute authority to commute a sentence to a less severe one.[465] The Sultan's will and authority, in this regard, must have been very important for the arsonists since the articles related to arson in the Penal Code were not very detailed and prescribed the death penalty for arsonists indiscriminately, whether they set fire to buildings, wooden huts, or hay barns in towns and villages, whether they succeeded or failed to accomplish their aims or whether they set fire their own property or not. Only with the modification of the articles related to arson in 1890 did the law begin to provide grounds for commuting the death sentences for arsonists to less severe sentences.[466]

The next three chapters of this dissertation explore another interesting case in the history of the Ottoman Empire that has escaped the attention of scholars thus far. These chapters are about the poison issue, which came to the agenda of the Ottoman government with the rising concern on the regulation of poison sale. The regulations enacted consecutively from the mid-nineteenth century onwards, various Ottoman actors, especially poisonous wives, who transgressed the boundaries defined by these regulations, and the state of forensic medicine in bringing out a hidden crime like poisoning constitute the main topic of the forthcoming chapters.

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[465] See p. 167 of this dissertation.

[466] See Appendix C.

PART III

DOMESTIC CONFLICTS AND POISON MURDER

Early in 1902 Vasil Naum Efendi, who was, at the time, teaching chemistry at the School of Medicine, somewhat anxiously called for a government intervention to the problem of poison murder.[467] He was anxious because murder by poison was as widespread and as damaging as an epidemic in the Ottoman countryside. According to him, the quantity of poisonous evidence sent from the provinces to the School of Medicine for chemical analysis and the number of criminal poisoning cases had been on the increase every year.[468]

Vasil Naum Efendi pointed out that arsenic (*hâmız arseniği, sıçan otu*) was the most commonly encountered substance resorted to by the murderers. Illicit love affairs of women and inheritance matters in families, on the other hand, were among the most encountered motivations behind these secret poisonings.[469] However, alongside the poison murders which had been uncovered, doubtlessly there should have been many other cases that could not be detected by the police and did not come to light. These cases should have been part of a larger phenomenon. In brief,

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[467] Halepli Vasil Naum Efendi (1855-1913) was the assistant of Kalya Bey (Antoine Calleja), first chemistry teacher invited from France to the School of Medicine in 1844, and taught inorganic chemistry at the School of Medicine between 1886 and 1912. When the language of education changed from French to Turkish at the School, he translated Calleja's chemistry book *–İlm-i Kimya-yı Gayruzvî-i Tıbbî-* to Turkish. See Emre Dölen, "1870'li Yıllarda Mekteb-i Tıbbiye Laboratuvarlarında Yapılan Analiz ve İncelemeler," in *II. Türk Tıp Tarihi Kongresi Bildiri Kitabı* (20-21 Eylül 1990) (Ankara: TTK, 1999), p. 72.

[468] BOA., DH.MKT, 2594/137, 23 Za 1319 (3 March 1902). (See Appendix G).

[469] *"...görülen vukuât meyanında bir kadının başka bir erkeğe varmak içün zevcinin ekmeğine zehir katması veyahud birinin bâgir hak bir mirasa konmak içün asıl varis olan ufak çocuğun ağzına zehir tıkması gibi cinâyât..."*

he stated, the main reason precipitating this widespread crime in the provinces must have been the free circulation of poison.[470] Therefore, a government intervention to the subject was an urgent need to ensure the compliance with the Regulation of 1885 restricting the free circulation of poison. Indeed, following this correspondence between the School of Medicine and the Ministry of the Interior, the government immediately sent copies of the Regulation to the provinces and ordered the proper application of the legislation. Konya, Adana, Cezayir-i Bahri Sefid and Çatalca were among these provinces which later considered the number of copies insufficient and demanded more to distribute to their districts.[471]

When Vasil Naum's alarm about poisoning cases came onto the agenda of the government just at the turn of the century, the American courts and press had been under the sway of such suspected poisonings. Mark Regan Essig, in his dissertation, claims that poison captured so much the attention of medical jurisprudence along with popular press and literature during the 1890s that poison murder turned into an obsession for Americans.[472] In fact, it was a rare crime compared to other kind of murders, but what made it attract so much interest and fear, according to Essig, was "the ubiquity of poisonous substances in nineteenth century America" along with the "fear of undiscovered crime":

> Poisoning possessed a double secrecy. It was carried out privately, within the home, behind closed doors, and usually by a person on intimate terms with the victim. There were almost never any witnesses… Unlike other weapons, poison did its work on the interior of the body, leaving no visible signs of violence. Because the symptoms of poisoning often resembled those of disease, it was often

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[470] *"…Anadolu'da bir maraz-ı müstevlî gibi mazarrat verdiği anlaşıldığına ve bunun taşrada kesretle vuku'una mevâdd-ı semmiyenin serbestçe füruhtundan başka bir sebeb olamayacağına…"*

[471] BOA., DH.MKT, 456/25, 14 Z 1319 (24 March 1902).

[472] Mark Regan Essig, "Science and Sensation: Poison Murder and Forensic Medicine in Nineteenth-Century America" (Ph.D. diss., Cornell University, January 2000), p. 3.

> difficult to tell whether a person had died from poison or from natural causes. It was this uncertainty that made poisoning such a dreaded crime.[473]

Just as happened in America, poisoning cases captured the public imagination and created a "public hysteria" in Victorian England too. Ian Burney analyses how the state of scientific expertise, the medical professionalization, and the development of the law of evidence emerged as matters of public discussion due to the trials of poisonings by focusing on the case of Dr. William Palmer which, he claims, "fed into ongoing and intense discussions on the subject of poison". By examining newspaper accounts, he focuses on the "poisoning mania," "the crime of the age" at mid-century England and puts forward how it was represented in these newspapers as "peculiarly the crime of civilization" in which physical force had been displaced by "mediated violence" and "market discipline."[474]

George Robb, on the other hand, mainly focusing on domestic poisonings, argues that there was a fear of undetected crime and many people shared this view, thinking that "known poisonings were but the tip of the iceberg." It was omnipresent, sinister, mysterious, and hidden.[475] In fact, this hysteria in the mid-nineteenth century, Robb states, was the reflection of other social and political problems, such as the disintegration of traditional rural communities and Chartist unrest besides the pressure created by the emerging organized feminism. The spectre of poisonous wives, as revealed by the press coverage of the poisoning cases,

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[473] Ibid., p. 6.

[474] Ian Burney, "A Poisoning of No Substance: The Trials of Medico-Legal Proof in Mid-Victorian England," *Journal of British Studies* 38, no. 1 (January 1999), pp. 67-70. For another study examining the medico-legal practice through poisoning cases in Victorian England , see Katherine D. Watson, "Medical and Chemical Expertise in Trials for Criminal Poisoning, 1750-1914," *Medical History* 50 (2006), pp. 373-390.

[475] George Robb, "Circe in Crinoline: Domestic Poisonings in Victorian England," *Journal of Family History* 22, no. 2 (April 1997), p. 177.

instigated a moral panic about domestic order and patriarchal authority by producing a discourse on a "poison epidemic" at a time in which traditional gender roles were being challenged by organized feminist movements. "…Victorian society hoped that home and family would serve as an effective bulwark against further chaotic change. A rather small number of husband poisonings thus generated considerable alarm because they struck at the heart of the domestic refuge."[476]

Not only Robb, but also many other scholars who have set out to contribute to the history of crime and gender in different contexts, deal with how narratives of female criminality mirrored the social and political concerns of the era and how conventional images of femininity and masculinity were reproduced through these representations. Frances E. Dolan, in the early modern context, mentions that the anxieties about murderous wives, in reality, do not overlap with the actual threat women posed in England. She states that wives who were murdered by their husbands occurred at least twice as often as husbands murdered by their wives, according to the statistics. However, killing a husband or a master was a distinguished crime from other forms of murder and pronounced as analogous to killing a king –high treason- until the 1790s. Therefore, it was defined as "petty treason," which made it a heinous crime against familial and domestic authority committed by the "female home-rebel and house-traitor," which is why the perpetrators were burned at the stake like those convicted for high treason.[477]

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[476] Ibid., p. 179.

[477] Frances E. Dolan, *Dangerous Familiars: Representation of Domestic Crime in England 1550-1700* (Ithaca&London: Cornell University Press, 1994), pp. 21-25. As women killing their husbands, house traitors, were convicted from petty treason and widely represented in popular genres of the early modern Britain, in Japan women who transgerred the gender boundaries were depicted as *dokufu*, "poison woman". Christine L. Marran analyses, in her book, how these women – murderesses, poisoners, thieves, adultresses, prostitutes- and women's crimes that came to the stage with the rise of the newspaper serials in the 1870s "emerged as popular icon during a time of tremendous social and political upheaval that could potentially bring great changes to women's

Foyster, on the other hand, suggests that "women's violence had a dangerous and deadly potential" unlike men's. A violent wife, it was assumed, could threaten the masculinity of her husband while subverting "a political and gender order that rested on patriarchal ideals."[478]

Stephen P. Frank, likewise Dolan and Foyster, highlights how women tried for the murder of their spouses in post-emancipation Russia fascinated and frightened the educated society in such a magnitude that run completely counter its poor significance in judicial statistics. According to Frank, these cases were perceived as a threat to "the basic principles upon which Russia's patriarchal social order rested."[479] Another scholar, Ann-Louise Shapiro, in her study "Breaking the Codes," provides us with the contemporaries' rising obsession with criminal women in *fin-de-siècle* Paris. She notes that the explosion of a discourse about the female criminal, which was very disparate from the declining rate of female criminality, was, in fact, closely related to the heightened national anxieties of France about the traditional family, gender roles, and the crisis of depopulation. Although the number of suspected poisonings decreased gradually starting from the middle of the nineteenth century, she states, "the symbolic importance of poisonings persisted and anxieties about the possibility of being poisoned remained high…creating *stories that are more terrifying than the truth itself.*" The free circulation of poisonous

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lives." In a period of nation-building, Marran states, the emergence of stories about these marginalized women helped in the creation of national bodies which certainly "require spaces of exclusion." See Christine L. Marran, *Poison Woman: Figuring Female Transgression in Modern Japanese Culture* (Minneapolis and London: University of Minnesota Press, 2007), pp. xiii-xxv.

[478] Elizabeth A. Foyster, *Marital Violence: An English Family History, 1660-1875* (Cambridge, New York: CUP, 2005), p. 105.

[479] Stephen P. Frank, "Women and Crime in Imperial Russia," p. 102.

substances was again the reason making the possibility of poisoning more fearful and real than ever.[480]

Just like America, Britain, and France, the Ottoman state was not alien to poison at all as manifested by Vasil Naum Efendi at the beginning of the twentieth century, and the courts had long been become acquainted with poison murder. Though it never turned into a very sensational issue for the Ottoman Empire, legal registers show that poison was significantly a weapon of choice for murderers from the early 1840s to the first decades of the twentieth century. The fact that the appearance of poisoning trials in the Ottoman archives comes to the fore with the early 1840s cannot be conceived of as a coincidence, since the early 1840s denotes the outset of an era in which control and governance of the population became gradually a more and more important question for the state. In this respect, the introduction of modern forensic science at the School of Medicine, the control of the practices of physicians, pharmacists, midwives, herbalists, and drug merchants along with defining the framework of their professions, and, as related to it, the efforts of the government to take the poison sale under its control and regulate it can be considered as different facets of this very same question.

Unfortunately, spousal murder in general and husband killing in particular have never earned a mention by the Ottoman historians. In this regard, this part on poison murder attempts to fill a lacuna in Ottoman history by examining poisoning cases in the nineteenth and early twentieth century. Garthine Walker criticizes the existing historiography, suggesting that it has never presented women as

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[480] Ann-Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-Siécle Paris* (Stanford, California: Stanford University Press, 1996), pp. 71-73. Also see Ann-Louise Shapiro, "'Stories More Terrifying than the Truth Itself': Narratives of Female Criminality in *fin de siecle* Paris," in *Gender and Crime in Modern Europe*, eds., M. L. Arnot and C. Usborne (London: UCL Press, 1999), pp. 206-208.

perpetrators of violence, but rather preferred to depict them as victims, hence privileging victimhood over agency. The low incidence of female violence compared to men's, according to her, trivialized it.[481] In the Ottoman context, there is no such "existing historiography" of feminine crime and violence. Moreover, statistical data do not exist to chart the convictions of women or men. Therefore, it is impossible to know at the moment whether poison murder trials in the Ottoman context were part of a larger wave of rising or falling rate of female criminality in the Empire in general or in a given locality.

Although there are plenty of studies concerning women who took part in legal disputes about divorce, marriage, inheritance, and other property issues especially in the early modern context; domestic violence and specifically female violence has never been explored. In the forthcoming chapters, I will attempt to analyze a specific form of female violence, poison murder, within the context of nineteenth century Ottoman policies of regulation with regard to poison sale. I argue that these cases yield much about the social and everyday life in nineteenth century Ottoman countryside, such as the availability of poisons, domestic routines, patterns of marital conflict, the coping strategies with domestic violence, and attitudes toward women. I will focus not only on poisonous women, but also, as mentioned above, examine the efforts of the Ottoman government to regulate the circulation poison throughout the Empire.

This subject inevitably brings forward the question of accidental poisonings caused by lay healers, unlicensed physicians and pharmacists, and herbalists whose professions the government strove to regulate. Therefore, while examining the institutional and legal dimension of this regulatory process, I will elaborate on the

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[481] Walker, p. 75.

emerging rivalry within the medical profession caused by the intervention of the government to the poison issue and also the contest between the government and the practitioners of medicine. I will claim that the attempts of the Ottoman government to control and regulate poison sale could not have been successful to a great extent and poison continued to be available on demand in spite of the incessant measures introduced in the field. The shortcomings of the regulations also will be explored in this chapter.

Another issue related to poisoning cases necessarily comes forward as the question of proof. Starting with the 1840s, medico-legal proof, though gradually, turned out to be important for the Ottoman courts and forensic medicine started to be resorted to frequently in legal cases. Especially in suspicious deaths, dissection and chemical analysis were necessary medical instruments to detect the cause of death and identify the fatal weapon. Although the practice of dissection started at the School of Medicine in 1841, the first textbook about forensic science came with Said Bey's *Vazâif-i Adliye-i Etibbâ* more than forty years later in 1888/1889. Said Bey included in his book a directory issued by the School of Civil Medicine (*Tıbbiye-i Mülkiye*) which helps us to understand the responsibilities of physicians as medical experts in criminal cases in detecting cause of death. In Chapter 8, I will touch upon various problems encountered during the introduction of forensic science courses at the School of Medicine and then attempt to understand how forensic medicine was appealed in suspicious poisoning cases.

CHAPTER 6

THE REGULATION OF POISON SALE

The introduction of controls to the business of poison sale and medicine can be appreciated within the context of serious governmental concerns about the protection of life and property of the Empire's subjects which, following the Tanzimat, came up as a crucial problem in the Ottoman governments' political agenda. The security and safeguard of the population was, evidently, an issue related not only to law but also to public health and hygiene. Consecutive outbreaks of cholera epidemics starting in the 1820s and continuing up until the early twentieth century, the plague epidemic of 1836, and inadequate health services and hygiene conditions aggravating the losses in the Ottoman army in the everlasting wars of the nineteenth century made public health and hygiene very important subjects for the government.[482] The Quarantine Administration (*Meclis-i Tahaffuz*) was established in 1838 for that reason to contain epidemic diseases.[483] Subsequent regulations introduced in this period aimed to improve hygiene conditions of the streets and supervise butchers, bakeries, taverns, baths, druggists and herbalists whose activities were deemed to be directly related to public health.[484]

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[482] Oya Dağlar, *War, Epidemics and Medicine in the Late Ottoman Empire (1912-1918)* (Sota Publications, Haarlem, 2008), pp. xxx-xxxi; Nuran Yıldırım, "Tanzimat'tan Cumhuriyet'e Koruyucu Sağlık Uygulamaları," in *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi*, 5 (İstanbul, 1985), pp. 1320-1338.

[483] Yıldırım, "Karantina İstemezük," p. 19.

[484] See Mehmet Seyitdanlıoğlu, "Zokaklara Dair Nizamname," in *Tanzimat Döneminde Modern Belediyeciliğin Doğuşu* (İstanbul: Türkiye İş Bankası Kültür Yayınları, 2010), pp. 123-135. This Regulation was enacted in 17 Ramazan 1275 (20 April 1859). The eight section of the Provincial Municipal Law of 1877 also contains regulations about various commercial activities of the artisans and related public hygiene rules. See *Vilayet Belediye Kanunu*, 1877, pp. 17-19. Khaled Fahmy underlines the same issue when talking about the introduction of modern medicine in Egypt and the wide-range of duties the graduates of Qasr al-'Ainî were appointed. See "Medicine and Power," p. 28.

When the Council of Medicine (*Meclis-i Umur-ı Tıbbiye-i Mülkiye*) was established in 1841, one of its major responsibilities was to control and regulate the sale of medicine together with ascertaining whether physicians, apothecaries, midwives, and nurses had diplomas or not.[485] It later culminated in the total regulation of the profession with the proclamation of the first Pharmacy Act, *Nizamnâme-i Eczacıyan Der Memalik-i Osmaniye*, in 1852.[486] Obviously, the main concern behind this attempt to regulate the profession and the subsequent state interventions to the field of medicine and pharmacology was to demarcate clearly the professions, the expertise of authorized physicians and pharmacists from those lay healers. In fact, not only lay healers such as barber-surgeons and herbalists were declared incompetent and begun to be conceived as a threat to public health *–sıhhat-ı umumiye-*, but those physicians, surgeons and pharmacists who had previously owned gedik but did not have a license were declared as unqualified *–naehl kesan-* as well. Accordingly, no artisan could obtain a gedik unless he took an examination by which he would acquire an official certificate from the School of Medicine.[487]

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[485] Sedat Bingöl, "Tanzimat İlkeleri Işığında Osmanlı'da Adli Tababete Dair Notlar," *AÜ. DTCF Tarih Bölümü Araştırmaları Dergisi* 26, no. 42 (2007), p. 39; Rıza Tahsin, *Mir'ât-ı Mekteb-i Tıbbiye*, ed., Aykut Kazancıgil (İstanbul: Özel Yayınlar, 1991) (1322), p. 19. For an article about the diploma requirement for practicing medicine see Ceren Gülser İlikan, "Osmanlı Devleti'nde Sağlık Mesleklerinde Diploma Mecburiyeti," *Toplumsal Tarih*, no. 194 (Şubat 2010), pp. 80-84.

[486] Nuran Yıldırım, "Nizamnâme-i Eczacıyan der Memalik-i Osmaniye: Osmanlı Devleti'nde Eczacılar Nizamnâmesi-1852," in *IV. Türk Eczacılık Tarihi Toplantısı Bildirileri* (4-5 Haziran 1998) (İstanbul, 2000), p. 43. By obliging the would-be-apothecaries to perform apprenticeship for six years in a drugstore and then attend courses of "*ilm-i ispençiyari*" at the School of Medicine for two years, this regulation established the field in medical education. See the Articles 43- 49 of "Nizamnâme-i Eczacıyan" about apothecary apprentices. The prerequisite for attenting a drugstore for six years was later revised with "Beledî İspençiyarlık San'atının İcrasına Dair Nizamnâme" in 1861 and reduced to three years. See Nuran Yıldırım, "Dârülfünûn-ı Osmanî Tıp Fakültesi Eczacı Mektebi Öğrencilerine Ait Kabulnâmeler ve Şehâdetnâmeler," in *II. Türk Tıp Tarihi Kongresi* (Ankara: TTK Basımevi, 1999), p. 240.

[487] BOA., İ.MVL, 295/11953, 29 R 1270 (29 January 1854). *"…tabib ve cerrah ve ispençiyar esnafından şimdiye kadar bir takım naehl kesan evkaf-ı hümayun hazinesinden gedik alarak icrâ-yı* zanaat etmekde iseler de bu keyfiyet hıfz-ı sıhhat-ı umumiye madde-i mühimmesine muzır ve mugayir *olduğundan…tebabet ve ispençiyarlık edeceklere lede-l-imtihan mahâret ve ehliyet tayin ve tahakkuk etmedikce ruhsat verilmemesi…"* After the Tanzimat, the number of pharmacy shops that

Legal Restrictions and Regulations on the Sale of Poison and Medicine

Until 1852, there were really no legal restrictions on the sale of medicine and poison. They could be purchased from any shop, especially from herbalists (*attar*).[488] In İstanbul, especially in Mahmut Paşa, there were many medicine shops (*hekim dükkanı*) retailing indiscriminately any kind of medicine to their customers and examining people.[489] Paste, pills and syrup containing opium and prepared by herbalists and other artisans were common remedies resorted to by mothers for soothing infants, which sometimes caused their death.[490] Other than physicians, surgeons, pharmacies and herbalists, medicine and poison were obtainable from street vendors as well. Of course, this situation was not peculiar to the Ottoman Empire. For instance, in nineteenth century France, substances such as mercury, laudanum and arsenic "circulated relatively freely as both medicine and poison."[491] Just as in the Ottoman Empire, "any poison could be bought and sold by anyone" in Britain too, until the introduction of the first regulation –the Arsenic Act.[492] In

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could be opened in İstanbul was restricted with the enforcement of gedik. This rule was preserved in 1852 Pharmacy Act. However, the new regulation in 1861 annulled the restriction about gedik. See Mehmet Karayaman, "Türkiye'de Eczane Sayılarının Sınırlandırılmasına İlişkin Düzenlemeler ve Sonuçları," *Osmanlı Bilimi Araştırmaları* 10, no. 1 (2008), pp. 115-116. There were 60 pharmacists in İstanbul in 1868 while it reached to 304 in 1888. See Turhan Baytop, *Eczahane'den Eczane'ye: Türkiye'de Eczaneler ve Eczacılar (1800-1923)* (İstanbul: Bayer, 1995), p. 56.

[488] In 1844, there were 492 attars and 52 pharmacists in İstanbul. See Nuran Yıldırım, "İstanbul Eczanelerinde Hasta Muayenesi ve Tıbbi Tahlil Laboratuvarları," *Yeni Tıp Tarihi Araştırmaları*, 2-3 (1996/7), p. 74.

[489] Turhan Baytop, *Türk Eczacılık Tarihi* (İstanbul, 1985), p. 103.

[490] BOA., A.MKT.MVL, 2/15, 22 C 1261 (28 June 1845).

[491] Shapiro, *Breaking the Codes*, p. 73.

[492] Peter Bartrip, "A Pennurth of Arsenic for Rat Poison: The Arsenic Act, 1851," *Medical History* 36 (1992), p. 54; and "How Green Was my Valance?: Environmental Arsenic Poisoning and the

Chicago, it was until the Pure Food and Drug Act of 1906 that "the federal government did not enter the business of poison regulation".[493]

With the enactment of the Act of 1852, only the druggists holding a license from the School of Medicine and registered were given the authority to prepare and sell medicine and poison.[494] Though the Act primarily aimed at the supervision of the pharmacy profession, Article 13 was a regulation about poisons. It prescribed the storage of poisonous substances such as arsenic and corrosive sublimate in locked cabinets separate from other medicine, which obviously aimed at preventing accidental poisonings and malpractices.[495] As a matter of fact, what prompted the government to introduce such an Act, according to Nuran Yıldırım, was an incident that occurred in 1850 which led to the death of Emine Hatun in İstanbul. Her tragic death was caused by a druggist's apprentice called Kosti, who mistakenly put strychnine -*kargabüken hülasası tozu*-, a fatal poison, instead of santonin into the mixture while preparing the prescription written by the patient's doctor.[496] Admittedly, malpractices, such as this, and accidental poisonings were not rare at

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Victorian Domestic Ideal," *The English Historical Review* 109, no. 433 (September 1994), p. 893; Katherine D. Watson, *Poisoned Lives: English Poisoners and Their Victims* (London and New York: Hambledon and London, 2004), p. xi; Elizabeth A. Foyster, ibid., p. 106. Peter Bartrip states that the first attempt to regulate and restrict the availability of poison in Britain, in fact, came to the fore with the Bill of 1819. However, it was opposed by the Committee of Associated Apothecaries and the Bill was withdrawn. See "A Pennurth of Arsenic," p. 58.

[493] Essig, p. 5.

[494] Nuran Yıldırım, "Nizamname-i Eczacıyan," pp. 50-51. Also see the Article 1 and 2 of the "Nizamnâme-i Eczacıyan": *"Mekteb-i Tıbbiye-i Şahâne veya Avrupa mekâtibi tarafından yeddinde eczâcı ustası diploması olmadıkça hiçbir kimsenin eczâcılık etmeğe ve eczâcı dükkanı güşâd eylemeğe ve ilaç yapıp satmağa salâhiyyeti olmayacaktır".*

[495] Article 13 of the Regulation: *"Eczâcı olan kimesne sıçanotu ve aksülümen ve bunlara mümasil eczâ-yı semmiyeyi ayrı ve emin bir mahalle vazedecek ve ol mahallin miftahını kendi yanında hıfz eyleyecektir".* See ibid., 66. Bayhan Çubukçu wrongly states 1861 *Beledî İspençiyarlık Sanatının İcrasına Dair Nizamnâme* as the first regulation that pronounced an article about the storage of poisonous substances in pharmacy shops. See Bayhan Çubukçu, "Türkiye'de Eczane ve Ecza Depolarında Şiddetli ve Hafif Zehirlerin Muhafazası," in *IV. Türk Eczacılık Tarihi Toplantısı Bildirileri* (4-5 Haziran 1998), ed., E.Dölen (İstanbul: Marmara Üniversitesi Yayınları, 2000), p. 387.

[496] Ibid., 44. Also see BOA., A.AMD, 20/73, 25 Za 1266 (2 October 1850).

all.[497] After the Crimean War, the number of pharmacies increased in İstanbul due to the foreign physicians and pharmacists coming to the capital city with the troops of European states. Besides that, in spite of the limited number of pharmacy shops, which was forty-five in 1868, the number of herbalists practicing medicine was around five hundred. There was an increasing competition going on between the two professions which eventually made the pharmacists ask the government to outlaw the trade of all herbalists in İstanbul, claiming that they were harmful to the public health. In fact, not only the herbalists, but the pharmacists were also a source of danger for the public health and safety. The drugs were not kept in labelled bottles in the pharmacies. Poisons and other medicine were on the same shelf without any label identifying them,[498] inviting malpractice and poisonings. Furthermore, the profession of pharmacy in İstanbul had been carried out predominantly by incompetent or unqualified apprentices who were mostly deemed responsible for such malpractices.[499]

Besides those apprentices, various artisans, without any formal training on the subject, were in the business of poison sale and medicine as well. The wife of

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[497] For the description of various cases of malpractice see Nuran Yıldırım, "Tarihimizden Malpraktis Olguları," in *Türkiye Biyoetik Derneği II. Ulusal Tıbbi Etik Kongresi Bildiri Kitabı*, eds., B.Arda, R.Akdur and E.Aydın (2001), pp. 186-196. Also see Ayten Altıntaş, "1853 Yılında İstanbul'da Bir Eczacının Cezalandırılması," *Yeni Tıp Tarihi Araştırmaları* 4 (1998), pp. 181-186. In such malpractices, the pharmacists were subject to imprisonment for six months according to the Act of 1852. See BOA., A.MKT.NZD, 103/114, 5 Ra 1270 (6 December 1853).

[498] Baytop, *Türk Eczacılık Tarihi*, pp. 73, 78-80, 102-103.

[499] For the document revealing the need for intervention to the profession of pharmacy and proposing the enactment of the Pharmacy Act see BOA., İ.MVL, 236/8324, 23 B 1268 (13 May 1852). *"...Dersaadet ve bilâd-ı selâsede kâin eczâcı dükkanlarında bulunanların ekseri çırak makulesinden olarak verilen reçeteleri bilir bilmez yapmakda olmalarından dolayı pek çok yanlışlık ve uygunsuzluk vuku' bulmakda olub terkib-i eczâ maddesi ise şâyân-ı i'tinâ' fünûn-ı dakika ve nazikeden bulunduğuna...binaen o makule dükkanlarda işleyecek usta ve kalfaların mekteb-i tıbbiye-i şahanede usulü üzere bir kere imtihan verüb malumat-ı mübteniyesini musaddık yeddine şehadetnâme almadıkça hiçbir yerde icrâ-yı zanaat edememesi gibi bir zabıta-ı kuvviye tahtına konulması..."* According to Baytop, the insufficient number of graduates of pharmacy from the School of Medicine was the reason behind the predominance of apprentices in the field. See "Türkiye'de Eczacılık Öğretimi'nin 150. Yılı", *Eczacı* (Mayıs 2003), p. 9.

Agop in Samatya was among the victims of such poisonings caused by a shoemaker.[500] In 1848, she took some pills prepared by Papuşçu Tanaş and was poisoned. By chance, she did not die, but when the pills she had taken were examined by a physician, it came out that the composition of the pills was poisonous containing mercury and calomel. The same year, when Ohannes the apprentice took some medicine prepared by Tailor Ohannes for his Chlamydia, he also got poisoned because of the composition of the medicine which again contained mercury and calomel. Both Tanaş and Ohannes were condemned to prison for three months since it was necessary to punish such unqualified persons who dared to give medicine to others though they were not physicians, to be deterrent to others.[501]

Again in 1848, this time a boatman, Kayıkçı Karabet, was convicted of having caused death as he had prescribed medicine containing mercury and some poisonous substances in spite of the fact that he lacked any knowledge about medicine.[502] Although he caused death, the people of his neighbourhood, Rumelihisarı, submitted a petition to the government asking for mercy for the boatman. However, the government was convinced that he must have been punished to be deterrent to others. Just like Tanaş, Ohannes, and Karabet, Sivaslı Esador was not a school-trained physician either.[503] Although he was a farmer, he had announced in Samsun that he was a physician and soon started to carry out the

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[500] BOA., İ.MVL, 127/3323, 15 L 1264 (14 September 1848).

[501] *"…mersumlar kendi işlerini bırakub hekimlik iddiasıyla şuna buna uygunsuz muâlece vererek halkı …(?) ilkâ etmekde olduklarına ve bu makuleler hakkında mücâzât-ı layıkanın icrâsıyla emsallerine ibret gösterilmesi icâb-ı halden bulunduğuna binaen mersumların li-ecl-el-tedib hapisleri tarihinden itibaren zabtiye tarafında üçer mah müddet hapisleri…"*

[502] BOA., A.MKT, 114/19, 2 R 1264 (8 March 1848).

[503] BOA., MVL, 307/27, 7 B 1273 (3 March 1857); A.MKT.NZD, 244/2, 13 R 1274 (1 December 1857).

profession. The fact that he was not an authorized physician trained at the Medical School came out when the pills he had prepared caused the death of two persons because of the poisonous substances they contained. He was taken into custody immediately and asked for his diploma. Staying in prison for a year, he was released and sent back to his town only after producing a guarantor (*kefil*), who guaranteed that Esador would not make or sell medicine anymore.

It is not surprising to see that the restrictions and new provisions introduced with the Act did not become deterrent at once.[504] After three years following the act, there were still barbers who were permitted to draw blood and pull out teeth in their shops in İstanbul, but also abused this authority by acting like surgeons or physicians. Besides these barber-surgeons there were other artisans, especially herbalists, practicing medicine and vending drugs in spite of the proposed prohibition. It is noteworthy that the general secretary of the *Gazette Médicale D'Orient,* Narranzi, was anxious to claim in the very first issue of the journal that empirics and charlatans were free to practice medicine in Turkey just as in Britain. Poisons such as arsenic, sublimate, and opium, he said, could be obtained easily from the Grand Bazaar and Jewish Bazaar.[505] Accounts of accidental poisonings and malpractice were also commonplace in the *Gazette*. An exemplary case revealing the hazardous consequences of the free circulation of poison was published in the

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[504] Although the Act had been enacted in 1852, it was put into practice in the countryside four years later after its implementation in Dersaadet and Bilâd-ı Selase. See Nuran Yıldırım, "Nizamnâme-i Eczâcıyan," 49. Of course, this does not mean that accidental or criminal poisonings or malpractices were rare in the countryside. In 1853, the poisonings that occurred in İzmit, İzmir and Kütahya brought about the death of many people and caused fear and anxiety in these districts. In Kütahya, a merchant and a derviş were poisoned because of some cream (*kaymak*) they had consumed. After the analysis of the cream , it came out that it was not an ordinary food poisoning since the cream contained arsenic. Eventually, many people died of poisoning in the district and the shops vending consumer goods (*havâyic-i zaruriye*) were sealed off by the local government due to the suspicion that all goods could be poison-laced. See BOA., A.MKT.UM, 56/76, 18 C 1269 (29 March 1853).

[505] *Gazette Médicale D'Orient*, no. 1 (April 1857), p. 7. Hüsrev Hatemi and Aykut Kazancıgil, "Gazette Médicale D'Orient'in İlk Sayıları," *Tıp Tarihi Araştırmaları*, no. 15 (2007), p. 34.

second issue of the journal. It was announced that an apprentice working at an unlicensed pharmacy shop had prepared an ointment with a strong solution of corrosive sublimate and lime for a customer asking for medicine for his syphilis. The medicine the apprentice prepared caused gangrene after which the apprentice was sent to prison for a month and the pharmacy was closed down for eight days.[506]

The uncontrolled involvement of these artisans, apprentices, and unlicensed pharmacists in the field of medicine was significantly considered as a source of evil and threat to public health.[507] The Act had introduced certain sanctions for those transgressors but evidently they were not strictly attended. The Supreme Council of Judicial Ordinances ordered the strict application of rules and regulations introduced by the Pharmacy Act for those apothecaries who had been working without license and for the ones who moved their shops to another place without permission since it had been detected that there were fifty-six pharmacies like this in İstanbul and in *Bilâd-ı Selase* (three townships: Galata, Üsküdar and Eyüp) acting contrary to law.[508] Facing these problems, the government consequently enacted legislation that would supposedly be deterrent for transgressors.

The 1858 Ottoman Penal Code introduced specific punishment for selling poison without a guarantee from a third person. According to Article 196 of the Ottoman Penal Code, the sanction for this offense was prison from one week to two years with a fine of up to twenty-five gold *mecidiye*s.[509] Nevertheless, as archival

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[506] *Gazette Médicale D'Orient*, no. 2 (May 1857), p. 32.

[507] BOA., A.MKT.MVL, 70/41, 17 R 1271 (7 January 1855).

[508] BOA., A.MKT.MVL, 107/54, 14 L 1275 (17 May 1859).

[509] Article 196 of the 1858 Ottoman Penal Code: "*Sıhhat-ı umumiyeyi ihlal edecek eczâ-yı muzırra ve karışık meşrubat ve kefaletsiz semmiyat füruht edenler bir haftadan iki seneye kadar habs olunur ve bir mecidiye altundan yirmi beş mecidiye altuna kadar cezâ-yı nakdî alınır ve sattığı eşya her ne ise canib-i hükümetten zabt olunur".* See *Fihrist-i Kanûnnâme-i Cezâ*, p. 45. In 1863, when Pino Hatun

registers reveal, the intervention of the government to the business of poison proved to be quiet ineffective as the sanction by law did not impede the vendors from selling fatal poisons.

The most important reason for it was that various poisons, especially rats bane (*sıçanotu, semm-ül-fâr*) and corrosive sublimate (*aksülümen*, bichloride of mercury, $HgCl_2$) had a vast range of applications and found many legitimate uses in daily life and therefore, were frequently requested for different purposes. Arsenic was a poison extensively used for killing rats besides ridding head lice. It was also employed in many trades and occupations. In addition to being an ingredient in many medicines, it was a poison used by women in cosmetic preparations and sometimes resorted to as an aphrodisiac and an abortifacient.[510] Furthermore, it was the poison "most frequently chosen for the purpose of committing murder" due to "the ease with which it may be secretly administered."[511]

Corrosive sublimate, a mercurial poison, on the other hand, was a poison employed in photography besides many other crafts.[512] In 1903, when the Police

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committed suicide by the poison, which she had bought from the Jewish peddler (*çerçi*) Çolbun, Çolbun was first condemned to 6 months prison and 3 golden mecidiye according to the Article 196 of the Ottoman Penal Code. Later, his sentence was increased to 1 year prison and 5 golden mecidiye since causing death because of vending poison without a guarantor contrary to law was considered as an aggravating factor. See BOA., MVL, 974/9, 24 C 1280 (6 December 1863).

[510] George Robb, "Circe in Crinoline: Domestic Poisonings in Victorian England," *Journal of Family History* 22, no. 2 (April 1997), p. 182. Peter Bartrip also puts forth in detail how arsenic was widely used for various purposes from manufacturing, industry and agriculture to medicine in mid-Victorian Britain and states that "the typical domestic environment was full of products containing a poison (…) exposing residents to the risk of (at least) low-level absorption of a virulent poison." See "How Green Was my Valance?," pp. 894-896. Katherine Watson indicates that in the 18th and 19th century England, arsenic was among the cheapest poisons which was affordable even by the poorest. Between the years 1750 and 1914, 45 per cent of known poison-related crimes were committed by arsenic. In a total of 540, arsenic was used in 237 cases. See Katherine Watson, ibid., pp. xii and 33.

[511] Robert Christison, *A Treatise on Poisons* (Adam Black: Edinburg, 1829), p. 172.

[512] Corrosive sublimate, like arsenic, was among the most frequently used poison for criminal purposes. It was the most important of the mercurial poisons and "commonly met with in the form of a heavy, snow-white powder, or of small, broken crystals, or in white, compact, concave, crystalline cakes." See Christison, p. 328.

Department had been informed that Bulgarian insurgents were planning to poison the drinking water (*Terkos suyu*) of İstanbul, some bastions in Çatalca would be dynamited and a senior soldier along with Çatalca governor would be assassinated, it triggered a panic and invited an urgent investigation. According to the intelligence gathered, there were also some Armenians in this conspiracy acting as collaborators. Not surprisingly, several Armenian printing houses in Bâb-ı Ali were raided by the police during the investigations, but what was found was no more than some newspapers the entry of which to the Ottoman lands was forbidden, except the poison found out at Karabet Tataryan's house. When his house was raided and searched, the police detected fifty grams of corrosive sublimate at the bottom of a bottle. Notwithstanding, it came out during the investigation that neither Karabet nor the detected poison was related to the conspiracy. Karabet's deceased son had been a photographer and the corrosive sublimate was a substance used in photography which was also acknowledged by some photographers who had been asked by the police to attend the inquest as expert witnesses.[513]

Besides photography, corrosive sublimate was a poison widely resorted to kill the vermin pestering cattle and sheep.[514] It also could be obtained very easily, especially in the Rumelian countryside, since it was a substance used as an ingredient in cosmetics. Women commonly used it in the form of ceruse –*düzgün*- to bleach or blush their faces and therefore it was widely available in herbalists.[515] A case from Rusçuk (Ruse), a district of Silistre Province in 1862, illuminates clearly

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[513] BOA., Y.PRK.ZB, 33/57, 9. B 1321 (1 October 1903).

[514] BOA., DH.MKT, 500/17, 29 Ra 1320 (6 July 1902).

[515] Nejat Yentürk states that *düzgün* (ceruse) was the name given to all kinds of cosmetics such as *allık* (luminizer), *aklık*, and rastık (kohl). See "Osmanlı Döneminde Süslenme ve Bakım Ürünleri," in *Beden Kitabı*, eds., E.G.Naskali and A.Koç (İstanbul: Kitabevi Yayınları, 2009), pp. 345-347.

how a local herbalist having vended corrosive sublimate defended himself at the court claiming that the poison had been widely in use by local women for the purpose of cosmetics.

In the autumn of 1860, a twenty-five year old woman, Ayşe, was convicted in Rusçuk of being the alleged murderer of her husband, Saka Mehmet. After the medical examination of the corpse and according to the testimony of a neighbour woman called Rüguş Kadın, who had informed the government of the murder, it came out that Ayşe had poisoned her husband with corrosive sublimate *–aksülümen-* by crushing it in a small cup of water and making him drink the poisonous mixture as medicine. As the remains of the poison were found in the cup during the investigation process and the Jewish herbalist *–attar-* Yoda also appeared in the court as a witness asserting that Ayşe had recently bought "*kırk paralık aksülümen*" from his shop, she became even more hopeless against the charges. In the face of strong evidence produced by the inquest establishing her guilt, she had no choice but to confess her crime though she had denied all claims against her during her first interrogation at Silistre. Ayşe was sentenced to fifteen years prison in accordance with Article 172 of the 1858 Ottoman Penal Code. Rüguş Kadın, who was claimed to be her collaborator by Ayşe, was released since there appeared no evidence against her except for Ayşe's allegations. Surprisingly, Jewish herbalist Yoda was also released even though the criminal law was strict about those herbalists or apothecaries who sold poison without a guarantee from a third party.[516] Yoda certainly would be punished if his statements had not been so convincing before the court. However, what he told to the interrogators made clear that the poison

[516] BOA., İ.MVL, 462/20858, 1 N 1278 (2 March 1862); MVL, 942/11, 12 Ş 1278 (12 February 1862); A.MKT.MVL, 143/53, 28 N 1278 (29 March 1862).

purchased by Ayşe to kill her husband was among many other substances which had been used by women in Rumelia for preparing various cosmetics and Yoda was unaware of the fact that what he had done was against law.[517]

According to the testimony of Attar Yoda, a thirty-six year-old herbalist exercising his profession for six years, Ayşe Hatun was a regular customer for him frequently visiting his shop and purchasing substances like corrosive sublimate, mercury and kalinite. The day when she came to shop, she asked for "*kırk paralık* corrosive sublimate" along with some other articles. Without having any suspicion, the herbalist gave her the poison she requested and further asked if she wanted to buy mercury as well, since mercury was one of the ingredients that should be used in producing *aklık* (ceruse) together with corrosive sublimate. Apparently, Attar Yoda had been vending poison such as corrosive sublimate and arsenic for a long time and did not know the requirement of the Ottoman Penal Code, which introduced a provision about producing a guarantee from a third person in order to purchase poison.[518] Yoda's testimony was acknowledged by the Silistre Council as strong evidence against Ayşe. What also came out with the testimony of Yoda and recognized as a deficiency of government by the Supreme Council was that the regulation that had been introduced by law in 1858 about poison sale, so far, could

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[517] *"..sülümen oraca nisâ tâifesinin yüzlerine sürdükleri düzgün terkibi eczâsından olub katile-i mezbûre ise zaten bunun ...(?) bulunduğuna binaen daima kendisinden almakda olduğu..."* See BOA., MVL, 942/11, 12 Ş 1278 (12 Febrary 1862). A person who committed an act which was forbidden with the new penal code but had not been illegal earlier, was not liable before the law if he did not know that it was forbidden . See Hüseyin Galib, *Nazariyât-ı Kanûn-ı Cezâ* (İstanbul, 1879), pp. 94-95.

[518] *"S: Civanın lüzûmu olduğunu nereden anladın da sordun idi / C: Kadınların kullandıkları aklığı civa ile sülümenden yaptıklarını bildiğimden ve sair vakitte de bu hatun benden sülümani ile beraber civa dahi almış idüğünden ve kendisinin aklık imaliyle sair kadınlara sattığını söylemiş olduğundan onun içün sordum... bu maddeye gelince kefaletle satılmak iktizâ edeceğini bilmez idim yasak oldu şimdi hiç satmıyorum / S: Yasak denmesinin manası bir şeyin bütün bütün men' olunmasıdır kefâlet maddesi başkadır senden sülümeni alan bu Ayşe Hatunun ve daha başkalarının kefilleri var mıydı bu kimdi / C: Yoğdu kefilsiz sattım.*" See BOA., İ.MVL, 462/20858, 1 N 1278 (2 March 1862).

not have been implemented in Rumelia and Yoda had unknowingly supplied the poison.[519]

Not only Ayşe's case but other similar cases as well show that the government's efforts to introduce restrictions into the sale of poison proved to be unsuccessful in the region. Just after Ayşe had poisoned her husband Saka Mehmet in Rusçuk district of Silistre, Kıbtiye Emine poisoned her husband Hasan in another district of Silistre, Şumnu (Shumen).[520] The same year, this time in Vidin, Miladinu poisoned her husband's uncle with rat poison, which she had acquired from Boyacı İstopan through her neighbour.[521] In fact, she had planned to kill her husband, but accidentally it was not her husband who consumed the poison-laced beans, but his uncle. Following that after a few months, Ümmügülsüm committed suicide in Rusçuk with rat poison, which she had bought from the Jewish peddler Çolbun.[522] In 1863, İstamenka, whose story we will examine in detail later, poisoned her husband in Niş, which was followed by the suicide of Pino Hatun in Vidin.[523] Niş and Vidin were very close districts in the western part of the region, while the districts of Silistre, Rusçuk and Şumnu were in the east, again not very far from each other. These consecutive breakouts of poison murders and suicides revealed explicitly how easy it was to obtain poison. For cosmetic purposes, like the trial of Ayşe yielded, or for killing lice or rats, fatal poisons were available from peddlers, local grocers,

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[519] *"…kefilsiz satılmaması hakkında olan memnûiyyeti bilmediğini merkum attar Yoda'nın ifade ve beyan etmesine ve fi-l-hakika bunun oraca olvecihle taht-ı memnûiyette olmadığı anlaşılarak bu kere ilan edilmiş olmasına göre attar merkum ma'zûr olub hükm-ü kanûnun icrâsına mahal görülememiş olmağla ba'de-mâ memnûiyyet-i mezkurenin devamına i'tinâ' olunması…"*

[520] BOA., MVL, 939/13, 22 R 1278 (27 October 1861).

[521] BOA., A.MKT.MVL, 129/70, 9 M 1278 (17 July 1861). For Miladinu's interrogation report see Appendix H.

[522] BOA., MVL, 934/28, 27 S 1278 (3 September 1861).

[523] BOA., İ.MVL, 555/24903, 6 S 1283 (20 June 1866); MVL, 974/9, 24 C 1280 (6 December 1863).

dyers, and herbalists for anyone who wanted to get rid of someone or commit suicide.

Under these circumstances, as is clear from the correspondences between the local and the central governments, one of the most important tasks to do when any accidental, hidden or intentional self poisoning had been reported was to locate the poison vendor and carry out an inquiry to make clear whether any transgression of law had occurred. In such cases, the poison vendor was the main agent conceived as responsible by the government since he was the one who had violated the law and ignored the orders which had caused the death. Therefore, bringing into open those vendors of poison became as important as detecting the culprits for the government. Even sometimes the investigation into the vendor went far beyond the investigation about the murderess. The interrogators strictly pursued the traces of poison vendors during the criminal inquests and forced the defendants to reveal the identity of poison vendors along with instigators and accomplices.

A New Attempt at Regulation:

Beledî İspençiyarlık San'atının İcrasına Dair Nizamnâme

In February 1861 (22 Receb 1277), the Act of 1852 was revised, published and announced under the name of *Beledî İspençiyarlık San'atının İcrasına Dair Nizamnâme* (Municipal Pharmacy Act).[524] It was indeed a new attempt, along with

[524] See BOA., ŞD, 2396/15, 7 M 1289 (17 March 1872). Also see *Düstur*, Tertip I, Cilt 4, pp. 429-435. For the transcribed text see Turhan Baytop, *Türk Eczacılık Tarihi*, pp. 260-264. In 1888, the article 20 of the *Beledî İspençiyarlık Nizamnâmesi* was revised. Accordingly, it was forbidden for the pharmacists to prepare any mecidine which was prescribed by physicians but without stamp or containing excessive amount of poisonus articles. See BOA., İ.MMS, 98/4150, 5 N 1305 (16 May 1888). Nuran Yıldırım states that *Beledî İspençiyarlık Sanatının İcrâsına Dair Nizamnâme* remained in effect till the proclamation of *Alelumum Eczâhaneler Talimatnâmesi* in 1916 though it was criticised a lot as soon as it was enacted. See Nuran Yıldırım, "Eczacılar ve Eczahaneler Hakkında Kararname-1922," in *Osmanlı Bilimi Araştırmaları* 4, no. 2 (2003), p. 84.

Tabâbet-i Belediye Nizamnâmesi (Regulation for Municipal Physicians), to control persons who were practicing medicine and pharmacy in Dersaadet and the countryside.[525] It was clear that there were many incompetent and unqualified persons who were practicing traditional medicine although not school-trained. Once working without official training or diploma and not recognized as a "danger," these persons now began to be treated as a threat to public health. In place of these unqualified persons, the government would employ provincial physicians and pharmacists who had studied science and medicine.[526] Evidently, the discourse of public health was gaining a new impetus. The so-called hazardous effects of uncontrolled professions in the field of medicine and pharmacology to the public were supposed to be eliminated by governmental regulative measures. However, as far as the archival registers reveal, these measures did not create a massive effect.

The efforts of the government to control the sale and use of poison through the announcement of the revised regulation failed.[527] The artisans of the Spice Bazaar in İstanbul and the herbalists continued to sell poisonous substances like arsenic and corrosive sublimate. In April 1861, the government informed the municipality that the artisans in İstanbul should be noticed about the fact that they

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[525] For the text of "Tabâbet-i Belediye Nizamnâmesi" (7.R.1278/12 October 1861) see Mehmet Seyitdanlıoğlu, ibid., pp. 155-158.

[526] BOA., A.MKT.NZD, 315/39, 29 Za 1276 (18 June 1860). *"...bunların içlerinde bir takım bigâne-i fen ve tecrübe eşhâs bulunarak halkın canını muhâtaraya koymakda ve pek çok uygunsuz haller zuhura gelmekde olduğundan... memâlik-i mahrûsa-yı şahanede fenn-i tıb görmeyerek tecrübe ve görenek ile müdavât etmekde bulunanların külliyen men' olunmasıyla beraber tabib olmayan mahaller maliye nezareti celilesinden lede-l-tahkîk oralara birer tabib ile birer ispençiyar intisâb ve irsâl olunması..."*

[527] We learn it from the correspondance between the School of Medicine and the Grand Vizierate. See BOA., ŞD, 2396/15, 7 M 1289 (17 March 1872).

would be punished according to the law –*nizâmen*- if any medicine detrimental to health –*eczâ-yı muzırre*- or poison were detected in their shops by the inspectors.[528]

Weed (*esrar*) was also among the substances detrimental to health. As far as the archival registers reveal, it was widely available in many coffeehouses around the districts of Tahtakale, Kasım Paşa and Hasan Paşa in 1863. Even the coppersmiths in Bayezid sold the substance. Since it was an article used in medicine and the trade of it was free, it was a perplexing issue for government to decide whether to ban it or not. The traders were paying the tithe and the customs for weed which was making it, in fact, a quite legitimate business. However, when a man seriously fell sick because of the weed he smoked at Mehmed Efendi's coffeehouse in Tahtakale, the issue of public health came to the fore again. After subsequent investigations, it was decided that many artisans other than pharmacists were in the business of weed, which impelled the government to take immediate precautions about it. All artisans were forbidden to sell weed except pharmacists who would be allowed to keep only a limited amount of it in their shops for medical purposes. Not to mention, the transgressors would be punished according to Article 196 of the Ottoman Penal Code.[529]

The situation in the provinces was not very different from İstanbul either. As late as 1875 in Boğazköy (Cernevoda) Village of Mecidiye (Medgidia) sub-district, it was established by the provincial physician that a shop selling herbs like opium and castor oil was also vending rat poison and corrosive sublimate. Since any poison sale was banned by the government, the detected poisons were confiscated and

[528] BOA., A.MKT.MHM, 216/100, 19 L 1277 (30 April 1861).

[529] BOA., İ.MVL, 495/22414, 23 Ca 1280 (5 November 1863).

destroyed by the village chief.[530] In Trabzon, Erzurum and Van, there were no pharmacists with official diplomas. According to an article written by Pierre Apery, the secretary of *Societe de Pharmacie de Constantinople*, and published in the *Societe*'s journal in 1880, the number of herbalists was even far more, exceeding the number of these unlicensed pharmacists in these cities. There were only four pharmacists in Trabzon though there were many herbalists selling medicine. He claimed that "these shop owners, who had no knowledge about the profession of pharmacy, could cause immense harm for public health. Unfortunately, the situation is not different all around Ottoman lands." In Erzurum, there were only three pharmacists. These pharmacists were selling sausage and dried meat in their shops along with dispensing preparations of medicine. In Van, a pharmacist, Artin Efendi, pulled out teeth, dressed wounds, sold medicine and shaved hair and beards in his shop. In another shop, Dr. Mihran sold tea, coffee, and sugar along with chemical and poisonous substances like quinine, calomel, bicarbonate, and castor oil.[531]

The Regulation about Herbalists and *Kökçüler*

In May 1885, two codes were enacted by the central government which again aimed at regulating poison sale.[532] These new regulations -*Attar ve Aktar ve Kökçüler*

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[530] BOA., C.SH, 22/1092, 14 Ra 1291 (20 April 1875). At the time, Mecidiye was a *kaza* of Tulcea (Tulça) district of Tuna Province.

[531] Pierre Apery, "Situation de la Pharmacie a Trebizonde, a Erzeroum et a Van," *Journal de la Societe de Pharmacie de Constantinople* 2 (1880), p. 99 cited by Baytop, ibid., pp. 105-106.

[532] BOA., ŞD, 2484/1, 3 R 1302 (20 January 1885). For the transkription of these texts see Naşid Baylav, *Eczacılık Tarihi* (İstanbul: Yörük Matbaası, 1968), pp. 255-258 and Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediyye*, no. 6 (İstanbul: İstanbul Büyükşehir Belediyesi Yayınları, 1995): pp. 3069-3073. *Memleket Etibbâsı ve Eczâcıları Hakkında Nizamnâme*, which was enacted in 16 April 1888, codified the salaries of provincial pharmacists. Accordingly, provincial pharmacists that would be employed in the districts, *liva*s and provinces would receive salaries according to their ranks which would be defined by the administrative unit in which those pharmacists were employed. While district pharmacists would be paid four hundred guruş with *rütbe-i râbi'a*, *liva* pharmacists would get six hundred guruş with the same rank. Provincial pharmacists, on the other hand, would have a salary

Hakkında Nizamnâme (The Regulation of Herbalists, Drug Merchants, and Kökçüler) and *Eczâ Tüccarları Hakkında Nizamnâme* (The Regulation of Drug Merchants)- took drug merchants (*akkar*), herbalists (*attar*) and their business under the control of the Ministry of the School of Medicine (*Nezaret-i Umur-ı Tıbbiye-i Mülkiye*) and proposed that those artisans in the herb and medicine trade should take a license from the municipality and be registered in the Council of Medicine in order to perform their business. Hereafter, drug merchants would be obliged to keep two separate books, one for registering the poison that would be sold to pharmacists and another one for artisans who had to purchase poisons such as mercury, hydrochloric acid and yellow arsenic (*zırnık*) to carry out their trade. The artisans would also be obliged to take a certificate –*esnaf tezkeresi*- from the municipality or if in the provinces, from the local councils, to prove that they were really in the business. In the report sealed by the Council of State, it was indicated that if herbalists were forbidden to sell those articles which were necessary for artisans such as photographers, engravers (*nakkaş*) and fishermen in their crafts or if they could be purchased only by wholesale, this would impede the provisioning of those articles and impair trade. Therefore, it was suggested that herbalists were to be allowed to purchase such substances from drug merchants on the condition of producing a guarantee from the wardens of their trade guilds (*esnaf kethüdası*) and selling them only by acquiring a guarantee from customers.[533] However, this could have brought

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of eight hundred guruş with *rütbe-i sâlise*. Provincial pharmacists would be promoted after they had performed business for three years. See Ergin, ibid., 3067-3068.

[533] BOA., İ.MMS, 79/3461, 22 B 1302 (7 May 1885). *"...mezkur defterdeki eczâ meyanında civa ve tuz ruhu ve zırnık gibi bazı esnaf ve ahalinin suret-i .. mübaya' ve isti'maline mecbur olduğu eşya dahi mevcud olub mesela bir balıkçının zanaati iktizasınca tedarik ve mübaya'ya mecbur bulunduğu civayı attarın satması men' olunur ve eczâ tüccarı dahi toptan satmağa mecbur tutulur ise onu tedarikte müşgülata uğrayub ticareti sektedâr olacağından bunun nizamnâmeye derc edilmeyüb fakat bu gibi eczânın esnaf kethüdaları marifetiyle kefil vererek eczâ tüccarından almak ve müşterilerinden*

a potential violation of the rules introduced by the regulations and so, it was not accepted.

Along with the regulations mentioned above, the names and the quantity of the poison would be recorded to the poison register together with the signatures of purchasers as well as vendors. Moreover, if purchasers were unknown to the vendor, they would be obliged to produce a guarantee from a notable witness who also would be required to sign the register. The inspection of herbalists, on the other hand, would be administered by the health inspectors appointed by the Ministry of Medicine and the local governments in the provinces would be obliged to cover the expenses of the inspector employed in their vicinity.[534] A directory to identify the responsibilities and duties of inspectors had been enacted in 1884. Accordingly, the inspectors would visit and examine pharmacies, drug merchants, and herbalists, along with the company of police and municipal employees when necessary.[535] However, the government was not content with the inspectors. In the eyes of the government, these health inspectors neglected their duties as various poisons were still readily available in the market even in 1898, thirteen years following the enactment of the Regulation.[536] The local governments were also neglectful in

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dahi kefil alarak satmak üzere attar dükkanlarında dahi bulundurulmasına şehremaneti tarafından tıbbiye nezaretine ba'de-l-muhabere mezuniyet verilmesi…"

[534] An archival register of 1865 illustrates that Miralay Hüseyin Bey, the inspector appointed for the supervision of the herbalists, pharmacists and physicians in the Province of Hüdavendigar, could not perform his duty and turned back to Istanbul because of the fact that the local government did reject to donate the expenditures of the inspector. The governor of the province was immediately ordered to cooperate with those officials employed and dispatched by the central government in order to fulfill their jobs. It was also ordered to confiscate the 62 kinds of poisonous articles that were detected in the herbalists but forbidden to sell according to the Regulation. See BOA., MVL, 711/101, 1 R 1282 (24 August 1865).

[535] "Eczâ-yı Tıbbiye Teftiş Memurlarının Vezâifini Mübeyyin Talimât," see Ergin, ibid., pp. 3074-3076. Also see *Düstur*, Tertib I, Cilt 4, p. 31.

[536] BOA., DH.MKT, 1811/123, 12 B 1308 (21 February 1891). According to the complaint petition submitted by Pharmacist Yorgaki Efendi to the government in 1887, the regulation about the

taking action. In Pirlepe, even the grocers were selling medicine and causing deaths by poisoning.[537] What should be done immediately was to detect those herbalists and other artisans, to take them under custody so that they could be adjudicated according to law and to confiscate the poisonous articles detected in their shops.

After all, it was usually not the inspector who brought the poison vendors to light. Criminal or accidental poisonings and suicides were important occasions which gave away the transgressors. For instance, when a certain Tahir committed suicide by *hâmız arseniği* –rat poison- in Bursa, it came out that he had bought the poison from an herbalist called Attar Kara Hafız.[538] When Hafız's shop was raided by the police, they found eleven kinds of poisons, such as Indian berry (*balık otu*), levant wormwood (*horasani*), black hellebore (*kara çöpleme*), stramonium seeds (*tatula tohumu*), cantharide (*kunduz böceği*), strychnine (*kargabüken*), bitter apple (*ebucehil karpuzu*), mercury and blue vitriol (*göztaşı*). As strictly forbidden for sale by law, these articles were confiscated by the police. However, it is clear that all

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pharmacists and the municipal physicians was not enforced at all. The target of his complaint was corrupt health inspectors who were employed to discover those unlicensed pharmacists that were still in the business together with unregulated prices of medicine, the herbalists and *kökçü*s who were still vending medicine and chemical substances. See BOA., DH.MKT, 1563/77, 29 S 1305 (16 November 1887); DH.MKT, 1473/96, 17 R 1305 (2 January 1888); and also see Turhan Baytop, *Türk Eczacılık Tarihi*, pp. 265-266. In 1892, Çerkes Timur died of poisoning in Selanik because of the medicine prescribed by an unlicensed pharmacist, Yako. In 1895 Bozacı Abdi died of poisoning as herbalist Hüseyin bin Mehmed had given him rat poison instead of vermicide by mistake. It caused an alarm in the district making the inspectors to raid the herbalists and confiscate medicine. In 1898, this time, provincial health inspectors in Trabzon informed the local government about some people who were practicing medicine without license. There were also many herbalists vending medicine and poisonous substances in Samsun. See BOA., DH.MKT, 1835/50, 14 L 1308 (23 May 1891); DH.MKT, 346/14, 23 Ş 1312 (19 February 1895), DH.MKT, 2088/49, 8 L 1315 (2 March 1898). Some registers in the archives display that the Regulation could not be implemented, especially in the countryside, and the control and supervision of poison and medicine sale did not cease to be a problem for the government. See BOA., DH.MKT, 2606/66, 1 Ş 1322 (11 October 1904). *"...eczâ tüccarı ile attar ve kökçüler hakkında neşr olunan nizamnâme ahkâmının tatbikiyle bu yüzden hayat-ı ictimaiye ve sıhhat-ı umumiye noktasından mâmûz (?) olan muhâzir ve muhâlikin husûl-i vuku'nun men'-i esbâbının tesir ve istikmali istinaç edilmesi nizamnâme ile mülhâkat-ı belediyye etibbasına tebliğ edildiği gibi makam-ı vilayete de bâ-mezkure mükerreren arz edilmiş ise de her nasılsa elyevm semere-i icrâât görülemediği..."* See BOA., DH.İD, 55/67, 20 Ş 1330 (4 August 1912).

[537] BOA., DH.MKT, 1793/25, 5 Ca 1308 (17 December 1890).

[538] BOA., DH.MKT, 2089/11, 28 Za 1315 (20 April 1898).

these poisonous substances were available in the market, hence revealing the ineffectiveness of the regulation. Therefore, the government ordered the Office of Health Inspectors in Hüdavendigâr Province to set up a special commission with the mission to confiscate all poisonous articles that would be detected in herbalists which would, in the end, help to prevent unfortunate events like Tahir's suicide.

In fact, the issue about setting up a commission had come up to the agenda two months earlier in February 1898 due to the persistent requests of twenty-six herbalists with official license to sell plentiful poisonous articles they had to drug merchants.[539] Thereupon, the Office of Health Inspectors in Hüdavendigâr Province had asked the Council of Civil Medicine (*Meclis-i Tıbbiye-i Mülkiye*) and the Ministry of Public Health (*Sıhhiye-i Umumiye*) what to do. In reply, the Office had been ordered to set up a commission which would have been employed to confiscate those poisonous substances to either burn or launch out them into the sea. Only those who could have shown their artisan license would have taken back their items. Tahir's death revealed that purchasers of poisonous articles were not only drug merchants with official license, but any person. On the other hand, the herbalists' requests were a clear indicator of the trouble they had in their business since the restrictions introduced for the sale of poison were a serious obstacle before their interests.

When the new Regulation was announced to artisans by the Municipality, the artisans of the Spice Bazaar filed complaints about it immediately. However, it came out soon that their complaints and ill feelings were due to a misunderstanding. They had assumed that not only the poisonous substances but the sale of all articles would be banned and the foreign artisans and traders would be exempted from this

[539] BOA., DH.MKT, 2088/28, 11 N 1315 (3 February 1898).

prohibition. In fact, foreign artisans' trade was subject to restrictions as much as the Ottomans'. Although at first there existed a fear of intervention by the foreign consulates to the Regulation, legal consultants, in March 1885, reported that the foreign ambassadors could not oppose to the Regulation since similar measures were currently effective in Europe as well.[540] Nevertheless, *Şehremaneti* and the School of Medicine still did not have the registries which should include the names of those foreign herbalists and kökçüler together with the localities where they had been practicing their trade and the information about the foreign state of which they were subjects though it was a requirement by the Regulation to be registered.[541] Furthermore, these foreign herbalists and kökçüler in İstanbul did prevent the health inspectors from visiting and examining their shops and they continued to sell various poisonous and hazardous substances. In the end, the police were asked to help in accompanying the health inspectors when they were on duty.[542] In brief, this issue continued to be a concern for the government even six years after the enactment of the new Regulation.

Setting Professional Boundaries: Power Struggles within the Profession

The regulation about drug merchants and herbalists, in fact, identified clearly the confines of different trades and crafts in which pharmacists, herbalists, drug merchants, and kökçüler were the main actors. Although we use the word *aktar* (herbalist) in place of all three words –*attar (aktar*), *akkar, kökçü-*, they actually

[540] BOA., HR.TO, 368/82, 11 March 1885.

[541] BOA., DH.MKT, 1813/123, 19 B 1308 (28 February 1891).

[542] BOA., DH.MKT, 1806/80, 27 C 1308 (7 February 1891).

denoted three different trades in the country.[543] *Attar* or *aktar* was a drug merchant whose business was restricted to wholesale trade. Retail sales of any medicine or chemical and toxic substances along with preparing medical recipes were forbidden areas for these wholesale merchants. The 68 articles of poisonous nature that they were granted permission to sell in accordance with the provisions mentioned above were specified in the 1885 Regulation, which strictly banned the vending of the same poisons for herbalists (*attar*). Unlike *attar*, *akkar* was an herbalist who could carry out retail sale. Just as the regulation identified sixty eight articles that were forbidden to sale, it also identified a list of 145 articles of drugs and chemicals which could be sold by herbalists. *Kökçüler*, on the other hand, were free to sell only those poisonous plants, vegetables and spices –*nebâtât-ı semmiye*- on the list only to those authorized drug merchants and pharmacists. The pharmacists were not free either in the business of poison. They could sell poison only if prescribed by a physician.

Supposedly, the regulation was to facilitate the effective control of these professions for the government. The prevailing ambiguity about which particular article would be handled as a poison or medicine and which specific profession would have the authority to sell these articles was a threat to public health since easy access to poison and medicine was a factor increasing their abuse. So the underlying object of the assumed specialization was the protection of the public by restricting the free and uncontrolled sale and use of poison and medicine.

On the other hand, the persistent enforcement of the measures proposed in the regulation was an indicator of a power struggle within the profession. Peter E. Pormann claims that "medical practitioners have always tried to distinguish

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[543] For the specified distinctions, see BOA., İ.MMS, 79/3461, 22 B 1302 (7 May 1885).

themselves from the other, from those whom they deem unprofessional," a mentality which was not alien to the medieval Islamic period as well. He investigates how physicians belonging to the medical elite enhanced and legitimized their position in the marketplace "by painting a negative picture of the others' practice," by depicting them as "quacks," "empirics" and "charlatans" in order to exclude them from the profession.[544] Bartrip, on the other hand, argues that the medical and pharmacological reform in Victorian England was a product of the ongoing struggles within the medical profession to achieve "professional closure" and acquire "a monopoly of practice for its members".

> …the principal means of realizing these goals [was] to restrict by law entry to the profession to those in possession of appropriate qualifications and licenses, to establish a system of the education, examination, registration, and government, and, to preserve certain matters for the exclusive exercise of professional expertise.[545]

The Ottoman field of medicine was not free of such power struggles either. In 1863, one of the members of the Council of Medicine, L. Mühlig, stated that the Council had been working hard to introduce new proposals for achieving professional closure for the licensed apothecaries registered at the School of Medicine. However, he claimed, these were not met with approval by the government and never enforced since the barber-surgeons vending drugs in İstanbul reacted against it.[546] While the Council was criticizing the government for not being attentive to their efforts, another power struggle was going on between herbalists and pharmacists. In August 1888, a petition sent to the Ministry of Medicine from an herbalist in İnebolu was

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[544] Peter E. Pormann, "The Physician and the Other: Images of the Charlatan in Medieval Islam," *Bulletin of the History of Medicine* 79, no. 2 (Summer 2005), pp. 189-193.

[545] Bartrip, "A Pennurth of Arsenic," p. 60.

[546] Feza Günergun and Nuran Yıldırım, "Cemiyet-i Tıbbiye-i Şahane'nin Mekteb-i Tıbbiye'yi Şahane'ye Getirdiği Eleştiriler (1857-1867)," *Osmanlı Bilimi Araştırmaları* 3, no. 1 (2001), p. 28.

clearly the indicator of such a struggle in the local context.[547] According to the petition of Attar Hacı Mustafa, the articles he had been selling for a long time had been confiscated by the municipality due to the complaints of local pharmacists. However, as Hacı Mustafa claimed, those articles could be found at any herbalist in the countryside, which is why he asked for the prevention of such an intervention to his business.

In 1890 Mıgırdıç Altunyan, this time a pharmacist, who had had an official diploma from the School of Medicine, who had opened a drug store in Tokat, submitted a complaint petition to the Ministry of Medicine. In his petition, he requested the prohibition of local herbalists and municipal doctor in the town from selling medicine which was contrary to legislation and damaging to his business.[548] The licensed pharmacist of Develi sub-district in Ankara, Sarkis, also submitted a complaint petition in 1901, informing the local government that a pharmacy that had been opened by two unlicensed people, Artin and Girkor, had been closed down by the health inspector and the municipal physician. However, after a while, these men opened their shop again and were running their business.[549] As late as January 1911, *Hekim Dergisi* of Trabzon called the attention of health inspectors to a dentist-physician who had been treating people by prescribing medicine for stomach pains and using his car as a consulting room.[550] In June 1911, Hasan Tahsin, a physician and a chemist, was anxious about another physician, Mösyö Goraşyo Karter, in Trabzon. According to Hasan Tahsin, this man was exploiting people by asking high

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[547] BOA., DH.MKT, 1529/49, 27 Za 1305 (5 August 1888).

[548] BOA., DH.MKT, 1711/70, 5 Ş 1307 (27 March 1890).

[549] BOA., DH.MKT, 2500/76, 2 Ra 1319 (19 June 1901).

[550] *Trabzon Hekim Dergisi*, no. 2, 15 Kânûn-i sânî 1326 (28 January 1911).

prices for fake medicine and neither municipality and public health commission nor any other office of government had paid any attention:

> Is this man a physician, a pharmacists or an herbalist? It is not clear. How can he deceive people by violating the laws regulating the profession of physicians, pharmacists and herbalists? While forgers imitating silver and golden coins by producing lead and copper coins have been sent to prison and executed, why does no one make anything for such forgers deceiving people with fake medicine? Why do not health inspectors and public health commissions see them?[551]

Beside troubles emanating from these professional contentions, herbalists were sometimes subject to the unjust administration of the regulations by the local governments too. In August 1892, Attar Avram was asking for the return of the articles that had been confiscated from his shop in Büyükdere by the master sergeant of the municipality. In his petition, which he submitted to the municipality of İstanbul along with his license, he stated that the confiscated articles such as ammonium chloride and hydrochloric acid were not among those toxic substances the sale of which was officially forbidden.[552] It is clear that Avram was aware of the current legislations enacted to regulate the business of poison sale and medicine. In addition, the license he had attached to his petition was, for him, the clear indicator of his qualification. His request was obviously legitimate as regard to the official regulations. What the master sergeant of the municipality, as a representative of an official body, had done was illegitimate and moreover unlawful, which should have invited an intervention by the government in favour of the herbalist.

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[551] *Trabzon Hekim Dergisi*, no. 12, 15 June 1327 (28 June 1911). Many other denounciations in *Hekim Dergisi* written by pharmacists and physicians can be seen complaining about their incompetent colleagues and inviting health inspectors' intervention to the problem. For example, in the 13th issue of the Journal, pharmacist Ömer Dursun, the owner of Şifa Pharmacy in Ortahisar, wrote a report in the journal informing the inspectors about the inadequate equipment of another pharmacy shop in Akçabad. See *Trabzon Hekim Dergisi*, no. 13, 1 July 1327 (14 July 1911).

[552] BOA., DH.MKT, 1983/119, 13 M 1310 (7 August 1892).

Science and Civilization as a Discourse

It is interesting to see that the discourse appealed to by the Ottoman elite when describing the ongoing anxiety in the countryside about the transgression of the afore-mentioned regulations and thus, of the confines demarcating different professions from each other which were not monolithic. Although the clashing interests within the profession and the rivalry among actors in the business was not specific to any locality in the Empire, an official correspondence occurred between the provincial (municipal) physician of Zor District -Dikran Hekimyan Efendi- and the Ministry of Medicine in 1893 reveals how "*bedeviyet*" (nomadic life) was positioned against "science" as part of a discourse of civilization which was called as "borrowed colonialism" by Deringil and "Ottoman orientalism" by Makdisi.[553]

In fact, the content of the correspondence depicting the situation in Zor district was similar to those sent from other districts or provinces in the countryside. In brief, unqualified artisans such as herbalists and barbers who were in the business of medicine and pharmacy in the district had cost so many lives over many years and were a great source of danger to the public health. Therefore, the apparatuses and medicine in their charge should be confiscated by the government and furthermore, the artisans acting against the regulation should be punished according to law. What Dikran Efendi alleged so far might not be worthy of special note. However, the fact that he associated the existence of unqualified practitioners of medicine in Zor to the way of life of the population in the district makes his discourse unusual and remarkable.

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[553] BOA., DH.MKT, 20/17, 8 L 1310 (25 April 1893). See Selim Deringil, "'They Live in a State of Nomadism and Savagery': The Late Ottoman Empire and the Post-Colonial Debate," *Comparative Studies in Society and History* 45, no. 2 (April, 2003) and Ussama Makdisi, "Ottoman Orientalism," *The American Historical Review* 107, no. 3 (June, 2002).

Dikran Efendi constructed a dichotomy between a modernizing centre with a civilizing mission and a periphery that needed to be reformed, regulated and introduced to science which was very alien to it. The population in Zor was still living in a "state of nomadism" *–hâl-i bedeviyet-* which is why herbalists and barbers, instead of licensed and qualified physicians or pharmacists, were in the business.[554] But as it had proved to have fatal consequences to exercise the profession "without scientific knowledge" *–mugayir-i fen-*, it was a matter of urgency to ban such practices along with the introduction of "scientific medicine" *– fenn-i tıb-* to the people of the district in order to protect public health.[555]

Selim Deringil argues that the Ottoman elite in the late nineteenth century "came to conceive of its periphery [especially its Arab provinces] as a colonial setting." According to his argument, a "civilizing mission" was central to the mentality of the modernizing Ottoman elite which was embodied in the provincial administration. For instance, what Osman Nuri Paşa, a former governor of the provinces of Hicaz and Yemen, proposed for the survival of the state was to "gradually bring the nomad into the fold of civilization" through various methods, such as educational policies and the establishment of the court of law.[556] Just as Osman Nuri Paşa deemed necessary to civilize the nomadic population for the survival of the Empire, for Dikran Efendi, too, the introduction of "scientific medicine" to the people of Zor was essential for eliminating the danger posed by the unqualified practitioners of medicine to the public health.

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[554] *"Zor Sancağı ahalisinin henüz hâl-i bedeviyette olmaları…cihetiyle bir takım berber ve attarlar eczâ-yı tıbbiye füruhtuyla alenen icrâ-yı tabâbet etmekde ve bu tarzda müdâvâttan senevî haylice vefayat vuku' bulmakda olduğu…"*

[555] *"…ahali-i beldenin fenn-i tıbdan istifadeleri zımnında icâb-ı halin icrâsı hakkında…"*

[556] Deringil, "'They Live in a State of Nomadism and Savagery'," pp. 311-312, 327.

As mentioned above, though there was no difference between Istanbul and Zor with regard to the interventions to the profession of medicine by unqualified persons who continued to sell medicine and poison or practice medicine without license in spite of the regulations enacted from the mid-nineteenth century onwards to the early twentieth century, there existed an imaginary temporal gap between the "modernizing" centre and the "pre-modern" distant periphery. As Makdisi argues, "Ottoman reform created a notion of the pre-modern within the empire in a manner akin to the way European colonial administrators represented their colonial subjects."[557]

For example, in a short report published in the *British Medical Journal* in 1892, the anonymous author informed his readers about the success story of the vigorous British administration in India in abolishing Thuggee, a sect of murderers and robbers, through persistent action of chasing, convicting, imprisoning, and executing them. However, according to the report, the Thugs changed their common method of murder –strangulation- and started to facilitate robbery and other crimes through poison. The author continued "…poisoning is not by any means confined to these professional murderers of Thugs, but that it is a common form of crime arising out of the mental constitution of a timid race who… are apt to prefer treachery to violence in the commission of crime…"

It is remarkable that the Indian's method of choice for murder was recklessly linked to "the mental constitution" of the race while poison murder was associated with treachery. In the rest of the report, the availability of any kind of poison in the bazaars was put forward as an explanation "for the prevalence of the crime of secret

[557] Makdisi, "Ottoman Orientalism," p. 769.

poisoning."[558] In fact, in Britain too, it was only in 1868 with the Pharmacy Act that a retail monopoly right was given to the qualified and licensed pharmaceutical profession. Furthermore, arsenic poisonings could not be prevented until the end of the century because of the wide application of arsenic in domestic products, like wallpapers and manufacturing.[559]

In this universe of representation, the race for the British and "bedeviyet" for the Ottoman elite was a signifier for "backwardness" while "*fenn-i tıbb*" was a feature and measure of Ottoman modernization and reforms. In this regard, another petition received from the Province of Aleppo in 1902 discloses again how people practicing medicine and pharmacy without having qualification were viewed, this time as "charlatans.[560] As the petitioner had invited an official intervention to the issue, the Ministry, in response, asked the provincial government to take the necessary measures and prohibit such inappropriateness, which was detrimental to the public health. A year later, in 1903, the central government was informed once more about the "charlatans" such as barbers, pack-saddle makers, herbalists and owners of coffeehouses in Aleppo who had been exercising the profession with suspected licenses while inducing loss of many lives.[561]

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[558] "Poisoning in India," *The British Medical Journal* 2, no. 1655 (September 17, 1892), pp. 641-642.

[559] Bartrip, "How Green Was my Valance?," p. 893.

[560] BOA., DH.MKT, 2577/102, 10 L 1319 (20 January 1902) and DH.MKT, 753/69, 28 Ca 1321 (22 August 1903).

[561] According to Pormann, one can attribute two meanings to "charlatanry": trickery and incompetence: "…charlatans are quacks who shout about remedies that, in the eyes of the medical establishment, are useless; they use treacherous tricks to sell them to the gullible customer. On the other hand, charlatans are empirics who lack knowledge of theoretical medicine and are therefore deemed to be incompetent." See Pormann, p. 194. The term "charlatan" as used in the archival register cited above clearly denotes to incompetency.

The regulation of poison sale through legal measures never ceased to be a question for the Ottoman state throughout the century. In this process, professional contentions came to the fore as part of a struggle over poison. Herbalists, kökçüler, pharmacists, physicians, and unlicensed healers all played their roles sometimes as transgressors and sometimes as agents of an intrusive government. It is apparent that the government did not become as intrusive as desired in spite of all its efforts of surveillance and control. As this policy of regulation was overwhelmed by the everyday material interests of various groups of artisans, legal sanctions were ignored and poison could be obtained from the bazaars, grocers, peddlers, and herbalists. As Vasil Naum Efendi's report in 1902 reveals, the regulations about poison sale could not be implemented and the undetected crime of poisoning continued to be a threat even at the turn of the century. It should be kept in mind that women were identified as the perpetrators of poison murder for the first time in this report. Almost three decades after Vasil Naum had sent his report to the School of Medicine, in the very early years of the Republic, Mustafa Hayrullah, the earliest Turkish neurologists and the founding member of the Institute of Forensic Medicine, would write these words in his book:

> Poison murder is preferred by timid and malevolent persons and this method is exploited by murderers who will not be suspected by the victim. For this reason, the perpetrators are usually women rather than men. However their poison of choice is very limited since the poison that will accomplish the purpose successfully should be odourless and tasteless that would lead it to be consumed without recognition. Necessarily, its effect should be fast so that it could secure the murder by not letting any intervention that would eliminate its impact and, at the same time, expose the intention. Furthermore, (…) it could be obtained easily. When these circumstances are considered, the alternatives appear to be quite limited and arsenic or rat poison come to the fore as the most appropriate alternatives. For this reason, poisoning

> is encountered rarely in legal cases and when encountered, the agent is almost always arsenic.[562]

Women, in this way, were once again identified as the unquestionably "usual suspects." Mustafa Hayrullah was obviously referring to the moral and physical weakness of women by strengthening his description of the perpetrators as "timid" and "malevolent." Poison as opposed to direct violence was an indicator of timidity. As a matter of fact, this approach seems to be the reproduction and confirmation of well-established presumptions about female criminality. Ann-Louise Shapiro states that poisoning was always claimed to be "the female crime *par excellence*" and poison was regarded to be the feminine weapon of choice. Criminologists in France at the end of the nineteenth century, she says, wrote about the "odiousness" of this crime, "committed by the person one trusted the most." Shapiro also underlines an interesting point in stating the female traits attributed to male poisoners by those criminologists in their analysis.[563]

As is clear, this discourse is not very different from the one produced by Mustafa Hayrullah. However, unlike Vasil Naum, he did particularly set forth the rarity of this type of murder due to the difficulty of hiding it. But, of course, the state of forensic medicine should have been much more advanced when he wrote these pages more than thirty years ago.

Interestingly, in 1887/1888 (1305), earlier than Vasil Naum and Mustafa Hayrullah, Dr. Şerafeddin bin Arif had called attention to criminal poisonings in "*Ev Hekimi*" which was, in fact, a manuscript aiming at providing first aid measures to

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[562] Mustafa Hayrullah, *Yarının Hakimlerine Tababet-i Adliye ve Ruhiye* (İstanbul: Cihan Matbaası, 1928), pp. 187-188. For a brief biography of Mustafa Hayrullah, see Mefkure Eraksoy, "Pioneers in Neurology: Mustafa Hayrullah Diker (1875-1950)," *Journal of Neurology* 250 (2008), pp. 1505-1506.

[563] Shapiro, *Breaking the Codes*, pp. 71-73.

prevent home accidents. According to Dr. Şerafeddin, poison murder was a crime that terrorized society and was usually committed in the domestic sphere. It was such a sinister, knavish, and secretive crime that it could even go undetected by scientific chemical analysis, causing doubts in judgment and thus disturbing the conscience of judges. Furthermore, he claimed, the perpetrator was always a villain.[564] Although there were more than thirty poisons which had been identified; arsenic, phosphor, blue vitriol, lead cyanide, sulphuric acid, and cantharides were among the most well-known. Nevertheless, thanks to the Sultan's efforts and success, he declared, pharmacists, herbalists, and other drug dealers were not abusing their authority by vending poisonous articles and medicine to any customer; hence not bringing about any accidents.[565]

Şerafeddin bin Arif did not note the gender of those villains, but his very last sentences mentioned above yield that he was far more eager to underline the success of the Sultan's surveillance than to display the threat these poisoners posed to society. Furthermore, according to him and contrary to archival evidence, poison was not easily available at the market as the subjects of the Sultan were attendant to the rules and laws and thus loyal.

In the next chapter, those "timid" and "malevolent" villains who aroused the anxiety of Vasil Naum Efendi at the turn of the century will be discussed. I will start with the trial of İstamenka, which combines many factors disclosing how and why a woman can commit that sort of crime. Though writing about poisonous wives carries the danger of reproducing the well-established conventions about this type of

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[564] Şerafeddin Bin Arif, *Ev Hekimi* (Dersaadet: Mahmut Bey Matbaası, 1305 (1887/1888)), p. 288. *"Zîr-i perde-i zulmetde gizlenüb familyalar arasında bil-irtikâb cemiyet-i beşeriyeye dehşet veren ve suret-i isti'mâlindeki usul ve tedabir-i desise ve hud'a-kâranesiyle tahlilat-ı fenniyeye bile meydan okuyan ve hükkâmı iştibâha düşürüb vicdanlarını rahatsız kılan bir cinâyet var ise o dahi fi'l-i tesmim ve tesmim cinâyetidir. Bu fiilin faili her zaman içün canidir."*

[565] Ibid., p. 290.

murder as “the female crime *par excellence*,” I will try to keep aloof from it by not reproducing a dichotomy between an image of “evil” and “victim” woman.

CHAPTER 7

POISONOUS WIVES IN THE OTTOMAN COURTS

> Kocama hayatta ben seni istemem deyu söyler idim cevabı da beni paramparça etseler bırakmam der idi.[566]

Early in the morning on June 23, 1863, Debbağ (tanner) Bişo died in the Kale Quarter of Şehirköy sub-district.[567] He was a forty year old, healthy but poor man who had been married for ten years. Since he was unable to support his wife and their only child –*idare-i taayyüşten aciz*-, his wife, İstamenka, a twenty-five year old woman, was working as a domestic servant at the houses of Muslims for the maintenance of her family. As a matter of fact, it was this misery that triggered the chain of events that would culminate in Bişo's death and İstamenka's fate in prison.

Bişo and İstamenka had been the tenants of Hancı Goke for two years. Hancı Goke was a forty-year old man who was earning his living by carrying goods with his oxen. He had been married twice before, but his wives had not lived long. His third wife had been suffering from tuberculosis for nine months. For that reason, in October, he had asked Bişo to let his wife stay in his house to nurse his sick wife, and do the cooking and the housework. Upon Bişo's consent, İstamenka took her child and went to Goke's house to serve her landlord. According to the physicians,

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[566] An excerpt from the interrogation report of Katinko who stood trial for poisoning her husband (I told my husband many times that I did not want him, but he always said that even he was torn into pieces, he would not let me go).

[567] BOA., İ.MVL, 555/24903, 6 S 1283 (20 June 1866). Şehirköy (Pirot) was a sub-district of Niş Eyaleti in 1863 prior to the new composition of Tuna Province in 1864. After the 1864 Provincial Statute, Niş Eyaleti became a district (*sancak*), again as a constituve part of Tuna Province. Şehirköy was one of its six sub-districts (*kaza*).

the illness Goke's wife had been suffering from was incurable, hence rendering the allocation of any money for remedies unnecessary. Understanding that his wife would die soon, Goke tried to get closer to İstamenka, saying that "your husband does not look after you, leave him so that we can get married." İstamenka was not happy with her husband, which made her manifestly express her willingness to get married with Goke, which would presumably rescue her from a miserable life. This proposal gave a start for their secret and illicit extramarital affair. The adultery became public only when it proved impossible for İstamenka to hide her growing belly. She found herself pregnant and it was quite obvious that by whom as she had not slept with Bişo in months. After a while, as the rumours grew, Bişo took his wife back to his home but, of course, he could not keep her from seeing Goke.[568]

Almost a month before the unexpected and sudden death of Bişo, Goke's wife passed away. Thanks to it, an obstacle before the lovers' marriage had disappeared. Now the problem was to determine how to get rid of İstamenka's husband. A divorce would be the easiest way; however Bişo refused to grant a divorce. In fact, İstamenka had tried to leave her husband even before she had started having an affair with the landlord. The reason pushing her to file a claim against her husband was not poverty. According to İstamenka's statements:

> …eight months ago, due to my weakness, my husband Bişo brought three young men into our house and said that they would stay here with us tonight even though I said we did not have anything to offer them. Anyhow after the evening, he told me to sleep with these men. I said no and did not surrender till the morning. The next morning I went to çorbacıs to tell what had happened and requested to be divorced from my husband. They summoned my husband and questioned him about

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[568] *"..bana senin zevcin sana bakmıyor gel sen bunu bırak da ben seni alayım dedi ben de ben seni isterim lakin bırakmıyor dedim nihayet beni tutub fi'l-i şenî icrâ etti ruz-ı safere kadar hemen fi'l-i şenî icrâ ettiğimizi kimse anlamadı ise de hamile kaldığımdan ve öteki beriki söylemeye başladığından zevcim Bişo beni oradan alıp evimize getirdi lakin ben yine gidip kalır idim..."*

> the previous night but he denied it and refused to leave me. Then we turned back home…[569]

As is clear from her testimony, İstamenka had been forced to sleep with other men by her husband, which was why she had initiated a divorce. However, divorce was not as easy for a woman as it was for a man unless it was mutually desired.[570] It was at the discretion of the husband both for Christians and Muslims. For example, in another case, when a woman named Katinko poisoned her husband, she dared to commit such a crime just because she could not get rid of him by seeking a divorce. When the interrogator asked "why did not you go to the Priest and get divorced" at her interrogation, she replied "I told my husband many times that I did not want him, but he always said that even he had been torn into pieces, he would not let me go".[571] In another domestic murder case that occurred in Maraş, what led the murderous wife Fatma to kill her husband with an axe in complicity with their

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[569] *"…bundan sekiz mah mukaddem düşkünlüğüme cihetle zevcim Bişo üç nefer oğlan alub evimize getirdi bunlar bizde bu akşam misafir olacaklar dedi ben de birşeyimiz yoktur ki bunları karşılayalım dedim her ne hal ise akşam geçtikten sonra haydi sen bunlar ile yatacaksın dedi ben de yatmam dedim nihayet sabaha kadar uğraştım teslim olmadım ertesi günü kalkub ve çorbacıların yanına gidüb keyfiyeti söyledim ve beni bırakmasını rica ettim zevcimi çağırdılar ve keyfiyeti sual etdiler ise de inkâr etdi ve bırakmam dedi oradan yine evimize döndük."*

[570] It was sufficient for a husband to state unilaterally that he divorced his wife whereas it was not possible for a woman to obtain a divorce without having recourse to the courts. If a husband compells his wife to lead a immoral way of life, as Ivanova points out, normally it was a legitimate ground for the wife to move for a divorce. See Svatlana Ivanova, "Judicial Treatment of the Matrimonial Problems of Christian Women in Rumeli During the Seventeenth and Eighteenth Centuries," in *Women in the Ottoman Balkans*, eds., A.Buturovic and I.C.Schick (London and New York: I.B.Tauris, 2007), p. 159. However, we see in İstamenka's case that the theory did not work in practice leaving İstamenka desperate in the face of her husband's denial. An American missionary Henry J. Van Lennep, traveling around Anatolia for over thirty years, also reports in his travel-book the impossibility of divorce among the Christians. See Henry J. Van Lennep, *Travels in Little Known Parts of Asia Minor* (London: John Murray, Albemarle Street, 1870), p. 264. In Hanafî law, only if the husband was impotent or had a sexual disease that prevented sexual intercourse, the wife could go to court for divorce. See Yahya Araz, "16. ve 17. Yüzyıl Osmanlı Toplumunda Eşleri Tarafından Terk Edilen Kadınlar," *Tarih ve Toplum* 6 (Güz2007/Kış 2008), p. 69.

[571] BOA., İ.DA, 5/78, 19 M 1286 (1 May 1869). *"S: Niçün Papaza gidüb merkumdan boşanmadın / C:Kocama hayatta ben seni istemem deyu söyler idim cevabı da beni paramparça etseler bırakmam der idi."*

shepherd was again the inability of her to seek a divorce, hence being unable to escape from her husband's violence.

> Q: "Why did you kill your husband and why did you seduce this man [Mustafa]? If you had any grievance with your husband, you should have submitted a complaint and they would either divorce you or put him under bailment so that you would relieve.
> A: Yes, during the time of Hurşid Paşa I submitted a complaint petition because of what he did to me. They put my husband into prison for two days and frightened and warned him not to maltreat me. However, Ali continued to maltreat me and in the end, as you see, there happened an accident like this. We killed him.[572]

Just like Katinko and Fatma, İstamenka failed to obtain a divorce in spite of her efforts because Bişo resisted it and the çorbacıs did not give permission. As she had been pregnant and the neighbours started to talk about it, she told the situation to the wife of Police Zeynel Ağa and asked for advice. She said, "It is very bad. Now that his [Goke's] wife will die, divorce your husband so that you can get married."[573] Since it was not possible to get a divorce, Goke and İstamenka conspired to murder Bişo in order to get rid of him.

On June 20, a Saturday morning, Goke mixed a yellow powder into a cup of coffee which was served to the victim by his wife. Bişo started vomiting severely in two hours. Probably to make his inevitable end much more certain, in the evening, Goke mixed that yellow powder, this time, into Bişo's food –horse bean- that had been cooked by İstamenka. Three days elapsed between the time he had consumed

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[572] BOA., MVL, 655/35, 2 C 1280 (14 November 1863). *"S: Kocanı niçün öldürdün ve kocanın kanına bu adamı niçün soktun eğer kocandan rahatsızlığın var idi ise canibe (?) şikayet ede idin seni ya ayırırlar idi yahud kocanı kefile bağlarlar idi rahat eder idin / C: Evet Hurşid Paşa zamanında kocamın bana ettiklerinden arzuhal verdim kocamı iki gün haps ettiler ve bana eziyet etmemesiyçün şartladılar ve korku verdilerse de Ali yine bana daima eziyet ettiğinden sonrası işte böyle bir kaza olub kanına girdik."*

[573] *"Mahalleli cümlesi Goke'den hamiledir deyu söylüyorlar idi fakat ben gizler idim ancak bundan bir buçuk ay mukaddem Zabtiye Zeynel Ağa'nın iyâli Paşa kadına gittim ve Goke'den hamile kaldığımı söyledim o dahi bu iş fenadır dedi işte onun karısı ölecek imiş sen dahi zevcinden bırakıl da birbirinizi alın dedi ondan başka kimseye söylememişim."*

the poison and its fatal result. After getting poisoned, Bişo fell sick, unable to get out of bed on Monday. His complete collapse happened soon on Tuesday morning.

The poison Goke mixed into the coffee and food was calomel (mercury chloride). We do not know how the type of poison that killed Bişo was identified since neither İstamenka nor Goke uttered any word about it. The external post-mortem examination of the corpse was conducted by a physician summoned by *debbağ-ı şerif* who had first viewed Bişo's body just after his death and probably he was the one who had detected the poison. Apparently, what İstamenka knew about the poison was only its colour –a yellow powder. Goke, on the other hand, totally denied the accusations and rejected his complicity in the murder, claiming that the charges were just defamation. Furthermore, he did not accept İstamenka's claims about their extramarital affair while denying his role in the impregnation. He claimed that the couple had had marital discord because Bişo had been drinking heavily and due to that reason, İstamenka had filed a claim against her husband to divorce him, which had not been permitted by çorbacıs. Therefore the poisoner, Goke stated, must have been İstamenka.

İstamenka admitted her role in the murder and even was not regretful about it at all. To the interrogator asking with astonishment that "how could you murder your husband to whom you were married for nine-ten years", she replied:

> I had already fallen out of love with him when he had brought home three men. Goke convinced me. I said I was afraid and told him to do whatever he liked. Thereupon he put [the poison] into the coffee and horse beans and he died suddenly after three days we administered it.[574]

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[574] *"Ben ondan daha üç kişi getirdiği vakit soğumuş idim ve Goke dahi beni kandırdı ben korkarım dedim sen ne yapar isen yap dedim o da kahveye ve baklaya koydu ve birden üç gün sonra bu verdiğimiz şeyden öldü."*

In spite of İstamenka's confession before the court and her denunciations of Goke, who was charged as the collaborator, instigator of the crime, and the supplier of the poison, he denied everything. Even when the defendant, İstamenka, was confronted with Goke and repeated her depositions in front of him; saying that "…we dared to do such a thing in order to get married… if I am lying, I have two eyes and a child. Let God take all of them from me,"[575] he resisted these claims and insisted on his denial. They both took an oath in front of the local council (Niş Cinâyet Meclisi) as to their depositions' accuracy. Unable to sign their names, they put their thumbprints and a cross after their testimonies.

İstamenka and Goke, in this case, are the only persons to whose interrogation reports we have access. We do not know if Zeynel Ağa's wife Paşa Hatun or the other three neighbour women, whose names were written down in the documents and who testified that they were witnesses to İstamenka's pregnancy, were interrogated or not. Probably, they were not summoned to the court but questioned out of court. The alleged culprits were arrested and put in prison on June 30, after a week following the sudden death of Bişo. They were interrogated on July 14 and two days later confronted each other. Before the şer'î court, İstamenka was found liable only for discretionary punishment -*ta'zîr*- and imprisonment, since Bişo had consumed the poison with his own hand. Though the investigation started very soon after the murder had been committed, three years elapsed between the onset of the investigation and the approval of the verdict by the Sultan's decree. The released verdict was approved on June 21, 1866. According to Article 172 of the Ottoman Penal Code, İstamenka was sentenced to prison for fifteen years in a place suitable for women (*nisâya mahsus mahbeste*). Doubtlessly, the fact that she did not receive

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[575] *"...eğer yalan söylüyorsam iki gözüm ve bir evladım vardır Allah alsın."*

a death sentence was due to her insistence upon the fact that the supplier and the administrator of the poison into the drink and food had been Goke. Because Goke had denied this claim and it could not have been established by any further evidence other than İstamenka's depositions that he had indeed administered the poison, the court requested the investigation be advanced.[576] If it was proved that he was not complicit in this murder, he would be released. However, until that time he would stay in prison. Interestingly, a *buyuruldu* (imperial decree summary) about this case that was found by chance at *Tuna Ayniyat Defteri* reveals that İstamenka was released from prison sometime before April 1867 on the condition of producing bail. She did not stay in prison for fifteen years, but only about four years. Goke also was released by producing bail and now that İstamenka was released from prison, the Supreme Council ordered the local court to annul Goke's constraint by law.[577]

The trial of İstamenka can be considered as an exemplary case of poisoning in which the wife of the victim stood trial as the perpetrator of the murder. The story is simple but yet reveals the nature of marital discords which were quite prevalent in the domestic sphere in nineteenth century Ottoman households. In many of the cases, the basic reason behind such a murder was domestic violence and the cruelty of husbands along with poverty and misery. However, examining all cases at hand reveals that the most important motivation that encourages poisonous wives to attempt such a ferocious crime was the presence of and encouragement by another man. Just as happened at İstamenka's trial, these men, who were claimed to have

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[576] *"…mezbûre bu semmi merkum Goke'nin tedarik ve ilkâ ettiğini söyleyüb onun dahi münekker bulunması cihetiyle…"*

[577] *"…İstamenka'nın kefalet altında salıverildiği anlaşılmış olmağla bu halde merkum Goke'nin taht-ı kefaletten dahi ihrac olunması Meclis-i Vâlâ'dan ba-mazbata ifade kılınmış olmağla icrâ-yı icâbı".* See *Tuna Ayniyat Defteri* 919, no. 886, 6 Z 1283 (11 April 1867).

been the collaborators, instigators, and sometimes suppliers of poison, almost always denied their complicity with the murderer.

In 1853, when Ayşe poisoned her husband Mustafa in Küreli sub-district of Trabzon, she claimed that she had committed this murder because İbşiroğlu Hüseyin had encouraged her. However, there was insufficient şer'î evidence to prove that he had been the instigator, which is why only Ayşe was condemned to punishment.[578] When Asiye poisoned her husband Osman in Kızılkoca sub-district of Yozgat in March 1865, she also claimed that she had killed him due to the motivation of Ahmet.[579] "Ahmet gave me the poison, saying feed it to your husband. It will not kill him, but will drive him insane. Therefore, I put it into the milk called *eğiz* and fed it."[580] Accordingly, they would get married after Osman went mad. Supposedly, she did not know that her husband would die, but only expected insanity. Throughout his interrogation, Ahmet denied his relationship with Asiye saying that he even did not know her and also rejected the charges about his role as the supplier of the rat poison. The criminal investigation about the case lasted for more than two years by which Asiye was eventually sentenced to fifteen-year imprisonment while Ahmet was not found guilty.

As there were no eyewitnesses to the poisoning due to the hidden nature of the crime, it was quite easy to reject the accusations which would remain only in the poisoners' depositions without further evidence. Poisoning was, no doubt, difficult to prove. More than that, since the courts needed confession or direct witnesses as strong evidence, any defendant's denial would result in his/her release in the

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[578] BOA., A.MKT.MVL, 64/98, 4 Za 1269 (9 August 1853).

[579] BOA., İ.MVL, 576/25852, 27 R 1284 (26 August 1867).

[580] *"Ahmed bana [zehiri] verdi kocana yedir ölmez fakat deli olur dedi onun üzerine eğiz tabir olunur sütün içine koyub yedirdim."*

absence of forensic evidence, especially autopsy. Alleged collaborators in all poisoning cases exploited it to the full extent. However, why almost all of these women who poisoned their husbands confessed their crime before the court remains a perplexing question that has to be considered.

In this section, I focus on poisonous wives who stood trial before the Ottoman courts. These domestic murder cases clearly reveal the familial disputes, the patriarchal nature of the family, and the gender roles in the Ottoman household while putting forward the "voices of feminine violence."[581] These voices, which will be explored through court interrogations, can help us to concentrate on the question of female agency, the women constituting themselves as self-conscious, speaking subjects through their narratives. Notably, poison murder committed by disgruntled wives against feckless and abusive husbands can quickly shatter the image of a submissive and desperate woman unable to do anything but sustain ill-treatment and internalize the damaging effects of domestic violence. Poison murder, in this respect, can be acknowledged as a response by those women to the violence of their husbands and also to other types of marital disputes. We see these women going to court or to their community leaders, submitting their complaints, and seeking divorce. But as İstamenka's case revealed, the inability to obtain a divorce exacerbates the situation and leaves no way out for these women. Furthermore, this problem gets worsen if the marriage was arranged by families or just consummated through abduction without the consent of the woman. In such cases, women's desires for other men rather than their husbands might lead them to resort to violent ways to accomplish their aims. In some cases, as mentioned above, passionate

[581] I borrowed this phrase from Garthine Walker. The title of the third chapter in her book is "Voices of Feminine Violence". See ibid., pp. 75-112.

lovers trigger the murder by promising these women happy marriages and prosperous lives. In some others, we see that neighbors, mostly women, urge them and supply the poison to eliminate the burdensome husband for the sake of those future promising marriages, making the solidarity among women visible.

Along with these issues which promise to shed light on the conflicts in the Ottoman domestic sphere, the interrogation process in court brings into the open other important questions. The sale of poison, its control and regulation in the countryside emerges as an uneasy problem, as discussed above. Evidently, this illustrates the Ottoman central government's inability to intrude into the provinces and the local life. On the other hand, these court registers provide sufficient evidence to focus on the question of proof before şer'î and nizamî laws and the various motivations that led murderess poisoning. These registers also promise us those lost voices of ordinary women and reveal clues about how a woman can assert her power in the court and construct a feminine subjectivity through telling her own crime story.

The Position of Poisoners vis-à-vis the Şer'î Law and the Nizamî Law

In June 1862, a certain Ahmed bin Elhac Mehmed from Tacura sub-district, a nineteen year-old shoe maker, was put in prison in Trablusgarb. The reason for his conviction was his alleged crime of poisoning his mother Fatma and brother and sister who were five and seven years old, respectively, and a neighbour woman, among who Fatma was the only victim. Initially he was brought before şer'î court and there, confessed his crime. In the interrogation conducted at the council, it came out that he had bought two kıyye of poison from Mehmed bin Rüsum and put it into the food because he was angry with his mother as she had made him divorce his

previous wife and not allowed him to get married to another one. He said, "I did it because I was deceived by the devil. It should be my destiny."[582]

What is noteworthy in his interrogation and related to our concern here comes up when he was asked by the interrogator why he had made his mother besides others drink poison. It is interesting to see the way he replied to this question by saying that "I did not make them drink it." We can understand what he meant only when we read the rest of his interrogation and also the verdict of the şer'î court. Indeed, Ahmed had not poisoned his mother and the others by his own hands, compelling them neither to drink nor eat any poison. The only thing he did was to mix the poison into the food in the saucepan when his mother had been cooking. After that, they all had eaten the food "with their own hands" and his mother had died as a result.[583] This particular detail in his interrogation is very important since it evidently discloses that Ahmed was well-informed about the doctrines of şer'î jurisdiction or the possible verdicts released by şer'î courts in such cases. However, he must have equally been unaware of the functioning of nizamiye courts and also the provisions of criminal law which had been introduced only four years before he committed this murder.

According to the verdict released by şer'î court, Ahmed was not liable for anything before şer'î law because the victim had consumed the poison with her own hand –*kendi eliyle ekl eylemiş olması cihetiyle*. He had not forced the poison down his mother's throat and she had consumed it voluntarily, though not knowing what it

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[582] BOA., İ.MVL, 488/22130, 13 S 1280 (30 July 1863). "Şeytan aldatdı yaptım kaderim böyle imiş."

[583] *"S: Geçen gün sen validene ve karındaşın Ali'ye ve kızkarındaşın Ayşe'ye zehir içirtmişsin ne içün içirttin söyle bakalım / C: Ben zehir içirtmedim .. Yemek pişerken tencere içine koydum validem ve karındaşım Ali ve kızkarındaşım Ayşe ve başka bir hatun yemişler / S: Ne içün öldü / C: Kab içine koyduğum zehirli taamı yedikleri içün öldü."*

was. Significantly, knowing or not knowing the content of the food or drink was not an important evidence for şer'î law. As Colin Imber puts forth clearly:

> The basic rule, therefore, is that a poisoner is not liable for *diya* if his victim consumes the poison voluntarily with his own hand. The poisoner is analogous to a man who gives an order to kill, and the victim is analogous to his agent. The agent has the option to disobey the command, and the poisoner's victim has the option not to consume the poison. The man who gives an order to kill is liable only when he exercises compulsion, and the poisoner is liable only when he compels his victim to swallow the poison.[584]

These were the rules of Hanafî legal doctrine, which suggested an analogy between killing by poison and killing at the command of another. But the analogy functioned in a bizarre way, for modern eyes, by putting the victim in the position of an agent who had received an order to kill and carried out it voluntarily as a legally competent subject.

It is also worthy of note that various Hanafî jurists had different opinions about the culpability of murderous agent while accepting the essence of the argument. According to Al-Sarakhsî, for example, a poisoner was not liable for anything and could inherit from the victim. For Al-Kâsânî, on the other hand, a poisoner could not be exempted entirely from liability. Although s/he was not liable for blood money and could inherit if s/he was an heir, s/he should be sentenced to ta'zîr (severe chastisement) and imprisonment. Colin Imber states that "Al-Kâsânî's opinion became so much the standard in Ottoman law," according to which the poisoners were usually sentenced to ta'zîr and imprisonment.[585] In the above-mentioned case, the şer'î court's decision to not regard Ahmed as culpable before

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[584] Colin Imber, "Why You Should Poison Your Husband: A Note on Liability in Hanafî Law in the Ottoman Period," *Islamic Law and Society* 1, no. 2 (1994), p. 214.

[585] Ibid., pp. 211-212. See also Mustafa Avcı, *Osmanlı Hukukunda Suçlar ve Cezalar* (İstanbul: Gökkubbe Yayınları, 2004), p. 98 cited from M.Ertuğrul Düzdağ, *Ebusuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (İstanbul, 1983), p. 154.

law indicates that the judge in Trablusgarb was not a follower of Al-Kâsânî, but Al-Sarakhsî. However, nearly in all cases with şer'î verdicts I have examined so far, şer'î courts prescribed ta'zîr and imprisonment or only ta'zîr for the poisoners.[586]

We cannot exactly know if Ahmed really had any knowledge about şer'î doctrines as such or not. But obviously his defence during his interrogation indicates that he was not totally ignorant about the verdicts of şer'î judgment in poisoning cases. Therefore, he defended himself saying that he had not made them drink the poison; that is, he had not compelled them to consume it, but only put it into the saucepan. Beyond doubt, he did not expect a guilty verdict which, in fact, came true, but only before şer'î law. However, when he stood trial before the nizamiye court, he was found guilty of premeditated murder and sentenced to death according to Article 170 of the Ottoman Penal Code. The death sentence was affirmed by an imperial decree in July 1863 to be executed in a public space in Trablusgarb to be a deterrent example for others.[587]

Of course, rules and procedures binding şer'î law were completely different from the ones binding nizamî law. To understand better the operation of legal system and to make sense of the cases at hand in particular, it is important to overview briefly the legal codes, articles, and doctrines proposed by these two separate fields of jurisdiction.

According to the definition proclaimed in Article 168 of the 1858 Ottoman Penal Code, homicide was "the act of causing the death of a person either by means

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[586] For some related examples see BOA., A.MKT.MVL, 39/1, 4 R 1267 (6 February 1851), MVL, 33/18, 27 C 1259 (25 July 1843), A.MKT.MVL, 53/30, 6 Ş 1268 (26 May 1852).

[587] *"…katil-i merkum hakkında her ne kadar şer'îyen nesne lazım gelmemiş ise de bu misillü taammüden katil olanların idam olunmaları kanûn-ı cezânın 170. Maddesi ahkâmından bulunduğuna mebnî katil-i merkumun şu hükme tatbiken ve emsalini terhîben Trablusgarb'ta cemiyetli bir mahalde idam edilmesi içün icâb eden ferman…"*

of a weapon, or by means of poison, or by any other means."[588] For the first time, with the 1858 Ottoman Penal Code poisoning was included in the definition of homicide in the penal code. Previous penal codes had not contained any statement indicating poisoning specifically as a crime. This led the local courts either to adjudicate cases according to the article related with murder proposing a sentence from one to five year hard labour for men and imprisonment for women convicts or to ask the highest court –the Supreme Council of Judicial Ordinances- in İstanbul about what to do. The following two cases demonstrate how local courts, before 1858, produced solutions when faced with poisoning cases for which the existing penal codes did not pronounce any sentence.

In July 1843, Hüsna poisoned her husband Hasan in Adana with corrosive sublimate. According to her testimony at the court, she had been in a relationship with a man called Ali bin Yusuf from another village and he had been the instigator, promising her a marriage and supplying the poison. When Hüsna mixed the poison secretly into her husband's food, he ate it with his own hands without having any suspicion. Since Hasan consumed the poison himself, Hüsna was sentenced to ta'zîr and imprisonment by the şer'î court. However, the local court was not very clear about the verdict that should be released. "Even though there was no explanation about it in the penal code," poisoning was among those serious crimes akin to homicide which would bring about her treatment like a murderer.[589] That is why, the court announced that, she would be sent to a prison suitable for women for two

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[588] Article 168: *"Katl gerek silah ile ve gerek tesmim ile ve gerek suret-i ahir ile bir şahsı idam etmekdir."* See *Fihrist-i Kanûnnâme-i Cezâ*, p. 40. Also see *The Ottoman Penal Code*, p. 75.

[589] *"…buna dair kanûnnâme-i hümâyûnda eğerçe serâhat yok ise de kabahat-i mezkure dahi katl maddesine yakın cünha-yı azîmeden olarak mezbûre hakkında katile cezâsı icrâ olunmak lazım gelmiş olduğuna…"*

years and in case she did not have any relatives, her expenses would be maintained by the local treasury.[590]

When Ali, a twenty-three year old scullion serving at the kitchen of Tekfurdağı sub-district governor (*kaymakam*) Hamid Bey, had poisoned the head cook Mustafa with rat poison just to take his place as head cook and caused him to be disabled for sixteen months, the local court did not know how to make a verdict about the appropriate punishment for the poisoner. The crime had been committed before the enactment of the new penal code and there was no clause in the previous penal code –*Kanûn-ı Atik*- about such crimes.[591] Therefore, the court consulted with the Supreme Council for the punishment that Ali deserved. Accordingly, he was sentenced to three years hard labour with regard to the article related with causing bodily harm with intent. Furthermore, Mustafa had sued Ali and asked for the money he had paid to the physician for his treatment, which was three hundred guruş. He also asked for the total sum of his salary that he would have receive if he had not been poisoned and had been able to continue to work, which was exactly 6400 guruş. Besides his servitude at hard labour, Ali was also made pay for all the financial losses of Mustafa.[592]

As these cases display, the 1840 and 1851 Ottoman Penal Codes were not only silent about poison murder, but they were also lenient in punishing murderers. When the new penal code of 1858 defined poisoning as a homicide, it also

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[590] BOA., MVL, 33/18, 27 C 1259 (25 July 1843).

[591] *"…merkumun şu kabahati kanûn-ı cedidin neşrinden mukaddem vuku' bularak kanûn-ı atikde dahi bu makuleler içün serâhaten bir cezâ bulunmamasından dolayı icrâ-yı icâbı Meclis-i Vâlâ'ya sual olunan mazbatasında…"* This was a standard phrase used to describe the situation in similar cases.

[592] BOA., A.MKT.MVL, 110/9, 15 S 1276 (13 September 1859); MVL, 826/58, 7 S 1276 (5 September 1859).

introduced harsher sentences for murderers. The distinction between unpremeditated (manslaughter) and premeditated murder (homicide) in the Ottoman Penal Code was brought forth with Articles 170 and 174 with regard to the punishment each deserved. Accordingly, the maximum punishment for the latter was fifteen years hard labour while it was capital punishment for the former.[593] The question of whether the murder committed was intentional or unintentional had been left to the judgment of the court, which depended on the direct or circumstantial evidence gathered throughout the investigation. However, criminal poisoning was, without doubt, a premeditated crime.[594] It was not like a murder committed in an instant of anger or in a state of madness. On the contrary, it was such an "exemplary secret crime," which "was almost always committed with forethought and planning," as Essig states.[595]

For şer'î law, on the other hand, poisoning was, by definition, unintentional and did not incur retaliation. Only when the weapon of murder was offensive, that is, "a weapon of war or an instrument specifically adapted to kill,"was homicide

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[593] Article 170: "*Bir kimsenin taammüden katil olduğu kanûnen tahakkuk eyler ise kanûnen idamına hükm olunur."* / Article 174: *"Bir kimse min-gayri-taammüd bir şahsı itlaf etmiş ise onbeş sene müddetle küreğe vaz'ı olunur fakat işbu telef-i nefs-i kaziyyesi ahir bir cinâyeti icrâ eder iken ya kabl-el-icrâ veya ba'del-icrâ veyahud bir cünhayı berây-ı icrâ vuku' bulmuş ise itlaf-ı nefs eden şahıs kanûnen idam cezâsıyla mücâzât olunur."* See *Fihrist-i Kanûnnâme-i Cezâ*, pp. 40-41. It should be remembered that the maximum penalty for homicide was five years in the previous penal code.

[594] For example, when Hatice had been poisoned by Ayşe with rat poison in Bolu, she was adjudicated and sentenced to fifteen years imprisonment as her crime was deemed unpremeditated murder by the local court. When the case was referred to İstanbul in order to obtain ratification for the execution of her sentence, the Supreme Council stated that "although poisoning is a premeditated murder due to the nature of the crime *–fi'l-i tesmimde taammüd tabii olmak cihetiyle-* and with respect to this the murderer deserves capital punishment, the local court sentenced the murderer to fifteen years imprisonment according to the Article 174 of the Penal Code for unpremeditated murder." In spite of this, her sentence was affirmed. See BOA., İ.DA, 9/213, 21 Ş 1287 (16 November 1870).

[595] Essig, p. 90.

deemed as intentional and thus, incurred retaliatory punishment.[596] For example, when Emine was killed by her husband Salih in Kasaplar Village of Bolu in 1853, he was found liable for blood money of five thousand dirhem-i şer'î in spite of the fact that the murder had been wilful (*amden*) with regard to his confession. The reason for that was the weapon of murder he had used in killing his wife: he hit her once on the head and then the ear with a blind stick –*künd çomak*. Since the stick was not sharp specifically designed for killing, he was not liable for retaliation, but only blood money before şer'î court.[597]

In another case from Eskişehir, when Fatma had been killed by her husband Osman in 1843, the heirs of the victim declared that she had been wounded and killed by a knife. Since a knife was a lethal weapon –*âlet-i câriha*-, they claimed his life. However, Osman denied the charges about the weapon of murder. He challenged the heirs' allegations saying that he had killed his wife by hitting on the head and neck with a piece of wood, which was not lethal –*âlet-i kebir*. However, he was found liable for retaliation.[598]

As these cases demonstrate, identifying the weapon of murder was very important for the court to decide whether the crime committed was intentional or unintentional. Once it was identified, then it was necessary to understand how this

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[596] Imber, pp. 207-208. Of course, the opinions of Muslim jurists about the criteria in defining a weapon as lethal were not the same. According to Ebu-Hanife, for example, hitting someone with a non-lethal weapon until he/she died was not an intentional killing while for the three imams –Şafii, Malik, and Ahmet- it was un intentional. Ebu-Yusuf and İmam Muhammed also acknowledged the blind weapons as lethal. To strangle someone with a rope was an unintentional killing for Ebu-Hanife and Ebu-Yusuf and incurred only blood money for rope was not an offensive weapon. See Avcı, pp. 32-33; and Recep Çiğdem, "The Register of the Law Court of İstanbul 1612-1613: A Legal Analysis" (Ph.D. diss., University of Manchester, the Department of Middle Eastern Studies, 2001), p. 213.

[597] BOA., A.MKT.MVL, 67/9, 9 R 1270 (9 January 1854). According to the Penal Code, Salih was sentenced to five years hard labour in Tersane-i Amire.

[598] BOA., İ.MVL, 53/1020, 17 Za 1259 (9 December 1843).

weapon was used by the murderer. For instance, if the crime was committed by an axe, the question would be whether the murderer used the sharp or the flat side of the axe.[599]

When the weapon of murder was poison, however, there could be no question about the character of the crime. Poison was a non-offensive weapon and a poisoner, thus, could escape retaliation if the victim had not been compelled to consume the poisonous food or drink. Furthermore, a poisoner could inherit property from his/her victim which must have provided a unique opportunity for those who wanted to get rid of burdensome family members while expediting an inheritance without enduring a serious compensation. These were obviously promoting factors in poisoning cases with regard to the leniency of the deserved punishment. Therefore it was important for plaintiffs to prove that the victim had not consumed the poisonous food or drink with his/her own hand voluntarily to be able to demand retaliation for the murderer. However, proof was not so easy to establish if there were no eyewitnesses and the defendant was sturdy enough to deny charges.

In the summer of 1854, when Gorgi veled Tohar had been poisoned by his wife Maltode in Dimetoka sub-district of Edirne, she stood trial initially before the şer'î court and then before the district council. In her trial, the attorney commissioned by the heirs of the victim pleaded that Maltode had poisoned her husband not once but twice. In fact, Maltode had acknowledged the alleged crime before the şer'î court. According to her confession, she had put rat poison into her husband's coffee because they had had a quarrel nearly twenty days earlier when she had called a physician to show her plasters without getting the permission of her husband. Up to that point, her statements and the plaintiff's allegations were not

[599] See BOA., A.MKT.MVL, 7-A/67, 7 R 1264 (13 March 1848), A.MKT.DA (DES), 10/44, 27 B 1288 (12 October 1271).

contradictory. However, the attorney claimed that when Gorgi had fallen sick after drinking his poison-laced coffee, Maltode, once more, but this time with her own hands, had fed him with soup into which she had mixed some poison. Accordingly, if the allegations were proven, Maltode would be liable for retaliation. However, she denied the charges and only acknowledged the first part of the story. Eventually, the plaintiff could not prove his claims in the absence of eyewitnesses and confession which made Maltode liable only for ta'zîr before the şer'î law and three-year imprisonment before the nizamî law.[600]

Considering the poisoning cases at hand, it should be stressed that there is even not a single case in which the poisoner forced the poison down the throat of his/her victim. In all cases, the poison was administered secretly either in a drink prepared or a food cooked by the poisoner and the victim consumed it with his/her own hands "voluntarily." That is why şer'î verdicts always included a statement about this "voluntary" consumption to justify the lenient sentences reserved for the murderer. As mentioned above, the murderers also were advantageous in poisoning cases when compared to other methods of killing since, on the one hand, there was always a possibility that their crime could go unpunished and, on the other hand, according to şer'î law, they would not be liable for blood money and furthermore could inherit from the victim which was an opportunity that would not be secured by any other method. The 1858 Ottoman Penal Code constituted a turning point since, from that time on, poisoning started to be defined as an intentional murder and poisoners were either sentenced to fifteen year hard labour/imprisonment or capital punishment. Moreover, when scientific proof gradually became important as evidence for the court with the advance in forensic medicine, poisoning lost its

[600] BOA., MVL, 214/27, 29 Za 1270 (23 August 1854); A.MKT.MVL, 67/76, 26 Z 1270 (19 September 1854).

character as a secret crime which left little room for poisoners to escape from punishment.

Poison Trials and Motivations

Throughout the century in Victorian England, George Robb claims, a similar pattern of presentation was followed in poison trials. There emerged four points which were important for the courts to secure a conviction and for the prosecution to prove the case. These points that needed to be established were that;

1. Poison was the cause of death,
2. The suspect had acquired poison,
3. The suspect had administered the poison, and
4. The suspect had a motive.[601]

At the Ottoman courts, as the cases demonstrate, the interrogation process nearly followed this very same pattern with the exception of şer'î jurisdiction elaborated above and the question of how the poisoner *could* acquire the poison. The first question Robb mentioned about whether death was or was not occasioned by poisoning was the easiest one for the Ottoman courts if the tendency of the culprits for confession was taken into consideration. Since the poisoners almost always acknowledged their crime, they also explained how they acquired the poison and administered it into the food or drink. In this way, they illuminated the second and the third points as well. However, in case there was no confession and that the deceased had died of poisoning, then the claims of the plaintiffs were considered

[601] Robb, p. 180.

seriously by the court in investigating whether the alleged culprit had any motive to kill the victim or not.[602]

The question of motivation came to the fore not only in the absence of confession, but also was investigated to explore whether the murderess really had a motive for killing or was just compelled or incited by another person to commit the crime. The motive that would set the stage for poisonings could be domestic violence, adultery, a long-term illness, drunkenness, senility, and ugliness. Béla Bodó, in an article examining a serial of poisonings occurred in a small village of Hungary, Tiszazug in 1929, explains the motive behind these murders with the traditional gender roles in peasant households which remained the same in spite of the changing living conditions with the effects of the First World War. These murders, she claims, for which thirty-five women were arrested for the poisoning of forty people and the victims of which were mostly burdensome husbands and relatives,

> …promised to eliminate tensions and solve problems that affected mainly women. The war and its material and psychological depravations increased the number of disabled adults, sick children, and frail elderly in peasant families, but it did not change the role of women as nurses and healers.[603]

In this small village of Hungary, the motivation of these women who dared to eliminate their sick and frail husbands and relatives was amplified by the after-war economic and social conditions. Unsurprisingly, criminal poisoning cases in the

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[602] For example see BOA., MVL, 673/20, 17 Z 1280 (24 May 1864). When Nazife Hatun died in Bolu, it was detected by the provincial physician through post-mortem examination that she had poisoned. The plaintiffs alleged that the poisoner was Fatma Hatun since the victim had claimed before she died that she had been poisoned as she had eaten the phyllo prepared and offered by Fatma. However, Fatma denied all charges which made the court to order further investigation to detect any possible hostility between these two women.

[603] Béla Bodó, "The Poisoning Women of Tiszazug," *Journal of Family History* 27, no. 1 (January 2002), p. 43.

nineteenth century Ottoman countryside were related to economic hardship and poverty as well. Nonetheless, poverty as a motive usually was encountered side by side with other factors. For example, as seen above, not only poverty, but poverty combined with other disputes led İstamenka to seek divorce and then poison her husband. Similarly, Meryem poisoned her husband Nasrullah with rat poison in Kesrivan district of Cebel-i Lübnan not only because of poverty, but husband violence accompanying poverty. According to her statements at the court, she had been incited and instructed by a woman called Duhaniye Hatun, who had recommended her to poison her husband so that she could change her destiny by getting married to another man.[604] When İstanya poisoned her husband Radoviçe in Yenipazar, she accused a woman called Belene as the inciter who, according to the murderess, told her to poison her husband with the poison she would prepare for her. In this way, she would get rid of her sick husband and find an opportunity to get married another man, Ekmekçi Vaso.[605]

These cases demonstrate that marriage was an important stage in a woman's lifecycle. As we will see in the Katinko trial below, it was supposedly a way out from a hard life, a promising economic opportunity for women that would save them from working, poverty and misery. However, it was also a bond which was hard to

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[604] BOA., İ.DA, 13/489, 11 M 1291 (28 February 1874). *"...merkum Meryem evvel-i emrde zevci merkum Nasrullah'ın kendisine eza etmesi ve zaten dahi fakire bulunması cihetiyle kendisini denize atmak üzere hanesinden Cebel'e gider iken (...) Duhaniye nam hatuna tesadüf ederek mezbûre nereye gideceğini kendisinden sorub (...) beyan eylediğinde mezbûre Duhaniye zevci merkumu tesmim ederek diğerine varub bu felekten kurtulmasını rey etmesiyle kendisi dahi Cebel'e giderek bir attardan aldığı semm-ül-fârı taama vaz' ile zevcine vererek zevci onu ekl etmekle müteessiren vefat eylediğini ikrâr eylediği..."*

[605] BOA., İ.MVL, 542/24344, 18 C 1282 (8 November 1865). *"...karyeli Belene nam hatun çend defa bana söylemiştir senin zevcin Radoviçe daima hastadır ve divanedir ne lazım seni ben ekmekçi Vaso'ya vereyim zevcin ölsün bir gün ben buzağımı tarladan evime götürmeye gittiğim halde merkume Belene kabaktan bir kapak içinde biraz un getirdi gördüm bana dedi ki bunu görüyorsun al bunu eve götür beş haftadan sonra yalnız undan bir ekmek yoğurub ve pişirüb ...(?) olarak bu ekmeği zevcin Radoviçe'ye yediresin."*

break away that was turning unanticipated unhappy marriages into a tragedy, inviting female violence as the only remedy and outlet. Of course, getting rid of an unwanted marriage always implicated the existence of another promissory marriage for these women. Furthermore, these marriages were mostly arranged by neighbour women who were aware of the violence or poverty these women had to face. Like Duhaniye and Belene, Rozakay offered her neighbour Neylihan Hatun some medicine to calm down her husband.[606] Benli Hacı, a Circassian immigrant settled in Tulça, was violent towards his wife. Hearing that he was beating Neylihan, Rozakay said "your husband is always beating you. I will give you some medicine and you will give it to him with coffee so that he won't beat you anymore."[607] She gave her a white powder wrapped in a piece of paper which really helped to prevent the brutal husband's violence forever. Rozakay denied Neylihan's charges of her being the instigator and the supplier of poison. We do not know if she really taught Neylihan how to deal with her husband, but following the investigation, the court was convinced that she was not related with the murder.[608]

Although women sought outlets from marriages burdened by violence or poverty, inheritance as a matter pertaining to money almost never appeared as a motive doubtlessly because the victims usually were poor peasants, artisans, or unemployed persons hardly earning a living for their families. Only in one case from

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[606] BOA., İ.DA, 12/420, 20 Ca 1290 (16 July 1873).

[607] *"...daima zevcin seni döğüyor ben sana bir ilaç vereyim de kahve ile içir bir daha seni darb etmez."*

[608] Béla Bodó also emphasizes the feminine conspiracy in Tiszazug case. She displays how village women made plans together during female visitations to eliminate their burdensome husbands and relatives while instructing each other about the possible ways to deal with them. SeeBodó, p. 43. We can see a similar network of feminine conspiracy in the trial of Giovanna Bonanno from Palermo. See Giovanna Fiume, "The Old Vinegar Lady, or the Judicial Modernization of the Crime of Witchcraft," *History from Crime*, eds., E. Muir and G. Ruggiero (Baltimore and London: The Johns Hopkins University Press, 1994), pp. 65-87.

Trabzon, the wife was accused of being the alleged poisoner who, according to the plaintiff's allegations, had poisoned her husband, Cevahir Ağa, with a motive of money, to inherit a family fortune that had been at the disposal of the victim.[609] Notably, in some cases, we can see other family members rather than husbands being victims of poison murder. For example, when Saliha was convicted for poisoning her father in Konya, it came out that she had been motivated to poison her father Barber Hacı Mustafa by his niece Plumber İsmail for his money. As the supplier of the corrosive sublimate, İsmail had promised the little girl marriage following her father's death. In this way, he would stand to inherit his uncle's house and money. For a while, Saliha mixed the poison into his father's food. However, when her father fell sick, she grew afraid and informed the government. Since Barber Hacı Mustafa did not die, İsmail, Saliha, and her mother –Hacı Mustafa's ex-wife-, who had also been informed about the plans, were sentenced to imprisonment for five months.[610]

Some cases also display that little children may have fallen victim to the greed of their step-fathers. For example, in 1857, a certain Mehmet from Niğde poisoned his step-son by feeding him poison-laced figs. As soon as the child's real father had passed away, leaving his son thirty thousand guruş, Mehmet did not hesitate for a moment to kill the child in order to obtain the money that he inherited

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[609] BOA., DH.MKT, 1790/29, 26 R 1308 (9 December 1890). No poisoning related with life-insurance appeared among our cases. Angela Brabin, in her article, examines a serial of murders in Victorian England where women poisoned their husbands for getting insurance premiums from insurance companies that became so widespread during the century. See Angela Brabin, "The Black Widows of Liverpool," *History Today* 52, no. 10 (October 2002), pp. 40-46. Unlike England, there were no insurance companies or burial clubs that would be abused for money in the Ottoman context. For another short article examining a murder case in Victorian England in which a woman poisoned her children and mother by administering arsenic for insurance premiums and the money she got from the burial clubs, see "Life Insurance and Burial Club Murder," *The British Medical Journal* 1, no. 896 (March 2, 1878), pp. 308-309.

[610] BOA., MVL, 569/54, 6 N 1274 (20 April 1858).

from his real father.[611] Like Mehmet, a certain Hasan from Dobran Village of Lofça sub-district poisoned his step-sons Halil and İbrahim in 1864 to inherit their fortune. Since the children's real fathers had passed away, they had inherited some land and animals from their father. Hasan was a poor man assuming that his real children would inherit from their step-brothers if they could be eliminated. He poisoned the children with a white powder mixed with sugar and killed them.[612]

The Question of Agency: The Trial of Katinko

The issue of motivation is important particularly because it reveals the position of women before the courts while illuminating the nature of spousal conflicts in Ottoman households. Whatever the motivation is, the question of female agency comes to the fore as it gets crucial for the court, throughout the inquest, to understand whether the culprit wilfully administered the poison to the deceased or not by making her confess about the instigators. In this regard, Katinko's case can be examined as a good example which highlights the question of female agency in criminal trials before the law.[613] In the Katinko trial, the interrogator was so insistent on learning the instigator that he asked the defendant five times about the identity of the person who must have instructed her how to poison her husband.

Katinko was around fifteen years old when she killed her thirty-year-old husband Kürekçi İstefan with rat poison by mixing it in a cup of coffee, in February

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[611] BOA., MVL, 224/18, 21 Ra 1274 (9 November 1857).

[612] BOA., İ.MVL, 576/25852, 27 R 1284 (26 August 1867).

[613] BOA., İ.DA, 5/78, 19 M 1286 (1 May 1869).

1868. At the court during her interrogation, she admitted her guilt while stating her motives clearly.

> Q:… tell the truth. Somehow you yielded to the devil and did such a thing. As you are young, you are not liable before the law. Tell us from whom you bought the poison. You will not be inflicted a punishment.
>
> A: I am approximately fifteen years old. I yielded to the devil. I will tell you the truth. On Saint Nikola's day, which was one day before my husband got sick, our tenant İlenko and I went to Aya Yorgi Church. While coming back from the church … I bought *on paralık* rat poison from the Jewish herbalist for killing rats… That night when my husband came home, he got angry with me asking that why I had gone out, put the ring he had given me on and wore the red dress. I resented and started crying saying that he doesn't want to let me out of this room, and what a bad fate I had. After we had had our dinner, he asked me to make coffee. Upon that fury, I put half of the rat poison into his coffee and went to bed. At midnight he started vomiting.[614]

As the foregoing quotation reveals, she was tired of her husband's jealousy, not to mention his beatings. Moreover, he had promised her the title deed of his house but did not give it after the consummation of their marriage. Anyway, he was only half-owner of the house as the other half belonged to his sister. Apparently, he was a poor man insomuch as that he was unable to buy a shawl for his wife.[615] He had even sold her engagement ring to the local grocer for thirty guruş when he had fallen sick just before his death. When Kürekçi Yorgi, a friend and workfellow of İstefan, was summoned to the court for his testimony, he also stated that İstefan could have

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[614] "*S: …doğrusunu söyle her nasılsa sen şeytana uyub bir şey yapmışsın daha küçüksün sana cezâ tertib etmez kimden almış isen söyle sana bir şey yoktur / C: Ben tahminen onbeş yaşındayım şeytana uydum size doğrusunu söyleyim Aya Nikola günü ki kocam hasta olmazdan bir gün evvel Aya Yorgi Kilisesi'ne bizim kiracımız olan İlenko ile gittik kiliseden döner iken (…) aktar yahudiden on paralık sıçan otu sıçanlara atmak üzere aldım eve gittim her yere koydum o gün vizite etmeğe gittim akşamüstü yine eve avdet ettim kocam daha gelmedi idi akşamısı gelüb bana gezmeğe niçün gitmişsin diyerek darılmağa başladı (…) ve verdiği yüzüğü dahi niçün takdın ve kırmızı çeyizi niçün giydin deyu darıldı benim çok gücüme geldi beni odadan dışarı çıkmağa bırakmıyor deyu ağlamağa başladım benim çektiğim nedir dedim ekmek yedikten sonra bana bir kahve pişir dedi ben de o öfke ile kahvesinin içine mezkur sıçan otunun yarısını koydum kocama verdim yattım yarı gece kusmağa başladı."*

[615] "*S: Kocan sana bir şey vaad etmiş mi / C: Evini vaad etti verecek idi ama vermedi ve bir şal dahi istedim onu dahi alamamış parası yoktu ki."*

got married thanks to the fellow artisans' support as they provided him the necessary money for wedding.[616]

Katinko was also a poor, orphan girl. She had no one in life but an aunt. Previously Katinko worked at Urkani's house, a merchant, for two years, but then quit as her salary –twenty guruş- was much lower than she deserved. Then she started to work for another man, whom she quit after six months because her aunt had arranged a marriage for her. In fact, at the time, she had already been in a love affair with another man, Yanaku, but as she no longer wanted to work, she did not seem reluctant to marry her prospective husband.[617] However, this marriage would soon prove to be not very promising for her, contrary to her expectations.

In the Katinko trial, the court summoned the Jewish herbalist Avram, Kürekçi Yorgi, and İlenko to the court. The archival registers about the case do not contain Avram's interrogation report, but we know from the Edirne Council's memorandum that he was questioned and denied Katinko's deposition, saying that he was not the one who had sold poison to the defendant. How Katinko had acquired the poison was an important question since the poison sale without the guarantee of a third party had been forbidden by law, as discussed above. For that reason, in the last instance, the Supreme Council suggested further investigation about the herbalist.

Kürekçi Yorgi was questioned definitely because he was one of the suspects who might have been the instigator. The court was suspicious about a love affair

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[616] *"Bir kız alacağım dediğinde nasıl kız alacaksın bilir misin deyu sordum o da bilirim dedi sonra bir gün gidüb merkumeye bakmış beğendi ve kızkarındaşı dahi ne makule kız olduğunu öğrenmiş dedi ve evlenmeği istedi ise de para yoğdu bir Çarşamba günü esnaftan para toplayub öbür Pazar günü evlendi."*

[617] *"Urkani nam tacire iki sene hizmet ettim çıkub biraz Nipalyotaki'de altı ay hizmet ettim sonra teyzem gelüb beni oradan alarak evine götürüb on beş gün oturduktan sonra beni kocaya verdi benim kimsem yoktur…Zor ile değil teyzem istedi yavuklu ettirmeğe ben de hizmetten kurtulayım diyerek çıktım."*

between Katinko and Yorgi as Katinko stated several times throughout her interrogation that her husband had enjoined her to see Yorgi. She said that he had often visited her when her husband had not been at home during the daytime. Nevertheless, Yorgi was not strictly questioned about this issue at the court, but instead asked how he could have stayed ignorant of what had happened to İstefan by not getting suspicious that he might have been poisoned.

İstefan and Yorgi had been friends for ten years and worked in the same workshop. İstefan had been occasionally visiting his friend's house where he had been living with his aunt and her children. The next morning just after he had been poisoned, he again visited Yorgi though he was violently ill with vomiting. After a short while, he attempted to go to the workshop, but he could not and turned back. When Yorgi had asked him about his illness, he had said that it must have been due to the coffee he had had the night before. Not asking any further question, Yorgi went to work leaving him there with his aunt who gave him some vinegar and pickled eggplant to cure his sickness. After two days, İstefan came to work, but his face was completely swollen. This was the last time he was able to go out.

The court's interest in the fact that Yorgi had not become suspicious about the possibility that his friend might have been poisoned is understandable, as the symptoms the victim displayed before his death, his denunciation about the coffee, and the rumours about poisoning should have created a suspicion on his side. He might certainly have been the instigator, according to the court, pretending to be unaware of everything to manipulate the court and waiting for the victim to meet his inevitable end. We cannot know if he had any role in the murder or not, but eventually, we know that he was neither indicted nor convicted of instigation and complicity.

Finally, the last suspect, İlenko, was İstefan's tenant, living in a room at his place with her husband and mother-in-law. As Katinko claimed that İlenko had been with her when she had purchased the poison from the herbalist, she was summoned to the court as a witness. Of course, she was questioned not only due to the suspicion that fell upon her, but because she was a next door neighbour who was presumably very close to Katinko and her husband's private goings-on, thus a very valuable source of information. İlenko may have observed or heard her neighbours. Indeed, she said that İstefan had fallen sick that night as she had heard him vomiting and further she had been the first who had visited him the next morning.

The interrogator asked İlenko about the people visiting the couple, Katinko's aunt and Yorgi in particular, if the spouses had quarrels, and if Katinko had any affair with Yorgi besides questioning her possible role in the murder as an associate by asking if she knew what Katinko had bought from the herbalist and for what reason. İlenko testified that she neither witnessed their neighbours quarrelling nor heard anything about an affair between Katinko and Yorgi.[618] At first, she tried to conceal that she had been with Katinko when she had bought the rat poison. However, later, when she was confronted with her, she had to acknowledge that they had been together in the market and she knew what she had bought, hence appearing as a very unreliable witness before the court. Presumably, this was the reason which made the court demand further investigation about İlenko in spite of Katinko's depositions that she committed the crime by her own without getting help or advice from anyone.[619]

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[618] "*Ne alemden ve ne de müteveffa-yı merkumun ağzından seviştiklerine dair bir lakırdı işitmedim."*

[619] *"Beni kimse öğretmedi yalnız kendim yaptım aç yatarım kocamı sevmediğimden bu işi yaptım öğreten yoktur kimsenin canını yakmayın."*

Frances E. Dolan argues that in early modern Britain, the representations of murderous wives in popular texts like plays, pamphlets, and ballads

> …reinforce the household as the sphere in which women act and suggest that women were not only confined to the household but were empowered within it. There they may suffer frustrations and annoyances so great that they turn to violence, but at home they also dare to transform their household tasks into the occasions of retribution and their household tools into the weapons they need.[620]

In a similar way, Robb also appreciates "the threat to poison" that women resorted to very often was an important weapon.[621] Overall, finding poison available as a weapon in a society where it was not possible for a woman to obtain a divorce in the face of her husband's unwillingness should have been empowering. As the trial of Katinko, and many other domestic poisonings have displayed, the subordinates find a voice through their court narratives and construct their subjectivities by accounting their wilful and violent transgressions against abusive husbands. To the question interrogator asking that "it is apparent that you planned it beforehand," Katinko replied;

> I did not have a good day since I got married to him. He always rebuked me. That day while I was going home from the Church, I bought rat poison as I thought that one way or another I would do this thing and administer it to my husband. So I brought it home."[622]

Then the interrogator asked subsequent questions about what she had thought after poisoning her husband and if she had felt repentance or any pity for him. She again answered without any hesitancy that "I thought that it is better to serve at another's

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[620] Dolan, p. 31.

[621] Robb, p. 187.

[622] *"Ben merkum ile evlendiğimden beri bir iyi gün görmedim hep beni azarlar idi ben de kiliseden o gün eve giderken sıçan otu alayım da evde bulunsun ne vakit ise bu işi yapacağım kocama vereyim deyu aldım eve getirdim."*

house and I am even willing to be without a piece of bread," while adding she had not repented for killing her husband, but she had felt a little bit sorry for him.[623]

Like Katinko, Fatma was also very self-confident and unrepentant when she was convicted and questioned at the İzmit district council.[624] She had confessed her wilful murder initially before her neighbours when her husband had been suffering due to the effect of the poison and then before the court.[625] She had killed her husband Hüseyin with *elli paralık* rat poison by administering it into his soup. Yet, the interrogator was suspicious about whether she had committed this crime alone wilfully or had been incited by another person and her answer to his question was revealing about her intention and commitment. "Q: Who told you to poison your husband? / A: Nobody gave me the poison. I administered it by myself and poisoned him."[626]

At her interrogation, Fatma explained why she poisoned her husband with the fact that he had always beat her and she was so anxious that he would eventually take her to the mountains and kill her. In other words, she resorted to violence in despair and self-defence. However, her vulnerability, both because she was a battered wife and furthermore pregnant, was not accepted as a mitigating factor. She was sentenced to death for the wilful murder of her husband.

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[623] *"S: Kocanı zehirledikten sonra ne kurdun kendi kendine / C: El kapıda oturayım ekmek bile olmasa razıyım bunu isterim der idim kendi kendime / S: Kocan kusmağa başladıktan sonra pişman oldun mu / C: Hayır hiç pişman olmadım / S: Ya öldüğü vakit merkuma acıdın mı / C: Biraz acıdım."*

[624] BOA., İ.MVL, 471/21305, 14 S 1279 (11 August 1862).

[625] *"...Hoca Mustafa Efendi ve Süleyman Çavuş ve Hüseyin ve sairleri gelüb tencerede fazla kalan çorbayı görüb farkettiler ben dahi evet zehirledim deyu cevap verdim."*

[626] *"S: Sana zevcini ağula deyu kim tarif eyledi / C: Kimse vermedi ben kendi kendime kodum ağuladım."*

When Mariye from Travnik killed her husband Rade by administering rat poison to his soup in 1864, she was also not repentant.[627] Her deposition at the court reveals the way she constructed herself as an agent of her wilful act.

> Q: Who murdered your husband Rade with poison?
>
> A: I killed him with poison.
>
> Q: Why did you kill your husband?
>
> A: My husband married me forcefully without my consent. He did not love me and always cursed and beat me. That is why I killed him with poison.[628]

Apparently, as the statement reveals, cruelty was integral to marriage. Battery, verbal and physical abuse, and sexual violence were not exceptional cases for an average peasant household.[629] On the contrary, plenty of cases show that the basic motive behind female violence against husbands was the excessive male violence targeting women. It was a kind of retaliatory punishment reserved for brutal husbands. A thirteen-fourteen year-old Hatice's unsuccessful attempt to poison her husband Halil was again due to her feelings of retribution.[630] They had got married a few months earlier and what nourished the young girl's grudge against her husband had been his accusation on their wedding night that she had not been a virgin, which had been followed, not surprisingly, by beating and verbal abuse. Upon that, she had bought *yirmi paralık* corrosive sublimate from a Jewish man and mixed it into syrup. Since Halil consumed some emetic medicine and yoghurt with garlic

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[627] BOA., MVL, 998/53, 26 C 1281 (26 November 1864).

[628] *"S: Senin kocan zevcin Rade nam kimse kim zehirledüb katl etti / C: Ben zehirledüb katl ettim / S: Ne sebebe mebnî kendi kocanı öldürdün / C: Kocam maktul merkum beni zor ile nikah ettirdi ve beni sevmedi her daim beni söğdü ve döğer idi bunu içün zehir ile öldürdüm."*

[629] Of course, it would not be true to refer violence as a particular characteristic of peasant households. As archival registers display clearly, urban households were not free of violence either.

[630] BOA., MVL, 612/23, 22 M 1278 (30 July 1861).

prepared by his mother, he survived. Though Hatice claimed that she had poisoned him on her own by yielding to the devil, being ignorant to the consequences of the crime,[631] it can be seen that she asserted her own will in court by rejecting submission to her husband. "Q: If your husband does not sue you and accepts you as a wife, do you want him? / A: If he beats and insults me again like before, I don't want him. If he doesn't, if he wants me, I want him too to get on merrily together."[632]

The way these poisonous women asserted and constituted themselves before the court as agents of their violent actions is remarkable. They explicitly confessed the crimes they had committed, portrayed their motives for murder clearly, and rarely displayed repentance. In this way, they challenged the standard cultural constructions of women as dependent, weak or incapable of autonomous action. Yet, no doubt, the archival registers provide heterogeneous evidence about women's subjectivity. On the one hand, evidence suggests that Ottoman women always found ways of challenging domestic authority and resorted to violence as a coping strategy against domestic violence and spousal discords. However, on the other hand, some other evidence may suggest that women were unable to construct themselves as agents since they had no other chance except yielding to domestic authority which is why, in the registers, they mostly appeared as victims of domestic violence and murder.

A noteworthy fact here is that the construction of history depends on the historian's choices, questions, and interpretations along with how s/he situates

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631 *"...aklım ermeden içirdim", "...şeytana uyup yapmış olduğumdan".*

632 *"S: Bu kabahatini iyâlin dava etmeyüb yine kabul eder ise sen de zevcini ister misin / C: Evvelki gibi döğer söver ise istemem eğerçi döğmez ise ve beni istediği halde ben de isterim güzel güzel geçinmek üzere."*

her/himself in the face of available historical evidence. As Appleby, Hunt and Jacob point out in the introduction part of their book, "history involves power and exclusion, for any history is always someone's history, told by that someone from their partial point of view… All human histories are provisional; none will have the last word."[633]

Keeping in mind that the last words about poisonous wives will not be written here, it can be claimed that cases about poisonous wives furnish us with the means to construct our narrative in the former direction that mentioned above, enabling us to portray those women as agents speaking on their own behalves and acting autonomously. In these cases, violence as a means of punishment and retribution significantly appears as a way of constructing subjectivities for women. Violence helps subordinate members of the household construct themselves as capable subjects by turning a position of subservience into a position of power. By violating the domestic hierarchy, contaminating the food, and killing their husbands, these women turned home into a site of retribution and an arena of female empowerment. Poisoning, in this regard, appears as a far more suitable method than other forms of violence for women as it fits to the traditional division of labour and gender roles in the household. In their particular relationship with the kitchen, cooking the food and nursing the sick and the old, women were able to carry out these murders more easily than men. In this sense, as Dolan states, "wives manipulate their husbands' dependence on them for physical sustenance."[634]

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[633] Joyce Appleby, Lynn Hunt and Margaret Jacob, *Telling the Truth About History* (New York and London: W.W.Norton & Company, 1995), p. 10.

[634] Dolan, p. 30.

While a close scrutiny of the interrogation reports by concentrating on the "voices of feminine violence" helps us to inscribe agency to poisonous wives, it also illuminates how this assertion of power was denied or, at least, the culpability of women was downplayed by the interrogators. As mentioned above, in the trial of Katinko, the interrogator asked the culprit the identity of the inciter five times. Though she clearly admitted the guilt, charging no one as her accomplice, she had to answer the same question formulated in different ways over and over again. "Q: You didn't plan this by yourself; of course there must be someone who taught you. / A: No, nobody taught me but I used to say even to my family that I didn't love this man."[635]

Clearly, the court was not very convinced about the fact that such a heinous crime had been committed by a young woman like Katinko, though she explicitly manifested by a confession that she had murdered her husband premeditatedly and wilfully without receiving any help from another agent. Probably, what led the interrogator to think in the way that she could not have planned such a crime alone was her young age. Furthermore, the fact that the couple had been married only for two months at the time of the murder and that Katinko had denied the alleged crime initially in her interrogation made the motives very suspicious. Eventually, she was sentenced to fifteen years imprisonment due to her age although she deserved death sentence for premeditated murder as prescribed by Article 170 of the Ottoman Penal Code. While her sentence was commuted to imprisonment, the court ordered further investigation into the herbalist Avram and İlenko.

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[635] *"S: Bunu sen yalnız kendiliğinden kurmadın elbet sana bir öğreten vardır / C: Hayır beni kimse öğretmedi lakin ben bu adamı sevmediğimi aileme dahi söylerdim."*

Remarkably, capital punishment almost in all these cases was substituted by fifteen years imprisonment for various reasons. Only in five cases were poisonous women sentenced to death.[636] In some of the cases, the main reason for mitigating the sentence was the young age of the woman. In some others, because the culprits had been incited by other persons, their sentences were commuted to imprisonment. In one case from Mardin, the capital sentence was substituted by fifteen years imprisonment just because the murderess Nuriye had stayed in prison for seven years while waiting for the end of the trial and investigation.[637] When another poisonous woman, Satıye, poisoned her husband's prospective second wife (*kuma*) Dudu with rat poison in Kastamonu, the death sentence prescribed for her also was commuted to imprisonment for fifteen years as she managed to convince the court that she had committed the crime unwittingly *–her nasılsa bilmeyerek oldu-* by yielding to the devil. As the murderess asked for "forgiveness for the sake of her little daughter" *–beni sagîre kızıma bağışlayın-* and denounced her act as unpremeditated, the court pronounced a lenient sentence for her.[638]

In 1864, when five-year-old Mehmet died because of his step-mother Fatma's attempt to poison her mother-in-law, the murderess was also sentenced to imprisonment. Fatma, in fact, had planned to poison her mother-in-law and for that reason, mixed some rat poison into the salt container. However, her plan did not run

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[636] At least we know that the final verdicts released by the local courts for Fatma (1862, Kastamonu), Neylihan (1873, Tulça/Tuna), Kamile (1905, Antakya), Zekiye (1907, Sivas/Tokat), and Abde (1907, Halep) were approved by the Sultan. See BOA., İ.MVL, 471/21305, 14 S 1279 (11 August 1862); İ.DA, 12/420, 20 Ca 1290 (16 July 1873); BEO, 2469/198646, 22 C 1323 (24 August 1905); Y.A.RES, 151/35, 4 Za 1325 (9 December 1907) and Y.A.RES, 146/73, 14 R 1325 (27 May 1907) respectively. For a more detailed analysis of Fatma's case see Aykut, pp. 63-64.

[637] See BOA., İ.DA, 12/465, 5 L 1290 (26 November 1873). We will focus on this case later in the section below about forensic medicine.

[638] BOA., İ.MVL, 545/24489, 9 Ş 1282 (29 December 1865).

its course when her step-sons, İbrahim and Mehmet, ate soup laced with poisoned salt. Furthermore, though she had seen that the children had put salt into their soup, she had not intervened. Fatma could not kill her mother-in-law, but she did kill Mehmet and was sentenced to capital punishment. Since Mehmet's real mother may have asked for şer'î jurisdiction, capital punishment was not found appropriate and was commuted to imprisonment.[639]

Briefly, many factors influenced the courts in releasing their final verdicts for these women. It is apparent that poisoning was not the most heinous crime before the Ottoman laws, particularly before the promulgation of the 1858 Ottoman Penal Code. Daniel V. Botsman claims that in Tokugawa period in Japan, poisoning was considered among the most heinous crimes which required special treatment by the courts.[640] As stated before, in Britain, husband-killing by any method, including poisoning, until the late eighteenth century was considered petty treason, which again required harsher punishment than "normal" murder, such as wife-killing.[641] In early modern Italy, too, poisoning was among those crimes that were considered as hidden.

> [It was] particularly subversive and dangerous…because of the elements of betrayal, premeditation, and hiding inherent in poisoning. Poisoning, moreover, was especially suited to the domestic setting and often involved family members, which made it doubly heinous.[642]

Suffice it to say here that the poison murder turned into a prominent crime, as elaborated above, only after the codification of the legal system through which poisoning was included in the definition of premeditated murder and a specific

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[639] BOA., MVL, 686/39, 5 C 1281 (5 November 1864).

[640] Daniel V. Botsman, *Punishment and Power in the Making of Modern Japan* (Princeton and Oxford: Princeton University Press, 2005), p. 29.

[641] See p. 222 and footnote 476.

[642] Astarita, pp. 151-153.

certain punishment was reserved for it. The Tanzimat's agenda played a crucial role in this process and poison murder came to the fore with its hidden nature, making it necessary for the nizamiye courts to unveil this secretive crime.

CHAPTER 8

UNVEILING THE TRUTH: THE QUESTION OF PROOF AND POSTMORTEM EXAMINATION IN SUSPECTED POISONING CASES

In 1851, Mehmet and Fatma went to the court in Edirne to report that their daughter Zeliha had been poisoned by her husband, Mustafa, and mother-in-law, Hatice. According to what was revealed by the investigation, the onset of symptoms appeared after Zeliha had had her dinner, drunk a glass of water, and gone to bed. Around three at night, she had awakened up and started vomiting, soon followed by diarrhoea and blood coming out of her nose and mouth, which eventually led to her death. When the two provincial physicians arrived to examine her corpse the next day in the afternoon, there were still blood coming out of her nose and mouth. Her body was as rigid as marble and blackened.[643] In the presence of these apparent signs, the physicians compiled a medical report stating that Zeliha had died of poisoning. The neighbours were suspicious of Mustafa as he had been cruel to his ex-wife. Probably, it was the reason which had motivated the alleged victim's parents to appeal to the court. However, Mustafa and Hatice totally denied all charges and claimed that Zeliha must have died due to medicine she had taken to induce a miscarriage. In the absence of strong evidence, that is, direct eyewitnesses, the medical evidence proved to be inadequate to convict the husband and his mother. The heirs could not claim anything since they could not substantiate their

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643 *"…müteveffiye-yi mezbûrenin vücudu .. yani mermer taşına parmak işlemek mümkün bunun vücuduna işlemek nâ-mümkün sırasında kapkara donub kalmış ve hatta ağzından burnundan mütemadiyen dahi dem gelmekde olduğu görülmüş ve suret-i haline nazaran müteveffiye-i merkume tesmim olunmuş olduğu anlaşılmış olmağla…"* (from the physicians' testimonial –*hekim şehadetnamesi*- dated 3 April 1851).

claims.[644] Moreover, it came out that the suspects had clean criminal records. Owing to the lack of proof, they were released with the condition of producing a guarantor.[645]

Similarly, in June 1858, when another Mehmet appealed to court in Ayaş sub-district of Ankara claiming that his son Hüseyin had been killed by poison administered to him by his daughter-in-law Zeliha, her father Ali and mother Alime, the alleged murderers were released due to lack of proof.[646] According to Mehmet's statement, there had been marital discord between the spouses for a year and it was actually the only motive heightening his suspicion about his son's sudden death. What is more revealing is that the external signs detected on his body after his medical examination were thought to be indicative of poison: His nails, gums, and upper part of his body had turned purple.[647] However, these signs were not considered as sufficient evidence against the defendants by the court as there were no eyewitnesses who would corroborate Mehmet's suspicions. Apparently, circumstantial evidence as such was viewed inferior to direct witness testimony. Eventually, both şer'î and nizamî courts returned a not guilty verdict and the case was dropped.[648]

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[644] BOA., MVL, 203/32, 23 B 1267 (24 May 1851).
[645] BOA., MVL, 204/52, 15 Za 1267 (11 September 1851).

[646] BOA., MVL, 579/9, 21 R 1275 (28 November 1858).

[647] BOA., MVL, 572/24, 25 L 1274 (8 June 1858). *"…keşfinde tırnakları ve dizlerinden üst tarafı ve diş etleri göğermiş…olmasıyla mesmûmen vefat etmiş zannolunduğu mahallinden bâ-mazbata inhâ olunmuş…"* Probably, the poison that killed Hüseyin was arsenic since the appearance presented by his body was akin to poisoning by arsenic. The symptoms of arsenic poisoning are distinguisable as it remains in the hair, skin, urine and fingernails of the victim since arsenic is an element that does not break down. See Serita D. Stevens and Anne Klarner, *Deadly Doses: A Writer's Guide to Poisons* (Writer's Digest Books: Cincinnati, Ohio, 1999), p. 11.

[648] BOA., A.MKT.MVL, 103/73, 1 Ca 1275 (7 December 1858).

Eleven years after Hüseyin's death, in 1866, when Fermano was allegedly poisoned by his wife Nuriye in Mardin, this time the heirs' position was stronger.[649] According to the testimony of Süleyman, the younger brother of the victim, Nuriye had brought them helva when they had been working at the field. After eating some of the sweet, Fermano had told her that the dessert had a bad taste but his wife had insisted that he eat it saying that its taste was okay. Upon asking his brother to eat it and see if he was right, Süleyman also popped a piece of helva in his mouth. However, Nuriye hit his hand and made it fall down, not allowing him to consume the rest. Later, when they returned home, the two brothers started vomiting, stricken with illness. Although Süleyman recovered, Fermano died in two hours.

After the suspicious death of Fermano, the local government was informed that there had been blackness on the left side of his throat and also on his ribs in addition to yellow fluid coming out of his mouth and nose, all of which was accompanied by hair loss.[650] Furthermore, corrosive sublimate had been detected at the bottom of the pot in which the culprit had put the helva. Thereupon, Nuriye was taken under custody and interrogated, which ended up with her confession before the court. It emerged that Nuriye had been having an affair with Remko, a man from another village, and his incitement had led to her poisoning her husband. In March 1866, when the lovers had met at Remko's village, Remko had supplied her with poison, saying "poison your husband so that we can get married."[651] Unhesitatingly, Nuriye had administered the poison in order to marry her lover.

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[649] BOA., İ.DA, 12/465, 5 L 1290 (26 November 1873).

[650] *"...Fermano'nun boğazının sol tarafıyla kaburgaları üzerinde siyahlık olarak ağzından ve burnundan sarı su gelmekde ve saçları dahi dökülmekde bulunduğu ihbar..."*

[651] *"...Remko'ya olan meyl ve muhabbetinden dolayı bir gün karyesine gittiğinde merkum kendisine bir miktar semm verüb zevcini tesmim et seni tezevvüç ederim demesi üzerine..."*

Why Mustafa, Zeliha, and other suspects went unpunished while Nuriye was convicted and sentenced to death can be explained, no doubt, by the quality of evidence presented to the court. We can see that in all cases, the court put great importance on witness testimony besides confession than medical reports. Poisoning was a "hidden" crime difficult to prove and even if medical expertise provided the court with circumstantial evidence, şer'î evidence was stronger than the former for the courts to pronounce verdicts, at least before 1858.[652] In the first and second cases, the nonexistence of any witness to the murders and the insistent denials of the culprits made the heirs' efforts void in spite of the fact that the first one contained medical expert testimony indicating poisoning. In the third case, on the other hand, what made Nuriye vulnerable in the face of accusations was her confession. Though she attempted to revoke her confession about poisoning her husband in the upper court (*meclis-i temyiz-i liva*) by claiming that she had been threatened and confessed under duress in the district, more than five witnesses appeared at the court and testified that she had confessed wilfully.

Significantly, the depositions of credible and reliable witnesses, among whom there were two members of the sub-district court (*meclis-i deâvî-i kaza*), the officer working at the women's prison and the village headman, evidently were more acceptable than hers. She was sentenced to death for the premeditated murder of her husband according to Article 170 of the Ottoman Penal Code. However, she was not executed. Since the verdict was heard at the appellate court in İstanbul after

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[652] See Fahmy, "The Anatomy of Justice," p. 5. In the context of eighteenth century Ottoman Empire and on the basis of evidence provided by Çankırı and Kastamonu şer'î courts, Ergene also argues that "the use of written documentation as an evidentiary instrument was very limited… When written documents were used in these courts, they usually were treated as allegations or counter-allegations subject to further corroboration." Any written document presented to the court had to be corroborated by witness testimony. See Boğaç Ergene, "Evidence in Ottoman Courts: Oral and Written Documentation in Early-Modern Courts of Islamic Law," *Journal of the American Oriental Society* 124, no. 3 (July-September, 2004), pp. 475-477.

seven years in 1873 and during that time she had been in prison, her sentence was commuted to fifteen years imprisonment.

The most important thing to note here is that neither medical expert testimony nor circumstantial evidence was more convincing than direct witness testimony. Yet, in Nuriye's trial, the corrosive sublimate that was detected at the bottom of the pot should have been treated as crucial circumstantial evidence before the court. Who detected the poison and more importantly how it was detected remain important questions for which we have unfortunately no answer.

In fact, medico-scientific evidence established by chemical tests or forensic medicine had been acknowledged by the Ottoman courts since the mid-nineteenth century and entered into trials of criminal poisoning with the institutionalization of the nizamiye courts. In İstanbul and the Ottoman countryside, medical practitioners such as provincial physicians, local surgeons, quarantine inspectors, and municipal doctors were entrusted to conduct external medical examination before the inhumation of the deceased in order to ascertain whether death was due to natural causes, an epidemic or a homicide.[653] Moreover, Article 17 of the 1845 Police Regulation stipulated that the employment of a proficient chemist, a physician, and a surgeon was necessary to examine and detect the cause of death. Before that, it had been only şer'î officials who attended such investigations.[654] Later in 1858, Article 176 of the Ottoman Penal Code introduced a sentence for those who violated the law

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[653] Actually, post-mortem examination was necessary not only to ascertain the cause of death, but also to see whether the person was actually dead. A case from Silifke sub-district in Alaiye Province reported in the pages of *Tercüman-ı Ahval* shows that Hüseyin Ağa was burried but in fact he was not dead and managed somehow to get out of the grave. See *Tercüman-ı Ahvâl*, no. 1, 6 R 1277 (22 October 1860).

[654] See Bingöl, "Osmanlı'da Adli Tababete Dair Notlar," p. 40 and Özen Tok, "Kayseri Kadı Sicillerindeki Yaralanma ve Ölüm Vakalarıyla İlgili Keşif Raporları (1650-1660)," *Sosyal Bilimler Enstitüsü Dergisi*, no. 22 (2007), p. 334. For an example see BOA., MVL, 67/46, 27 Ş 1260 (11 September 1844).

by attempting to bury a corpse without informing the government before the performance of a post-mortem examination. Accordingly, they would be sentenced to prison from one month to one year and obliged to pay pecuniary punishment from one to five golden mecidiye.[655] To carry into effect the statute introduced by the criminal law, the order of the government was announced to all neighbourhoods and headmen in İstanbul and Bilâd-ı Selase.

What made this announcement indispensible was a violation that took place in Yeni Bahçe where two persons' corpses had been buried without waiting for the arrival of the physicians sent by the quarantine administration (*cânib-i karantina*). Therefore, the headmen of the neighbourhoods were warned and reminded that the quarantine department should be informed about deaths that occurred within their confines without delay so that it would be possible to carry out medical examination of the deceased. Otherwise, they would be held responsible for the violation of law which was introduced "for the protection of public health and security."[656]

Approximately a year later, in 1860, the same order was proclaimed in the countryside as well. Notably, this time, the anxiety of the government was not restricted to the protection of public health and security. The inhumation of any corpse without informing the government was against personal law, in other words, the rights of the heirs –*hukuk-ı verese*.[657] Burying the dead without medical

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[655] See *Fihrist-i Kanûnnâme-i Cezâ,* p. 41. Article 176: *"Maktulün cesedini ihfâ veyahud hükümete haber vermeksizin ve keşf olunmaksızın defn eden kimse bir aydan bir seneye kadar habs olunur ve bir mecidiye altunundan beş mecidiye altununa kadar cezâ-yı nakdî alınır fakat ol kimsede madde-i katle şirket var ise onun içün göreceği cezâ başkaca icrâ olunur."* In 1869, when Şaban was murdered in Zara district of Sivas, Magir, his wife Göher and Hasan were sentenced to one year prison and five *mecidiye*s as they had buried the victim secretly to a field in order to conceal the murder. See BOA., İ.DA, 9/261, 25.R.1288 (14 July 1871).

[656] BOA., A.MKT.MHM, 151/110, 25 C 1275 (30 January 1859). *"...sıhhat ve emniyet-i umumiyenin hıfzı içün..."*

[657] BOA., A.MKT.MHM, 176/68, 11 B 1276 (3 February 1860).

examination would prevent the heirs' plea before law by leaving the cause of death unknown. Obviously, the need to determine homicide cases was as much important as to know whether any outbreak of disease or epidemics was on the rise, given the fact that in most cases the inhumation conducted without informing the government was for concealing a homicide.[658] It also could bring about undesirable consequences for innocent people who might be unjustly accused of a murder.

For instance, after a man named Biraşkova died in Sinop, his brother Dimitri buried him without informing the government. Following the funeral, Dimitri accused Biraşkova's wife of having poisoned her husband. Since the deceased's body had not been examined by a physician, the accused was able to prove her innocence only by appealing to witness testimony from her district, who testified that they had observed no sign of poisoning on the deceased when they had washed the body. The court returned a not guilty verdict in the end and concluded that the man had died because of illness.[659]

Post-mortem examination, supposedly, could reveal the cause of death in suspicious cases. That is why the physician's qualification was important to detect poisoning from its symptoms. Furthermore, in case poisoning was detected before the victim or the patient died, it was crucial to know treatment methods to save his/her life. As early as 1867/1868 (1284), Brigadier (*Mirliva*) Mustafa Hami Paşa, a member of the Deliberative Council of the Sublime Porte (*Daruş Şurâ-yı Askerî*), in his book on public health, suggested treatment methods and emetic medicines for

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[658] There are plenty of cases that can be found in the archives which reveal that murderers buried the victim to cover up their crimes. For example, in Tırnova district of Tuna Province, when Fatma was murdered by her son Salih, her corpse was buried without calling any medical practitioner for post-mortem examination to conceal his crime. See *Tuna Ayniyat Defteri* 919, no. 943, 29 Za 1284 (23 March 1868), p. 159.

[659] BOA., MVL, 584/46, 19 L 1275 (22 May 1859).

people who had been poisoned. Of course, his suggestions were for those victims who knew the type of poison they had consumed. Metals like copper, silver nitrate (*cehennem taşı*), and lead; opium, strychnine, cinchona (*kınakına*), and aque laurocerasi (*taflan suyu*) were among the poisonous articles for which he had antidotes prescriptions.[660] A few years later, in 1870/1871 (1287), a new book called *Kanûn-ı Sıhha* was published by Mustafa Hami Paşa. This time, he first described the symptoms of numerous poisons in the human body and then suggested antidotes. His list of poisons included arsenic and corrosive sublimate, which had not figured in his previous book. Accordingly, if the poison consumed was arsenic, it would cause a bitter taste in the mouth, fever in the body, abdominal and stomach pains, convulsions, vomiting and bloody diarrhoea which would be followed by rapid heartbeat, anxiety, and fainting accompanied by hair loss and the skin turning black. In that case, he suggested, the patient should immediately be given lime water as an antidote.[661]

Apparently, the chapters on poison in his books were not written with criminal poisonings in mind, but accidental poisonings. In any book about health, anyway, poisoning occupied an important place to some degree. For instance, as late as 1910/1911(1328), just like Mustafa Hami Paşa, Doctor Muhiddin wrote about first aid treatment in cases of sunstroke, congealment, flexion, prevention from infectious diseases, and other health issues in his book *Rehber-i Sıhhiye* and not surprisingly, treatments for poisoning.[662] In case it was recognized that a person had

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[660] Mustafa Hami Paşa, *Menafiü'l İnsan: Fenn-i Hıfz-ı Sıhhat-ı Avam* (İstanbul: Tophane-i Amire Matbaası, 1284), pp. 134-148.

[661] Mustafa Hami Paşa, *Kanûn-ı Sıhha* (İzzet Bey Matbaası, 1287), pp. 165-166.

[662] Doktor Muhiddin, *Rehber-i Sıhhiye* (Konstantiniye Matbaa-yı Ebuziya, 1328), pp. 160-170.

been poisoned before s/he died, these prescriptions and receipts would probably work. However, if a person died unexpectedly and suspiciously producing symptoms of poisoning, then forensic science would be called on to detect the hidden cause of death.

The Role of Dissection Detecting Cause of Death in Suspicious Poisoning Cases

Khaled Fahmy suggests that the introduction of legal-medicine to nineteenth century Egypt should be seen as "another way in which the modern state interfered in private life and appropriated the human body for its own purposes." He acknowledges this new science as an extension of other modern governmental techniques such as the introduction of vaccinations, registration of deaths, collection of statistics and quarantines in Egypt while criticizing approaches that reduce it to "the superstitious reaction of the fanatic *ulamâ* to a few enlightened reforms." He elaborates how the illiterate masses, young Arabic-speaking doctors, and also the state used and channeled forensic medicine for their own benefits.[663]

My focus here about forensic medicine and the role of dissection will obviously will be limited to poisoning cases. Though not suggesting a very comprehensive analysis like Fahmy's, I will attempt to illuminate the rise of medico-legal proof in poisoning cases. There are very few studies on the history of forensic medicine in Turkey and most of these studies have not been based on primary sources but rather short summaries or reproductions of previously held studies on the subject made by historians of medicine such as Bedi Şehsuvaroğlu,

[663] Fahmy, "The Anatomy of Justice," p. 26.

Cahit Özen and Esin Kahya in the 1970s.[664] A more recent but brief study on the history of forensic science was carried out by Sedat Bingöl who, in his article, gives examples of the practice of forensic science in the nineteenth century Ottoman Empire by referring to primary sources.[665] Given the limited scope of scholarly works in the field, it is not easy to find reliable information on the exercise of forensic science in suspicious poisoning cases. In this respect, I analyzed cases that are promissory in revealing clues about various aspects of forensic medicine such as external post-mortem examinations, dissections, and chemical analysis which were appealed to by the Ottoman courts as evidence.

It should first be noted that forensic medicine may take various forms such as external post-mortem examination, laboratory analysis or autopsy (*feth-i meyyit*). As mentioned above, external post-mortem examination was compulsory before the burial of any deceased whether a case was a suspected murder or a natural death from disease or accident. Dissection in legal cases, on the other hand, was a tool mostly resorted to in suspicious cases only with the permission of the deceased's heirs or relatives.

The first empirical anatomy lectures for students to practice dissection on cadavers were started at the School of Medicine in 1841 by Dr. Bernard, an Austrian physician, who also introduced the first seminars on forensic medicine (*Tıbb-i Kanûni*) at the School.[666] However, there was a problem that had to be overcome in order to teach dissection: obtaining enough cadavers to use in the dissection courses. Owing to the methods of teaching anatomy, the demand for corpses increased to a

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[664] See for example Oğuz Polat and Cem Uysal, "History of Forensic Medicine in Turkey," *Legal Medicine*, no. 11 (2009), pp. 107-110.

[665]See Bingöl, "Osmanlı'da Adli Tababete Dair Notlar," pp. 37-65.

[666] Ibid., p. 39; Şemsi Gök and Cahit Özen, *Adlî Tıbbın Tarihçesi ve Teşkilatlanması* (İstanbul: TC Adalet Bakanlığı Adlî Tıp Kurumu, 1982), p. 1.

large extent that the School of Medicine had to ask for the government's permission to acquire the corpses of felons who had died at the Arsenal (*Tersane-i Amire*) and also those unclaimed bodies of "*gureba*" who were brought to Çürüklük Cemetery to be buried. However, the government permitted the School only to get the corpses of the felons died in the prison when necessary but, secretly –*hafiyyen*- while refusing the latter. On the one hand, the government was quite convinced about the needs of the students to practice dissection in order to have empirical experience. Yet, it was also considerably anxious and sober about the potential disturbances that would break out if it became known that the bodies of felons who died in prison were sent to the School of Medicine to be used in anatomy and dissection classes.[667]

Krista Kesselring points out that in England, unlike continental Europe, medico-legal autopsies and the first texts on legal medicine began to appear very late, towards the end of the eighteenth century. This situation was mostly due to the public attitudes towards medical practices. In the mid-sixteenth century, barbers and surgeons received royal permission to acquire the bodies of four felons a year from the gallows and conduct anatomy classes. These were the bodies of murderers who had been hanged, and that is why dissection was perceived for a long time as an extension of punishment. Kesselring states that it was only in 1832 with the Anatomy Act that dissection "stop[ped] being a supplementary 'mark of infamy' for killers and become instead a penalty for poverty, with the subjects gathered from workhouses rather than gallows." Dissection also deprived the bodies of a proper

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[667] BOA., İ.DH, 38/1771, 18 S 1257 (11 April 1841). For an article about the problems of obtaining cadavers in the Ottoman Empire see Yüksel Çelik, "Osmanlı Devleti'nde Anatomi Eğitimi ve Kadavra Teminindeki Sorunlar," in *İğdiş, Sünnet, Bedene Yönelik Şiddet Kitabı*, eds., E.G.Naskali and A.Koç (İstanbul: Kitabevi Yayınları, 2009), pp. 348-352 and Esin Kâhya, "Bizde Disseksiyon Ne Zaman ve Nasıl Başladı?," *Belleten* XLIII, no. 172 (1979), pp. 740-751.

burial. It was this ignominy attached to the procedure which caused popular fear and resentment of it.[668]

Peter Linebaugh, on the other hand, in an article on the Tyburn Riots in eighteenth century England, describes the increasing competition for the corpses at the gallows in public hangings which broke out between the relatives and friends of these executed people, the institutions which were granted royal permission to acquire corpses for dissection, and the private surgeons and hospitals. He emphasizes the development of private trade in dead bodies while analyzing how corpses were turned into a commodity that could be bought and sold.[669] For the Ottoman Empire, it would not be correct to talk about such a competition, but it can be suggested that an increasing demand for bodies in the mid-nineteenth century had engendered, to a certain degree, the commodification of corpses.

In 1847, a report submitted to the government by the chief physician of the School of Medicine reveals that the school was having trouble in finding cadavers to use in the courses on dissection. According to the report, the convicts who died at *Tersane-i Amire* were the main source for cadavers, which later left their places to the ones supplied by the Slave Market. However, after the removal of the Market, the school started to have difficulty obtaining cadavers and requested that the government to compel the slave traders to give the corpses of black male and female slaves -*fevt olan zenci cariye ve gulamlar*- to the School of Medicine in order to be

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[668] Krista Kesselring, "Detecting 'Death Disguised'," *History Today* 56, no. 4 (April 2006), p. 24.

[669] Peter Linebaugh, "The Tyburn Riot Against the Surgeons," in *Albion's Fatal Tree*, eds., D. Hay, P. Linebaugh and E. P. Thompson (London: Allan Lane, Penguin Books, 1975), pp. 70-79.

used in the dissection courses. It is worth to note that the school was ready to pay thirty guruş for each corpse that would be delivered by slave traders.[670]

In 1848, Charles Mac Farlane, in his travel book, also stated that it was mostly those black slave bodies that were used as cadavers for dissection courses at the School of Medicine. When a slave owner handed over the body of his deceased black slave to the School, he was paid twenty to twenty-five guruş.[671] Since the slaves were privately owned, even their dead bodies had a commodity value for their owners. At issue here is that what made the School of Medicine ready to pay for the corpses was obviously the scarcity of corpses that could be obtained from prison. Hence, in 1855, the Minister of the School again requested corpses from Tersane-i Amire and Bâb-ı Zabtiye.[672] For the period in question, we do not have statistics displaying how many felons died in prison. However, considering the ill-reputation of prisons due to overcrowded space and adverse hygiene and health conditions, it can be assumed that the death rates could not have been so low as to leave the School of Medicine in deprivation.[673]

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[670] BOA., İ.DH, 144/7419, 6 Ca 1263 (22 April 1847).

[671]Charles Mac Farlane, *Turkey and its Destiny*, C.II (1850), pp. 262-266 cited by Esin Kâhya, ibid., p. 754.

[672] BOA., A.MKT.MHM, 81/46, 15 R 1272 (25 December 1855).

[673] For the state of prisons in the Ottoman Empire see Hasan Şen, "Osmanlı'da Hapishane Mefhumu," in *Osmanlı'da Asayiş, Suç ve Ceza*, eds., N.Levy and A.Toumarkine (İstanbul: Tarih Vakfı Yurt Yayınları, 2008), pp. 208-210; Ömer Şen, *Osmanlı'da Mahkum Olmak* (İstanbul: Kapı Yayınları, 2007), pp. 17-30; Gültekin Yıldız, "Osmanlı Devleti'nde Hapishane Islahatı (1839-1908)" (M.A.thesis, Marmara Üniversitesi, 2002), pp. 101-108. For the description of the conditions in Sivas prison see Lennep, pp. 224-225: "…The prisoners lie down in rows, chained, and with their feet in the stocks…They lie here until they rot and die, or until their friends collect money enough to bribe the Pasha and his council to let them go…The only relief occasionally afforded them is to make them work on the highways, several being chained together. And then woe to the seller of bread, or of anything eatable that may come within their reach; they grab it with savage delight, and are never punished, because they are supposed already to endure all that human nature is able to bear."

If we take into account the correspondence in 1841 mentioned above about the "secret" delivery of corpses to the School, it can be assumed legitimately that this practice might not have been perceived well by the prison and police administrations or by the public. Before 1841, dissection of cadavers was not allowed. Although there were anatomy courses at *Tıbhane-i Amire*, founded in 1827 by Sultan Mahmut II, these courses were theoretical. In 1832, just after a cholera epidemic had hit İstanbul, a British doctor, W. M. Carthy, was complaining in a letter written to the *London Medical Gazette* about the inability to conduct dissection: "Unfortunately, owing to existing prejudices, and the state of medical science in Turkey, we do not have the advantage of post-mortem examinations."[674] Only after the imperial decree of Sultan Abdülmecid in 1841, was dissection allowed to be practiced at the School of Medicine.[675] Given the delicate balance between the advance in medicine and the public perception of and attitude toward dissection, the latter seems to overbalance and determine the supply of corpses.

Until 1857, no autopsy could be conducted on the bodies of Muslims. In 1857, upon the suspicious death of a Hungarian woman, who had converted to Islam and married a senior officer in the Ottoman Army, rumours that she had committed suicide had become so widespread that the Minister of Military Affairs demanded an autopsy. The deceased woman was exhumed from her grave in Mevlanakapı Cemetery after fourteen days following her burial and her body was dissected. Interestingly, no corrosion was found on the body, which was an indication of a sublimate poisoning. However, corrosive sublimate was detected in her stomach

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[674] W.M.Carthy, "On the Cholera at Constantinople," *The London Medical Gazette* (February 4, 1832), pp. 681-682.

[675] Enis Ulucam, Nilüfer Gökçe and Recep Mesut, "Turkish Anatomy Education from the Foundation of the First Modern Medical School to Today," *JISHIM*, no. 2 (2003), pp. 50-51.

tissues. It came out after the investigation that she had bought six *dirhem*s (19.5 grams) of corrosive sublimate and consumed all of it to commit suicide.[676] Again in 1857, another autopsy was carried out on Lieutenant Ali Ağa. Ali Ağa had gone to hospital with the symptoms of poisoning. However, he died soon and his body was dissected. It came out that he had been poisoned with lead carbonate and mercuric chloride that he had purchased from a soap seller in Zindankapı, prescribed for his syphilis.[677]

In 1859, Dr. Fauvel submitted a complaint to the Minister of the School of Medicine, Hayrullah Efendi, claiming that students could not benefit from medical education without any demonstration of anatomical and pathological studies on cadavers. People were reluctant to authorize physicians to conduct dissection on the dead bodies of their beloved ones, Dr. Fauvel said, since it was commonly opined that dissection was against Islam.[678] In 1864, it came out that neither Bâb-ı Zabtiye nor Tersane-i Amire were sending corpses to the School for dissection courses despite the order pronounced. In fact, the Police Department had sent a few corpses following the order, but then it had stopped. Moreover, the School had received no cadavers from the prison. The School of Medicine was, therefore, once more asking for an order that would force the police and prison administrations to send the corpses of felons who were unattended.[679] Zoeros Paşa was also not very happy with the fact that dissection was still a practice far from being regular and systematic at

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[676] *Gazette Médicale D'Orient*, no. 5 (August 1857), p. 95.

[677] *Gazette Médicale D'Orient*, no. 6 (September 1857) cited by Hüsrev Hatemi and Aykut Kazancıgil, ibid., p. 38.

[678] Zuhal Özaydın, "Tanzimat Devri Hekimi Hayrullah Efendi Hayatı ve Eserleri," *Tıp Tarihi Araştırmaları*, eds., N. Sarı and H. Hatemi (İstanbul, 1993), p. 79. Zuhal Özaydın cites from *Gazette Médicale D'Orient*, no. 6, September 1859.

[679] BOA., MVL, 866/52, 25 Ca 1281 (26 October 1864).

the School of Medicine. According to Zoeros Paşa, there was a need for a regulation about the practice of dissection that would permit conducting dissection on the deceased who died at the hospitals.[680]

As late as 1894, still, the School of Medicine –*Mekteb-i Fünun-ı Tıbbiye*- was complaining about the difficulty of receiving a regular supply of bodies sent from the prison. The school notified the local government that five or six corpses were not sufficient to teach dissection and asked that more would be obtained from the mental health hospital and the *Gurebâ-yı Müslimin* Hospital.[681] Nevertheless, the local government of İstanbul was quite suspicious about dead bodies since the cholera pandemic of 1893-94 had caused a disaster costing more than 1500 lives.[682] This time, the difficulty in obtaining corpses for dissection did evidently not result from the fear of public reaction, but from the urban sanitation measures administered in İstanbul to control the spread of cholera.

During the nineteenth century, medical examinations conducted in the Empire were mostly external. This was standard procedure in all criminal cases. As the cases mentioned before reveal, it was upon the basis of symptoms or external signs alone that a diagnosis of poisoning was made by physicians and lay witnesses. In cases of suspected murders, if there were no visible wounds or cuts and blood on the victim's

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[680] Feza Günergun ve Nuran Yıldırım, "Cemiyet-i Tıbbiye-i Şahane'nin Mekteb-i Tıbbiye-yi Şahane'ye Getirdiği Eleştiriler (1857-1867)," *Osmanlı Bilimi Araştırmaları* 3, no. 1 (2001), p. 26. Zoeros Paşa was the first physician who initiated the courses on deontology and history of medicine at the School of Medicine. For an article about it see Nuran Yıldırım and Yeşim Işıl Ülman, "Zoeros Paşa ve Deontoloji," *Tarih ve Toplum* 22, no. 127 (1994), pp. 29-34.

[681] BOA., Y.MTV, 111/64, 25 C 1312 (24 December 1894), BEO, 534/39992, 16 C 1312 (15 December 1894).

[682] Mesut Ayar, "Osmanlı'da Koleranın Tarihçesi," *Mostar*, no. 58 (December 2009). See http://www.mostar.com.tr/Detay.aspx?YaziID=380&Sayi=19. For the unrest caused by quarantina measures against cholera in 1893 see Nuran Yıldırım, "Karantina İstemezük!", p. 25.

body, the unidentified cause of death was believed to be either due to a disease or poisoning. For example, when Hatice died unexpectedly in Bolu in 1868, what made the lay witnesses convinced that she had been poisoned was her appearance.[683] As she had been sick and about to die, her husband had informed the villagers about his wife's sickness and invited them for examination. The seven people from the village who attended for the medical examination of Hatice were the village headman, some members of the village council, and teachers from the village school, but no physician. They witnessed that her fingers, fingernails, eyes, and chest had turned purple. In addition, her lips had become swollen and hung down to her chin.[684]

In another case from Kastamonu, this time, it was the defendant who was exposed to the questions about the post-mortem appearance of the victim. When Satıye acknowledged before the court that she had killed the prospective second-wife of her husband with rat poison, the interrogator asked her if there were any bruises on the victim's body. Her answer was an evidence of poisoning since the victim's finger nails had turned purple.[685] Along with these indicators –bruises, swelling of the face or body- throwing up a lot or vomiting blood were apparent symptoms of poisoning even for those lay persons who were not experts in medicine.

As is evidenced from these cases, a medical report produced by a physician was not crucial for the investigation process if the defendant acknowledged the

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[683] BOA., İ.DA, 9/213, 21 Ş 1287 (16 November 1870).

[684] *"...geldiklerinde Hatice'nin tekellüme iktidarı olmadığını ve ellerinin parmak ve tırnakları ve gözleriyle göğsünün etrafı siyahlanmış olduğunu ve dudakları dahi şişüb çenesine sarkmış idüğünü görüb..."*

[685] BOA., İ.MVL, 545/24489, 9 Ş 1282 (28 December 1865). Nearly in every criminal poisoning case containing interrogation reports, it can be seen that the interrogators asked the defendants, plaintiffs or witnesses whether any bruises or other signs of poisoning were detected on the victim's body or if s/he vomited or not.

alleged crime and if there were witnesses. Nevertheless, in case the defendant denied all charges about the murder which would leave the heirs of the victim and the court in suspicion, then the evidence provided by the post-mortem report was important before the law to substantiate the allegations. Of course, lay witnesses' depositions were as important as the medical expert's testimony but not in suspicious poisoning/homicide cases. However, it was not always possible for the plaintiffs and also for the courts to find a provincial physician or a quarantine inspector available in every district.[686] In 1864, when Simane poisoned her husband Rade in Zubçe village of Trebin sub-district, Bosnia (today in northern Kosovo), the witnesses and plaintiffs were asked plenty of times whether the victim's body had been examined by a physician or not:

> Q: Is there a physician in your village and was he [Rade] examined before or after he died?
> A: There are some lay-healers –*hekim kılıklı adamlarımız*-, who treat the lesions and carbuncles growing under our garments, in our village. However, since they are not so well-informed in medicine to detect whether a man was poisoned or not, we did not make him examined. Even if he was examined, they would not be able to diagnose it. But as far as we know, he got sick and died in three to four hours.[687]

As is evident from the interrogation reports, there was no physician in Zubçe. In fact, in case there was no physician in a village or a district, then it was the job of military physicians and surgeons working in nearby battalions to go the crime scene and conduct examinations. There was a battalion in Trebin, but it came out that the battalion physician did not go to Zubçe for the examination. This was a problem for the court because Simane denied that she had poisoned her husband, which rendered

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[686] In 1876, the local government of Tuna Province was instructed that since there were not provincial physicians in every district, the sick soldiers would be examined by military physicians. BOA., C.SH, 17/ 841, 2 R 1293 (24 July 1876). Evidently, it seems that this order did not only include sick soldiers but also the local people.

[687] BOA., İ.MVL, 568/25540, 10 Za 1283 (16 March 1867).

the post-mortem examination of Rade's body more important than ever. Although there appeared witnesses, including her relatives, testifying that she had formerly admitted the crime when she had been interrogated by the church before village people who had gathered in front of the church and numbered more than one hundred, she was insistent on her denial. She claimed that she had not been conscious at the time of her confession –*aklımı gayb ettim*- and remembered nothing. Even though the presence of witness testimonies was sufficient for conviction, a post-mortem report turned out to be a necessary detail for the investigation process in the face of her denial.

Actually, until the late nineteenth century, autopsy or dissection (*teşrih*) had not been performed frequently in suspicious death cases or in homicide investigations. Several lawsuits that came before the courts in the mid-nineties reveal that autopsy was the last resort to prove or disprove a case when and if conclusive evidence could not be reached through the external post-mortem examination of the corpse.[688] Sometimes, however, when any sign could not be detected by preliminary external examination of the lay witnesses, the post-mortem report of a physician indicating any poisoning was a motive that led the court not for requesting a dissection but for further investigation. An archival register from Drama shows that the court magistrates rested on the reports submitted to them by physicians to advance the investigation. In 1878 when five-year old İbrahim died in İspirli Village, the little boy's mother claimed that her son had been poisoned by a neighbour called Fatma due to a matter of grudge. According to her denunciation,

[688] It was only in 1879 that a provision of the *Usûl-i Muhâkemat-ı Cezâiye Kanûn-u Muvakkiti* proclaimed the conduct of dissection necessary if other evidence obtained from the post-mortem examination of the deceased could not be conclusive to prove a case. See "Adli tıp Kurumu'nun Tarihçesi," http://www.atk.gov.tr/tarihce.html.

the alleged poisoner had given İbrahim a piece of bread containing opium. Although no sign of poison was detected on İbrahim's body when examined externally, the physician confirmed and reported that the cause of his death was indeed opium. Immediately an investigation was started and Fatma was taken into custody for interrogation. In spite of her denial, it soon came out with witness testimonies that she was the poisoner, she was sentenced to fifteen years imprisonment.[689]

An exceptional case from Samatya, İstanbul, reveals that autopsy was in fact a medical instrument practiced by physicians as early as the 1840s as a means of uncovering cause of death. When Avanis suspiciously died in 1846, a post-mortem was immediately conducted by two doctors. However, no external sign could be found indicating the cause of his death. Thereupon, he was dissected and opium was found in his stomach. Subsequently, the heirs were summoned to the court and questioned but they did not accuse anyone of murder. On the contrary, they claimed that he must have bought and consumed the opium on his own as he had not known right from wrong. Because of his state of mind, they had previously admonished the herbalists and the apothecaries around their neighbourhood not to give Avanis opium or any other poisonous substance if he asked for it. Nevertheless, the testimonies of the heirs were not considered sufficient enough to bring the case to light. The court ordered the investigation to be proceeded and thus the vendor of the opium to be located.[690]

Most of the cases at hand reveal that dissection was a medical instrument particularly practiced in İstanbul. There were proficient and experienced surgeons at the School of Medicine for dissection and to complement the function of forensic

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[689] BOA., İ.DA, 18/829, 17 Ca 1295 (19 May 1878).

[690] BOA., A.MKT, 67/15, 29 Z 1263 (8 December 1847).

medicine, the chemistry laboratories also operated there. Below, I will focus on some particular suspected poisoning cases that occurred in İstanbul and in which autopsy played a pivotal role in search of clues to discover the cause of death. These exceptional cases illustrate how forensic medicine as a modern science was implemented in the capital city and how it was perceived and resorted to as circumstantial medico-legal evidence by the judicial authorities. Then, I will consider some other cases from the Ottoman provinces, arguing that unpaid fees and salaries of the physicians were the main problems in the provinces hindering the efficient operation of the medico-legal system.

When Kaniye Hanım died in July 1900 in Aksaray, the primary suspect was Atiye Hanım as Kaniye had died soon after she had taken some medicine prepared by the woman. In fact, Kaniye Hanım's husband Halil Efendi, who at the time was a police man in Aksaray, also had taken the same medicine, but nothing had happened to him. For a reason not specified in the registers but can be inferred, the suspected poison was cantharides (*kunduz böceği*), a substance obtained by means of drying Spanish fly. It was, in fact, a common remedy to induce abortion and also to cure conditions such as dropsy and amenorrhea. It also was thought, though wrongly, to work as an aphrodisiac.[691] This explains indeed why both Kaniye Hanım and her husband took the same medicine.

During the investigation, the police confiscated numerous medicines and a suspicious liquid in a bottle that were found at Kaniye Hanım's house to be analyzed at the School of Medicine. In addition, the body was dissected to establish whether the medicine she had ingested was poisonous. Consequently, the report of the

[691] Adnan Öztürel, *Adli Tıp* (Ankara: Sevinç Matbaası, 1979), p. 433. See also R.D.Rosin, "Cantharides Intoxication," *The British Medical Journal* 4, no. 5570 (October 7, 1967), p. 33.

chemistry laboratory was forwarded to the Police Department stating that no poisonous substance had been detected in the post-mortem tissue and the suspicious liquid was just an ordinary and harmless herb. Strictly speaking, this case is exceptional with regard to others as the registers enclose the report conducted and signed by the chemistry teacher Major Vasil Naum Efendi and the analyst Major Ali Rıza Efendi, both teaching at the School of Medicine. The report clearly demonstrates the methods employed in dissection, which internal organs of Atiye Hanım were extracted and examined, and which reagents were applied for chemical analysis:

> …when the organs handed over to the chemistry laboratory in two bottles and stamped with the seal of the Police Physicians Section (*Zabtiye Etibba Dairesi*) were examined, it was seen that there were stomach contents, heart and a part of the liver in one of the bottles and intestines in the other. When the stomach and the intestines were dissected and observed, no sign was recognized indicating cantharides which was assumed to exist by the physicians who had conducted the dissection. Taking samples from the organs, they were analyzed according to scientific methods by pure "*hâmız klormat*" and "*klorit potas*" (potassium chloride). In the white fluid that came out, no inorganic poison was detected. Similarly, no organic poison was detected after performing scientific analysis. When the medicine that had been confiscated from Atiye Hanım's house and handed over to the chemistry laboratory in a sealed bottle was analyzed, it came out that the substance, a blurry and dark green liquid the quantity of which was six hundred grams, was just an ordinary and harmless herb containing no organic or inorganic poison.[692]

The registers remain silent about Kaniye Hanım's fate. Unfortunately we do not know if she was released or not when nothing was discovered by dissection. We also do not know if any further investigation about Atiye Hanım's suspicious death was carried out. The only thing we know about the rest is that for the chemical

[692] BOA., ZB, 301/19, 1 July 1316 (14 July 1900).

analysis of the extracted matters stated in the report, the School of Medicine was paid a fee of twelve and a half mecidiye.[693]

Obviously, the fact that no trace of cantharides could be discovered in the organs of Atiye Hanım does not mean that she did not take the pills or was not poisoned. Other factors that were not taken into account could be within the bounds of possibility. That is why the Police Department and the court were not always confident about the outcome disclosed by science in the trials. The response of the court to the post-mortem conducted after a little boy's suspicious death in İstanbul can be considered as an indicator of such suspicion.

When Mehmed had been given syrup and soon after died, it was alleged that he had been poisoned because of the morphine the syrup contained. Morphine and opium were two constituents extensively employed in medicine, especially in soothing syrups and pills for infants. These syrups and pills were dangerous concoctions, but yet they could be obtained in the market easily. Although herbalists

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[693] BOA., ZB, 300/51, 10 July 1316 (22 July 1900). The first chemistry laboratory (*kimyahane*) was founded at the School of Medicine in 1844. See Emre Dölen, "Tanzimat'tan Cumhuriyet'e Bilim," in *Tanzimattan Cumhuriyete Türkiye Ansiklopedisi*, no. 1 (İstanbul: İletişim Yayınları), p. 169. For the decree that ordered the construction of a building for "*kimyahane*" within the Mekteb-i Tıbbiye-i Adliye-i Şahane see BOA., İ.DH, 92/4624, 17 L 1260 (30 October 1844). The medical examinations and chemical analysis demanded by the court to obtain further evidence was free of charge until 1870. After 1870, a fee tariff was issued which made fee payments compulsary for plaintiffs and courts. According to the tariff, the fee that would be demanded for the analysis of internal organs and the substance they contained in suspicious poisoning cases was ten to seventy-five *yirmilik mecidiye*. See Emre Dölen, "1870'li Yıllarda Mekteb-i Tıbbiye Laboratuvarlarında Yapılan Analiz ve İncelemeler," pp. 75-77. For example, the fee demanded for the chemical analysis of internal organs (*ihşâ-yı batıne*) was ten *mecidiye* in 1903. See BOA., ZB, 301/60, 1 teşrin-i evvel 1319 (14 October 1903). When İsmail had been allegedly poisoned by his wife Emine in 1909 with yellow arsenic (*zırnık*), five *mecidiye* were sent to the School of Medicine by the court as a fee for chemical analysis along with the sealed bottle which contained İsmail's vomit. See BOA., ZB, 349/82, 14 May 1325 (27 May 1909). For other registers which reveal the fees for chemical analysis of various tissues or extracted matters see BOA., ZB, 302/39, 30 July 1321 (12 August 1905); ZB, 302/33, 3 April 1321 (16 April 1905); ZB, 40/99, 1 Teşrin-i sânî 1323 (14 November 1907). Emre Dölen states that during the last quarter of the nineteenth century, other than the chemistry laboratory of the School of Medicine, the *Gümrük Kimyahanesi* was the only official institution which carried out chemical analysis in the Ottoman Empire. Due to the growing demand, first private laboratory was established in May 1891 in Beyoğlu by Joseph Zanni. See Dölen, "1870'li Yıllarda Mekteb-i Tıbbiye," p. 79. Until 1928, pharmacies conducted chemical analysis of urine, blood and sputum. They also analysed foods sent by the municipalities. In 1928, pharmacies were forbidden to conduct chemical analysis and examine patients. See Baytop, *Türk Eczacılık Tarihi*, pp. 193-195.

and pharmacists had been forbidden to prepare and sell soothing syrups in 1845,[694] they were still available, as Mehmed's case reveals, at the turn of the twentieth century.

Mehmed had been given three and a half spoonfuls of syrup. According to the toxicology report of the chemistry laboratory, this explained why the post-mortem could not yield the presence of morphine in the extracted organs of the little boy. Since per five and half grams syrup contained one and half milligrams morphine, this amount was not sufficient to affect the organs, and therefore proof was difficult to establish. Interestingly, the court was dissatisfied with the report. Hearing that no evidence had been discovered by the toxicologists, it ordered the very same report to be examined and re-evaluated by the board of physicians who had carried out the autopsy as it was their responsibility and job to decide whether the boy had died of morphine or not. According to the court, the absence of any residue of morphine in his body was not sufficient to exclude it as the murderous agent. The absence of toxicological evidence did not mean that the boy had not consumed the syrup and the cause of his death had not been morphine. To detect the poison and its quantity was evidently not enough to identify the cause of death. Alternatively, it would be necessary to investigate and then inform the interrogator about the state of health of the deceased before his death, whether he had had an addiction to opium or not, and the appearance presented by the internal organs after death.[695]

This case indeed displays the place of medico-legal proof and the development of the law of evidence in Ottoman courts in the early twentieth

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[694] BOA., A.MKT.MVL, 2/15, 22 C 1261 (28 June 1845).

[695] BOA., ZB, 345/50, 27 April 1322 (10 May 1906).

century. As can be seen, the absence of proof of poisoning by morphine did not simply drop the case but, on the contrary, led the court demand a clear demonstration of other evidentiary support. This seems reasonable because the regulation enacted for those physicians and surgeons who were in charge of forensic medicine had been currently effective in the Empire since the late 1890s. Although the exact date of its publication and announcement is not clear, we know the text from Said's *Vazâif-i Adliye-i Etıbbâ* (The Duties of the Forensic Scientists) published in 1888/1889.[696]

Vazâif-i Adliye-i Etıbbâ can be considered to be the first textbook deliberating on the relation between law and medicine in the Ottoman Empire. It was a source book for forensic scientists, focusing on the responsibilities of physicians as medical experts in criminal cases in detecting cause of death in addition to such things as their wages and fees. The fourth chapter of the textbook describes how a physician should behave in the face of specific cases such as homicide, drowning, sexual violation, infanticide, insanity, and suspected poisoning. Accordingly, a legal physician (*tabîb-i kanûnî*) summoned by the government to the crime scene was to conduct an investigation on the spot, collect the suspected weapon of murder and put it in a labelled and numbered vessel.[697] Then he was to report the details about how and in what position the victim had been found at the crime scene. It was also important to specify whether the victim was a man or a woman along with his/her age and state of health before his/her death and the

[696] Sedat Bingöl makes an estimation about the date of its publication and claims that it must have been published sometime between 1867-1889. He also states that he could find neither the date nor the text of the admonition in spite of his research in the Ottoman archives. See Bingöl, "Osmanlı'da Adli Tababete Dair Notlar," p. 49. The transcription of the text can be found at the appendix of his article between pages 57-62. Here I used the original text by Said.

[697] Said, *Vazâif-i Adliye-i Etıbbâ* (İstanbul: Alim Matbaası, 1306) (1888/1889), p. 47.

apparent symptoms of the deceased before death. Any vomit or faeces around the victim would be collected for examination. If the physician detected any sign on the fingers, lips, and mouth of the deceased, this would be specified in his report. Only hereafter, could the victim be dissected, by which stomach and intestines would be extracted. Just like the suspected weapon of murder, these internal organs would be kept in ethyl alcohol, in glass vessels which had to be sealed, labelled, and numbered separately and forwarded immediately to the Office of Civil Medicine (*İdare-i Tıbbiye-i Mülkiye*).[698]

As is clear from Mehmed's case, the interrogator and, in the last instance, the court had the highest authority to decide on a poisoning conviction. The toxicological evidence provided by the chemical analysts and any medical report of physicians had only secondary importance in qualifying as evidence before court. Although the presence of poison after dissection and analysis would lead to the conclusion of poisoning, the converse did not always hold. Under these circumstances, other circumstantial evidence and motives would come to the stage to affect the court's final verdict.

The fact that the School of Medicine was located in İstanbul does not mean that dissection operations were conducted only in the capital city. In the archival registers, there are numerous cases which prove that it was done in the Ottoman countryside as well. In the provinces, dissections were to be conducted by a commission of physicians which should include the quarantine doctor. The provincial physicians appointed to the provinces were not allowed to practice dissection alone. That is why Mösyö Vom, the provincial physician of Hanya, was discharged from his office in 1883, as he had conducted a dissection on the body of

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[698] Ibid., 55-56.

Sami Kaptan of Hanya Port without the company of the commission and the quarantine doctor. Furthermore, he had not waited for the expiry of the time, which should be twenty four hours following the death, instead conducting the dissection after three and a half hours. His failure to obtain permission from the deceased's relatives caused complaints by the kin and resulted in his dismissal.[699]

As was mentioned before, in case any death occurred, municipal doctors and quarantine inspectors were to be summoned to examine the corpse before burial. After examining the corpse, if there were any suspicious signs, the local physician might suggest dissection to detect the cause of death. As early as 1846, the quarantine doctor of Erzurum, Mösyö Dikon, suggested autopsy when Hacı Hüseyin, an Iranian bureaucrat, died suspiciously. Besides the signs indicating poisoning, it came out that he had taken some medicine from an Iranian doctor just before his death. But the Iranian merchants accompanying Hacı Hüseyin refused to let his body be dissected.[700] Similarly, when Eleni, a forty-year old woman, died suddenly in Manastır and was examined by the municipal doctor, the cause of her death could not be established, which invited dissection. Her nose and mouth were bleeding and her face and eyelids were swollen, which must have appeared unnatural to the doctor.[701]

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[699] BOA., DH.MKT, 1342/5, 7 M 1301 (8 November 1883), DH.MKT, 1343/82, 11 R 1301 (9 February 1884). *"...bir memleket tabibinin öyle kendi başına keyfi olarak feth-i meyyit icrâsına mübâşeret eylemesi dahi hiçbir nizâm ve kanûnda yeri yokdur hatta öyle nizâmsız suretde ve gayet acele ve fennen kabul olunmuş olan 24 saat müddet tekmil olmazdan hemen feth-i meyyit icrâ olunmuşdur ki bu hususda Mösyö Vom tıbb-ı kanûniye kâmilen mugâyir olarak hareket etmiş olduğu anlaşılmışdır...merkumun memleket tebabeti memurluğundan hemen azl olunması Meclis-i Tıbbiyece münasib görülmüşdür.."*

[700] BOA., A.MKT, 35/87, 18 S 1262 (15 February 1846).

[701] BOA., TFR.I.MN, 72/7161, 26 C 1323 (28 August 1905).

Even when there were no suspicious signs on the deceased's body, the prosecutor might ask for a dissection if the plaintiffs were insistent that the death had not resulted from natural causes. When Hasan Ağa died in Tikveş in 1903, his daughter Ayşe accused her step-mother, who allegedly had acted in complicity with her son and other relatives to poison her father. The motive, according to the accuser, had been money. They had stolen four thousand liras from Hasan Ağa's house and poisoned him in order to conceal it. Due to Ayşe Hanım's allegations, the deceased was dissected and the extracted internal organs were sent to the chemistry laboratory in Selanik Province for analysis.[702] A year later in Karaferye, this time, a three-month old baby's mother alleged that her husband had poisoned and killed her daughter. Since no signs of poisonings had been established after post-mortem examination, dissection was deemed necessary to bring her cause of death to light.[703]

As can be seen, dissection could have been performed in the provinces by provincial physicians or quarantine doctors. However, the tissue or the extracted organs had to be sent to Istanbul for chemical analysis to explore whether the organs really contained poison, since not every provincial hospital had a chemistry laboratory and moreover, it was not permitted to conduct such analysis at hospitals other than the School of Medicine in İstanbul. For example, in Selanik, though Hamidiye Gurebâ Hospital's chemistry laboratory was well-equipped, it started to

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[702] BOA., TFR.I.SL, 7/649, 29 Z 1320 (29 March 1903).

[703] BOA., TFR.I.SL, 46/4598, 11 S 1322 (27 April 1904). *"...haricen bir güna alaim-i semm müşahade olunmamasına binaen feth-i meyt ameliyatı bil-icrâ aza-yı dahiliyesi ahz olunarak fennen icrâ edilecek tahlîlât-ı kuvviye ile ancak cürmün mahiyeti tahakkuk ve tezahür edeceğinden bahisle bu babda tanzim kılınan zabt varakası müddei umumi muavinliğine ita..."* Since there was a chemistry laboratory at Selanik Hamidiye Gurebâ Hospital, the internal organs should be sent there for analysis.

be used only in 1904 with the permission of the government.[704] In Trabzon the extracted organs had been sent to İstanbul even in 1910. A report published in *Trabzon Hekim Dergisi* declared that in suspicious poisoning cases, until that time, only stomachs had been sent to İstanbul for chemical analysis. But what should have been done was to send all organs extracted from the body after dissection since looking for poison only in the stomach would not reveal any satisfactory outcome as the stomach was not the only digestive organ that could be affected by poison.[705]

It was normally a routine business for the provincial and municipal physicians to attend post-mortem examinations in the provinces just as in İstanbul and they were not to be paid any perquisites for visits in their vicinity. Yet, only for conducting dissection, the government informed the Province of Bitlis in 1902 that these physicians would be paid a maximum amount of three to four golden Ottoman liras.[706] In case the heirs of the deceased were unable to afford the charges for examination, the money would be disbursed by the Treasury.[707] The issue of fees and salaries, indeed, was a major problem in the provinces besides the unwillingness of provincial physicians to go to their assigned destinations.

As early as 1860, the Ottoman state was anxious about these physicians who were reluctant to go to work in the provinces. Instead of going to the localities to which they had been appointed, they preferred to stay in İstanbul by acquiring a military rank. In fact, what the Ottoman government aimed at vigorously was to identify those districts without a doctor and to employ licensed physicians and

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[704] BOA., BEO, 2421/181542, 22 B 1322 (2 October 1904). Also see BEO, 2571/192795, 4 Ra 1323 (9 May 1905).

[705] *Trabzon Hekim Dergisi*, no. 3 (1), 31 Kânûn-ı sânî 1325 (13 February 1910).

[706] BOA., DH.MKT, 2542/121, 26 C 1319 (10 October 1901).

[707] BOA., DH.MKT, 606/25, 1 Ş 1320 (3 November 1902).

pharmacists there against the threat posed to the public health and safety by those unlicensed physicians who were "ignorant of science and experience" -*bigâne-i fenn ve tecrübe*. These physicians, according to their merits and qualifications, would be paid salaries between 750 guruş and 1500 guruş.[708] However, the provincial and municipal physicians constantly complained about their unpaid salaries during the second half of the century. Besides the unpaid salaries, they had grievances due to the unpaid fees for dissections, which made them abstain from attending their judicial duties. In 1910, the complaints received about Celil and Avram Efendi, the former and present municipal physicians of Edirne, respectively, were the result of such negligence. Since they did not go to a crime scene in Üsküdar village to examine a murder victim, the government requested an explanation about their excuses. Presumably, for the government, the reason might have been unpaid fees. However, the local government was determined to defend the physicians, saying that what had hindered their judicial duty was definitely their main responsibility. As they had been commissioned to examine the convicts in prison, they could not go to the crime scene.[709]

In addition to those provincial and municipal physicians and quarantine inspectors who examined the deceased, conducted dissections, and served as expert witnesses at the court, there was another agent that should be considered as part of modern Ottoman medico-legal system, the midwife. The Ottoman State's concern

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[708] BOA., A.MKT.NZD, 315/39, 29 Za 1276 (18 June 1860).

[709] BOA., DH.MUİ, 67/59, 15 Ra 1328 (27 March 1910). That same year, a short note published in *Hekim Dergisi*, again, called attention to the issue of unpaid salaries of physicians. According to the note, there had been a recent debate in the Parliament that brought into question the payment of a total ninety thousand liras for municipal physicians' salaries from the Treasury. Claiming that physicians were disgruntled as they were not paid, the Journal requested from the government to take the issue seriously in hand. As this problem was leaving many districts without physicians, it was causing deaths due to untreated infections. See *Trabzon Hekim Dergisi*, no. 10, 15 May 1326 (28 May 1910).

about unlicensed midwives came to the agenda as part of other governmental regulations about public health and safety in the early 1840s. In fact, "unlicensed midwifery was created and thus defined by regulation" just as Willem de Blecourt suggests for the Dutch historical context.[710] All at once, unlicensed midwives without formal training were considered the root of the high maternal and infant mortality rates and prompted the establishment of the Midwifery School in 1842. Parallel to other attempts of regulation particularly related to public health, local and unlicensed midwives also took their share from the regulationist state's policies to control their practices.[711]

In poisoning cases I have examined so far, midwives never came to the fore due to the nature of the crime. Nevertheless, they appear in the court registers whenever a rape case is the matter at hand. They were expert witnesses in the courts testifying as to whether a girl had been deflorated or not. In cases other than rape, infanticide, and abortion, however, they rarely took part in the medico-legal practice. Unavoidably, gender played a particular role in cases related with reproduction, but not at all in other cases. It seems that the gender of the corpse did not make a difference for the heirs and the community when a physician was required, as the medical practitioners were always male.

Although Nuran Yıldırım gives some remarkable evidence about the unrest and even lynching targeting quarantine officers in Amasya, which resulted from the post-mortem examinations of a female corpse, these local disturbances should be regarded along with other public concerns such as poverty, famine, and hostility

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[710] Willem de Blecourt, "Dutch Difference? The Prosecution of Unlicensed Midwives in the Late Nineteent-Century Netherlands," in *Gender and Crime in Modern Europe*, eds., M.L.Arnot and C.Usborne (London: UCL Press, 1999), p. 191.

[711] For the transformation of midwifery in the nineteenth century and the state's attempts to regulate midwives' practices, see Balsoy. Also see BOA., A.MKT.NZD, 315/39, 29 Za 1276 (18 June 1860).

against foreign quarantine doctors. In addition, the examination of female corpses by male physicians, especially the examination of the intimate parts of a female body, was a reason stimulating anger and reaction to these doctors and sanitary measures in general by local people.[712]

Yıldırım notes that according to Article 8 of the quarantine regulation enacted by the Council of Health (*Sıhhiye Meclisi*), were a corpse female, it would be examined by a woman appointed by the Council of Health.[713] There were female officers employed at the Quarantine Administration called *mütetabbibe* or *mortucu* who were very experienced in detecting if a person had died of cholera or plague. Later on, however, these *mütetabbibes* and *mütetabbibs* (male officers) were replaced by health inspectors and physicians.[714]

If we leave aside these disturbances caused by quarantine measures, we can claim that the gender of the medical practitioner did not become a factor affecting the post-mortems. The corpses of females, just like males, were examined by male practitioners. Even in the absence of physicians, those invited to examine the deceased were mostly the male members of the village, though there were exceptional cases which disclosed that female neighbours as lay witnesses initially examined the female deceased and reported the external post-mortem appearance of the body. For example, in Siroz, a district of Selanik Province, when İstamo was beaten to death by her husband Gorgi with a stone, four women witnesses came to

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[712] Cengiz Kırlı states that the reaction against the foreign quarantine doctors were due to the general atmosphere caused by the proclamation of the Tanzimat which disturbed the sense of the superiority of the Muslims over the non-Muslim population. In 1840, there were even rumors about the Frenk doctors who were allegedly poisoning the patients at the hospital with the intention to destroy Islam completely. See Kırlı, *Sultan ve Kamuoyu*, pp. 80 and 259 (the spy report no: 535).

[713] Yıldırım, "Karantina İstemezük!," pp. 21-22.

[714] Nuran Yıldırım, "Kadınların Hekim Olma Mücadelesi," *Toplumsal Tarih*, no. 147 (2006), pp. 52-53.

court to testify that they had examined the victim's body and reported that the cause of her death had been the wounds and injuries on her back and hip. However, they were not the only ones who examined İstamo's corpse. Two members of the village council, Lazarko and Muleteer Nikola, were also examiners who detected hematoma and bruises from her nape to the end of her spinal column.[715]

The directory of forensic science republished by Said Bey mentioned above was clear about the instructions when faced with a suspicious death by poison. The archival documents examined reveal that the procedures described in this directory were administered closely by forensic scientists. However, dissections and chemical analysis of extracted tissues became only gradually indispensible parts of forensic science starting from the mid-nineteenth century onwards. Moreover, forensic medicine was not without problems. As late as 1928, Mustafa Hayrullah, from whose book a quote was made at the beginning of the chapter about poisonous wives, wrote about the handicaps of chemical analysis in the same book as it might impair the results acquired by forensic medicine.[716]

Death by poison, according to Mustafa Hayrullah, was among the most important categories of suspicious and sudden deaths. There were several peculiarities specific to poisoning that would support any suspicion about death by poison. If a person was poisoned, the vomit and other excretion left over by her/him would have a garlic or onion odour and its colour would be dark brown, blackish or bluish green. The victim would have strong abdominal spasms and diarrhoea like rice water. His/her lips or mouth would have signs indicating that he/she must have

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[715] BOA., A.MKT.DA (DES), 10/44, 27 B 1288 (12 October 1871).

[716] For a brief biography of Mustafa Hayrullah see Mefkure Eraksoy, "Pioneers in Neurology: Mustafa Hayrullah Diker (1875-1950)," *Journal of Neurology*, no. 250 (2008), pp. 1505-1506.

consumed something vitriolic and prickly and moreover his/her gingival would turn black. These indicators certainly could be acknowledged as signs and symptoms of poisoning. However, they would not expose the actual reason of death but only uncover the means. A poisoned person, Mustafa Hayrullah stated, could either have been murdered, committed suicide or just been a victim of an accident. Even s/he could have died of any reason other than poisoning but the murderer could have poured a chemical substance like vitriol oil into his/her mouth so that others would think that s/he committed suicide by poison. Here at this point, it was the duty of forensic medicine to bring out the truth.

Mustafa Hayrullah was aware of the limited capacity of medico-legal investigation to supply tangible evidence. First, because the symptoms of the deceased before death could also be produced by any other disease, it was not possible to diagnose whether poison was or was not the cause of death only by looking at the symptoms. Second, it should be known that the chemical compositions of some poisons might mutate when they were absorbed by the body, which is why no chemical test could detect it. Just as the absence of poison could not be the evidence that death had not been caused by it, it was also clear that the presence of poison in the body could not necessarily be evidence of the means of death. Since many drugs, though in small proportions, contained poison as a compound and if that drug had been taken by the deceased for medical purposes, it could be detected when the body was dissected.[717]

In nineteenth century Britain, Ian Burney claims, forensic science and toxicology emerged as a prominent field of science thanks to poisoning cases.

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[717] Mustafa Hayrullah, *Yarının Hakimlerine Tababet-i Adliye ve Ruhiye* (İstanbul: Cihan Matbaası, 1928), pp. 185-187.

"Against the threat of an unseen agent of crime," it was toxicology which "promised a restoration of sight." In this sense, both for public opinion and the courts, it had the power to turn those deceased into a "speaking body."[718] Obviously, the founding member of the Institute of Forensic Medicine, Mustafa Hayrullah, did not have that much faith in toxicology. He was not convinced by the fact that chemical analysis could bring out the most decisive evidence in poisoning cases that would make the dead speak.

Before Mustafa Hayrullah demonstrated his reservations about toxicology, there appeared a fictitious letter in *Hekim Dergisi* in April 1911 written as if from the mouth of a young woman who had been fatally poisoned by her husband when a cholera outbreak of the previous year had swept across Trabzon. The letter's title was "Open Letter to the Local Governor: A Mournful Cry from İmaret Cemetery." According to the letter, the victim had been poisoned premeditatedly by her husband Nuri. The tone of the letter was entirely sentimental, trying to grow feelings of pity for the hapless and innocent woman and fury against her remorseless husband. However, the main point of the letter was not the terrible fate of the woman. The victim was asking the local governor to implement justice which obviously had not been established by the judiciary. After committing the crime, her husband had fled to Russia owing to the deficiencies of the legal system. In fact, three days following her death, her parents had filed a claim against Nuri and declared that their son-in-law had poisoned their daughter. Upon that claim, her body had been exhumed, dissected, and after a month her internal organs had been sent to İstanbul in special vessels for chemical analysis.

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[718] Ian Burney, "Poison and the Victorian Imagination," *History Today* 48, no. 3 (March 2008), pp. 39-40.

That the alleged murderer had not been taken into custody during that time had made it easy for him to escape by simply obtaining a passport. Now, the victim, even her dead body, was restless and disgruntled with justice. She asked: "Is not the judiciary capable enough to inhibit him by informing population registry office or binding him to warranty until the report comes from Dersaadet or taking him into custody at the police station?"[719]

It cannot be known if the anonymous author of this fictitious letter just made up this story to enounce his/her criticisms about the judiciary system. Nor can we determine if the case was a reflection of a true crime story that had occurred in Trabzon. One way or another, this letter was an open declaration of the need to close the lacunas in the legal system which could be exploited easily by murderers.

[719] *Trabzon Hekim Dergisi*, no. 7, 1 Nisan 1327 (14 April 1911), pp. 268-271. *"Adliye nüfus idaresine beyân-ı hal etmekle onu men' etmeğe veya Dersaadet'ten kati rapor gelinceye kadar onu kefalet-i şahsiyeye rabıta veya polis nezareti altında bulundurmağa muktedir değil mi?"*

CONCLUSION

> …although the living is subject to the ruin of time, the process of decay is at the same time a process of crystallization, that in the depth of the sea, into which sinks and is dissolved what once was alive, some things "suffer a sea-change" and survive in new crystallized forms and shapes that remain immune to the elements, as though they waited only for the pearl diver who one day will come down to them and bring them up into the world of the living.[720]

Arson and poisoning were not only methods of taking revenge and implementing justice or crimes that aroused fear among the higher echelons of the government and the populace, but they were also part of a verbal and rhetorical struggle going on in a contested space of legitimacy. From the mid-1890s onwards, the rumors that Armenians were planning to poison the drinking water and wells and set İstanbul on fire in a conspiracy against the government took hold in the Empire. Obviously, these rumors were the symptoms of a general hostility against the Armenians in the period under question, not surprisingly coinciding with the Armenian massacres of the 1890s and the medium through which deeper concerns about the internal security of the Empire came to the fore. In November 1895, the Governor of Haleb (Aleppo) informed the Ministry of Interior about an alarming dispatch sent by the local governor of Ayntab that Armenians had allegedly poisoned the drinking water of the district.[721] In early September 1896, just after the seizure of the Ottoman Bank by the members of the Armenian Revolutionary Federation (Dashnak Party) on

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[720] Hannah Arendt, *Men in Dark Times* (New York: A Harvest Book, 1968), p. 206.

[721] BOA., DH.TMIK.M, 1/11, 5 C 1313 (23 November 1895).

August 26,[722] the Porte was alarmed by a threat of organized arson by Armenians in İstanbul. As a precaution against this threat, the Grand Vizierate ordered the Ministry of Interior to close down herbalists' shops run by Armenians, organize fire brigades, and increase the number of watchmen in the neighborhoods.[723] Four years later, in 1900, a rumor surfaced that Armenians were going to poison the drinking water and wells in İstanbul.[724] In this context of insecurity, mistrust and fear, Bulgarians were another major source of evil and suspicion for the Ottoman government.

In 1903, a year after the Ministry of the Interior had received Vasil Naum Efendi's disconcerting report on the frequency of poison murder in Anatolia,[725] the Sublime Porte was struck by another report submitted by the Bulgarian commissariat. Bulgarian brigands were gathering in Sofia and their number was rising by the day. There were rumors about a conspiracy organized by Bulgarian gangs (*komite*) who would contaminate the water reservoirs with plague bacillus.[726] Although the target of the alleged threat was Selanik,[727] the panic reached İstanbul

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[722] For the Ottoman Bank incident see Edhem Eldem, "26 Ağustos 1896 'Banka Vakası' ve 1896 'Ermeni Olayları'," *Tarih ve Toplum*, no. 5 (Bahar 2007), pp. 113-146.

[723] BOA., DH.TMIK.M, 13/79, 28 Ra 1314 (6 September 1896).

[724] BOA., Y.PRK.EŞA, 36/64, 6 C 1318 (1 October 1900).

[725] See Chapter VI.

[726] BOA., Y.PRK.MK, 15/82, 16 C 1321 (9 September 1903); Y.A.HUS 457/129, 29 C 1321 (22 September 1903).

[727] Selanik was one of the three provinces in Macedonia called the Three Provinces (*Vilâyet-i Selase*) composed of Selanik, Manastır, and Kosova organized by Abdülhamid. It was the seat of the Internal Macedonian Revolutionary Organization (IMRO) established in 1893. In April 1903 and then in August 1903 just before the rumors of poisoning, IMRO initiated a general uprising covering all these provinces by bombing the port of Selanik, the Ottoman bank, the terminal, the bridges and railways, and raiding and plundering the Muslim villages, which invited foreign intervention. The uprising ended with a reform plan called the Mürzsteg Programme proposed by the Great Powers. The Bulgarian government, in fear that it could find itself in an unwanted war, took measures to prevent IMRO activities in its territories. Later in April 1904, it signed an agreement with the Porte and attested its intention to stop IMRO. See Stanford J. Shaw and Ezel Kural Shaw, *History of the*

and the poison scare was reproduced rapidly in different terms. According to the information gathered by the government, the next target of the alleged conspiracy was to be the Terkos reservoir. The Bulgarian brigands would poison the drinking water of İstanbul, but this time there were also some Armenians on the scene, supposedly working in cooperation with the Bulgarians.[728] The waterways reaching the military barracks in Küçük Çekmece were especially under threat.[729] After a few months, the provincial governments in Rumelia were informed and warned to be on alert about this plot since two pharmacists, Ahmed and Marko Efendi, had detected arsenic and blue vitriol mixed in the olive and bread in Tırnovacık.[730] Though the pharmacists stated explicitly in a report that the food had been poisoned not deliberately but accidentally due to the fact that the olive barrels were kept under shelves on which there were dye cans, they could not convince the government, which promptly asked for further investigation.[731]

Ottoman Empire and Modern Turkey, pp. 209-211; and François Georgeon, *Sultan Abdülhamid* (İstanbul: Homer Kitabevi, 2006), pp. 419-424.

[728] BOA., Y.PRK.ZB, 33/57, 9 B 1321 (1 October 1903).

[729] BOA., DH.MKT, 776/18, 19 B 1321 (11 October 1903).

[730] Malko Tarnovo. A town of Burgaz in today's southeastern Bulgaria. Until the Balkan Wars, it was a sub-district in Edirne Province.

[731] BOA., DH.MKT, 815/33, 10 Za 1321 (28 January 1904). In 1903 and 1904, the rumors about a plot against the government heightened suspicions that Bulgarians would not only poison the water but stir up trouble by organizing arson gangs especially in Macedonia. In July 1903, the Major of the Gendarmerie in Drama informed the government that they had received information from a certain Hacı Osman Efendi from Karlova town that Bulgarian gangs gathering in Macedonia would burn the crops in the fields in Muslim villages. See BOA., TFR.I.SL, 14/1397-1, 18.4.1321 (14 July 1903). A few months later, the government received a ciphered telegram from the local governor of Osmaniye that the Bulgarians would burn Ustrumca in Selanik. See BOA., TFR.I.KV, 35/3455, 16 C 1321 (9 September 1903). In early 1904, another ciphered telegram sent from Edirne arrived to Istanbul reporting to the government that Bulgarians who were five or six hundred in number would burn Muslim villages. However, it was also stated in the telegram that such rumors spread by the gangs (*komite*) were prevalent. Since the winter was so hard, the validiy of such threats was questionable. See BOA., Y.PRK.ASK, 210/81, 22 L 1321 (11 January 1904).

Not surprisingly, the rumors about an organized poisoning threat did not come to end. A spy report signed by Şükrü from Bitlis reported another alleged poisoning case to the government. The municipal physician Habib Ressam Efendi, in collaboration with his brother and the director of documents (*evkâf müdürü*) Osman Efendi had poisoned the governor of Bitlis, Hüsnü Bey, in order to conceal a crime. They allegedly had stolen one thousand liras which had been collected in donations for earthquake victims. According to Muhbir Şükrü, the thieves without question must have been serving Armenian interests (*Ermeni fesadı*).[732]

Strikingly, this rhetoric merged not only with the fears of the central power but also with the collective anxieties of the subordinate groups. For example in December 1892, the Armenian deputy in Zeytun accused the Ottoman physicians of poisoning and killing more than 150 Armenian children under the guise of vaccination.[733] A few years later, in May 1895, just at a time when Great Britain, France, and Russia had submitted a reform package to the Ottoman government about the six eastern Anatolian provinces after the violent suppression of the Sasun revolt,[734] the Armenians of Yozgat invoked rumors that some poison-laced sugar and cookies had been set out in the Armenian school and on the streets.[735]

Two years later, in 1897, the same rumors appeared, this time in Tarsus and Mersin. The Governor of Adana informed the Ministry of Interior that the source of the rumors was the teacher of the primary school (*sıbyân mektebi*), who claimed that

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[732] BOA., DH.MKT, 829/82, 27 Z 1321 (15 March 1904).

[733] BOA., BEO, 115/8613, 13.Ca.1310 (3 December 1892).

[734] See Taner Akçam, *A Shameful Act* (New York: Metropolitan Books, 2006), pp. 40-42 and Robert Melson, "A Theoretical Inquiry into the Armenian Massacres of 1894-1896," *Comparative Studies in Society and History* 24, no. 3 (July 1982), pp. 487-488.

[735] BOA., Y.A.HUS, 328/115, 13.Za.1312 (23 May 1895).

an old man with a white beard had come to the school and declared that some poison-laced sugar and fruits had been set out on the streets in the towns to kill the Armenian children.[736] Similar to the rumors in Zeytun and Adana, an account that appeared in the pages of the Armenian newspaper *Manzûme-i Efkâr* accused the Adana municipal physician of poisoning the Armenian children in Zeytun with vaccines in October 1908.[737] Later in 1910, the people of Boztepe in Trabzon charged the municipal physician, Leon Efendi, with poisoning a woman with the medicine he gave her for cholera.[738]

In a period of political turmoil when Abdülhamid II was under great strain due to the Macedonian and the Armenian questions, the terrorist activities by the Balkan nationalist organizations, and the news in the foreign press about an assassination against the Sultan,[739] the rumors about an organized attack by poison and fire should alert the Ottoman government. Against the backdrop of these events, these rumors simultaneously coincided with the government's and people's fears.[740]

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[736] BOA., DH.TMIK.M, 32/68, 25 Za 1314 (27 April 1897). The Governor also added that such rumors had always been invoked by people. *"...her mahallin avâmı beyninde böyle kîl ü kallerin zuhûru âdet olmuş ise de..."*

[737] BOA., DH.MKT, 2630/98, 18 N 1326 (14 October 1908), DH.MKT, 2663/63, 24 L 1326 (19 November 1908).

[738] BOA., DH.İD, 51/9, 15.L.1328 (20 October 1908). Also see *Trabzon Hekim Dergisi*, no. 19, 1 Teşrin-i evvel 1326 (14 October 1910) and no. 22, 15 Teşrin-i sânî 1326 (28 November 1910).

[739] See Orhan Koloğlu, *Avrupa'nın Kıskacında Abdülhamit* (İstanbul: İletişim Yayınları, 1998), p. 260. Leaving aside the rumors about the alleged poison and arson threat by the Armenian and Bulgarians, the Porte was also alert about a conspiracy against the Sultan by poison. In May 1893, a letter sent by Narni from Genova warned the government that the head physician of the Sultan, Mavroyeni Paşa, was an untrustworthy man. According to Narni, Mavroyeni Paşa would poison the Sultan with a poison sent from Britain. See BOA., Y.PRK.AZJ, 24/36, 10 Za 1310 (26 May 1893). In November 1906, at a time when the rumors about the Sultan's sickness were circulating among the populace, another report was received from Nevşehir. A former custodian of the Palace, Osman bin Süleyman, informed the government that he had heard some news that the Sultan would be poisoned. See BOA., Y.PRK.ZB, 37/10, 16 N 1324 (3 November 1906).

[740] Many scholars note that rumors emerge during the time of crisis. See for example, Nwokocha K. U. Nkpa, "Rumors of Mass Poisoning in Biafra," *The Public Opinion Quarterly* 41, no. 3 (Autumn 1977), p. 332; and Dan E. Miller, "Rumor: An Examination of Some Stereotypes," *Symbolic*

It is actually not important to question the validity of these rumors. It is important, however, to see how larger political anxieties about the enemy within at the beginning of the twentieth century were articulated with the rhetoric of poisoning and arson culminated in a poison and arson scare.

It also should be noted that such rumors were not peculiar to the Ottoman Empire and had recurred throughout the centuries in different contexts. In fourteenth century France, for example, vagrants and lepers were charged of poisoning waters. They were accused of spreading leprosy or plague by contaminating wells, an act for which they were allegedly paid by the Jews or the Muslims.[741] In nineteenth century Transkei, South Africa, rumors spread that the local water supplies, the food, and the vaccines had been poisoned by Cape colonial officers in order to destroy the native population and African herds to make the native people work for the white men.[742] In Germany not poisoning but a delusory organized arson by vagrants and homeless poor turned into a major threat for the German jurists, authorities, and also for the populace from the sixteenth century onwards. Since they were considered as the most marginal groups, the poor itinerant people and their so-called organized arson gangs were the collective enemies of society allegedly working on behalf of foreign powers. As Johannes Dillinger notes, the fight against this imaginary enemy was essential for the emerging territorial state to make the society accept its

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Interaction 28, no. 4 (Fall 2005), p. 514. Miller, citing from Shibutani, states that "deliberate rumoring is intended to damage reputations, to mobilize collective action, or to correct public definitions of the situation." Apparently, the intent of the rumors invoked by the Armenians about poisoning was to mobilize collective action against the government while damaging its legitimacy. The rumors about the Armenian and Bulgarian conspiracy against the government, on the other hand, were the product of a heightening suspicion against these groups.

[741] David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, New Jersey: Princeton University Press, 1998), pp. 93-124.

[742] Jacob Tropp, "Dogs, Poison and the Meaning of Colonial Intervention in the Transkei, South Africa," *Journal of African History*, no. 43 (2002), pp. 451-72.

legitimacy.[743] In nineteenth century Russia, on the other hand, during the arson panic of 1839 in the Middle Volga region, the suspicion fell primarily on the Jews as the "outsiders." Both for the local officials and the peasants, socially marginal people were the first to blame. The Jews were initially accused of having been bribed by Polish deportees to start the fires in order to undermine Russia. Then, the rumors circulated that "the Jews planned first to bum all homes throughout Russia, destroy all the standing crops, and then exterminate all Russians with poison."[744]

Apparently, the way the social and political fears and anxieties were manifested always corresponded with the tensions embedded in the social context of the period. In the Ottoman context, the fear of disintegration in the face of political mobilization by different ethnic groups came to the fore through the idioms of poison and arson. Other accusations of poisoning against physicians and government officers also brought forth the suspicion and the intense feeling of animosity the Ottoman subjects felt towards the government and the non-Muslims. In this context, we can also ask if Vasil Naum Efendi's alarming report had some resonances with the floating rumors about this alleged threat of organized poisonings.

Unfortunately, given the absence of criminal statistics, we cannot judge the veracity of Vasil Naum's report. Nor can we claim that poisonous women created a great anxiety in public similar to the one in nineteenth century France and Britain. Contemporary newspaper accounts do not lend themselves easily to a qualitative

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[743] Johannes Dillinger, "Organized Arson as a Political Crime. The Construction of a 'Terrorist' Menace in the Early Modern Period," *Crime, History & Societies* 10, no. 2 (2006), pp. 1-20.

[744] Hugh D. Hudson Jr, "A Rhetorical War on Fire: The Middle Volga Arson Panic of 1839 As Contested Legitimacy in Prereform Russia," *Canadian Slavonic Papers* (March, 2001). FindArticles.com.22 Jul, 2011. http://findarticles.com/p/articles/mi_qa3763/is_200103/ai_n8933857/ Later, in this process, the officials and landlords came to the center of the rumors as the source of the fires and it caused great peasant disturbances in the region. Even the tsar himself was included in the rumors.

analysis of both arson and murder cases since they reserved no more than a few lines in a column for crime reporting. That Ottoman historians are also deprived of popular genres such as ballads, pamphlets, and plays which were widely available to the public in Europe from the early-modern period onwards adds further to the question of representation and narrows the space for a comparison between the court narratives and the way these crimes were represented in literary fiction.[745]

Given the limitations of historical sources, this dissertation did not explore the way rural arson and poison murder were reported and represented in the newspapers, but rather focused on how they were perceived by the common people and the state officials as reflected by the court narratives in the mid-nineteenth century. By taking these two crimes as point of departure, this study tried to delve deep into the everyday lives of ordinary Ottoman peasants and women and focused on their own narratives of conflict. These narratives disclosed not only the motives and conditions of a criminal act, but also the alternative claims on justice and law by the Ottoman subjects.

I examined rural arson and poison murder as two specific phenomena by which common people in the Ottoman countryside asserted their agency in order to take revenge, to make the opposite party pay for his/her wrongdoing, and to escape from poverty, misery, domestic violence, and unwanted marriages. Violence, as an integral part of everyday life, provided for angry and disgruntled peasants and women an outlet and the means to take justice into their own hands when they sought immediate vengeance or when they could not obtain the desired solution for

[745] In 1883, the first crime fiction, *Esrâr-ı Cinâyât*, by Ahmet Mithat Efendi was published in episodes in *Tercüman-ı Hakikat*. Between 1881 and 1903, fifty-four crime fictions were translated to Turkish from English, French, and German. The Sultan Abdülhamid II's interest in the genre should have stimulated these translations. The first crime fiction serial by Ebüssüreyya Sami, *Amanvermez Avni*, was published in 1913. See Erol Üyepazarcı, *Korkmayınız Mr. Sherlock Holmes* (İstanbul: Göçebe Yayınları, 1997), pp. 67, 163, and 178.

their problems through official legal mechanisms. In this regard, both rural arson and poison murder were unique means to implement justice unofficially. Given the nineteenth century Ottoman context after the proclamation of Tanzimat, when the Ottoman state's claim on justice was much stronger than ever, I argue, people's claims on justice continued to survive not with a conscious effort to deny or challenge the former but for quite pragmatic reasons arising from the conditions of daily life. Instead of appealing to the law with the bureaucratic, expensive, long, and delayed mechanisms of justice, peasants preferred to execute justice personally by fire when they were wronged by their fellow villagers, village headmen, çorbacıs, and employers. Rather than appealing to court and waiting for the end of the investigation process to compensate their damage caused by fires, the victims of fire sought to solve the problem within the community by appealing to kasame.

For women, the official law provided no concrete solutions in the face of domestic conflicts. Divorce was impossible if the husband did not consent, which is why women sought other ways out of official legal mechanisms in order to get rid of their husbands. Furthermore, both arson and poisoning, due to their clandestine nature, might go undetected while working efficiently to achieve the desired end.

In this respect, rural arson and poison murder emerged largely due to the deficiencies of the official law in social spheres to which the central state could not penetrate efficiently. Apparently, one of this spheres was village life with its own culture, norms, and rules and the other one was the domestic space in which the authority and tyranny of the husband over his wife was unquestioned. Both spheres were full of conflicts and contentions with vulnerable and more powerful actors. The vulnerable actors asserted agency to turn these contentious spheres into a site of empowerment, though their methods of empowerment, on many occasions,

reproduced their vulnerability in a different way before the courts. While they attempted to correct the wrongs and injustices in their own ways, they posed a challenge to the state's monopoly on violence, justice, and law and became a threat for public security and order. Nevertheless, most of the perpetrators were not really considered a threat at all and were treated leniently by the courts.

Both arson and poison murder were capital crimes according to the 1858 Ottoman Penal Code. In most cases, however, the severe sentence reserved for these crimes was commuted to hard labour or imprisonment. Shepherds, farmhands, and cultivators were regarded as not fully culpable either due to their ignorance of the law or for being gullible. Women also were deemed naturally incapable of understanding the consequences of their actions with regard to their state of mind as the inferior gender. Yet, some questions remain with respect to the ambivalent attitudes of the courts toward women arsonists. Though these women were acknowledged as *nâkısat-ül-akl* which means mentally weak and ignorant as the court verdicts stated, they received relatively harsh penalties when compared to their male counterparts. This contradiction between the discourse and reality is an important question regarding the position of women before the law and the role gender played in the Ottoman courts to which this dissertation could not offer a satisfactory answer.

There are also some other questions that remained unanswered and require further investigation. We still do not know, for example, how ordinary people became familiar with the workings of şer'î law and its procedures in poisoning cases. How did those women know that they could somehow escape from liability before the law if they claimed that they had not compelled the persons they murdered to consume the poison but the victims had eaten or drunk it with their own

hands? Did they turn for advice to others who had knowledge? Or was the knowledge about şer'î principles so widespread and commonplace that they already knew how to defend themselves before the courts in order to be secured from full culpability? We know from other cases that many defendants feigned insanity or resorted to the gullibility defense before the courts to get lenient sentences or to be excused. Men who murdered their wives, daughters, or sisters usually referred to the honour plea and claimed that they had committed the crime to restore their honour injured by the immoral acts of these women even if this was not true. How did popular agents know that these strategies would work before the law? With regard to these questions, the reception and dissemination of legal concepts and culture among the popular strata remains a pending issue for Ottoman historians.

In this dissertation, I attempted to depict a different picture of the late Ottoman Empire through a close scrutiny of nizamiye court records by putting forward various historical actors who hitherto had been unexamined. These actors' court narratives revealed the encounter between the Ottoman subjects and the official law, to what extent this law managed to open venues for the Ottoman subjects to solve their disputes at the local level, and how these subjects showed willingness and at the same time reluctance to use and manipulate the new opportunities provided by the new courts. Based on archival evidence yielded by the court records, this study aimed to lay bare the way ordinary Ottoman people perceived justice and to what extent this conception overlapped or differed from justice as defined by the Ottoman state and provided by the Ottoman law and courts. In doing so, it uncovered alternative claims on justice and law by the common people.

Just as emphasized before, peasants appear in Ottoman studies as long as they took part in uprisings and especially tax riots. They also become visible with their petitions while petitioning for justice against the oppression of local state officials. However, they almost have never been portrayed as individual actors undertaking their individual problems. Rural arson, as part of rural culture which had a great deal to do with the concepts like reputation, honour, and vengeance, opened a new window onto the lives of these peasants and their personal coping strategies with alleged or real injustices and wrongdoings. Women also came to the fore in this study as they never had before through poison murder and arson as the transgressors and perpetrators of violent actions. In this respect, I claim, this dissertation sheds new light on the historical actors, their emotions and mentality, and their experiences with state and society, crime and punishment, and law and justice by using an approach informed by social history and gender studies.

In any study on crime and punishment, the legal context necessarily imposes itself on the narrative. For this study, the legal context also was crucial to establishing a connection between the rising concern of the Ottoman state with transgressions and the nineteenth century legal reforms. In the first part of this dissertation, I attempted to set the contours of this study by situating it within the social history perspective and also within Tanzimat studies. Since this study was built upon evidence provided by the nizamiye court registers, I highlighted the value of these registers for the social history of the Ottoman Empire and examined nizamiye courts' functioning not in theory but in practice at the local level. Three important issues came to the fore in relation to the administration and execution of justice at these courts. First of all, due to the co-existence or co-functioning of şer'î and nizamî law and courts and in spite of the autonomy of these two separate legal

spheres in theory with respect to their jurisdictional power, various complications came out during the adjudication process of criminal cases. In such circumstances, the Ottoman state emphasized the inviolability of the personal rights of the plaintiffs before the law, that is, the inviolability of the şer'î law, while at the same time accentuating its own rights to punish criminals before the new courts according to the nizamî law for public interest. What came forward was a legal framework in which the compatibility of these separate legal spheres was emphasized earnestly by the central government.

Second, while the legacy of şer'î law was preserved in the spirit of the nineteenth century legal transformations, the central government had a keen interest in curtailing the arbitrary power of the local elites. For this reason, the countryside turned into a contested arena where the power of the central government clashed with that of the local administrative and judicial authorities in various ways. While the central state tried hard to eliminate the arbitrariness of the local authorities in dispensing justice and specifically executing capital and corporal punishment, the local authorities perceived this effort as an intrusion that had no use except for retarding and suspending the execution of justice and dispelling the deterrence of punishment.

Finally, it should be noted that the control over the local population was not a less important issue than the control over local power holders with regard to the centralizing efforts of the Ottoman state. The equality before the law for all subjects of the Empire promised by the Tanzimat Edict would supposedly serve the central state to secure the obedience of diverse local communities. However, neither the equality promoted by the Tanzimat principles nor the new legal codes and courts were welcomed or received in an unproblematic fashion. The attitudes of the

Ottoman subjects toward the new legal system did not display uniformity. On some occasions, they took advantage of the new system and on others they showed reluctance to settle their disputes in the courts and preferred other methods. The local customs and the availability of extrajudicial methods that insured a quick restoration of justice, the physical distance of the upper-courts from the villages and the burdensome bureaucratic legal mechanisms played roles in the peasants' pragmatic choices of dispute settlement out of or inside the nizamiye courts.

Apparently, the nizamiye courts did change the course of legal procedures by giving circumstantial evidence a prominent role in crime investigation. I concluded the first part of this dissertation with an elaboration of the adjudication process in the nizamiye courts in order to emphasize its similarities with and differences from the şer'î investigative procedures. This also provided the subsequent chapters on rural arson and poison murder the perpetrators of which stood trial before these nizamiye courts with a general framework and introduction by which specific issues that recurred throughout the text, like the role of the community in crime detection, the importance of reputation and honour, and the role of circumstantial evidence were considered.

In the second part of this dissertation, I tried to uncover the meaning of fire for Ottoman peasants by describing the perpetrators, their victims, the objects of arson, and the motives through an examination of the correspondences between local governments and the central government, but especially through a close scrutiny of the interrogation reports provided by the nizamiye court records. Rural arson cases, in this regard, revealed the encounter between the Ottoman state and the peasants in a particular way. As a specific language of vengeance and a method of executing justice, arson provided me with the means to understand the "subjective

reality" of the peasants, "a reality constituted by the subjective experience"[746] in contrast to the reality of the state perceiving and describing the perpetrators as "simple-minded" (*safdil*), "nitwit" (*sersem*) or "ignorant" (*cahil*) peasants.

Rural arson was, in fact, a quite calculated action with a just measure of violence attacking only property, excluding livestock. Young shepherds, cultivators, farmhands, and day labourers committed it individually or sometimes in the company of their friends with the intention and conscious effort to settle their scores with the opposite party. When the hay barn, cow shed, or the fodder was set ablaze and consumed to the ground, the impotent rage of the perpetrator cooled down as well. The peasants did not denounce the arsonists to the authorities even if they knew them out of fear of being the next target. Apparently, many cases went unreported and the culprits remained protected. This was the basic reason which raised the arson to the rank of custom (*adet*) in the villages with a frequency that disturbed and threatened the individual peasant.

The Ottoman state attempted to combat this crime in a futile effort by intervening with its law and courts. However, law and court meant nothing in the absence of a community's cooperation in bringing the arsonists to light. Yet I was able to write this part on arson thanks to the partial willingness of the community in cooperating with the state since the archival evidence as a matter of course came from those cases that were reported to or detected by the nizamiye courts. While the correspondences between the provinces and İstanbul revealed the significance and frequency of unreported arson cases in the villages, the reported crime provided me with the material to explore the everyday interactions and conflicts within the

[746] Schulte, *The Village in Court*, p. 197.

community, the motives behind them, and the way this crime and its perpetrators were handled at the nizamiye courts.

Rural arson cases also revealed how the principles of the Tanzimat were bent in time by the Ottoman state itself with the force of the local social dynamics. In this regard, these cases show the reconciliation between the official law and the local customs and the interaction of the higher state ideals with the local demands. They demonstrate the extent to which official law and justice as defined by the state overlapped with or diverged from the peasants' conception of justice.

The cases on female arsonists depict a rather different picture than the one revealed by rural arsonists. These cases shed light not on the peasants but on another subordinate group, indeed the most subordinate group in nineteenth century Ottoman society: female slaves. Most of the arsonist women were enslaved persons and except for one, all of them were black. The significance of these cases for this dissertation came out when I realized that only three arsonists were executed among all and strikingly these three persons were black enslaved female domestics. The uniqueness of these women's experiences offered another angle from which I could question the role of gender before the Ottoman courts.

Women's experiences with crime did not come out only with arsonist women but also with the poisonous women in this study. While rural arson served to concentrate on the individual conflicts within the village, poisoning cases offered an opportunity to uncover domestic conflicts within the household when these women stood trial before the nizamiye courts for having poisoned their husbands. As far as the archival records reveal, poisoning was particularly a female crime and in this regard, a feminine weapon of vengeance if we consider the conjugal discords that led to this violent crime. Domestic violence, prearranged marriages, and poverty

were the basic motives behind it. Of course, not only the victims of domestic violence but also passionate women who had fallen in love with other men resorted to poison.

In both cases, women preferred poison for three reasons: First, there was always a strong possibility that the crime could go undetected as it was committed within the household secretly with no eye-witnesses leaving no visible signs of violence on the victim. Second, poison could be obtained easily from herbalists, peddlers, and even grocers due to its various uses in daily life. In spite of the regulations enacted from the mid-nineteenth century onwards to restrict the sale of poison, these regulations hardly reached that far to the villages and towns. Even in İstanbul, the efficiency of the regulations was quite questionable. Third and most importantly, poison murder before the şer'î law was not considered a premeditated murder unless the victim was compelled to consume the poison by the culprit. As a result, murderers received lenient penalties until the proclamation of the 1858 Ottoman Penal Code. The stipulations of Hanafî law saved the culprits from full culpability by providing them an alternative when they could not obtain a divorce.

Poison murder enlarged the scope of this study by including in the picture various conflicts around the poison issue. The efforts of the Ottoman government to control poison sale and regulate various trades throughout the nineteenth century brought forth the contentions within the business of poison sale. The interrogation process of the poisonous wives in the courts revealed the position of women before the law. Detection of poison following the incident brought other problems related with the place of medico-legal evidence to the surface.

Briefly, this dissertation attempted to highlight the experiences of ordinary Ottoman subjects, especially peasants and women, with law and their particular

methods of implementing justice in their daily lives when the official mechanisms of law could not provide solutions to their problems in the village and the household. It focused on the gap between the expectations of these historical actors and the failure of the Tanzimat state to meet their expectations. Rural arson and poison murder were scrutinized as two specific forms of violent crime and methods through which peasants and women constructed their agencies, challenged the official law, and asserted their claims on justice while the Ottoman state proved its capability and incapability to realize its ambitions of centralization and strict control on its population from the mid-nineteenth to early twentieth century. By trying to include the everyday conflicts and contentions of the ordinary Ottoman subjects into the larger picture of the Tanzimat judicial reforms, this dissertation aimed to contribute to the nineteenth century Ottoman history from a perspective informed by gender studies and social history.

To conclude, at the very beginning of this research at the Prime Ministry Ottoman Archives, I had no idea what I would encounter when I read the summary of an archival document from the İ.MVL catalogue which read exactly "about the arsonists who set the house of Reşid on fire in İzmir and the murder cases in Şehirköy sub-district."[747] I requested the document in order to see who those murderers were. Surprisingly, the arsonist in İzmir was a woman, Dellal Fatma, and the murderer in Şehirköy was İstamenka, whose poison trial I examined in detail in Chapter 7. This document with interrogation reports indeed opened my eyes to the world of arsonist peasants and the poisonous wives. This dissertation was written thanks to the evidence and inspiration provided by this document.

[747] "İzmir'de Reşid'in hanesini yakanlar ve Şehirköyü kazasındaki katl olaylarına dair." See BOA., İ.MVL, 555/24903, 6 S 1283 (20 June 1866).

APPENDICES

APPENDIX A

An Exemplary Data of Murder Cases Showing the Punishment Released by the Courts before and after the 1858 Ottoman Penal Code

Document	Date	Place	Murderer	Victim	Murder Weapon	Punishment
i.mvl 79/1549	1262/1846	Midilli	Kalonye	His wife	strangling and beating	2 years *pranga*
i.mvl 108/2461	1263/1847	Trabzon	Emine	Her husband	axe	5 years imprisonment
i.mvl 125/3233	1264/1848	Rusçuk	Ümmügülsüm	Her husband	axe	5 years imprisonment
a.mkt.mvl 9/5	1264/1848	İstanbul	Dimitri	His wife	beating	5 years imprisonment
a.mkt.mvl 13/73	1265/1849	Kocaeli	Ali	His wife	strangling	5 years hard labor
a.mkt.mvl 31/53	1266/1850	Üsküp	Rukiye	Her husband	rifle	5 years imprisonment
a.mkt.mvl 32/57	1266/1850	Adana	Mehmed	His wife	rifle	5 years hard labor
a.mkt.mvl 30/38	1266/1850	Kastamonu	İbrahim	His wife	a sharp object (alet-i cariha)	5 years hard labor
mvl 197/55	1266/1850	Selanik	Betro	Her husband	stick	5 years imprisonment
a.mkt.mvl 39/25	1267/1851	Kastamonu	Fatma	Her husband	strangling	5 years imprisonment
a.mkt.um 128/90	1269/1853	Kastamonu	Mustafa	His wife	unknown	Sulh (400 guruş) nizamen?
a.mkt.mvl 66/55	1270/1854	Adana	Ali	His wife	unknown	5 years hard labor
a.mkt.mvl 67/9	1270/1854	Kastamonu	Salih	His wife	stick	5 years hard labor
a.mkt.mvl 76/95	1272/1855	Yozgat	Alime	Her husband	unknown	7 years imprisonment
a.mkt.mvl 83/73	1273/1856	Girit	Nikola	His wife	unknown	5 years *pranga*
a.mkt.mvl 96/64	1274/1857	Silistre	Süleyman	His wife	hammer	7 years hard labor
a.mkt.mvl 108/12	1275/1859	Hersek	Nefise	Her husband	razor	10 years imprisonment
a.mkt.mvl 115/70	1276/1860	Yanya	Bukurin	Her husband	unknown	10 years imprisonment
a.mkt.mvl 123/65	1277/1860	Sivas	Alime	Her husband	squeezing testicles	15 years imprisonment
i.mvl 440/19547	1277/1860	Silistre	Yovan	His wife	unknown	15 years hard labor
a.mkt.mvl 128/89	1277/1860	Erzurum	Esmer	Her husband	rifle	15 years imprisonment
a.mkt.um 403/96	1276/1860	Trabzon	Havva	Her husband	rifle	15 years imprisonment
a.mkt.mvl 128/89	1277/1861	Van	Esmer	Her husband	rifle	15 years imprisonment
mvl 679/34	1281/1864	Kastamonu	Fatma	Her husband	strangling	Death sentence/kısas
Tuna Ayniyat D.	1283/1866	Tuna	Yonge	Her husband	axe	15 years imprisonment
Tuna Ayniyat D.	1283/1866	Tuna	Yovan	His wife	beating	15 years hard labor
i.da 4/74	1286/1869	Tuna	Petra	His wife	knife	15 years hard labor
a.mkt.da 9/66	1288/1871	Yanya	Eleni	Her husband	squeezing testicles	15 years imprisonment
i.da 11/359	1289/1872	Malatya	Ali	His wife	unknown	15 years imprisonment
i.da 14/579	1291/1874	Manastır	Ümmühan	Her husband	axe	15 years imprisonment

APPENDIX B

The Instruction (*Tenbihnâme*) Addressing the Peasants Published in Tuna Provincial Newspaper, No. 29, 7 Cemaziyülevvel 1282 (28 September 1865)

Tuna Vilayeti dahilinde kâin İslam ve Hristiyan ve cümle köy muhtarlarına ve ihtiyar meclisleri a'zâsına hitâben neşr olunan tenbihnâmedir.

Köylüler siz bilirsiniz ki hırsız ve haydud ve eşkiya takımı zabitin eline geçmemek ve gözüne görünmemek içün köyden köye dolaşub tenha yerlerde gezerler ve bunlar köylülere hiç zarar etmeyecek olsa bile tutuldukları vakit istintâklarında nereye uğradıkları ve nerelerde oturub kaldıkları meydana çıkar onun içün bir takım adamların kimisi yataklık töhmetiyle ve kimisi hırsıza ekmek vermek kabahatiyle habs olunurlar ve hiç olmaz ise bir müddet istintâk elinde sürüklenirler eğerçe o makule hırsız ve edebsizleri köylüler kabul etmez ise de ne çare ki bunlarda silah bulunduğundan ve hem de kötü adam ile eyü adam birden bire fark olunmadığından aralıkda eşkiya fırsat bulur işte buna bir çare olmak ve köylerce artık şöyle böyle demeğe mahal kalmamak içün silah taşınması yeniden gayet şiddetli yasak edilmişdir silah taşımağa salâhiyyet ve memuriyeti olan zabtiye neferatı kıyafetlerinden ve elbisesinden malumdur ve yolculardan ve köy bekçilerinden silah taşımağa ruhsatı olanların elinde tezkeresi olmak lazım gelür bunlardan ma'dâ hiç kimse silah taşımayacaktır bu günden sonra zabtiye neferatından başka islam ve hristiyan her kim olur ise olsun bir köye silahlı adam geldiği anda muhtar ve ihtiyar meclisi a'zâsından orada bulunanlar ve sâir münâsib olanlar ol adamın yanına varub evvel-i emrde silahlarını aldıktan sonra silah tezkeresini soracaklardır ol adam silah tezkeresi çıkarır ve isbat eder ise silahlar kendisine ....(?) eğer tezkere çıkaramaz ise ol adamı silahlarıyla beraber köylüler müdüre götürüb teslim edeceklerdir ve bu adamın kötü ve uygunsuz olduğu anlaşılur ise kollarını bağlayub hükümete öyle götüreceklerdir ve eğer öyle bir veya iki silahlı adam silahlarıyla köy muhtar ve ihtiyar meclisine karşu durub da silah atar ise köylülerin ol adamı silah ile öldürmesine kanûn ruhsat vermişdir belli başlı ve ismi ma'lûm haydud ve hırsızlardan olur ise köylüler onu tutsunlar ve tutamadıkları suretde urub öldürsünler böyle izin ve ruhsat verilmişdir ve köylüler köyleri civarında dağda ve ormanlarda hırsız ve haydud olduğunu işittikleri anda eli ayağı silah tutanlar olvakit silahlanub ve muhtar ve ihtiyar meclisinin önüne düşüb ve putra (?) kalkmasu içün yakın köylere dahi el altından haber yollayub haydudların üzerine gitsinler ve tutsunlar haydudlar karşu durur ise yukarda söylediğimiz gibi köylüler dahi onları tepelesünler köye döndüklerinde yine herkes silahını çıkarsun ve bir yerde haydud olub da putara (?) çıkarılması içün civar köyden ahir bir köye haber gönderilmiş bu köyden kimse gitmecek olur ise hırsıza ve hayduda yardım etmiş derecesinde kabahatli olacağından öyle vakitde imdada yetişmeyen köylüler kanûnca tedib ve mücâzât olunacakdır ve bundan sonra bir silahlı adam tutulub da istintâkında ondan evvel bir köye silah ile uğradığı ve köylü hiç birşey demediği anlaşılur ve haber alınur ise muhtar ile ihtiyar meclisi kabahatli düşecekdir işte bunların cümlesi ibadullahın ve ehl-i ırz-ı ahalinin selameti içündür zira hükümetin ve hükümet memurlarının birinci işi halkın mal ve can ve ırzına dokunan edebsiz takımının başını ezmek ve kırmaktır ve haydudların kökünü kazımak ve hepsini bitirmek içün köylüler cümleden ziyade çalışmalıdır ve bu da mücerred kendi hayır ve selametleri içündür bu tenbihnâme her köye gönderilmiş olduğundan nüshası islam köylerinde cami ve hristiyan köylerinde kilise ve bunlar yoğsa münasib mahallerin duvarına yapıştırılub daima herkese okutturulması ve bu tenbiye sade bu seneye ve gelecek yıllara mahsus olmayub daimi bir şey olduğundan muhtarlar ve ihtiyar meclisleri her vakit bunu okuyub ve okutturub bunda ne yazılmış ise öylece hareket etmesi

lazımdır hasılı bundan sonra kimsenin şöyle böyle oldu demeğe ve özür etmeğe hakkı kalmayacağından bir hırsızın veya bir haydudun barındığı ve ekmek aldığı köy ahalisi hakkında kanûnen … (?) olan en şedîd ceza icrâ olunacağını herkes bilsün.

APPENDIX C

Articles 164, 165, 166, and 167 on arson in the 1858 Ottoman Penal Code[748]

Article 164: Whosoever shall intentionally set fire to buildings situated elsewhere than in a town, village, or hamlet, and not either inhabited or intended for habitation; to ships, to forests, felled timber, or standing crops, when the same are the property of another, shall be punished with hard labour for from fifteen years to life. Any person who in setting fire to any of the things above mentioned, if they are his own property, thereby causes damage to another, by the spreading of the fire, shall be punished with hard labour for from three to fifteen years.

"*Hâric-i şehir ve kasaba ve kurrada insana mahsus yahud kabil-i süknâ ve isti'mâl olmayan binalara ve sefinelere ve koru ve orman ve henüz toprak üzerinde bulunan mahsulata kendi malı olmadığı halde amden ateş koyub ihrâk eden kimse müebbeden ve kendi malı olub da kezâlik amden ihrâk etmesinden harikin sirâyetiyle ahire mazarratı dokunduğu halde dahi muvakkaten kürek cezasına müstahak olur.*"

Article 165: Whosoever shall intentionally set fire to timber, or firewood, or severed crops, belonging to another, shall be punished with hard labour for from three to fifteen years; and if by setting fire to such things as aforesaid, being his own property, he intentionally causes damage to another, he shall be punished with incarceration for from three to fifteen years.

"*Kesilmiş odun ve kereste ve biçilmiş mahsulata kendi malı olmadığı halde amden ateş veren şahıs muvakkaten küreğe konulur ve kendi malı olub da böyle bil-ihtiyâr ihrâkıyla ahire mazarratı dokunduğu halde muvakkaten kalebend kılınır.*"

Article 166: In all cases if the fire shall cause the death of one or more persons who happen to be in the places set fire to, at the time when the fire burst forth, the punishment of the persons so intentionally setting such places on fire shall be death.

Addition to Article 166: All gunpowder stored for sale in any place contrary to the regulations in that behalf shall be forfeited to the State. The owner and the storer of the same shall be sentenced to three years hard labour.

If damage has been caused by an explosion of gunpowder stored in any place other than a place licensed therefor under the regulations in that behalf, the person in possession of such powder shall be punished with hard labour for from three to five years in proportion to the mischief occasioned; and for from ten to fifteen years if the death of any person has been occasioned thereby.

"*Her halde vakı' olan harik hîn-i zuhurunda mevki'-i muhterikede bir veyahud daha ziyade şahsın telefini mucib olduğu halde kundak vaz' edenler ale-l-ıtlak idam cezasıyla mücâzât olunur*.

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[748] *The Ottoman Penal Code 28 Zilhijeh 1274,* pp. 70-71 and *Fihrist-i Kanûnnâme-i Cezâ*, pp. 39-40.

Fî 23 Rebiyülahir sene 1281 zeyl: Mugâyir-i nizâm bir mahalde bey' ve füruht içün barut bulunur ise zabt olunub barut sahibi bulunan ve saklayan üç sene müddetle kürek cezası görecekdir eğer harik zuhur edüb de nizâma memnu' olan mahalde bulunacak barutun isti'mâlinden hasarat zuhura gelür ise mikdar-ı hasarata göre barut sahibi üç seneden beş seneye kadar ve eğer telef-i nefs dahi vuku'bulur ise on seneden on beş seneye kadar küreğe konulacakdır."[749]

Article 167: Whosoever shall with force or violence set fire to buildings, or to immovable or movable property of any kind, shall be punished with hard labour.

"*Her türlü ebniye ve emvâl ve emlakı ihrâk içün bir şahsa cebr ve ikrâh eden kimse kürek cezasıyla mücâzât olunur."* This article was also added to the Penal Code on 23 Rebiyülahir 1281.

The modified versions of Article 163 and 164 which came into effect on March 14, 1890 (22 Receb 1307).[750]

Article 163: Şehir ve kasaba ve karye derununda meskûn ve gayr-ı meskûn her nevî ebniye ile sefinelere amden ateş verüb ihrâk eden şahıs ihrâk ettiği bina veya sefine başkasının malı bulunduğu veyahud kendisinin malı olub da ateşin sirayetiyle başkasının bina veya sefinesi dahi muhterik olduğu suretde eğer ikâ' olunan harik telef-i nefsi mucib olmuş ise faili idam ve telef-i nefsi mucib olmamış ise müebbed kürek cezâsıyla mücâzât olunur.

Fakat muhterik olan bina veya sefine kendü malı olub ateş dahi ahirin bina veya sefinesine sirayetle ihrâk etmez ise on seneden ziyade olmamak üzere muvakkaten küreğe konulur.

Article 164: Şehir ve kasaba ve karye haricinde olub insana mahsus veyahud kabil-i süknâ ve isti'mâl olan ve olmayan binalara ve koru ve orman ve henüz toprak üzerinde bulunan mahsulata amden ateş verüb ihrâk eden kimse ihrâk ettiği şey başkasının malı ise müebbeden veyahud muvakkaten ve kendi malı olub da harikin sirayetiyle ahire mazarratı dokunur ise muvakkaten kürek cezasına müstahak olur.

Dahil veya hâric-i şehirde her nevî binaların kasden ihrâkına mutasaddî olub da fiile getiremeyenler muvakkaten küreğe konulurlar.

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[749] *Düstur,* Cilt 1, p. 573.

[750] See *Mecmua-yı Lahika-yı Kavanin*, İstanbul, 1311, pp. 101-102.

APPENDIX D

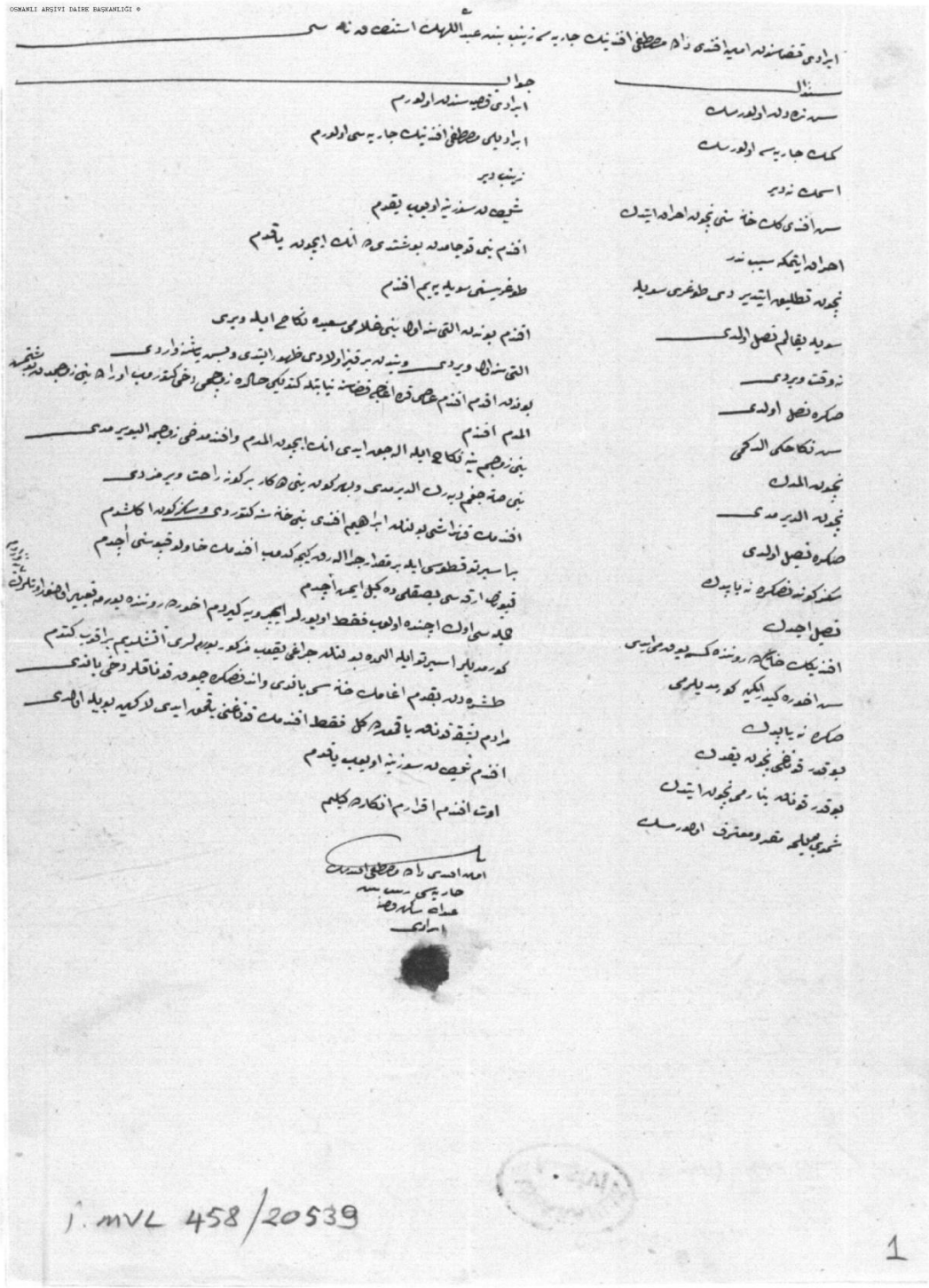
Female Arsonists

Date	Place	Arsonist	Victim	Burnt Structure	Motive	Punishment
1847	İstanbul/ Edirnekapı	Emine Hatun	Kurukahveci Reşid Efendi	House (a runaway fire)	Concealment of theft	Imprisonment in Haseki asylum
1857	Hüdavendigar Province/ Hisar quarter	Hatice (foster daughter)	Hacı Resmi	House (2)	Ill-treatment by the mother of Hacı Resmi	6-months imprisonment
1858	İstanbul/ Sultanahmet	Kadem Hayr (a black servant)	Saraylı Hatice Hanım	House	Grudge due to being sold to another person	Unknown
1859	Vidin, Ayşe Hatun quarter	Gülfidan (a black servant)	Osman Ağa (Major in the Rumelian Army)	House	Grudge due to ill-treatment	Unknown
1860	Kıbrıs/ Limasol	Şerife ve Ermeni Penbe	Zeliha Hatun	Two pieces of timber (house door)	unknown	6-months imprisonment
1861	İstanbul/ Buğdaycılar Kapısı	Vüruşerif (a Circassian servant, 21)-mentioned Crimean Mehmed as her accomplice.	Ahmed Efendi (Commissioner of the Renovation Department of Charitable Foundations	House	Concealment of theft	15-years imprisonment
1861	Konya/Alaiye/ İbradı	Zeynep (a black servant)	Mustafa Efendi	Cowshed (a runaway fire)	Grudge due to being sold to another person	Death sentence
1861	Selanik/ Tarakçı quarter	Dilferah (a black servant, 21)-mentioned Ahmed as her accomplice.	Mehmed Ağa (Tobacco Customhouse Director)	House	Concealment of theft	Death sentence
1865	İzmir	Dellal Fatma-mentioned her husband Hacı Ahmed as her accomplice.	Reşid Ağa	House	Concealment of theft	15-years imprisonment
1867	İzmit	Feraset (a black servant)-mentioned Selime, a black female manumitted slave (*müttekâ*) as her accomplice	Şükrü Ağa	House	Concealment of theft	Death sentence

1867	Tuna/Niş/ Şehirköy	Mika Hatun (20)- mentioned Meyto as her accomplice.	Lazar	Hay barn	Grudge (honour)	10-years imprisonment
1868	Tuna/Tulça	Feraset (a black servant, 13-14)	Akif Efendi (Head Officer of Taxation in Tulça)	House	Unknown	5-years hard labour and 15-months imprisonment
1870	Kıbrıs/ Değirmenlik	Hatice (a black servant)	Mehmed Ratib Efendi	Storehouse	Grudge due to being sold to another person	15-years imprisonment
1871	Tuna/Rusçuk/ Hizergrad	Ayşe Hatun	Koç Ömer and Yavaş Ömer	2 hay barns and a plum orchard	Grudge	10-years imprisonment
1885	Karinabad	Stafina (70)	Angeli	cowshed	Unknown	Temporary hard-labour
1906	Adapazarı	Atiley	Şerif (her husband)	House	Unknown	Imprisonment in Haseki women hospital

APPENDIX E

Alaiye Sancağı dahilinde İbradi Kazası sakinlerinden Mustafa Efendi'ye ait evin yanmasına sebeb olan Zeyneb'in cezasına dair (The interrogation report of Cariye Zeyneb)



İ.MVL.00458

BOA., İ.MVL, 458/20539, 25 Ca 1278 (28 November 1861)

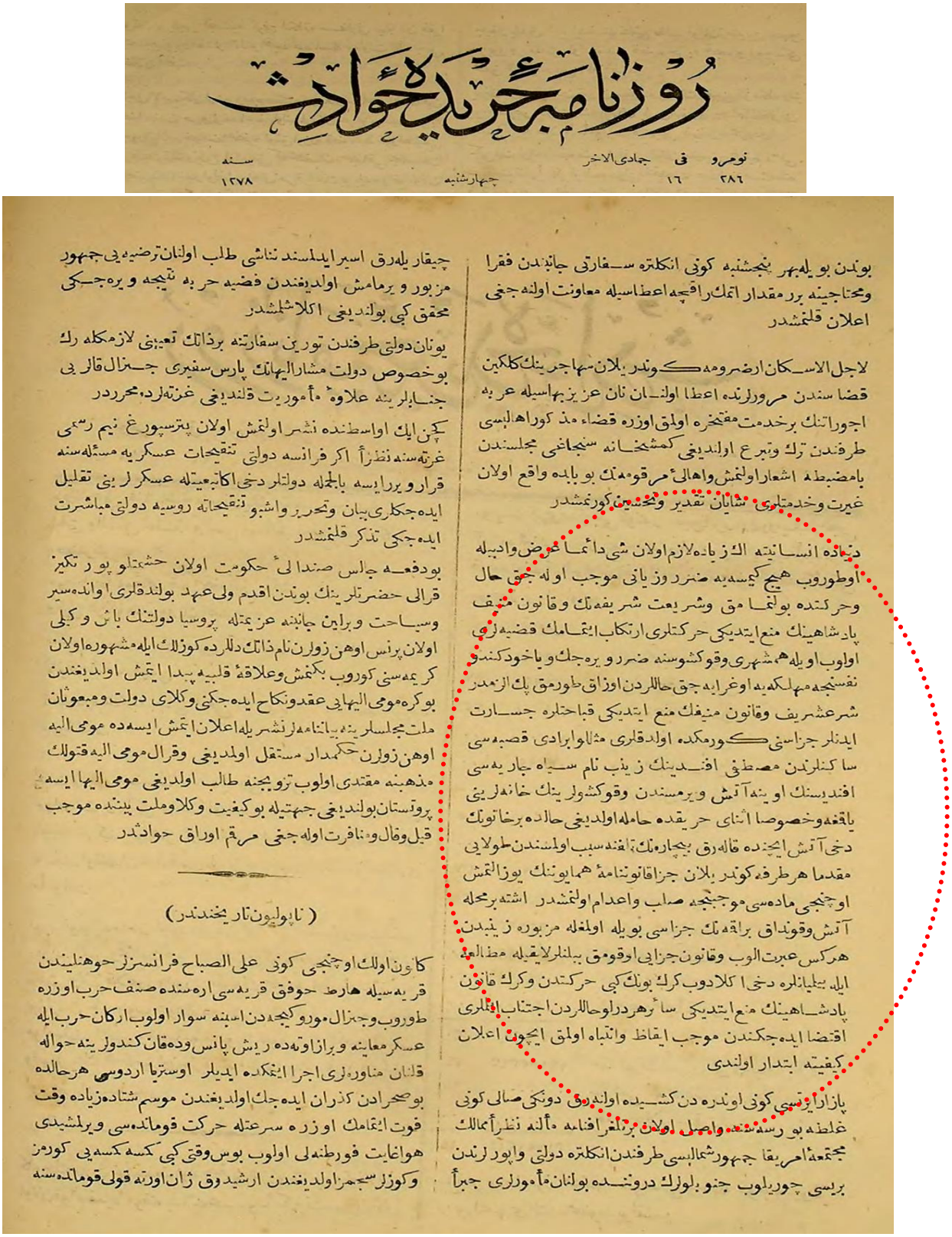
İbradı Kazasından Emin efendizade Mustafa Efendinin cariyesi
Zeyneb bint Abdullah'ın istintâkı

Sen nereden olursun
İbradı kazasından olurum
Kimin cariyesi olursun
İbradılı Mustafa Efendinin cariyesi olurum
İsmin nedir
Zeynebdir
Sen efendinin hanesini niçün ihrâk etdin
Şeytan sözüne uyub yakdım
İhrak etmeğe sebeb nedir
Efendim beni kocamdan boşatdı da onun için yakdım
Niçün tatlik ettirdi doğru söyle
Doğrusunu söyleyeyim efendim
Söyle bakalım nasıl oldu
Efendim bundan altı sene evvel beni gulamı Seyide nikah eylediydi
Ne vakit verdi
Altı sene evvel verdi ve benden bir kız evladı zuhur etti ve beş yaşında vardı
Sonra nasıl oldu
Bundan akdem efendim Asikaraağaç Kazasına niyâbetle gittiği halde zevcimi dahi götürüb orada beni zevcimden boşatmış
Sen nikahını aldın mı
Almadım efendim
Niçün almadın
Beni zevcim yine nikah ile alacak idi onun için almadım ve efendim dahi zevcime alıvermedi
Niçün alıvermedi
Seni satacağım diyerek alıvermedi ve beher gün beni döğer bir güna rahat vermezdi
Sonra nasıl oldu
Efendimin karındaşı bulunan İbrahim Efendi beni hanesine götürdü ve sekiz gün eğleştim
Sekiz günden sonra ne yapdın
Bir ispirto kutusu ile bir mikdar çıra alarak gece gidüb efendimin havlu kapısını açtım
Nasıl açdın
Kapunun arkası basıklı değil imiş açdım
Efendinin hane derununda kimse yok mu idi
Ailesi evvel içinde olub fakat uyurlar içeriye girdim ahur derununda bürüm tabir olunur otların yanına vardım
Sen ahura gider iken görmediler mi
Görmediler ispirto ile elimde bulunan çırayı yakub mezkur burumları ateşledim bırakub gittim
Sonra ne yaptın
Dışarıdan bakdım ağamın hanesi yandı ve ondan sonra çok konaklar dahi yandı
Bu kadar konağı niçün yakdın
Muradım başka konak yakmak değil fakat efendimin konağını yakmak idi lakin böyle oldu

Bu kadar konak yanar mı niçün ettin
Efendim şeytan sözüne uyub yakdım
Şimdi … makarr-ı mu'terif olur musun
Evet efendim ikrârım inkâr değilim

Emin Efendizade Mustafa Efendi'nin cariyesi Zeyneb bint Abdullah
sakine-i kaza-yı İbradı

APPENDIX F



روزنامهٔ جریدهٔ حوادث

نومرو ۲۸۶ | فی ۱۶ جمادی الاخر | چهارشنبه | سنه ۱۲۷۸

بوندن بویله بهر پنجشنبه کونی انکلتره سفارتی جانبدن فقرا ومحتاجینه برر مقدار اتمك راقچه اعطا سیله معاونت اولنه جغی اعلان قلنمشدر

لاجل الاسکان ارضروم ده کوندریلان مهاجرینك کلکین قضا سندن مرورلرنده اعطا اولنان نان عزیز بهاسیله عربه اجوراتنك برخدمت مفتخره اولق اوزره قضاء مذکوراهالیسی طرفندن ترك وتبرع اولندیغی کمشخانه سنجاغی مجلسندن بامضبطه اشعار اولنمش واهالیٔ مرقومه‌نك بو بابده واقع اولان غیرت وخدمتلری شایان تقدیر وتحسین کورنمشدر

دنیاده انسانیته اك زیاده لازم اولان شی دائما فرض وادبیله اوطوروب هیچ کیمسه‌یه ضرر وزیانی موجب اولهجق حال وحرکتده بولنمامق وشریعت شریفه‌نك وقانون منیف پادشاهینك منع ایتدیکی حرکتلری ارتکاب ایتمامك قضیه‌لرینی اولوب اویله همشهری وقوکشوسنه ضرر ویره‌جك ویاخود کندو نفسنجه مهلکه‌یه اوغرایه‌جق حالده‌لردن اوزاق طورمق پك الزمدر شرع شریف وقانون منیفك منع ایتدیکی قباحتلره جسارت ایدنلر جزاسنی کورمکده اولدقلری مثللو ابرادی قصبه‌سی ساکنلرندن مصطفی افندینك زینب نام سیاه جاریه‌سی افندیسنك اوینه آتش ویرمسندن وقوکشولرینك خانه‌لرینی یاقمغه وخصوصا اثنای حریقده حامله اولدیغی حالده برخاتونك دخی آتش ایچنده قاله‌رق بیچاره‌نك تلفنه سبب اولمسندن طولایی مقدما هرطرفه کوندریلان جزاقانونتامهٔ همایونینك یوزالتمش اوچنجی ماده‌سی موجبنجه صلب واعدام اولنمشدر اشته برمحله آتش وقونداق براقمه‌نك جزاسی بویله اولمغله مزبوره زینبدن هرکس عبرت الوب وقانون جزایی اوقومق بیلنلرلایقیله مطالعه ایله بیلمیانلره دخی اکلادوب کرك بونك کبی حرکتدن وکرك قانون پادشاهینك منع ایتدیکی سائر هردراوحالدن اجتناب اولمری اقتضا ایده‌جکندن موجب ایقاظ وانتباه اولق ایچون اعلان کیفیته ابتدار اولندی

پازارایرتسی کونی اوندره دن کشیده اولدیغی دونکی صالی کونی غلطه‌یه برسه‌سنده واصل اولان برتلغرافنامه مألنه نظراً ممالك مجتمعهٔ امریقا جمهورشمالیسی طرفندن انکلتره دولتی واپور لرندن بریسی چوریلوب جنوبلوك درونده بولنان مأمورلری جبراً چیقاریله‌رق اسیر ایدلمسندن ناشی طلب اولنان ترضیه‌یی جمهور مزبور ویرمامش اولدیغندن فضیه حربه نتیجه ویره‌جکی محقق کبی بولندیغی اکلاشلمشدر

یونان دولتی طرفندن تورین سفارتنه برذاتك تعیینی لازمکله رك بوخصوص دولت مشارالیهانك پارس سفیری جنرال قاریی جنابلرینه علاوهٔ مأموریت قلندیغی غزته‌لرده محرردر

کچن ایك اواسطنده نشر اولنمش اولان پترسبورغ نیم رسمی غزته‌سنده نظراً اکر فرانسه دولتی تنقیحات عسکریه مسئله‌سنه قرار ویررایسه بالجمله دولتلر دخی اکا تبعیتله عسکرلرینی تقلیل ایده‌جکلری بیان وتحریر واشبو تنقیحاته روسیه دولتی مباشرت ایده‌جکی تذکر قلنمشدر

بودفعه جالس صندالیٔ حکومت اولان حشمتلو پور تکیز قرالی حضرتلرینك بوندن اقدم ولیعهد بولندقلری اوانده سیر وسیاحت وبراین جانبنه عزیمتله پروسیا دولتنك باش وکیلی اولان پرنس اوهن زولرن نام ذاتك دللرده کوزللك ایله مشهوره اولان کریمه‌سنی کوروب بکنمش وعلاقهٔ قلبیه پیدا ایتمش اولدیغندن بوکره مومی الیهایی عقد ونکاح ایده‌جکنی وکلای دولت ومبعوثان ملت مجلسلرینه بیانامه‌لرنشر یله اعلان ایتمش ایسه‌ده مومی الیه اوهن زولرن حکمدار مستقل اولدیغی وقرال مومی الیه قتولك مذهبنه مقتدی اولوب تزویجنه طالب اولدیغی مومی الیها ایسه پروتستان بولندیغی جهتیله بوکیفیت وکلاوملت پیننده موجب قیل وقال ومنافرت اوله جغی مرقم اوراق حوادثدر

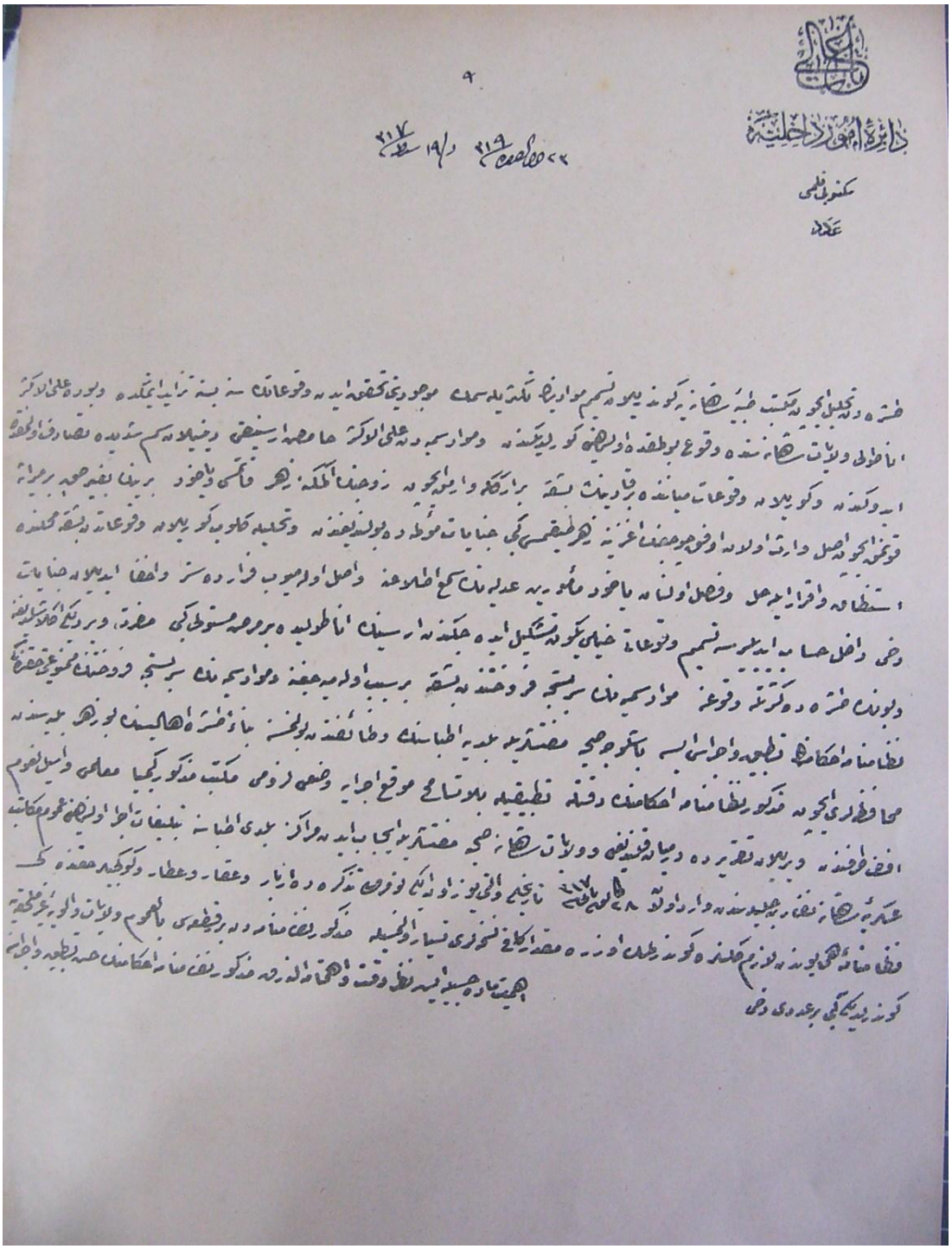
(ناپولیون تاریخندن)

کانون اولك اوچنجی کونی علی الصباح فرانسزلر حوهنلیندن قریه‌سیله هارط حوفق قریه‌سی اره‌سنده صنف حرب اوزره طوروب وجنرال مورو کیجه‌دن اسبنه سوار اولوب ارکان حرب ایله عسکر معاینه وبرازاوته‌ده ریش پانس ودهقان کندولرینه حواله قلنان مناوره‌لری اجرا ایتمکده ایدیلر اوسترتیا اردوسی هرحالده بوصحرادن کذران ایده‌جك اولدیغندن موسم شتاده زیاده وقت فوت ایتمامك اوزره سرعتله حرکت قوماندەسی ویرلمشیدی هوانهایت فورطنه‌لی اولوب بوس وقتی کبی کسه کسه‌یی کورمز وکوزلر سجمزاولدیغندن ارشیدوق ژان اورته قولی قوماندەسنه

The admonition published in the pages of *Ruznâme-i Ceride-i Havâdis* about the arsonist Zenciye Zeyneb, no. 286, 16 C 1278 (19 December 1861)

APPENDIX G

Zehirli maddelerin serbestçe satılmasının yasaklanması hakkındaki nizamnamenin tatbik edilmesi ile attar ve kökçüler hakkındaki nizamnamenin umum vilayet ve livalara gönderilmesi (About the regulation on the prohibition of selling poisonous substances).

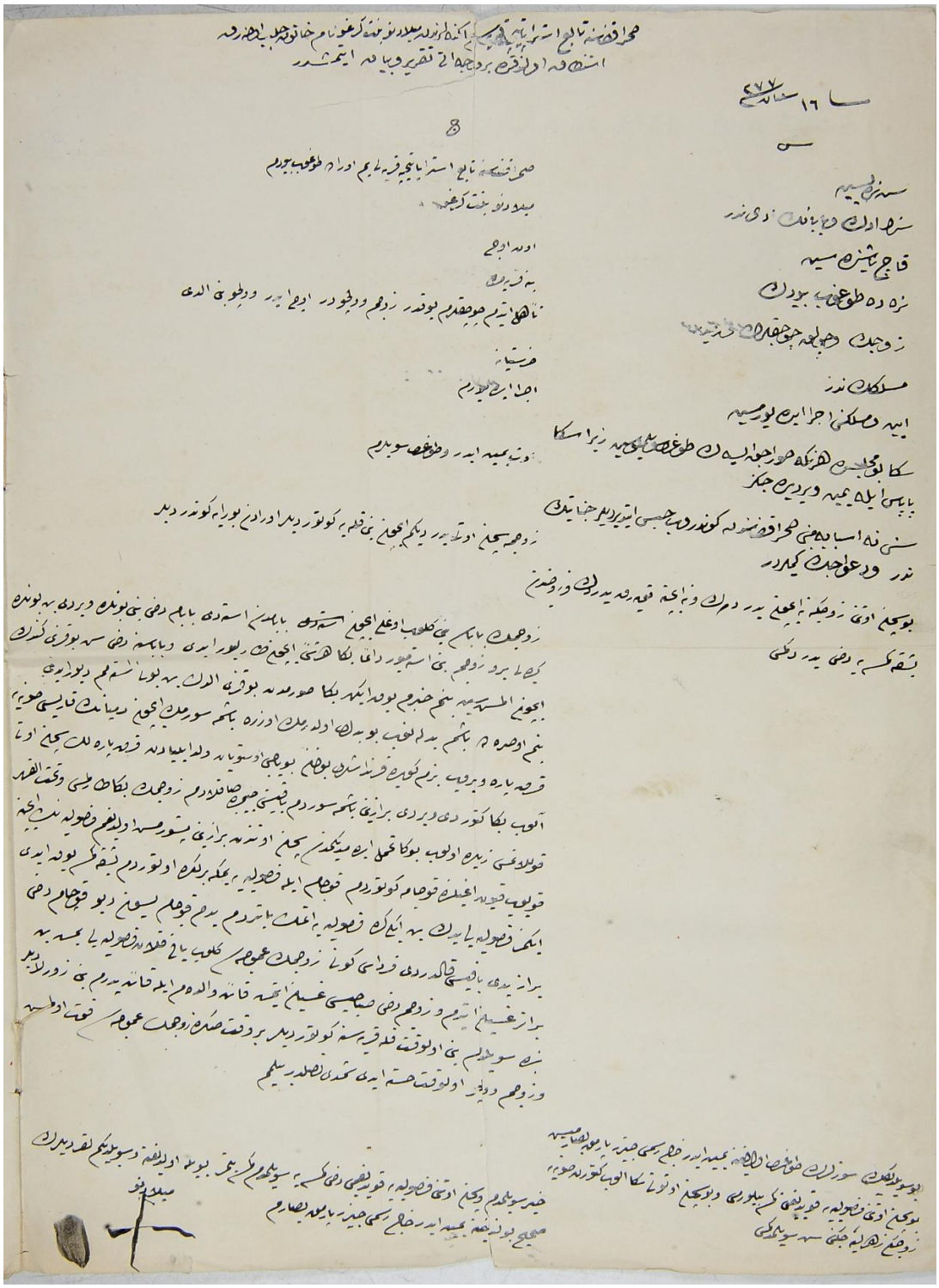


BOA., DH.MKT, 2594/137 23 Za 1319 ve 19 February 317 (3 March 1902).

Taşradan tahlil içün Mekteb-i Tıbbiye-yi Şahaneye gönderilen tesmim mevâddının tekessürüyle semmin mevcudiyeti tahakkuk eden vukuâtın sene besene tezâyüd etmekte ve bu da ale-l-ekser Anadolu vilayet-i şahanesinde vuku' bulmakta olduğu görüldüğünden ve mevcud semmiyeden ale-l-ekser hâmız arseniği denilen semm-i şedîde tesadüf olunmakda idüğünden ve görülen vukuât meyânında bir kadının başka bir erkeğe varmak içün zevcinin ekmeğine zehir katması veyahud birinin bagir hak bir mirasa konmak içün asıl varis olan ufak çocuğun ağzına zehir tıkması gibi cinâyât-ı müellimede bulunduğundan ve tahlile gelüb görülen vukuâttan başka mahallinde istizân ve ikrâr ile hal ve fasl olunan yahud memurin-i adliyyenin semm' ıtla'ına vâsıl olamayub firarda setr ve ihfâ edilen cinâyât dahi dahil-i hesab edilirse tesmim vukuâtı hayli yekûn teşkil edeceğinden arsenik Anadoluda bir maraz-ı müstevlî gibi mazarrat verdiği anlaşıldığına ve bunun taşrada kesretle vuku'una mevâdd-ı semmiyenin serbestçe füruhtundan başka bir sebep olamayacağına ve mevâdd-ı semmiyenin serbesçte füruhtunun menûiyyeti hakkındaki nizamnâme ahkâmının tatbik ve icrâsı ise başlıca sıhhiye müfettişleriyle belediye etibbâsının vezâifinden bulunmasına binâen taşra ahalisinin bu zehir beliyyesinden muhafazası içün mezkur nizamnâme ahkâmının dikkatle tatbikiyle bila-tesâmuh mevki'-i icrâya vaz' lüzumu mekteb-i mezkur kimya muallimi Vasil Naum Efendi tarafından verilen takrirde der-miyân kılındığı ve vilayet-i şahane sıhhiye müfettişleriyle icâb eden merkez beledî etibbâsına tebligat icra olunduğu Umum-ı Mekteb-i Askeriye-i Şahane nezaret-i celilesinden vârid olan 28 Kânûn-ı sânî 317 tarihli ve 612 numerolu tezkirede izbâr ve Akkar ve Attar ve Kökçüler Hakkındaki Nizamnâme-i Hümâyûndan lazım gelenlere gönderilmek üzere mikdar-ı kafi nüshaları tesyâr olunmasıyla mezkur nizamnâmeden birer kıt'ası bi'l-umum vilayât ve elviyey-i gayri mülhakata gönderildiği gibi bir adedi dahi ehemmiyet-i madde hasebiyle nazar-ı dikkat ve ihtimâma alınarak mezkur nizamnâme ahkâmının tatbik ve icrâsına.

APPENDIX H

Miladinu Hanım'ın zevcini zehirlerken amcası Hristo'yu da zehirleyerek ölümüne sebep olduğu ve zehir satıcısı İstopan'ın cezalandırılması (About Miladinu Hanım who attempted to poison her husband but instead poisoned her husband's uncle Hristo and the punishment of the poison vendor İstopan).



BOA., A.MKT.MVL, 129/70, 9 M 1278 (17 July 1861).

Sahra Kazasına tabi' İstrapançe karyesi sakinelerinden Miladinu bint Girgo nam hatun celb olunarak istintâk olundukda ber-vech-i âtî takrîr ve beyân etmişdir.

16 Şaban 277 (27 Şubat 1861)
Sen nerelisin?
Sahra Kazasına tabi' İstrapançe karyeliyim orada doğub büyüdüm
Senin adın ve babanın adı nedir
Miladinu bint Girgo
Kaç yaşındasın
On üç
Nerede doğub büyüdün
Yine karyemde
Zevcin ve çoluk çocukların var mıdır
Teehhül ettim çocuklarım yokdur zevcim Vulçudur üç aydır Vulçu beni aldı.
Mesleğin (mezhebin?) nedir
Hristiyan
Ayin ve mesleğini (?) icra ediyor musun
İcra ediyorum
Sana bu mecliste her ne soracak isek doğru söyleyeceksin zira sana papaz ile yemin verdireceğiz
Evet yemin eder ve doğru söylerim
Seni ne esbâba mebnî Sahra Kazasından gönderüb habs ettirdiler cinâyetin nedir ve davacın kimdir
Zevcime sıçan otu yedirdiğim için beni kaleye götürdüler oradan buraya getirdiler
Bu sıçan otunu zevcine ne içün yedirdin ve ne içüne koyarak yedirdin ve zevcinden başka kimseye dahi yedirdin mi
Zevcimin babası beni gelüb oğlu içün babamdan istedi babam dahi beni bunlara verdi ben bunlara gideli berü zevcim beni istemiyor daima bana herşey içün azarlıyor idi ve babasına dahi sen bu karıyı kendin içün almışsın benim haberim yok iken bana sormadın bu karıyı aldın ben bunu istemem diyor idi benim o sırada başım bitlenüb bu bitleri öldürmek üzere başıma sürmek için Dimyan'nın karısı Sone'ye kırk para verüb bizim köyde karındaşları bulunan Boyacı İstopan veled İlya'dan kırk paralık sıçan otu alub bana getirdi verdi birazını başıma sürdüm bakiyesini cebimde sakladım zevcimin bana darılması ve taht-l-kahr kullanması ziyade olub buna tahammül edemediğimden sıçan otundan birazını pişirmiş olduğum fasulyenin içine katub koyun ağılında kocama götürdüm kocam ile fasulye yemeğe birlikte oturdum başka kimse yok idi ikimiz fasulyeyi yedik ben iki kere fasulyeye etmek batırdım yedim kocam yesin deyu kocam dahi biraz yedi bakiyesi kaldırdı ferdası günü zevcimin amucası gelüb baki kalan fasülyeyi yemiş ben biraz gisyan ettim ve zevcim dahi sabahsı gisyan etmiş kayınvalidem ile kayınpederim beni zorladılar ben de söyledim beni olvakit Kale karyesine götürdüler bir vakit sonra zevcimin amucası fevt olmuş ve zevcim Vulçu olvakit hasta idi şimdi nasıldır bilmem

Bu söylediğin sözlerin doğru olduğuna yemin eder haç resmi çizer parmak basar mısın bu sıçan otunu fasulyeye koyduğunu kimse bilir mi ve bu sıçan otunu sana alub getiren Sone'ye zevcini zehirleyeceğini sen söylemedin mi
Hayır söylemedim ve sıçan otunu fasulyeye koyduğumu dahi kimseye söylemedim kimse bilmez böyle olduğuna ve söylediğim lakırdıların sahîh bulunduğuna yemin eder haç resmi çizer parmak basarım.
Miladinu

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