

FROM INTEREST TO USURY: THE TRANSFORMATION
OF *MURABAHA* IN THE LATE OTTOMAN EMPIRE

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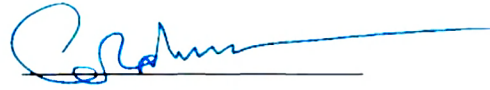
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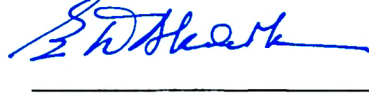
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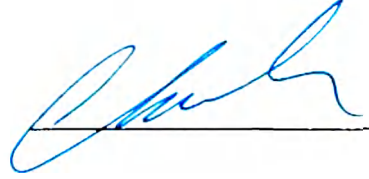
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ABSTRACT

FROM INTEREST TO USURY: THE TRANSFORMATION OF *MURABAHA* IN THE LATE OTTOMAN EMPIRE

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This study examines the place of *riba* in the Late Ottoman Empire. To this end, I will scrutinize the concept of *murabaha* to demonstrate credit relations among the Ottomans. The scholar approach to this subject overlooks social reflections of *riba* by focusing only on the judicial or economic side of the concept. Since *riba* is prohibited in Islam, the Ottomans used legal solutions of Islamic law for transactions which intended to bear interest gain without falling into the ill-doing of *riba*. These *riba*-prevention methods were mainly used in charitable ends such as sheltering orphan assets and serving in pious foundations. Credit relations amongst commoners were also regulated under these *sharia* compliant solutions and an interest rate ceiling was appointed. Hence, the “clean” interest gain from these legal transactions was defined as *murabaha* in order to differentiate it from *riba*. My starting point is that why the legal solutions to escape from *riba* became the tools that usurers employed in the first place.

Identifying the actors and the methods help observe the reflections of *riba* in the socio-economic life. After illustrating the credit market, I conclude that there was not a special group of usurers such as *sarrafs*, non-Muslims or merchants. The legal cases regarding usury were examined consecutively. Usury cases generally resulted with the reducing of interests and dividing the debt into instalments. Such cases show that the state took side with the debtors to

preserve the social harmony. Since the problem of usury prevailed mainly in the provinces, state-wide measures were taken in the second half of the nineteenth century. The state reduced interest rate ceilings and established cash funds to deal with usury.

The vanishing of the concern of preventing *riba* and the negative connotation the concept gained in usurious cases made *murabaha* to signify the usury.

Keywords: *faiz*, credit, usury, *riba*, *murabaha*, interest.

ÖZ

FAİZİN YANSIMALARI: GEÇ DÖNEM OSMANLI İMPARATORLUĞUNDA

MURABAHA KAVRAMININ DÖNÜŞÜMÜ

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Bu çalışmada Osmanlı Devleti'nin son döneminde ribanın durumu incelenmektedir. Bunun için de murabaha kavramı analiz edilerek Osmanlılar arasındaki kredi ilişkilerinin sosyal tarihi ortaya çıkarılmaya çalışılmıştır. Mezkur mevzuya değinen akademik çalışmalarda ribaya sadece iktisadi ya da fihhi açılardan yaklaşıldığından ehemmiyet arz eden sosyal yansımalar göz ardı edilmiştir. Riba ya da günümüzde daha sık kullanıldığı itibarıyla faiz, İslam dininde yasaklanmış olduğu için Osmanlılar bazı fihhi çarelere başvurmuşlardır. Böylelikle kredi işlemlerinden belirli bir miktar getiri elde edip, yasağı çiğnememiş oluyorlardı. Bu fihhi çarelere daha çok yetim mallarının korunması ve vakıf paraların işletilmesi gibi ihya/hayır işlerine yönelik kredi ilişkilerinde başvuruluyordu. Tebaa arasındaki kredi ilişkilerine de aynı hassasiyetle yaklaşıp bu uygulamaları kullanmaları istenmekteydi. Aynı zamanda bu kredi getirilerine bir sınır koyulmuştu. Osmanlılar yasak olan ribadan kaçınıp helal bir getiri olarak gördükleri bu fazlalığa murabaha demektedir.

Osmanlı sosyo-ekonomik yaşamındaki kredi ilişkilerini gözlemlemek için bu ilişkilerde kullanılan yöntemleri ve bunları uygulayan aktörleri tanımlamak gerekmektedir. İncelendiğinde görülüyor ki, literatürün aksine belirli bir tanınmış grup olarak tefeci sınıfı yoktur. Bunların her gruptan olabileceği; yalnızca sarraf, tüccar ya da gayrimüslim olmadıkları da anlaşılmıştır. Tefecilik davalarına baktığımızda ise devletin borçludan yana taraf

tutarak, borç yükünü azaltmak için fahiş faizi düşürdüktan sonra borcu uzun vadeli taksitlere böldüğünü görmekteyiz. Tefeciliğin yoğun olarak görüldüğü kırsal bölgelerde ise on dokuzuncu yüzyılın ikinci yarısıyla birlikte tefecilik karşıtı yeni uygulamalar görülmektedir. Öncelikle murabaha nizamnameleri ile kadimden beri yüzde on beş olan getiri oranı düşürülmüş ve uygun kredi dağıtmak amacıyla kooperatif/bankalaşma tecrübesi yaşanmıştır. Bu gelişmeler sosyal harmoniyi korumak ve iktisadi kalkınmayı başarılı kılmak için uygulanmışsa da ribadan kaçınma endişesinin ortadan kaybolduğu gözükmemektedir. Sonuç olarak gittikçe azalan şeriata uygunluk endişesiyle değişen riba algısı ile birlikte, sosyal hayatta tefecilerin aleti haline gelmiş murabaha kavramının doğrudan fahiş faiz olarak anılmasına sebep olmuştur.

Anahtar kelimeler: Osmanlı Devleti, faiz, riba, murabaha, tefecilik, kredi.

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ABBREVIATIONS

BOA: Başbakanlık Osmanlı Arşivi (Prime Ministry's Ottoman Archives), İstanbul, Türkiye

EI²: Encyclopaedia of Islam, second edition

TDV: Türkiye Diyanet Vakfı

TTK: Türk Tarih Kurumu

TDV İSAM: Türkiye Diyanet Vakfı İslam Araştırmaları Merkezi

TOIELH: The Oxford International Encyclopedia of Legal History

AÜİFD: Ankara Üniversitesi İlahiyat Fakültesi Dergisi

BSOAS: Bulletin of the School of Oriental and African Studies, University of London

BTHAE: Banka ve Ticaret Hukuku Araştırma Enstitüsü

TC BDAGM: Türkiye Cumhuriyeti Başbakanlık Devlet Arşivleri Genel Müdürlüğü

TEB: Türkiye Ekonomi Bankası

İBB: İstanbul Büyükşehir Belediyesi

BHDDMGM: Başbakanlık Hazine Müsteşarlığı Darphane ve Damga Matbaası Genel Müdürlüğü

TBB: Türkiye Bankalar Birliği

TDK: Türk Dil Kurumu

TCB DİE: Türkiye Cumhuriyeti Başbakanlık Devlet İstatistik Enstitüsü

JESHO: Journal of the Economic and Social History of the Orient

IJTS: International Journal of Turkish Studies

IJMES: International Journal of Middle East Studies,

SÜİFD: Selçuk Üniversitesi İlahiyat Fakültesi Dergisi

INTRODUCTION

Broadly defined as any kind of economic exploitation, *riba*¹, has always been an important concept in Islam for it was expressed as a big sin and accordingly prohibited. A growing body of literature and institutions in the sphere of Islamic Economics² deal with the problem of *riba* as one of the main aims of Islamic Finance is to eliminate *riba* from economy. It is an intriguing area of study for scholars specializing in Islamic history because they can shed light on prohibition of *riba* in states ruled under Islamic Law. The Ottoman Empire, which endured more than six centuries, constitutes an important part of Islamic history. Showing the situation of *riba* in the Ottoman Empire would be an important contribution to Islamic history. If one investigates into the situation of *riba* in the Ottoman Empire, there is no chance of overlooking the term *murabaha*³ since most sources imply the connection between *riba* and *murabaha*.⁴ The *murabaha* contracts now represent an important part of the financial transactions that Islamic financial institutions use to avoid *riba*. Yet, sources suggest that it carried the meaning of *riba* in the last years of the Ottoman Empire, pointing to usury. Interestingly, one sees from the sources dating back to the sixteenth century that the term *murabaha* did not have such negative meaning as usury; it simply meant the profit gained in an economic transaction, including the interest demanded in loan transactions as well.

¹ In Islamic law, *riba* is the unmerited gain resulting from economic transactions (mostly on money).

² It is one of the main aims of Islamic Finance, a part of Islamic Economics, to promote a *riba*-free financial market, for example.

³ The term means to stipulate a gain on the price of an asset and it is originally used for a kind of sale that contains a certain profit.

⁴ The translation of the *Encyclopaedia of Islam* in Türkiye is called the "İslam Ansiklopedisi" and its editors used *murabaha* while translating the article, *riba*. See, Joseph Schacht, "Ribâ," in *İslâm Ansiklopedisi* (İstanbul: M. E. G. S. B., 1988).

Literature Review

I will review academic literature starting with the conceptual approaches to Ottoman history. Regarding social and economic history of the Ottoman Empire, there is not much work focusing on concepts of these sub-disciplines except some encyclopedic entries. Although Neş'et Çağatay's study is on *riba* and interest concepts in the Ottoman Empire⁵, he does not present a picture of the practice of and perception by the Ottomans of these concepts. Çağatay found it sufficing to put a brief examination of legal responses and literary claims on these concepts. On the other hand, there are comprehensive surveys on the relationship between legal history and social history. Ahmet Mumcu's study on the concept of *zulm*⁶ might set a good example to this approach. In his work, Mumcu derives his claims from the perception and practice of *zulm* among the Ottomans.⁷ Another example can be the works of Engin Deniz Akarlı in which he shows the place of custom (*urf*) through emphasizing the diversity of its usage in the Ottoman experience.⁸ Boğaç Ergene's study on justice (*adl*) might be another instance to illustrate different perceptions of the notion.⁹ Yet the concepts I will investigate demonstrate a different path than the concepts of *adl*, *zulm* and *urf* followed. It is rather a transformation of one meaning than the reflections of different meanings amongst different actors.

The literature about the Ottoman conception of *riba* is a controversial one as it is in the situation of "*riba* in Islam". Although many scholars agree about the loan relations in the Empire, they differ on how to interpret the findings and

⁵ Neş'et Çağatay, "Riba and Interest Concept and Banking in the Ottoman Empire," *Studia Islamica*, no. 32 (1970).

⁶ The meaning of *zulm* is injustice and transgression as it originally refers to the absence of light.

⁷ Ahmet Mumcu, *Osmanlı Hukukunda Zulüm Kavramı* (Ankara: Phoenix Yayınevi, 2007).

⁸ *Urf* means custom in a narrow sense. See, Engin Deniz Akarlı, "Custom as Signifier of Consensus, Commonality, and Right" (paper presented at the Justice in Ottoman Society: Institutions, Actors and Practices, İstanbul, 2012), 245-70; "Law in the Marketplace: Istanbul, 1730-1840," in *Dispensing Justice in Islam: Qadis and Their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David Stephan Powers (Leiden: Brill, 2006).

⁹ Ergene examines the concept of justice in the Ottoman Empire in Bourdieuan sense, see: Boğaç A. Ergene, "On Ottoman Justice: Interpretations in Conflict (1600-1800)," *Islamic Law and Society* 8, no. 1 (2001).

results. The reason is that the approach to the subject overlooks the social history.

This study will conduct a historiographical survey into the problem. It will show the current state of the divergence in the literature. One of the first and the most prominent historians to work on this subject was Ömer Lütfi Barkan. The way he led other scholars is misleading. Valuable for that he studied the sources, which touch upon the interest-bearing transactions and loan relations closely. Barkan referring to his own work on *vakıfs* and the *tereke* (law estate) registers claimed the Ottomans often used the *hile-i şeriyye*; the contracts, which enabled to bear interest without breaching the *riba* ban. He then labeled sharply that the oft-used concepts and terms in the Ottoman sources such as *faiz*, *ribh* and *murabaha* were not different than *riba*.¹⁰ Neş'et Çağatay seconds Barkan in his work analyzing the banking process in the Ottoman Empire. He makes the same claims regarding credit relations as Barkan and even asserts that it was the wrong understanding of Islam by the Ottomans that gave way to Christian and Jewish people to gain wealth by money-lending in the Ottoman Empire.¹¹ In his work on the cash *vakıf* debates in the sixteenth century, Jon Mandaville supports this statement as he uses the term "usurious" to explain the acts of *vakıfs* in the title of his article.¹² Haim Gerber states that Ottomans used the *murabaha* instead of *riba* to name the charged interest. For him the legal strategems did not matter much, it was only about of naming of the sum in intra-subject loan relations.¹³ Halil İnalçık can also be considered as an advocate of such a position as one can see in his article on economic history of the Ottoman Empire.¹⁴ A considerable number of scholars seem to accept this conclusion.

¹⁰ Ömer Lütfi Barkan, "Edirne Askeri Kassamına Ait Tereke Defterleri (1545-1659)," *Belgeler* III, no. 5-6 (1966): 31-58.

¹¹ Çağatay, "Riba and Interest Concept and Banking in the Ottoman Empire."

¹² Jon E. Mandaville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire," *IJMES* 10, no. 3 (1979): 289-308.

¹³ Haim Gerber, *State, Society, and Law in Islam : Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 74, 101.

¹⁴ Halil İnalçık, "Capital Formation in the Ottoman Empire," *The Journal of Economic History* 29, no. 1 (1969): 101.

Scholars who are accustomed to Islamic law acknowledge the lawful *hiyel* (plural of *hile*)¹⁵ as legitimate methods for that the leading Hanafi jurists accepted them. Ömer Nasuhi Bilmen strongly advocates these methods.¹⁶ Scholars who study on the *vakıf* system, the *cash vakıfs* and thus legal history such as Ahmet Akgündüz¹⁷, İsmail Kurt¹⁸ and Tahsin Özcan¹⁹ are from this fraction of historiography which is defensive of the Ottoman Empire.

Yet, there is another group of Ottoman historians with the background of Islamic law whose commentaries fuel the debate. For example, Abdülaziz Bayındır investigates the law court records of the empire and claims that the methods used by the Ottomans would cause *riba* as they aimed to create a false web of commercial activities and this cannot be tolerated in Islam.²⁰ Bayındır is also one of the few scholars who mention the relationship between *riba* and *murabaha* in the Ottoman Empire. Süleyman Uludağ also criticizes these methods used to bypass the *riba* ban and accuses the Ottomans for being insincere Muslims as these methods were under the guise of trade.²¹

Timur Kuran mentions the relevance between *riba* and *murabaha* in his account but his attempt is misleading from the start. Kuran wanted to prove that *murabaha* was recognized as usury in Ottoman history but the *murabaha* he relates to, is the sale transaction used in contemporary Islamic finance, which is different than the Ottoman counterpart.²² İbrahim Kafi Dönmez indicates briefly that *murabaha* had a negative connotation as usury in the Ottoman Empire in

¹⁵ The methods used to bypass the law, and in this context, gain interest while avoiding the ban on *riba*.

¹⁶ Ömer Nasûhi Bilmen, *Hukukî İslâmiyye ve İstilahatı Fıkhiyye Kamusu*, 8 vols., vol. 5 (İstanbul: Bilmen Yayınevi, 1968), 47-48.

¹⁷ Ahmed Akgündüz, *Osmanlı Hukukuna Giriş ve Fatih Devri Kanunnâmeleri*, 9 vols., vol. 1, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri* (İstanbul: Fey Vakfı, 1990), 238-50.

¹⁸ İsmail Kurt, *Para Vakıfları: Nazariyat ve Tatbikat* (İstanbul: Ensar Neşriyat, 1996), 45.

¹⁹ Tahsin Özcan, *Osmanlı Para Vakıfları Kanuni Dönemi Üsküdar Örneği* (Ankara: TTK, 2003), 54-64.

²⁰ Abdülaziz Bayındır, *Ticaret ve Faiz* (İstanbul: Süleymaniye Vakfı, 2007), 267.

²¹ Süleyman Uludağ, *İslam'da Faiz Meselesine Yeni Bir Bakış* (İstanbul: Dergâh Yayınları, 2010), 149-55, 311-15.

²² Timur Kuran, "The Economic Impact of Islamic Fundamentalism," in *Fundamentalisms and the State : Remaking Politics, Economies, and Militance*, ed. Martin E. Marty and R. Scott Appleby (Chicago: University of Chicago Press, 1993), 310.

his encyclopedic entry.²³ Scholars like Şevket Pamuk²⁴ uses data provided by Jennings²⁵ and claims that the prohibition on *riba* was circumvented by the legal strategems and thus Ottomans had never failed to own a credit market. Suraiya Faroqhi who used primary sources, claims the same as Pamuk.²⁶ Although this claim cannot be falsified it lacks certain aspects of *riba*. Whether there was *riba* practice in the Ottoman Empire is a question that must be complemented with other questions such as “in what ways *riba* occurred?”, “what was the role of the state in *riba* cases, how these cases were settled?”, “did the state take measures to prevent *riba*?” and so forth. One might say the state of *riba* studies in the Ottoman Empire is still virgin.

Murat Çizakça develops a different assertion and indicates that the Ottomans had the economic notion of interest whilst escaping the judicial one.²⁷ Timur Kuran also mentions that these legal transactions bear out transaction costs along with the stipulated interest.²⁸ I do not agree that the Ottomans acclaimed such separation of interest – usury at least in the classical period of the Empire. It was clearly stated any stipulation on loans should have the *ilzam-i ribh* and *devr-i şeri* processes. Thus they needed to accept the terms on legal transactions regardless of the charged interest, even if it was an insignificant amount.²⁹ Timur Kuran’s claims about the transaction costs of these legal methods seem as a misconception because the parties might also show their loan relations as *karz-ı hasen* which might seem interest-free even if it there was a stipulation. Such examples can be deduced from documents regarding the method above.

²³ İbrahim Kâfi Dönmez, "Murâbaha," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2006).

²⁴ Şevket Pamuk, "Institutional Change and the Longevity of the Ottoman Empire, 1500-1800," *The Journal of Interdisciplinary History* 35, no. 2 (2004): 225-47.

²⁵ Ronald C. Jennings, "Loans and Credit in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *JESHO* 16, no. 2/3 (1973).

²⁶ Suraiya Faroqhi, *Stories of Ottoman Men and Women : Establishing Status, Establishing Control* (İstanbul: Eren Yayıncılık, 2002), 95-112.

²⁷ Murat Çizakça, "Cash Waqfs of Bursa, 1555-1823," *JESHO* 38, no. 3 (1995): 330-31.

²⁸ Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2011), 147-53.

²⁹ Legal records suggest that the debt must be registered in the court under the precepts of Islamic law which contains *devr-i şeri* (rearrangement of the contract after due time) and *ilzam-ı ribh* (stipulate a gain on the capital). For the legal responses of the religious scholars, see Süleyman Kaya, "XVIII. Yüzyıl Osmanlı Toplumunda Nazari ve Tatbiki Olarak Karz İşlemleri" (Unpublished, Marmara Üniversitesi, 2007).

Though some scholars claim the opposite as asserting that the legal transactions were used by the money-lenders only to raise the interest rate they were to charge. This claim has no solid ground.³⁰ The *muamele* process needed to be taken in order for it to be a legal, *seri* transaction free of *riba*. Later came the economic decision-making in setting the rate between ten to fifteen percent or to twenty percent if conditions became more difficult.

Both considerations that I have explained fail to cover the situation of *riba*. The first group of scholars that I have demonstrated in the example of Ömer Lütü Barkan etc. took the liberty of asserting a commentary on a matter, which simply does not fit their discipline, and thus they did not have the necessary knowledge or their level of knowledge was misleading for this matter. What they did was more like measuring the Muslimness of the Ottomans. The other group that I have described as defensive seems to overlook the archival documents or fail to mention the social history of the Ottoman Empire although *riba* considerably intervenes in social life. To summarize, a superficial look at historiography of *riba* might leave one confused. This is parallel to the commentaries about the relationship between Islamic Law and the Ottoman praxis of it that I will mention later.

As for the accounts on the praxis of *riba* from the aspect of the actors in the Ottoman Empire, one can declare that the area is virgin except some brief explanations on money-lenders. Tevfik Güran's study might be considered an exception in which he locates the credit market in provinces.³¹ Süleyman Kaya's survey based on the local *ahkam* records of İstanbul provides clues about the identity of money-lenders varies as well. Faroqhi presents some findings about wealthy usurers, demonstrating the spread of money-lending in some certain centers.³²

³⁰ Abdul-Karim Rafeq, "Making a Living or Making a Fortune in Ottoman Syria," in *Money, Land and Trade: An Economic History of the Muslim Mediterranean*, ed. Nelly Hanna (London: I.B. Tauris, 2002), 108-16. Cenk Reyhan, *Osmanlı'da Kapitalizmin Kökenleri* (İstanbul: Tarih Vakfı Yurt Yayınları, 2008), 159-64. There was elasticity in adjusting interest rates in harsh conditions of the *vakıfs* and administering orphan properties, as I will demonstrate later.

³¹ Tevfik Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar* (İstanbul: Eren Yayıncılık, 1998).

³² Kaya, "XVIII. Yüzyıl Osmanlı Toplumunda Nazari ve Tatbiki Olarak Karz İşlemleri."

All in all, I will develop some proper claims on *riba* in Ottoman praxis through a fresh examination of resources. My study is novel for a few reasons. First, I will locate and analyze the attitude of the state in usury cases. Second, I will explore the usury regulations, which are not well studied. Previous literature lacks accurate or full transcriptions in some accounts.³³

Method and sources

I will investigate the concept of *murabaha* in order to understand *riba* in the Ottoman experience. Thus, this work will be a product of *begriffsgeschichte*.³⁴ Conceptual history pays due attention to social history which reveals a novel understanding of this subject. Previous research lacks such an understanding of *riba*. The study of social history is crucial in the investigation of *riba* in attaining a better understanding since the concept covers both economic and social meanings.³⁵ As Koselleck explains in his studies of conceptual history, concepts reveal a pattern in the aspects of social history. Koselleck argues that concepts change over time and their lexical changes might provide some clues from corresponding areas.³⁶

As the conceptual investigation in Ottoman history is similar to digging with a needle, the sources used in this study vary according to the focus of each section and period. From the classical age starting with the 14th century up until the

³³ Kazgan's studies on Ottoman banking is full of reading and transliteration mistakes. Haydar Kazgan, *Osmanlı'dan Cumhuriyet'e Türk Bankacılık Tarihi* (İstanbul: T.B.B., 1997).

³⁴ The German term means "conceptual history" after the pioneering work of the German scholar Reinhart Koselleck.

³⁵ An example discussing that *riba* is not only a legalistic matter; Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*, Studies in Islamic Law and Society (Leiden: Brill, 1999), 142-46.

³⁶ Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, Studies in Contemporary German Social Thought (Cambridge, Mass.: MIT Press, 1985)., Karin Tilmans Iain Hampsher-Monk, Frank van Vree, "A Comparative Perspective on Conceptual History - an Introduction," in *History of Concepts: Comparative Perspectives*, ed. Karin Tilmans Iain Hampsher-Monk, Frank van Vree (Amsterdam: Amsterdam University Press, 1998). See the review, Hayden White, "Futures Past: On the Semantics of Historical Times by Reinhart Koselleck; Keith Tribe," *The American Historical Review* 92, no. 5 (1987).

nineteenth century³⁷, records from *şeriyye sicils* (law court records), *mühimme defterleri* (collection of orders and judgments discussed in the highest office and sent to the provinces) as well as the *ahkam defterleri* (the records of local complaints that local law courts could not solve or reach beyond their jurisdiction) will be used along with the *kanunnames* (sultanic laws). The writs of the religious scholars; the *ulema*, and their *fetvas* (legal responses) along with official histories will be used as well. The sources from the later period are rather rich. Periodicals and daily newspapers with the *nizamnames* (regulations), *layihās* (advisory treatises) will be added to the sources with the reports of officials from the provinces as well as other sources from the Ottoman archives such as *Meclis-i Vala* (First Council) records. The books of Ottoman intellectuals were used as well. A small amount of foreign primary sources such as reports retrieved will be added to the analyses. To be sure, secondary sources also constitute an important part of my research. This study contains a lexical investigation, thus the aid of dictionaries and encyclopedias were put into account along with articles and books.

My main focus will be *murabaha* in this study and since the term *murabaha* generally signifies the interest that is stipulated in loan contracts, I will not take into account other economic transactions that might bear *riba* from some points of view. This is because the interpretations of *riba* might drive this study to various areas. For example, the importance of *sarrafs* (the official group of bankers) in the Ottoman economy is well-known yet this study will not insert any observations regarding *sarrafs* activities. Some fiscal measures of the state such as issuing bonds, borrowing domestic and foreign loans that might be recognized in the sphere of *riba* would be out of this research as well. The same is valid for the foreign loans that the Ottomans borrowed from European powers. To be clear, this survey will be a study on the question of *riba* amongst the common people in order to keep the subject in control.

³⁷ I am using the periodization offered by Mehmet Genç that accepts Ottoman history briefly in two periods; the *kadim* until the nineteenth century and the modernization. See: Mehmet Genç, *Osmanlı İmparatorluğund Devlet ve Ekonomi* (İstanbul: Ötüken Neşriyat, 2000), 38-40.

Outline of chapters

This thesis consists of three chapters along with the introduction and conclusion. The first chapter examines the place of *riba* in Islam. I investigate primary sources to understand the essence of *riba* in credit relations. Then, I explore the place of *riba* in the Ottoman Empire in a theoretical fashion. For this purpose, I firstly analyze the relationship between the Ottoman Empire and Islamic law briefly and develop claims regarding Ottoman law and *riba*. Secondly, the methods used in the Ottoman Empire to avoid *riba* in credit relations will be analyzed. I will discuss Ottoman historians' claims and assumptions on *riba*. The chapter will continue with the concepts (within terms) that are related to interest, usury and *riba* avoiding methods in Ottoman credit market. The reason behind this investigation is that there are numerous terms providing clues regarding the *riba* question. I will discuss the differentiation between usury and interest in defining *riba* by the Ottomans under this section regarding the concepts. The background on *murabaha* as usury by the Ottomans is aimed to be understood with the similar experience of Europeans. The outcomes of changes and shifts in meanings of concepts regarding *riba* will be explained with the relationship between social history and the terminology/daily-language.

The second chapter deals with the identities and methods employed by the money-lenders. It can be considered as a complementary section to the first chapter since I will show the praxis of terms described theoretically in this part. How did the Ottomans label a person as *murabahacı* and what kind of meaning does this label carry? Were they members of a special group e.g. *sarrafs* as it is generally claimed in the literature? Were they *sarrafs* or merchants, or simply regular people involved in loans? Was being a money-lender the same as being usurer?

The investigations of these questions will constitute the first section of Chapter 3. These answers will help developing claims about the frequency of usury in daily life. I will speculate on the change of labeling usurers as *ribahor* to *muameleci* and *murabahacı* over time as well. Next, the methods that these

murabahacı people used as a means of oppression will be described, as seen from the sources such as complaint records. I will elaborate on usurers' methods to clear the picture of the praxis of usury. The chapter will cover the approach of the state to these usurers as well. I will present cases regarding the oppression of *murabahacı*s and analyze how these were settled. Did the state act as a mediator between the debtor and the creditor? If so, were there measures for the creditor to not get involved in the use of *riba* again? Another question is that which penalties were executed to parties in activities related to the use of *riba* or if there were any punishment prescribed at all. Answering these questions will reveal whether money-lending on interest by common people was permitted.

The third chapter will cover the measures against usury, separated as regulatory and preventive. The first section of the chapter will cover the *Murabaha Nizamnameleri* (regulations) issued in the Ottoman Empire, between 1265 (1850) and 1304 (1887). The regulations will be analyzed with their own inner changes to capture the shift in the language and discourse of these regulations. The information deduced from these regulations will demonstrate the attempts of practicing usury by the usurers while emphasizing the role of *murabaha* as to whether it was usury or a harmless interest as these were the discussion topics of earlier chapters. Also, I will analyze whether the reductions of interest rates in these regulations were efficient in economic or social terms. The privileged statuses of cash foundations and of orphan properties are strongly related to this topic since they were accepted as exceptions in reducing interest rates. The reasons for such privilege will be explored and explained as well.

The second section of Chapter 3 sheds light on the banking process that was undertaken in the second half of the nineteenth century. The banking process was aimed to deal with problems regarding usury as well as other purposes such as issuing money and obtaining domestic debt. The banking process was first undertaken provincially for the problem of usury was more critical in the rural areas. Ottomans established bank-like institutions (cash boxes, *sandıks*), which would supply cheap credits in order to combat usury and those who

participated in such activities. These institutions later evolved into the Agricultural Bank. The Ottomans were also aware of the notion that the interest rates needed to be lowered in order to succeed in economic development. The economic mentality behind the banking process will be regarded. Unlike the cash *evkaf* and administration of orphan properties as the *sandıks* and then the bank used rather secular methods in their transactions that did not pay attention to *riba*-prevention. At the end of this section, a general overview of the effectiveness of these banking measures will be presented from archival documents.

The conclusion will cover my main claims in this study along with some new questions that arose at the end of my research.

CHAPTER 1
***MURABAHA*: A NEED FOR THE CONCEPTUAL APPROACH TO MONEY-
LENDING AND *RĪBA***

In this chapter, I will show the state of *riba* in Islam as a social and economic concept. Next, I will examine the state of *riba* in the Ottoman Empire. To do so, I will first analyze Ottoman historians' claims on *riba*. Later I will define the main concepts of Ottoman economic life related to *riba* in their contemporary context. After providing a general explanation on the information regarding the concepts and methods to escape the prohibition of *riba*, I claim that one must articulate the concepts used in this branch and observe trends to have a sound understanding of the subject.

1.1 *Riba*: Usury, interest?

*Riba*³⁸ is basically defined as unmerited gain occurring from lending or transaction, which is a vital concept in Islam for it is openly criticized and prohibited in the main sources of religion. Yet it is not only Islam that prohibited *riba*, the other Abrahamic faiths³⁹ as well as other religions stand against *riba* as usury emphasizing its damaging effect on the society. It can be asserted that *riba* has a negative meaning in most communities since almost all civilizations condemned usurious gain. It goes without saying the conception of *riba* can change in each community, but a common connotation of exploitation is evident.

³⁸ For that the distinction of usury and interest is the subject of this chapter, I will use the original term *riba*. Some claims define *riba* only as something to do with interest rates as it will be mentioned.

³⁹ Vincent J. Cornell, "In the Shadow of Deuteronomy: Approaches to Interest and Usury in Judaism and Christianity," in *Interest in Islamic Economics : Understanding Riba*, ed. Abdulkader S. Thomas (London; New York: Routledge, 2006), 13-24.

Let me begin with an etymological analysis of *riba* in the Islamic world. The Arabic word consists of ر-ب-و or ربا, which also has the meaning to increase, to populate and to gain height.⁴⁰ It was a well-known concept among Arabs before their experience in trade. Thus they were aware of the harmful nature of *riba*. An example from the history of the Arab trade culture in the pre-Islamic era provides clues about this awareness. When the population of Mecca came together to restore the holy sanctuary of the Kaaba as it had become damaged and dillipated, they decided on excluding money gained from usurious activity from the collected funds of this initiative. Their rationale was that the holy house would not be clean if impure money is used in its restoration.⁴¹ The conception of *riba* among pre-Islamic Arabs is labeled as the *riba of jahiliyya*.⁴² In this relationship when the debtor could not pay his debt in due time, the interest multiplied along with the extension in the payment. In some cases, the debt owners became slaves of the creditors because of the heaviness of the usury burden, which disabled a feasible manner to the payment of debt.⁴³ This negative connotation of *riba* was then further criticized within Islamic doctrine and culture. This approach to *riba* was later expanded with the deliverance of the Qur'an and, the accumulations in the Sunnah.

Now I will refer to the concept of *riba* in the primary source of Islam; the Qur'an. Although the practice of the use of *riba* in pre-Islamic Arabia has been discussed, it is important to see how this negative perception was further consolidated with the advent of Islam, especially as Sharia formed to become the main legal framework that guided Islamic societies and states, including the Ottoman Empire.

Riba was gradually banned in the Qur'an. In his book about the prohibition of the use of *riba* in the Qur'an within the historical context, *Tarihi Bağlamı Çerçevesinde Kur'an'da Faiz Yasağı*, Ali Rıza Gül proposes a new explanation

⁴⁰ Muhammad Akram Khan, *Islamic Economics and Finance : A Glossary*, 2nd ed. (London: Routledge, 2003).

⁴¹ Ebu Muhammed Cemaleddin Abdülmelik İbn Hişam, *Siret-i İbn-i Hişam Tercemesi: İslam Tarihi*, trans. Hasan Ege, 4 vols., vol. 1 (İstanbul: Kahraman Yayınları, 1985), 258.

⁴² The term *jahiliyya* points out the stance of Arabs before Islam.

⁴³ Uludağ, *İslam'da Faiz Meselesine Yeni Bir Bakış*, 283.

about the stages of prohibition. Scholars generally explain it in three or four-stage process, based on a chronological reading of the revelations⁴⁴ containing the term *riba*. But Gül expands the view and develops a multi-staged approach that adds up convincingly. According to him, the revelations that dictate about not to seek for more when giving is the first stage labeled as “mental preparation”. Then follows the the revelations about the “psychological preparation” which involves advice regarding the mundane responsibilities of a Muslim by warning him to give up the “*jahiliyya* age” benefit-seeking life with showing the positive or negative results which are related to the obedience of warnings. Later he presents the revelations about the “economic preparation” which dictates to follow the righteous path by giving alms and *zekat* and not getting involved in unjust ways to economic ends. Later comes the “stage of opposition” in which revelations directly mention *riba*, stressing the ineffectual nature of *riba* and fruitful nature of giving alms instead.⁴⁵ This is a revelation from the “Macca period” of the *risala*. The following revelations about *riba* are from the “Madina period” when an Islamic State was established. The warning in the revelation is not to devour usury double or multiplied.⁴⁶ Gül labels this warning as the “stage of partial prohibition.”

There were non-Muslim communities in the Islamic State of Madina, for instance the Jewish and they were involved in credit relations that bore *riba*. In a period where the *riba* was shown to be illicit, one finds new revelations about *riba* that provides examples of earlier communities’ use of *riba*, in particular the Jews. The Jewish community was criticized for not abandoning the practice of *riba* even though their religion forbids *riba*. Thus the Qur’an deemed the Jews to be on the wrong side.⁴⁷ This is the stage of “warning of non-Muslims” as Gül

⁴⁴ For the debates about the chronology of *riba* verses, see: Cengiz Kallek, *Asr-ı Saâdet'te Yönetim-Piyasa İlişkisi* (İstanbul: İz Yayıncılık, 1997), 61-64.

⁴⁵ “That which you give in usury for increase through the property of (other) people, will have no increase with Allah: but that which you give for charity, seeking the Countenance of Allah, (will increase): it is these who will get a recompense multiplied.” (Al Room 30: 39)

⁴⁶ “O ye who believe! Devour not usury, doubled and multiplied; but fear Allah. that ye may (really) prosper.” (Al Imran 3: 130)

⁴⁷ “That they took usury, though they were forbidden; and that they devoured men's substance wrongfully;- We have prepared for those among them who reject faith a grievous punishment.” (An Nisa 4: 161)

indicates. After the partial prohibition and warning with an historical example, came the stage of “general prohibition” with the revelations, which clearly separate trade/transactions from usury⁴⁸ since the usurers defended themselves with such reasoning. The following revelations of the same surah, Al Baqara, continue to explain the issues relating to *riba*. Declaring war on *riba* consumers/usurers (in accordance with the events of the Madina period) who were not willing to give up on their “residual *riba* payments” demonstrates the seriousness of the approach.⁴⁹ The last revelations about *riba* explain that those in debt should be alleviated from this burden. It tells to give respite to debtors in need and emphasizes that lenders must not follow the practice of gains of their sums. Finally, it recommends that it may be better for lenders well-being if they release these debts as alms.⁵⁰

Gül’s approach is useful as it widens the sense of the Qur’anic conception of *riba* rather than simply placing it into a narrow economical framework.⁵¹ In Islam, *riba* harms brotherhood; the bond amongst the believers, which Islam attempts to build. Hence it provides a social conscience installed into the hearts and minds of believers to rid this ill practice in order to strengthen societal bonds, since this concept is both attached to a social as well as economic perspective.

The relationship offered by the Qur’an is declared as a *qard al hasan*, which literally refers to the “fair debt/loan” and is mentioned in the Qur’an with

⁴⁸ “Those who devour usury will not stand except as stand one whom the Satan by his touch hath driven to madness. That is because they say: “Trade is like usury,” but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offense) are companions of the Fire: They will abide therein (for ever). Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loveth not any ungrateful and wicked. Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord: On them shall be no fear, nor shall they grieve.” (Al Baqara 2: 275-277)

⁴⁹ “O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, take notice of war from Allah and His Messenger. But if ye repent, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.” (Al Baqara 2: 278-279)

⁵⁰ “If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew. And fear the Day when ye shall be brought back to Allah. Then shall every soul be paid what it earned, and none shall be dealt with unjustly.” (Al Baqara 2: 280-281)

⁵¹ Ali Rıza Gül, *Tarihi Bağlamı Çerçevesinde Kur’ân’da Faiz (Ribâ) Yasağı* (Ankara: İlâhiyât, 2006).

different inferences.⁵² Thence, since *riba* is an unclean method of income it is evidently forbidden. As well as this, it has a potential to harm to the concept of brotherhood between Muslims, which is required for living in accordance to the Islamic way of life in both personal and social aspects.⁵³

Another major source of Islam is the Sunnah that are the teachings, practices and the way of life of Prophet Muhammad (peace and blessings be upon him). Since the Prophet himself is considered as the living Qur'an, one can say the Sunnah helps Muslims to understand and live by what is ordered in the Qur'an. İshak Emin Aktepe in his study, "*Faiz ve Finansman Hadisleri*" (Hadiths⁵⁴ about Usury/Interest and Finance) presented the position of the prophetic stand against *riba*.⁵⁵ The framework of *riba* is explained widely in these *hadiths* including the *riba of jahilliyya* of which the Arabs were aware. A hadith reports that *riba* occurs in the exchange of six kinds of commodities; namely gold, silver, date, salt, barley and wheat. These commodities were widely used during trade in that age. When each is exchanged with its own kind, the units shall be equal no matter what kind of labor is involved.⁵⁶ Otherwise, there occurs *riba* of surplus⁵⁷. The potential of the *riba* of surplus is accepted that it cannot be tapered to these six commodities while claiming the commodities circulated extensively.⁵⁸ Scholars indicate *riba* of surplus is causative of *riba* of *nasia/jahiliyya* as it carries a potential to the *riba of jahiliyya*.⁵⁹

Another authentic hadith is about the corpus that "*riba* is only in *nasia* (credit, period)".⁶⁰ Wider versions of the hadith add, "that there is no *riba* except in the

⁵² One of the meanings of the term refers to the debt that Allah has taken from the Muslims and thus it will be paid back with the most graceful and generous means.

⁵³ Saeed emphasizes the social harms of the *riba* in Saeed, *Islamic Banking and Interest : A Study of the Prohibition of Riba and Its Contemporary Interpretation*.

⁵⁴ Hadith is the narration of the Sunnah; consisting of actions, sayings, approvals and denials of the Prophet Muhammad.

⁵⁵ İshak Emin Aktepe, *Fâiz ve Finansman Hadisleri* (İstanbul: Yedirenk Yayıncılık, 2010).

⁵⁶ Ibid., 123-48.

⁵⁷ *Riba al fadl*; also mentioned as the *riba of hadith*.

⁵⁸ Khan, *Islamic Economics and Finance : A Glossary*, 9, 157.

⁵⁹ İsmail Hakkı (İzmirli), "Fıkıh ve Fetava: Rıbe'l-Fazl ve Rıbe'n-Nesie," *Sebilürreşad* 11, no. 275 (1329 (1913)).

⁶⁰ Aktepe, *Fâiz ve Finansman Hadisleri*, 151-58.

credits.” This caused some debates among the *ashab* (companions) of the Prophet. Based on this hadith, some companions of the Prophet concluded that the essential kind of *riba* is the only one mentioned in the Qur’an.⁶¹ Thus, one sees that the essence of *riba* was a debated issue among the companions of the Prophet. *Riba* was to be condemned. However, they did not come to a consensus on what was essentially *riba* and what was not, except for the clearly known methods.

There is a group of hadiths mentioning that *riba* chargers will face afterlife. They also emphasize the harmful structure of *riba*. Lastly, in the last sermon of the Prophet he declared *riba* is abolished and the first example of unconfined gain is that of his uncle’s. In it he added that the principal of the loan/debt is to be kept but any kind of addendum is banned to the practice of Muslims. The assertion “neither oppress nor be oppressed” in the manner of *riba* is crucial for the understanding of the concept.⁶²

Doctrinal schools of jurisprudence (*madhabs*) of Islamic law have minor differences in both defining and placing the use of *riba* in daily-life. The separation for example can vary from Hanafi jurists to Malikis but since this phenomenon is clearly mentioned and banned in the Qur’an and the Sunnah, a common ground in the banishment is agreed upon. Other than the differentiation of the definition of *riba* mentioned above, a distinction to the approach to towards methods preventing *riba* is evident. These methods, which are called *hiyal* or *makharij*, are practiced because of the concern of granting a definite earning in credit relations whilst not violating the *riba* prohibition. I will mention and define these methods in the Ottoman experience later on, but it is sufficient to say that some Islamic schools of law have recognized these methods by emphasizing their advantage for letting Muslims not to intervene with the unclean *riba*. Joseph Schacht defines these special ways as a *modus vivendi* (a mediary) between theory and praxis.⁶³ The literature of legal

⁶¹ Ali Rıza Gül, *Sahabilerin Faiz (Riba) Anlayışları* (Ankara: İlahiyat, 2006), 260-68.

⁶² Aktepe, *Fâiz ve Finansman Hadisleri*, 94-99.

⁶³ Joseph Schacht, *An Introduction to Islamic Law* (London: Oxford University Press, 1964), 80.

strategems offers “solutions” for other areas such as marriage as well.⁶⁴ There are various types of methods for escaping *riba* but they all form a similar process that makes the debt contracts look as commercial transactions taking third party tools, and persons into the process. For the aspect of Islamic law, these methods must only be carried out in exceptional situations, and generalization was not accepted.⁶⁵

1.2 *Riba* in the Ottoman Empire

Though this study covers the place of *riba* only in the history of Ottoman Empire in the sphere of Islam, one sees lack of in-depth surveys. There are few substantial accounts dealing with the money-lending relations in Islamic law. Yet we know from some sources that such interest bearing transactions were undertaken by a certain group of money-changers named as *djhabdh/cehbez*⁶⁶ and muslim traders used interest bearing bills that were named *mukhatara/süftece*. A record regarding the Ilkhanid sultan who turned into Muslim tells about his efforts and success to eliminate well-spread *riba* from the everyday life, is interesting as well.⁶⁷

1.2.1 Some notes on the legal structure of the Ottoman Empire

It is obligatory to present a brief portrait of Islamic law and the Ottoman legal structure in the life span of the Ottoman Empire since they are prone to being misunderstood. Ottoman State was an Islamic State in that it upheld the concepts of Sharia. Yet the Ottomans accepted and applied different practices from the Turks, Persians and Byzantines. .

⁶⁴ Saffet Köse, "Hiyel," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 1998).

⁶⁵ H. Yunus Apaydın, "İne," *ibid.* (2000).

⁶⁶ W. J. Fischel, "Djhabdh," in *EI2* (Leiden: Brill, 1991).

⁶⁷ Rashiduddin Fazlullah, *Jami'u't-Tawarikh: Compendium of Chronicles: A History of the Mongols*, ed. Şinasi Tekin and Gönül Alpay Tekin, trans. W. M. Thackston, 3 vols., vol. 3 (Cambridge: Harvard University, 1999), 736-42.

The structure of the Ottoman legal apparatus stands in the center of the debates about the relationship between Islamic law and the Ottoman Empire. The first generation of Ottoman historians in the Republic of Türkiye generally adhered to the notion that there was a dichotomy in the Ottoman legal system, namely two opposite parts as secular (*urfi*) and religious (*şeri*) laws that challenged power in the continuance of the empire. This was also a general claim laid among Orientalist scholars studying the Ottoman Empire. Fuad Köprülü and Ömer Lütfi Barkan, both scholars of the first kind mentioned this dichotomy in their works. Barkan sets a good example for this view. In his analysis he describes a unique system regarding the Ottomans by providing examples about the legal apparatus while indicating these examples (i.e. inheritance law or sultanic laws) had no theoretical background/advocates in Islamic law. He added that in situations where secular and religious laws were opposed, the Ottomans preferred secular methods so that they could provide a wider area of intervention.⁶⁸ İnalçık defends this dichotomy by asserting that the *ulema* (bureaucratic group of religious scholars) acted as a legitimizing mediator juxtapositioning secular law into the religious law system. It was portrayed that the religious law was subservient to secular law (which are the laws of the Sultan i.e. kanun) at the end of the process.⁶⁹ Niyazi Berkes stresses the rigidity of Islamic law by claiming its inability to satisfy the matters of changing times, because it lacks the required mechanisms to deal with the changes towards a modern state. Berkes continues with a broad sphere of the Hanafî school of thought that enables the ruler to act rather serenely than in other schools by giving more space to the ruler legitimization. He utilizes this as evidence of why the Ottomans chose to act under the Hanafî law officialy.⁷⁰ The source of these views are linked to the works of Orientalist scholars, e.g. Joseph Schacht, who specifically studied Islamic law. Schacht states secular law had the ability to transform the notions of Islamic law in a flexible manner in his comments about

⁶⁸ Ömer Lütfi Barkan, "Osmanlı İmparatorluğ Teşkilat ve Müesseselerinin Şer'iliği Meselesi," *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* 11, no. 3-4 (1945): 203-24.

⁶⁹ Halil İnalçık, "Kanun," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2001), 325-26.

⁷⁰ Niyazi Berkes, *Türkiye İktisat Tarihi* (İstanbul: Yapı Kredi Yayınları, 2013), 92-93.

the *kanunnames* (collections of the Sultan law) of the Ottoman Empire.⁷¹ A scholar who worked on the famous şeyhülislam Ebussuud Efendi (d. 1574); Colin Imber states Ebussuud's importance lies on his success to merge secular and religious laws. Imber continues that Ebussuud used different methods of deduction (overlooked the classical methodical hierarchy of Hanafis) from different doctrinal schools of Islamic law when the Hanafi school would not find a solution.⁷² These assertions are reflections of the opinion that Islamic law was unable to deal with the needs of the changing times as it was established during the first centuries of Islam. Thus the Ottomans had no choice but to innovate new methods and laws to overcome this deficiency. Economists using data from historical sources advocate this claim nowadays. In his book on searching the roots of economic backwardness in the Middle East, Timur Kuran sets a good example of this approach.⁷³

Engin Deniz Akarlı, however, states that Islamic law does not have a rigid body, and the solutions found by merging different schools of law was already used thus suggesting that Ebussuud's method was organic in the legal tradition.⁷⁴ M. Akif Aydın finds that the laws decreed by the sultan did not differ from Sharia, but rather were a complementary body with Islamic law. This is because the Ottoman understanding of the Sharia does not intervene in all the living spaces and sets living rules; it enables the Muslim to act freely unless his actions and deeds do not contradict the primary rules/orders of the religion. Thus the question of changing times was satisfied with both the *istihsan*⁷⁵ and accepting the requirements of those times. This is where the concept of *urf*⁷⁶ comes into

⁷¹ Schacht, *An Introduction to Islamic Law*, 89-91.

⁷² Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 270-71.

⁷³ Collecting historical data from the vast archive of Ottoman court records might be helpful unless one do not hold on to a certain state of mind. Since the question of backwardness is problematic in its own nature, Kuran's study fails to provide novel approaches from the Orientalist claims. See, Timur Kuran and Çizakça's review on Kuran: Murat Çizakça, "Was Shari'Ah Indeed the Culprit?," (MPRA, 2010).

⁷⁴ Engin Deniz Akarlı, "Ebu's-Su'ud: The Islamic Legal Tradition by Colin Imber," *Islamic Law and Society* 6, no. 2 (1999). and "Ottoman Empire: Islamic Law in Asia Minor (Turkey) and the Ottoman Empire," in *TOIELH*, ed. Stanley N. Katz (Oxford: Oxford University Press, 2009).

⁷⁵ In Islamic law, it is kind of deduction from primary sources in relation to changes in time.

⁷⁶ *Örf* (*urf*) is from the Arabic root of knowing, wisdom and used as *örf* in Turkish language.

play, the *urfi* law is accepted in Islamic law unless its implementations are not inharmonious with the basis of Islam.⁷⁷

There are some examples of the usage of *urf* in the Ottoman Empire, which can be seen as exceptions in the law, but historians oft made mistakes as acting like a religious scholar and giving certain judgments about Ottoman-Islamic law, which is not a proper way of understanding the issue. It is true the Hanafi law is accepted to be more flexible than the other three major schools of law in placing the *urf* as a legal source⁷⁸, but this fact with “the Ottoman exceptions” does not mean false deductions are to be accepted by historians. The Ottomans endured more than six centuries and the problem of periodization still exists in historiography.⁷⁹ Ottoman institutions underwent an age of reform and this reflected on the legal system as well.⁸⁰

The Ottomans advised the legal officer: *kadıs*, and the jurists to act on the basis of the Hanafi law (this also depended on which school the population accepted) and although it was exceptional, obeying other schools’ answers was deemed valid in the cases that the Hanafi law seemed to have weaker solutions than the others, i.e. the case of cash *vakıfs*.⁸¹ Still, the availability of finding solutions to questions during changing times in Hanafis is seen more often, and is more satisfactory because it enjoys the long tradition and living space.⁸² This means there was legal flexibility, which aimed to construct or not disrupt the harmony of social groups.⁸³

⁷⁷ Mehmet Âkif Aydın, *Türk Hukuk Tarihi*, 5 ed. (İstanbul: Hars Yayıncılık, 2005), 78-81.

⁷⁸ Mohammad Zain bin Haji Othman, "Urf as a Source of Islamic Law," *Islamic Studies* 20, no. 4 (1981): 343-55.

⁷⁹ For the paradigm of decline, see Cemal Kafadar, "The Question of Ottoman Decline," *Harvard Middle East and Islamic Review* 4, no. 1-2 (1997-1998). Erol Özvar, "Osmanlı Tarihini Dönemlendirme Meselesi Ve Osmanlı Nasihat Literatürü," *Divân Disiplinlerarası Çalışmalar Dergisi*, no. 7 (1999).

⁸⁰ Akarlı, "Ottoman Empire: Islamic Law in Asia Minor (Turkey) and the Ottoman Empire."

⁸¹ İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı* (Ankara: TTK, 1965), 86.

⁸² Wael Hallaq, "A Prelude to Ottoman Reform: Ibn ‘Abidîn on Custom and Legal Change," in *Histories of the Modern Middle East : New Directions*, ed. I. Gershoni, Y. Hakan Erdem, and Ursula Woköck (Boulder, Colo.: Lynne Rienner Publishers, 2002), 54.

⁸³ Akarlı, "Law in the Marketplace: Istanbul, 1730-1840."

The Ottoman legal system underwent some critical transformations starting from the nineteenth century in the reorganization period known as the Tanzimat.⁸⁴ The establishment of city councils and courts to oversee the issues emerged within the need of new conditions (the courts for non-Ottoman merchants etc.) arising. One of the important reasons of this change was the corruption of the classical legal system as indicated by scholars.⁸⁵ The need of the era was always an important stimulator for legal thought of the Ottomans, and the institutions changed softly in the classical period, alike fiscal⁸⁶ and other institutions. We can say that the nineteenth century had those changes more seemingly and and quickly as its main intentions called for the immediate effect to solve long enduring problems of administration.

The Ottomans translated the French Law of Commerce in 1852 with a process of adaptation of certain articles that were not befitting the Ottoman case. One can say this was also the case for the classical period for the Ottomans who were not shy in inheriting or adopting establishments from different cultures so long as they did not contradict the basis of their Islamic principles.

The changes in the legal system in the nineteenth century cut the ways of Islamic jurisprudence straight out.⁸⁷ However the *kanuns* issued by sultans were not secular codes in this aspect, contrary to general claims.⁸⁸ This also touches the situation of the legal transactions because scholars show the *hila* of Ottoman money-lending as an example to the secular side of the system.

⁸⁴ Ahmet Mumcu, "Tanzimat Döneminde Türk Hukuku," in *Adâlet Kitabı*, ed. Halil İnalçık, Bülent Arı, and Selim Aslantaş (İstanbul: Kadim Yayınları, 2012), 207-28.

⁸⁵ Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies: State, Province and the West*, ed. Colin Imber and Keiko Kiyotaki (London, New York: I. B. Tauris, 2005), 43-60., Mehmet Âkif Aydın, "Mecelle-I Ahkâm-I Adliyye," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2003).

⁸⁶ For fiscal changes, see: Genç, *Osmanlı İmparatorluğund Devlet ve Ekonomi*.

⁸⁷ For the secularization debates, see: Avi Rubin, "Legal Borrowing and Its Impact on Ottoman Legal Culture in the Late Nineteenth Century," *Continuity and Change* 22, no. 02 (2007). Murteza Bedir, "Fikih to Law: Secularization through Curriculum," *Islamic Law and Society* 11, no. 3 (2004). And an authentic document from the Ottoman archives that has been studied: BOA, Yıldız Esas Evrakı, 10/58, 06.R.1327 (28.03.1909).

⁸⁸ On the secularity of the *kanuns* and the concept of *urf* in the Ottoman Empire, see: Engin Deniz Akarlı, "The Ruler and Law Making in the Ottoman Empire," in *Law and Empire: Ideas, Practices, Actors*, ed. Jeroen Duindam, et al. (Leiden: Brill, 2013); "Custom as Signifier of Consensus, Commonality, and Right."

Ottomans saw *urf* that endured for a long time as an organic source of the Ottoman legal organization. *Tearuf*⁸⁹ was for instance important as it pointed out the deeds which were accepted and generalized among the Muslims. The article of *Mecelle* proves the change of time precedes the change of the judgments as: “Ezmanın tegayyürü ile ahkâmın tegayyürü inkâr olunamaz”⁹⁰ which takes its roots from the traditional Ottoman view that is put clearly by Hezarfen Hüseyin from seventeenth century (d. 1691) “Her asrın bir örfü ve her örfün bir muktezası olur”.⁹¹ Along with this; obedience to the classic, *kadim* was evident whenever necessary: “Kadim, kıdemi üzerine terk olunur.”⁹² Katip Çelebi, in his commentary over the cash *vakıfs* debate the place where Birgivi stood and claimed that Birgivi failed to see the need of his time. Moreover he claims that Birgivi was on the wrong side in declining the cash *vakıf*, which already became *tearuf* since it was in practice with good intention for decades.⁹³ Nineteenth century alims such as Ibn Abidin and İzmirli İsmail advocated *urf* in their works as well.⁹⁴

1.2.2 *Riba*-prevention methods used in loans

The Ottomans inherited interest bearing “legal” procedures in money-lending, which were debated but already recognized in Islamic jurisprudence. Some scholars claim the predecessors of the Ottomans, the Seljukis had already used these methods in money-lending so that Ottomans did not have much difficulties in adopting them.⁹⁵ The methods that were used mainly were 1- *Bey*

⁸⁹ Derived from *urf*, carries a meaning of a generalized custom.

⁹⁰ Article 39: “It is an accepted fact that the terms of law vary with the change in the times” translation retrieved from C. A. Hooper, “[the *Mejelle*. Articles 1-100],” *Arab Law Quarterly* 1, no. 4 (1986).

⁹¹ “Every period have their own spirit in which each of them has different obligatories.” in Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân* (Ankara: TTK, 1998), 198.

⁹² Article 6: “Things which have been in existence from time immemorial shall be left as they were.” translation retrieved from Hooper, “[the *Mejelle*. Articles 1-100].”

⁹³ Kâtip Çelebi, *Mizânü'l-Hakk fî İhtiyâri'l-Ehakk*, trans. Orhan Şaik Gökyay and Süleyman Uludağ (İstanbul: Kabcacı Yayınevi, 2008), 91, 219.

⁹⁴ Hallaq, “A Prelude to Ottoman Reform: Ibn ‘Abidin on Custom and Legal Change.”, İsmail Hakkı (İzmirli), *İlm-i Hilaf* (Dersaadet (İstanbul): Hukuk Matbaası, 1330 (1911/1912)).

⁹⁵ To follow a debate on this issue which has gone out of academic concerns, follow: Osman Turan, “Selçuk Türkiye'sinde Faizle Para İkrasına Dair Hukuki Bir Vesika,” *Belleten* XVI, no. 62 (1952); Coşkun Üçok, “Selçuk Türkiyesinde Faizle Para İkrasına Dair Hukukî Bir Vesika”

bi'l-vefa and *Bey bi'l-istiğlal*⁹⁶ and 2- *Muamele-i şeriyye*. *Bey bi'l-vefa* is sale with guarantee of repurchase with the same price. *Bey bi'l-istiğlal* is a similar method with the rental of the purchased asset, which usually was the house or real estate. *Muamele-i şeriyye* is a different method that in fact there were no real sales of any assets (sometimes in a disguise of a double sale) but a loan agreement with a gain contract. The first two transactions emerge as well from the need of a credit need. In the end the money needed would be retrieved with a limited level of gain. The rate of return from these sales met standards of the appointed rate that would not exceed twenty percent in the classical period. The estate changed hands in *bey bi'l-vefa*, but not in the *bey bi'l-istiğlal*, which the seller would continue to benefit from the merits of his sale while paying rental to the purchaser.⁹⁷ The rentals of *istiğlal* obeyed the appointed rate as can be observed from law court or *vakıf* records. These were the most common methods of the cash *vakıfs*⁹⁸ that were used in the credit transactions when the debtor had something to mortgage. Operators of the liquated goods and money belonging to the orphans (*emval-i eytam*)⁹⁹ rather preferred the *muamele-i şeriyye*.¹⁰⁰ *Muamele-i şeriyye* is derived from the *beyu'l-îne*¹⁰¹ and consists of

Hakkında," *AÜİFD* 2, no. 1 (1953); Osman Turan, "Selçuklular'da Faizle Para İkrâz Münasebetiyle Zoraki Bir Tenkit," *ibid.* 4, no. 1-2 (1955); Coşkun Üçok, "Bir Tenkide Verilen Zoraki Bir Cevâp Hakkında," *ibid.*, no. 3-4.

⁹⁶ Also known and practiced in Egypt as *gharuka*, see Gabriel Baer, *A History of Landownership in Modern Egypt, 1800-1950* (London: Oxford University Press, 1962), 34-35.

⁹⁷ Abdülaziz Bayındır, "Bey' Bi'l-Vefâ," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 1992). Beşir Gözübenli, "Bey' Bi'l-Vefâ (Vefâen Satış) Ve Bey' Bi'l-İstiğlâl," *Atatürk Üniversitesi İlahiyat Fakültesi Dergisi* 9 (1990). Also Gerber states that Jewish communities in the Ottoman Empire used *istiğlal* in their money-lending operations and it is likely that they borrowed the method from Ottomans, in Haim Gerber, "Jews and Money-Lending in the Ottoman Empire," *The Jewish Quarterly Review* 72, no. 2 (1981).

⁹⁸ System runs as: the *mütevellîs* of cash *vakıfs* lends money to *sarrafs* or any kind of debtors to gain interest so that the pledged money does not vanish over time because of devaluations and inflation or undue loans.

⁹⁹ Except intangible assets, the goods of orphans are generally sold and given to *emins/vekils* (responsibles, relative) to "profitize" the money until the orphans come to an adult age. The main reason behind was the same as the cash *vakıfs*, to prevent the diminishing of the assets.

¹⁰⁰ It was important to lend the money of orphans with strong loan arrangements that minimized the possibility of diminishing. A document regarding the mismanagement of orphan properties: BOA, A. MKT. 111/75, 18 M 1269 (26.10.1852). Also see regarding the emphasis on managing orphan properties: BOA, DH.MKT 1614/63, 08 Ş 1306 (09 04 1899).

¹⁰¹ The essence of *îne* can vary. It is also known as *mukhatara* especially in relation with the similar purposing contract in Europe; *mohatra*. See J. D. Latham, "Mukhatara," in *EI2* (Leiden: Brill, 1993). Cengiz Kallek, "Süftece," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2010).

different ways of creating gain on the money that is lent. The main contract was to show the loan as a commercial sale, therefore the parties did not get involve in any *riba* resulting processes. As the methods of *muamele-i şeriyye* might vary, a common variation was that where third party intervention to the sale agreement (who just donates the asset or takes/gives it as a present or just sells/buys) occurs.¹⁰² The legal source of the late Ottoman Empire; the *Mecelle* described the *vefa* and *istiğlal* methods and stipulated conditions on each of them.¹⁰³ Yet there is no mention of *karz/qard* transactions, which are the loan and credit relations and *muamele-i şeriyye* in the *Mecelle*¹⁰⁴ but this does not mean that they were not legally transcribed. Nonetheless, there were debates on these legal transactions in the Ottoman Empire. The infamous debates on the cash *vakıfs* in the sixteenth century among the ulema contained remarks and regulations on the *muamele-i şeriyye*. The chief müfti of his period, *Şeyhülislam Çivizade Efendi* (d. 1547) asserted the prohibition of cash *vakıfs* that were very much spread throughout the Empire, predominantly in the Balkans. *Çivizade* claimed that the place of these *vakıfs* in Islamic law were doubtful, for different reasons such as the money cannot be pledged etc. In those arguments; the claim that the legal transactions were nothing different than *riba* had also found voice. But *Bali Efendi* (d. 1553); a local mufti and *Ebussuud Efendi* who would be the next *Şeyhülislam* after *Çivizade* reclaimed the place of cash *vakıfs* along with the credit methods used in operating after a series of legal discussions.¹⁰⁵ The ban

¹⁰² Recep Çiğdem, "Osmanlı'da Faiz Yasağını Delme Bağlamında Hediye," in *Hediye Kitabı*, ed. Emine Gürsoy-Naskali and Aylin Koç (İstanbul: Kitabevi Yayınları, 2007), 197-206.

¹⁰³ Articles 118 and 119: "A sale subject to a right of redemption is a sale in which one person sells property to another for a certain sum of money, subject to the right of redeeming such property, upon the price thereof being returned. Such a sale is considered to be permissible in view of the fact that the purchaser has a right to enjoyment of the property sold. It is also in the nature of avoidable sale inasmuch as the two parties have the right of cancelling the sale. Again, it is in the nature of a pledge, in view of the fact that the purchaser cannot sell the property sold to any third party.

Article 119. A sale with a right of usufruct is a sale subject to a right of redemption, the vendor having a right to take the property sold on hire." Translation retrieved from C. A. Hooper, "The *Mejelle*: Book I: Sale," *Arab Law Quarterly* 1, no. 5 (1986).

¹⁰⁴ For a fictitious addendum of these terms into *Mecelle* in accordance with the method of *Mecelle*, see: Orhan Çeker, "Mecelle'de Ele Alınmayan Üç Konu: Faiz, Sarf ve Karz," *SÜİFD* 5 (1994).

¹⁰⁵ For *Bali Efendi*'s letters, see: Tahsin Özcan, "İbn Kemal'in Para Vakıflarına Dair Risâlesi," *İslam Araştırmaları Dergisi*, no. 4 (2000).

on cash *evkaf* was lifted. Since Çivizade died while the debate was still in its formative stage and his main supporter on this subject was *İmam* Birgivi (d. 1573), a well-known and distinguished religious scholar of his time advocated Çivizade's main thoughts on the cash *evkaf* (plural of *vakıf*). Birgivi claimed in his *reddiye* (refutation) to the *vakıfs* that the *mütevellıs* (trustees) of the cash *vakıfs* did not pay attention to the handling of the requirements of legal transactions and therefore the danger of falling to *riba* was inescapable.¹⁰⁶

After this debate we do not see much protest against the use of *muamele-i şeriyeye* amongst the legal scholars and thus almost in all the *fetva*/responsa records we see the legitimate place of these transactions throughout the collapse of the Ottoman Empire.¹⁰⁷; Hamza el Aydınî (d. unknown, approximately 1710) criticized these methods in his treatise and it can be read as an opposition to the mainstream acceptance.¹⁰⁸ But since the leaders of the *Kadızedelis* were accused of being usurers¹⁰⁹ and the content of the treatise was not that dissident, the claim of an opposition is not estimable enough.

The social and economic concerns of the Ottoman ulema must have been effective in the legitimization of the *muamele* transactions. It had been previously mentioned that *riba* is not only an economic concept, but rather covers other aspects of human relations. The aforementioned cash *vakıf* debates in the sixteenth century provides clues about the concern of the *ulema* and other bureaucrats, and one can track these debates in the *fetva* records, i.e. Ebussuud Efendi in his response to the question claims the usurers' would harm others in the rural areas. Therefore he set a fifteen percent ceiling to the rates. Bali Efendi

¹⁰⁶ Mandaville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire," 304-06.

¹⁰⁷ A digest of *fetvas* from the early twentieth century includes these transactions, see: İsmail Cebeci, *Ceride-i İlmıyye Fetvaları* (İstanbul: Klasik Yayınları, 2009).

¹⁰⁸ Süleyman Kaya, "17. Yüzyıl Sonlarında Muhalif Bir Metin: Muhammed B. Hamza El-Aydını'nın Bey'u'l-İne Risalesi," *Dıvân Disiplinlerarası Çalışmalar Dergisi* 14, no. 26 (2009). And J. A. N. Schmidt, "Hamza Efendi's Treatise on Buying and Selling of 1678," *Oriente Moderno* 25 (86), no. 1 (2006).

¹⁰⁹ Naima marks Kadızedelis as a *murabahacı* in his work, Mustafa Naima, *Naima Tarihi : Ravzatü'l-Hüseyin Fi Hulasati Ahbari'l-Hafikeyn*, 6 vols., vol. 6 (İstanbul: Matbaa-i Amire, 1866 [1283]), 233. And see Marinos Sariyannis, "The Kadızedeli Movement as a Social and Political Phenomenon: The Rise of a 'Mercantile Ethic'," in *Political Initiatives from the Bottom-up in the Ottoman Empire (Halcyon Days in Crete VII, a Symposium Held in Rethymno, 9-11 January 2009)*, ed. Antonis Anastasopoulos (Rethymno: Crete University Press, 2012).

suggested cash *vakıfs* helped the Islamization of the Balkan provinces while helping the poor with its credits and pious deeds.¹¹⁰ Not to mention that these institutions proved efficient in the expansion of monetary relations as they maintained under-control and sustainable monetary institutions. So one can conclude that the legal transactions of *muamele-i şeriyye* were aimed to be set under control and protect the subjects from falling into the grievous hands of the usurers. Another area that legal transactions were used were the orphan properties where money and assets of the orphans were charged (their properties were sold) with interest by giving the responsibility to an agent (*emin/vekil*) to protect and profit until the orphans came to an adult age. This institution seems to be put into practice due to religious concerns, as it is important for the administrators to treat orphans and others of need with caution.¹¹¹ The Ottoman concern for sheltering orphans was used as a means to legitimize legal transactions. These agents, vekils, used *muamele* transactions heavily rather than any other method, and their appointed rate was fifteen percent. They enjoyed the privileged status, having the permission to lend up to of twenty percent as *sarrafs*. In a similar fashion to the cash *vakıfs*, the orphan properties endured throughout the Ottoman Empire with some institutional changes of its establishment in the nineteenth century. It is known that the cash *vakıfs* were put under the administration of the *Evkaf*, a separate fund for orphans, *Eytam Sandıkları*, which was established in 1864 within the banking system. These two important examples show the understanding of the Ottomans to the credit relations and the *riba* as they sought better ways of satisfying the needs of social groups. The Ottomans established these original institutions and they carried the Islamic concern because they were helping to eradicate economic exploitation.

Some contemporary scholars such as Süleyman Uludağ disapprove these methods. He claims that these methods helped falsifying the commercial transactions and presented them as dishonesty for their main purpose was sale but to gain interest on money. The view can be rooted back to the nineteenth

¹¹⁰ Özcan, "İbn Kemal'in Para Vakıflarına Dair Risâlesi.", Mandaville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire," 298-307.

¹¹¹ Protecting the orphans is strongly advised in the Qur'an in various places.

century, particularly to 1860. The so-called Young Ottoman Ali Suavi in his newspaper *Ulûm Gazetesi* criticizes these methods claiming that the *îne* (the sale term which is the core of the method *muamele-i şeriyye*) was an inefficient way that only led to higher rates.¹¹² There might have been some denials of and debates on the *hile-i şeriyye* issue but praxis proves the endurance of the acceptance of the methods for centuries. Therefore they maintained their place as the “*teamul, tearuf*” (became customary and accepted), and this resonated with Islamic law. The question is whether these legal transactions were known and used among the reaya in their informal credit relations stands. The law court registers’ literature shows the debts were given as *qard al hasan* sometimes, and usually the type of the transaction was anonymous. But since the cases are presented as a last resort to the formal body approach, the population might have hidden the evident sum of interest/gains. One might come across as well some debt cases in which one side accused the other of consuming *riba*.

The *muamele-i şeriyye* was accepted and practiced by the leading scholars such as Ebu Yusuf (d. 798) of the Hanafi school of law. This was originally the *îne* transaction and the Ottomans expanded the meaning of the term and named it as such. This pre-assumption is controversial but later on, the main sources of Hanafis preserved a space for these strategems with the *riba*-preventing methods. The methods to escape *riba* took place i.e. the *Fetava’l-Haniyye* of Kâdîhan¹¹³ (d. 1196), which was a respected source for religious scholars in the Ottoman Empire. So the debate on *riba*-preventing transactions was not a serious one in the manner of legal transactions and the *ulema* continued to support these methods in their *fetvas*. As the Hanafis, the doctrinal school of the Shafî also supported the *hiyal* methods in this regard, but some scholars from different schools of Islamic law naturally declined them, e.g. the Hanbelis and

¹¹² Ali Suavi, "Faiz Meselesi," *Ulûm Gazetesi* 1869 [H.1286]. "...Öyle ise şu îne meselesi Birgivi hocanın Tarikat kitabında dahl ettiği kadar vardır. Çünkü îne fahiş faize herkesi sapa yoldan götürmekten başka bir hile değildir..."

¹¹³ Burhanpurlu Şeyh Nizam, *Fetâvâyi Hindîyye (Fetâvâyi Alemgiriyye)*, trans. Mustafa Efe, 16 vols., vol. 14 (Ankara: Akçağ Yayınları, 1987), 327-28.

the Malikis.¹¹⁴ Population and the *ulema* from Arab lands of the empire generally did not adhere to Hanafis or the Shafi schools' interpretations. A document from the early twentieth century shows the tension between the jurists of different schools of thought on the *hiyal* methods. The document is a complaint from the locals of Hicaz, implying that the *muamele* transactions¹¹⁵ on the orphan properties which had the potential of carrying *riba*.¹¹⁶ Moreover they demanded a solution for the elimination of *riba* bearing transactions. The answer from the Porte was addressed by the highest müfti, *Şeyhülislam* Mustafa Kazım (d. 1920), who claimed that *riba* and *ribh* were two separate terms and the latter, which was used in the *muamele* transactions, was not *riba*. Musa Kazım consolidated his argument by asserting that these methods were legitimate and used by the *ulema* for centuries, the resulting *ribh* from mentioned methods were not *riba*. The behaviour of the Ottoman *ulema* on the continuity of legitimization of the legal transactions for more than three centuries is related to the traditionalist body of the Ottoman Empire which was set out by Mehmet Genç, with the other two pillars of Ottoman bureaucrats' economic mindset and decision-making.¹¹⁷ This traditionalism is also evident in Islamic law; *Mecelle* for instance refers to this. One sees the traditionalist approach in the aforementioned complaint from Hicaz. However, the response of the *Şeyhülislam* emphasized the tradition that legal transactions had become. The methods of legal transactions were explained clearly in the records and it can be seen that the concern of the subjects was not to be involved in activities

¹¹⁴ This might explain the absence of cash *vakıfs* in the Arabic provinces of the Empire. Bruce Masters, "Semi-Autonomous Forces in the Arab Provinces," in *The Later Ottoman Empire, 1603–1839*, ed. Suraiya N. Faroqi, The Cambridge History of Turkey (Cambridge: Cambridge University Press, 2006), 186-206.

¹¹⁵ One understands that if the term *irbah/istirbah* is used, there is a good chance it was a *muamele* transaction carrying a grant on loan.

¹¹⁶ "...ribh ile riba yekdiğerinden ayrı olup emval-i eytam ve evkafın muamele-i şeriyye ile nezaret-i amme-i hilafet-i İslamiyye tahtı temenni ve irbahı hususunun ecell-i fukaha taraflarından suret-i tecvizi kütüb-ı fıkhiyyede mestur ve bu suret dahi ... Müslimin tarafından kabul edilerek asırlardan beri muamele olduğu cihetle adem-i cevazına ... muamele-i şeriyyenin ribh hasilına riba denilmesi ve bunun hürmet-i katiyeyle haram tanınması ğayr-ı muvafık ve..." in BOA, BEO. 3802/285108, 3 N 1328 (8.9.1910).

¹¹⁷ Genç, *Osmanlı İmparatorluğund Devlet ve Ekonomi*, 43-52.

regarding *riba*. The combining “*ribadan ari*” (meaning clear from *riba*) was encountered in the court registers as an indicator that it was clean profit.¹¹⁸

A document from the nineteenth century Ottoman Empire might also show the concern and flexible views towards *riba*, which Araks Şahiner used in her study.¹¹⁹ When the need for asserting tax-penalty on some debtors arose and bureaucrats put them into effect, some complaints emerged that this was *riba*. In response, the bureaucrats re-named the sum but continued to implement this policy.

1.3 The concepts concerning *riba* and credit relations

The potential occurrence of *riba* is heavily related to loan and credit relations in commercial life. Though it is not the only feature of *riba*, I will focus on such situations since it is necessary to narrow the investigation. Moreover, one seldom finds *riba* cases on the grounds other than money transactions in the praxis.

A trivial search of the term “*riba*” in the databases of Ottoman archives will show the reluctance of Ottomans using this term in their documents. The documents related to *riba* in the scans reveal the outcome in roughly two decimal findings. This by itself provides clues about the religious attention of the officials. Yet this will not be a healthy assertion since the condition of Ottoman Archives might mislead one on such a matter. Yet there are various terms in the Ottoman documents pointing to usury and usurers. *Riba* is a hazardous term as mentioned, it is seen in central orders from the earlier ages and among the ulema writs and responses. *Ribh*, on the other hand, which means earning/grant of transaction, is widely used in documents.

¹¹⁸ *İstanbul Kadı Sicilleri Balat Mahkemesi 2 Numaralı Sicil (H. 970-971/M. 1563)*, ed. M. Akif Aydın, Kadı Sicilleri Dizisi (İstanbul: TDV İSAM, 2011); *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 19 Numaralı Sicil (H. 1028-1030/M.1619-1620)*, ed. M. Akif Aydın, Kadı Sicilleri Dizisi (İstanbul: TDV İSAM, 2011).

¹¹⁹ Araks Şahiner, "Sarrafı of İstanbul: Financiers of the Empire" (M.A., Boğaziçi University, 1995), 32-33, 38-39, 45.

In the dictionary prepared by the diplomat Mesgnian in the seventeenth century, *riba* is defined as usury and *murabaha* seems to have a neutral meaning as interest.¹²⁰ The French lexicon gives the meaning to usury as *muamele* and *riba*.¹²¹

The key term to the economic life concerning credits was this r-b-h (ر ب ح)¹²² and the word derived from this root. *Ribh* is an Arabic word meaning profit, covering nearly all economic transactions. It can be encountered in the Qur'an. *Írbah*; meaning to gain profit¹²³ is often found in court registers and *vakif* records within the context of the interest or profit of the credits given. And *istirbah* carries the parallel meaning, to make use or sell the asset in order to gain profit or grant.¹²⁴ Another term encountered in the documents is the *ilzam-ı ribh*,¹²⁵ which literally means to stipulate the profit of the loan.

The essential term here is the *murabaha*. It is clear it has the same three-lettered root with others above; *r-b-h*. *Murabaha* means the gain or income of the loan¹²⁶ but I will further investigate whether it was the most active concept of the Ottoman linguistic stock concerning monetary relations. The Ottoman language was rich in this sense; they used a variety of similar and synonymous terms. Words from Arabic, Persian and Turkish are combined together. If one were to reveal the lexical meaning of these words derived from *r-b-h*, the conclusion would be that the dictionaries from both Ottoman and the modern Turkish, both imply different but related meanings. It seems *murabaha* calls for a deeper investigation as it has the same meaning with the term *muamele*. This term was sometimes used alone, and carries a neutral meaning but beginning

¹²⁰ Francisco a Mesgnien Meninski, *Lexicon Arabico-Persico-Turcicum*, ed. Bernard de Jenisch and Franciscus de Klezl (Viennae: Typis Iosephi Nobilis de Kurzböck, 1780-1802).

¹²¹ Alexandre Handjeri, *Dictionnaire Français-Arabe-Persan Et Turc*, 3 vols., vol. 3 (Moscow: A L'imprimerie De L'universite, 1840).

¹²² Hereafter it will be mentioned as *ribh*, as it was encountered in the registers.

¹²³ Ferit Devellioğlu, *Osmanlıca-Türkçe Ansiklopedik Lugat* (Ankara: Aydın Kitabevi Yayınları, 2011).

¹²⁴ İlhan Ayverdi, *Misalli Büyük Türkçe Sözlük*, 3 vols., vol. 3 (İstanbul: Kubbealtı Neşriyat, 2006).

¹²⁵ Mustafa Nihat Özön, *Büyük Osmanlıca-Türkçe Sözlük* (İstanbul: İnkilap ve Aka Kitabevleri, 1979).

¹²⁶ Dönmez, "Murâbaha."

with the second half of the eighteenth century, one can track the gradual change of its meaning to a negative connotation. Especially *murabahacı*, which means the person who charges *murabaha*, has the same meaning as the *ribahor* from earlier centuries. This change might have been an indicator of some shifts. It seems the separation of usury and interest had already happened in the Ottoman Empire with no identical patterns. *Murabaha* was now used to signify the meaning of usury, as claimed by the intellectuals, except religious scholars. Other terms such as *faiz*, *güzeşte*, *nema* remained the same with no negative connotation. The reasons of the turning into a pejorative will be discussed in the following pages.

At this point there is need to inquire other terms that suggests similar meanings to that of *ribh* in the Ottoman language. The terms in Ottoman such as *nema*¹²⁷ and *irad* also have similar meanings to the English term of meaning income. However these terms were not widely used. *Nema* for instance is used as well as the *irad*. *İrad* was essentially used in the cash *vakıfs* for a period.¹²⁸

Güzeşte, a Persian word implying past and lapse is rather a common one. It points to the interest on money.¹²⁹ Does it carry the meaning of interest for late payment? This is an argued question among the scholars.¹³⁰ Some scholars claim that *güzeşte* was first used in a monetary sense in the eighteenth century and it is likely that it implies the undelivered payments.¹³¹

Other terms in the Ottoman money market are *karz*, *ikraz* and *karz-ı hasen*. An Arabic word, *karz*¹³² means debt and *karz-ı hasen* as mentioned means to give debt with no expectation of profit.¹³³ Cash *vakıfs* and intra-subject relations

¹²⁷ James Redhouse, *Redhouse Yeni Türkçe-İngilizce Sözlük* (İstanbul: Redhouse Yayınevi, 1983).

¹²⁸ Çizakça, "Cash Waqfs of Bursa, 1555-1823," 323.

¹²⁹ James W. Redhouse, *A Turkish and English Lexicon* (n.p.1890).

¹³⁰ Ariel Salzman, *Tocqueville in the Ottoman Empire: Rival Paths to the Modern State* (Leiden; Boston: Brill, 2004), 167.

¹³¹ Mehmet Zeki Pakalın, *Osmanlı Tarih Deyimleri ve Terimleri Sözlüğü*, 3 vols., vol. 1 (İstanbul: M. E. B., 1993), 690-91.

¹³² Mentioned above as *qard al-hasan* for it was used as an Arabic term. Hereafter will be mentioned as *karz* and *karz-ı hasen* since the scope is the usage amongst Ottomans.

¹³³ Jennings claims that it also meant a loan with interest in some cases. Jennings, "Loans and Credit in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri."

show the usage of *karz-ı hasen* but sometimes the word calls for *karz* with a certain profit that was not desired to add on, as they might not have undergone the interest involved processes.

Kâr is a Persian word that is still in use in modern Turkish, it has the same meaning with *ribh*. However *kâr* carries rather a neutral meaning for it was not used in usury complaints.

İdane and *istidane* are two Arabic words meaning to give debt; derived from the word *dayn*. These are to be found in numerous sources and do not connote to any negative meanings with their definition.

Muamele literally means transactions. But for a certain period it was used synonymously with *murabaha*. The group of *muamelecis* is encountered in the documents including usury complaints. *Muamele-i şeriyye* is important in the Ottoman context as it pointed to the legal transactions as a way to escape *riba* in credit relations.

Faiz is an Arabic rooted word (*fa'id*) used by some in modern Turkish as the equivalent of *riba*. But the Ottomans used it with a neutral connotation, somewhat close to the meaning of profit,¹³⁴ as the grant of the credit or the profit. It is the same as *ribh* and *murabaha* in the context. The term was used by late Ottoman intellectuals as the helpful and moderate interest that differs from *murabaha*.

These terms all involve in the *riba*-prevention methods but this does not mean that each transaction has its own terms. The ample amount of terms refutes the claims that the Ottomans, as an eastern empire, lacked activities of market life, but also some scholars stated the richness does not imply chaotic and non-regular credit relations, which were linked to the state. As known, the state interfered in the money market of subjects in two areas. The first is the semi autonomous institutions, pious cash foundations (*evkaf-ı nukud*) that worked on money and credit. The second is the orphan properties (*yetim malları/sandıkları, emval-i eytam*), which were liquidated and lent in order not to be diminished. The liquidated assets were then given to protectors so they

¹³⁴ Muallim Nâcî. *Lügat-i Nâcî*. (Ankara: Türk Dil Kurumu, 2009).

could loan money on charge. These two institutions enjoyed a long life-span, approximately beginning from the sixteenth century to the twentieth (The former might have gone back a century earlier as there are records showing money was pledged in *vakıfs*).¹³⁵

Devr-i şeri and *muamele-i şeriyye* are also encountered in the registers. *Devr-i şeri* states the loan-debt was renewed under legal terms and it implies the gain was not *ribevi* (*riba* carrying). The renewal of a contract was needed each year as it prevented the potential carriage of the multiplied gain; namely the usury. The Ottomans emphasized this point and gave special importance to this aspect because of the Islamic concern, which can be tracked in *fetva* records. *Muamele-i şeriyye* means the transaction was carried out in the context of Islamic maxims. The formal records tend to point out that all transactions complied with these legal and official processes, which prevented the occurrence of *riba*.

None of these terms refer to the concept of usury with their actual meanings. But some of them are dressed as such meaning in the historical process, which went through social, economic and religious norms.

1.3.1 The formation of interest – usury dichotomy in the Ottoman Empire

The main debates about *riba* among the Ottomans call for the conception of *riba* itself. Apart from the debates on the *hile* methods, the changing meaning of *riba* must be investigated in order to see the whole picture. The debates on the cash *vakıfs* touched upon this method as mentioned earlier. Another question from the nineteenth century intellectuals derives from the European notion of usury as it suggests that the economic conditions makes it impossible not to reach a dichotomy between usury and interest. While the former is defined as an economic explanation claiming that the rate of return is crucial in this duality, the latter is obligatory and needed to realize the development and expansion.

It is now essential to see the concept of usury in terms of European history since it affected the Islamic/Ottoman understanding of *riba* in the nineteenth century

¹³⁵ M. Tayyib Gökbilgin, *XV.-XVI. Asırlarda Edirne ve Paşa Livâsı : Vakıflar, Mülkler, Mukataalar*, vol. no. 508, İstanbul Üniversitesi, Edebiyat Fakültesi Yayınları ; (İstanbul: Üçler Basımevi, 1952), 223-24, 72-73, 90-91.

and afterwards. Usury is banned in Christianity and was an illdoing that ended up with excommunication.¹³⁶ Like Greek philosophers, scholastics defined it in a similar way to Islam but later one can see a shift in the concept within the Reformation period in Europe.¹³⁷ While there were institutions that loaned money with a moderate return rate as early as the 13th century; the *Mons Pietatis*¹³⁸ governed by the Church and the Court of Orphans in England¹³⁹, similar to that of the orphan properties' administration in the contemporary Ottoman Empire; the shift found its decisive turn with the establishment of the discipline of economics. Beforehand in this development, philosophers and legal scholars interpreted usury in a way to legitimize interest.¹⁴⁰ Growing monetary relations must have urged them to think that interest is an integral part of money and thus economy which had the ultimate goal of infinitive expansion over time.¹⁴¹ Adam Smith defined usury as something to do with primarily interest rates. He explained that usury was ineffectual economically (as a setback to development hand-in-hand with credit market) given the social harm it presents to the communities.¹⁴² This was accepted by all Christian states, and they issued usury laws accepting the notion of interest, not with usurious rates of return. The usury laws of England for example, set the rate to five percent¹⁴³ and later the French set laws to twelve percent while separating the commercial and common interest rates. That meant usury; which was accepted as "malum in

¹³⁶ John H. Munro, "Usury, Calvinism and Credit in Protestant England: From the Sixteenth Century to the Industrial Revolution," in *Religione E Istituzioni Religiose Nell'economia Europea, 1000 - 1800 = Religion and Religious Institutions in the European Economy, 1000 - 1800*, ed. Francesco Ammannati (Florence: Firenze University Press, 2012), 180.

¹³⁷ Charles Poor Kindleberger, *A Financial History of Western Europe* (London: Allen & Unwin, 1984), 41-42.

¹³⁸ Sidney Homer and Richard Sylla, *A History of Interest Rates*, 4th ed. (Hoboken, N.J.: Wiley, 2005), 76-77.

¹³⁹ Judith Spicksley, "Usury Legislation, Cash, and Credit: The Development of the Female Investor in the Late Tudor and Stuart Periods," *The Economic History Review* 61, no. 2 (2008): 285-87.

¹⁴⁰ John H. Munro, "The Medieval Origins of the Financial Revolution: Usury, Rentes, and Negotiability," *The International History Review* 25, no. 3 (2003).

¹⁴¹ See Lopez's work on Commercial Revolution: Robert Sabatino Lopez, *The Commercial Revolution of the Middle Ages, 950-1350* (Cambridge: Cambridge University Press, 1976).

¹⁴² Adam Smith, *The Wealth of Nations* (London: Everyman's Library, 1964). Joseph M. Jadow, "Adam Smith on Usury Laws," *The Journal of Finance* 32, no. 4 (1977).

¹⁴³ Homer and Sylla, *A History of Interest Rates*.

se” in the Christian Europe, then became a “malum prohibitum”.¹⁴⁴ Moreover the doctrine of usury underwent a rather secular process and was labeled as a term of economics by no longer taking religious importance into consideration.¹⁴⁵ In the late Ottoman Empire a course on economics (*İlm-i servet*)¹⁴⁶ was introduced at the high school level. The textbooks read in these courses were the translations relied on first economists, predominantly French¹⁴⁷ and later on German.¹⁴⁸ One sees the Ottomans adopted the doctrine of interest and namely defined it as rental price of money. Mehmed Cavid’s book for the latter period, *İlm-i İktisad*, defines interest as such.¹⁴⁹ Later on one can see *Meskukat*, where the definitions of interest and usury with a touch to praxis of these terms in Ottoman economic life by Hasan Ferid, the chief of mint.¹⁵⁰ İbrahim Fazıl, a scholar of economics from the early republican era pointed *murabaha* as the flagrant interest as well.¹⁵¹ Religious scholars also mentioned this dilemma but as an original figure in the Ottoman Empire, I quote Ali Suavi’s (d. 1878) descriptions on this matter from his article “Faiz Meselesi.” Despite not being a legal scholar, he uses religious sources to reason on the subject matter. Ali Suavi argued interest was evident in Islam, as an acceptable return of money and other estates. People needed to guarantee return of assets, which they lent and this is natural to societies. He first stresses the obligatory status for the expectation of rate of returns of loans, by claiming that no one was as honest and virtuous as the companions of the Prophet to give their money with

¹⁴⁴ The two are both legal terms from Roman Law. *Malum in se* means evil in itself regardless of usage level yet *malum prohibitum* signifies something that is not harmful if hold within the limits.

¹⁴⁵ Joseph Persky, "Retrospectives: From Usury to Interest," *Journal of Economic Perspectives* 21, no. 1 (2007).

¹⁴⁶ Sakızlı Ohannes, *Mebadi-yi İlm-i Servet-i Milel* (İstanbul: Mihran Matbaası, 1881 [1298]).

¹⁴⁷ Serandi Arşizen, *Tasarrufât-ı Mülkiye (Osmanlı İmparatorluğu'nda Bir Politik İktisat Kitabı)*, ed. Hamdi Genç and M. Erdem Özgür (İstanbul: Kitabevi, 2011).

¹⁴⁸ Şerif Mardin, "Tanzimat'tan Cumhuriyet'e İktisad Düşüncenin Gelişmesi (1838-1918)," in *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi*, ed. Murat Belge (İstanbul: İletişim Yayınları, 1985).

¹⁴⁹ Mehmed Cavid, *İlm-i İktisat* (İstanbul: Karabet Matbaası, 1897 [1315]), 91. Sakızlı, *Mebadi-yi İlm-i Servet-i Milel*, 318.

¹⁵⁰ Hasan Ferid, *Osmanlı'da Para ve Finansal Kredi: Bankacılık*, ed. Mehmet Hakan Sağlam, 3 vols., vol. 2 (İstanbul: B.H.M. D.D.M.G.M., 2008), 10-16.

¹⁵¹ İbrahim Fazıl, *İktisat*, 2 vols. (İstanbul: İstanbul Darülfünunu, 1933), 284-85.

no expectation¹⁵²; *karz-ı hasen*. Ali Suavi later suggests that lower interest rates refer to a developing economy the Ottomans were craving for. Suavi therefore advocated *faiz*, which for him was the natural return of money or properties unless the rate would not escalate to usurious levels.¹⁵³ He was refuted by some intellects in his age such as *Kanipaşazade Rıfat*¹⁵⁴ but later on the Ottomans accepted this separation like Ali Suavi. Evidently, this doctrine was taken from Adam Smith and John Baptiste Say's thoughts on interest rates. Ali Suavi might have obtained these ideas from Urquhart in their conversations as well.¹⁵⁵ The economists mentioned above labeled the Eastern states' rates as usurious which did not succeed in developing in comparison to West.¹⁵⁶ The Ottoman Empire had high money lending interest rates and therefore it was an obstacle for social well-being and economic development, including the agricultural and industrial development. One also sees in Ottoman policies that, lowering interest rates were used as policy. The separation of interest and *riba* continued to influence scholars in the twentieth century, for instance Fazlurrahman, an influential scholar offers by his interpretation of the Qur'anic meaning of *riba* as usury while asserting that Islamic countries needed to accept normal interest.¹⁵⁷ These are in line with modernist views of Islam. This doctrine accepts moderate interest by claiming that it was only the multiplied-*riba* that was prohibited. In Türkiye, Uludağ accepts this separation of usury and interest by underlining the necessity of interest in economy.¹⁵⁸

These assumptions supported by the changing economic conditions of the world calls for questions apart from being indigenous. Some claim that the economic

¹⁵² "Her yuvarlak ceviz değil ve her insan da Ebubekir değil" in Suavi, "Faiz Meselesi."

¹⁵³ "Muamelatsız medeniyet olmaz. İstikraz ve ikrazsız muamelat tam olmaz. Muamelatın tamamı elalemin malını nezdinde tevkif edenlerin bir faide ile mukabele etmesine muhtaç. Yoksa kimse parasını verip bad-ı heva haps etdirmeğe cebr olunamaz. Demektir ki bir din ... tasavvur olunamaz ki faizden nehy etmiş olsun. Zira böyle bir nehyden ictinab mütemeddinler için müyesser olmaz." Ibid.

¹⁵⁴ Çelik mentions the debate in Hüseyin Çelik, *Ali Suavî ve Dönemi* (İstanbul: İletişim Yayınları, 1994), 220.

¹⁵⁵ Ibid., 124-32.

¹⁵⁶ Smith, *The Wealth of Nations*.

¹⁵⁷ Fazlur Rahman, "Ribā and Interest," *Islamic Studies* 3, no. 1 (1964).

¹⁵⁸ Uludağ, *İslam'da Faiz Meselesine Yeni Bir Bakış*.

thought and life in the past was primitive, and nowadays the inflation and expanded money usage naturally necessitates the usage of interest. The banking process signifies this shift in the Ottoman Empire, which I will dwell on later.

1.3.2 The transformation of the concepts

The evident richness of concepts in credit relations obliges one to ponder on their continuity since language and concepts live within society and experience changes mutually. The main concepts are the *ribh*, *irbah*, *istirbah* and *murabaha* as they are the bedrock of the prevention of *riba*. The vast amount of documents from the sixteenth century present that *murabaha* was accepted as clean profit with the take of “*meriyye*, *şeriyye*”¹⁵⁹ before it, possessing legitimization. *Riba* was used in the documents, especially from the *mühimme* records (central edicts) and imperial edicts and *kanuns* with no synonyms. The term *ribahor* was preferred when it came to define the “*riba* chargers”, usurers as they were accused to be charging excessive interest.

A distinguished Ottoman Hanafi scholar of the nineteenth century, Ibn Abidin claims there are two ways of gain; the first type is *riba* which was banned and the second one is *murabaha*, which was legitimate.¹⁶⁰ His approach was theoretical in this aspect. But at the same time one sees in course books and articles in newspapers/journals of the late Ottoman intellectuals that they label *murabaha* as usury, an exorbitant interest to harm economy and society.¹⁶¹ To seek and understand the transformation as weighing of a negative meaning on the term *murabaha* is the key to see the aspects of money-lending relations in the Ottoman Empire. *Murabaha* was labeled as the *murabaha-yı meriyye* but from the nineteenth century onwards; the connotations of the term were used

¹⁵⁹ *İstanbul Kadı Sicilleri Balat Mahkemesi 2 Numaralı Sicil (H. 970-971/M. 1563); İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 19 Numaralı Sicil (H. 1028-1030/M.1619-1620).*

¹⁶⁰ İbn-i Âbidin, *Reddül-Muhtar Ale'd-Dürri'l-Muhtar*, trans. Mehmet Savaş, 17 vols., vol. 11 (İstanbul: Şamil Yayınevi, 1984), 111.

¹⁶¹ An example from Hasan Ferid's *Meskukat*: “...”Murabaha bir su-i maksad ile ikraz muamelesi demektir. Ale'l-umum muamelat-ı ticariye pek makbul ve müstahsen olduğu halde ihtikar yani bir nevi eşyanın yekdiğerile müttefik birkaç kişi tarafından toplanıp taht-ı inhisara alınarak bi'l-ahire külli fark-ı fiatla satarak herkesi ızrar etmek pek makduh bir hareket olduğu gibi ikrazat ihtikarı demek olan murabaha dahi o derece makduhtur. Binaenaleyh ihtikar ile ticaret yekdiğerile karıştırılmadığı gibi ikraz ve faiz muamelesi ile murabahacılık dahi yekdiğerine karıştırılmamalıdır...” in Ferid, *Osmanlı'da Para ve Finansal Kredi: Bankacılık*, 2, 10.

directly meaning usury. However, the legal usage of the term by the religious scholars was still in the positive sense.

Barkan for example, born on the eve of the twentieth century, uses the term *murabaha* in his own daily language usage as usury and it is likely he analyzed the concept as such, which he had seen in the sixteenth century *vakıf* registers. The negative meaning it began to carry points to the exploitation of such methods that caused/ resulted in *murabaha*. Accordingly, money-lenders and their economic oppression could be the main reason behind this negative path-taking as they mostly followed the *murabaha* bearing processes while lending such as *muamele-i şeriyye* whether they followed the procedural processes or not. It is known that the concepts can show a pattern in the aspects of social history as Koselleck explains in his studies of conceptual history.¹⁶² Koselleck argues concepts change over time and lexical changes might provide some clues from corresponding areas. In a life of four centuries of concepts derived from *r-b-h*, principally the term *murabaha*, the negative connotation of this term proves that the methods the Ottomans adhered to in order to escape *riba* ended up becoming the sole symbol of the meaning of *riba*. Concluding the matter from other disciplines, scholars tend to overlook the concepts and the meanings they carry. *Murabaha* was not only a judicial or economic term, as can be tracked from the sources, it beared a weighty social meaning. The change of the meaning of the term *murabaha* (*ribh* and *muamele* can be explained similarly) shows the ability of conceptual history to grasp the subject while not falling into one-sided conclusions.

To seek if the term *riba* experienced a similar transformation in the Ottoman Empire like the one usury did from *malum in se* to *malum prohibitum* in Europe, we can say that this is possible, then again the debate can be carried that the Ottomans already recognized a normal rate of interest from earlier ages. That they already accepted interest as a *malum prohibitum* is correct in part for the economic concern regarding interest was secondary in the eyes of the Ottoman bureaucrats.

¹⁶² Reinhart Koselleck, *Kavramlar Tarihi*, trans. Atilla Dirim (İstanbul: İletişim Yayınları, 2009). Iain Hampsher-Monk, "A Comparative Perspective on Conceptual History - an Introduction."

CHAPTER 2

MURABAHACI: THE WAYS OF EXPLOITATION OF MURABAHA IN THE OTTOMAN EMPIRE

In this chapter I show and criticize the general claims about the identity of the money-lenders and the methods they employ in the guise of legal transactions. Subsequently, I explain the assertions regarding the legal apparatus in the Ottoman Empire. I also investigate if there was any punishment prescribed to the usurers. I use some representative cases to present the situation through the continuation of legal alterations. My findings in this chapter strengthen my theoretical hypothesis from the previous chapter especially in relation to the praxis of usury in Ottoman daily life, apart from official relations.

2.1 Who were labeled as *murabahaci*: Actors and methods of usury

In the Ottoman Empire, the usurers always represented a problem against the facilitation of justice, in both economic and social means. This can be traced back from the fact that the most common words used in the complaints about usurers were *zulm* and *taaddi* (*oppression and transgression*), which simply proves that they were perceived as harmful in the first place. *Murabaha* defines a gain on loans and credits. My findings in the previous chapter suggest that it tends to signify an unjust relationship (which can be called usurious) in favor of the creditor.

To begin with, the Ottoman Empire had their recognized guild of creditors; namely *sarrafs* who were generally involved in the “official” relationships between themselves and the bureaucrats; both in the capital İstanbul and other urban cities. Having their own guild and establishing special and private partnerships with the Ottoman elites, *sarrafs* played a significant role in fiscal matters with growing importance throughout the life span of the Ottoman Empire. The *sarrafs* provided insurance to the *mültezims* (tax farmers) in the

malikane system and as well in the *esham*¹⁶³, collected and delivered money with charged interest in the *vakıfs* and *eytam* establishments. In the nineteenth century, they also provided surety and helped newly established banks along with the issuance of bonds etc. The bankers of this group played a significant role in contributing to both domestic and foreign debts. Aside from these circumstances, the de-facto duty of the *sarrafs* was to exchange money on a regulated rate.¹⁶⁴ The economic and legal status of *sarrafs* is another issue that we will return to when needed but since the main aspect of this study is the *ribh/murabaha* concept, it is important to isolate the credit relations of *sarrafs* for their official status and privileges. Although there are numerous studies on the *sarrafs*, it is still unclear if they used the legal transactions since non-Muslim subjects (the *sarrafs* were predominantly subjects from the non-Muslim societies of the Empire) were also responsible for such transactions in their money-lending operations. In any event, the *sarrafs* were using the money of Muslim bureaucrats.¹⁶⁵ And since the state was also involved in interest-carrying bonds and foreign debts in the nineteenth century, this study will not focus on those aspects to limit the scope of this research.¹⁶⁶ *Esham*; was a kind of bond carrying interest, used in the Ottoman Empire to collect the highly-needed credit in cases of war. Though there are not many debates regarding whether the structure of *esham* was *riba*; it can be understood that it was similar to the *iltizam/malikane* method with a more secure and lifelong guaranteed return. Although there would be fiscal measures about credits implemented in times of need, they will not be part of my research, as it is necessary to cover the work.

Below I will examine the term *murabahacı* (the suffix *-cı* in Turkish means the person who does the deed of the word, thus *murabahacı* means a person who

¹⁶³ Genç, *Osmanlı İmparatorluğunda Devlet ve Ekonomi*; "Mâlikâne," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2003).

¹⁶⁴ Yavuz Cezar, "The Role of the Sarrafs in Ottoman Finance and Economy in the Eighteenth and Nineteenth Centuries," in *Frontiers of Ottoman Studies: State, Province and the West*, ed. Colin Imber and Keiko Kiyotaki (London, New York: I. B. Tauris, 2005).

¹⁶⁵ A well-documented study on the sarrafs: Şahiner, "Sarrafs of İstanbul: Financiers of the Empire."

¹⁶⁶ Edhem Eldem, "Ottoman Financial Integration with Europe: Foreign Loans, the Ottoman Bank and the Ottoman Public Debt," *European Review* 13, no. 3 (2005).

seeks for *murabaha* in his/her transactions) and try to place it in the Ottoman economic system.

First mentions of *murabahacı* date back to the late seventeenth century¹⁶⁷, in sources one sees that a group of wealthy usurers harmed peasants when they were unable to pay their due debts. There were always these kind of opportunity-seekers in economic systems, needless to say the Ottomans had their usurers before the seventeenth century. My observations in the *mühimme* (*council edicts*) registers from the sixteenth century show that usurers who were charging an interest with fifty to sixty percent rate of return were labeled as *ribahor*.¹⁶⁸ They were also officially called *ribahor* in the legal/religious responsas (*fetvas*);¹⁶⁹ meaning “*riba* consumer” (Persian *hûr/hor*’s definition is “the eater/consumer”) making the distinction between *murabaha* and *riba*. As mentioned above *murabaha* was the symbol of clean profit against *riba*. The term *ribahor* was continuously used in the documents of the Empire throughout the seventeenth century.¹⁷⁰

Muameleci is a term, which replaced *ribahor* along with *murabahacı* to define the usurers in the eighteenth century as the documents reveal. There is no more common use of *ribahor* in the index searches but complaints from the *muameleci taifesi* is both seen in primary¹⁷¹ and secondary sources on Ahkam records of İstanbul (the collected local complaints that were discussed and solved by the Council of State) in the eighteenth century. They were referred as *muameleci*, (economic) transaction, because they were charging the usurious interests with the name of *muamele*. The name may also come from the

¹⁶⁷ Râşid Mehmed Efendi and Çelebizâde İsmâil Âsım Efendi, *Târih-i Râşid ve Zeyli (1071-1114/1660-1703)*, ed. Abdülkadir Özcan, et al., 3 vols., vol. 1 (İstanbul: Klasik Yayınları, 2013); Naima, *Naima Tarihi : Ravzatü'l-Hüseyn Fi Hulasati Ahbari'l-Hafikeyn*, 6.

¹⁶⁸ Ribahor mühimme “...livâ-i mezbûrda ba’zı ribâ-hôrlar onun on beşe ve on altıya mu’âmele ile re’âyâya akça virüp ve bir mikdâr zamâna mehil virmekle her yıl vâfir mahsûllerin ve terekelerin alup ...” in *3 Numaralı Mühimme Defteri 966-968 / 1558-1560*, (Ankara: TC BDAGM, 1993).

¹⁶⁹ M. Ertuğrul Düzdağ, *Şeyhülislam Ebussuûd Efendi Fetvaları*, 2 ed. (İstanbul: Enderun Kitabevi, 1983), 244.

¹⁷⁰ Halil İnalçık, "Adâletnâmeler," *Belgeler* 2, no. 3-4 (1965): 130.

¹⁷¹ An exemplary document which tells about a *muameleci* İbrahim Ağâ from the eighteenth century: BOA. C.. ADL. 21/1249, 10 Za 1157 (15.12.1744).

muamele-i şeriyye, as they were settling legal transactions in giving credit. Furthermore in the nineteenth century the term *murabahacı* is more common in a broad sense. This might be rooted from the afore-mentioned negative narrowing of the term *murabaha*. If *murabaha* tend to signify usury, *murabahacı* followed the same path and signified the usurer.

The question as to whether they were a special group of money-lenders recognized by the state as the *sarrafs*, needs some thorough research and analyses. In some records I find the clues of such assertion that there was actually a group of *murabahacıs* who were money-lenders of rather small amounts. Studies focusing on urban sources support this finding showing that a group of *murabahacı* (and *muameleci*) existed.¹⁷²

There is a general claim that the *sarrafs* and the merchants in the urban dominate the Ottoman credit market. In the provinces there were notables who gave money as loans and then turned it into usury whenever possible. Thus, it is somewhat accepted that the *murabahacı* is no one different than the *sarraf*, merchant or ağa, it is only an issue of terminology. My findings combined with other studies on this matter show that the *murabahacı* might also be a subject of the state with no significance, carrying no ranks or *berats* given by the rulers.

Some claim these *murabahacıs* were only non-Muslim subjects for that it was non-Muslims who usually practiced such activities but this is misleading.¹⁷³ Recent research proves that Muslim subjects including women¹⁷⁴ were involved in loan/debt relations. Thus, we might extend this claim that there were *murabahacıs* from various kinds of professions, religions and genders. A *murabahacı* was a person who might be a profiteer/creditor with a strong possibility of belonging to another/main profession to earn his/her living. Records show that there are *murabahacıs* from nearly all walks of life excluding

¹⁷² In some sources of the seventeenth century we also see *murabahacı*, in seventeenth century chronicles but the dominance of the usage is seen in after 1750s.

¹⁷³ For an example, Arslan Yüzgün, "Ziraat Bankası," in *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi*, ed. Murat Belge (İstanbul: İletişim Yayınları, 1985). Çağatay, "Riba and Interest Concept and Banking in the Ottoman Empire."

¹⁷⁴ Ronald C. Jennings, "Women in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *JESHO* 18, no. 1 (1975).

villagers/peasants.¹⁷⁵ Merchants practiced *murabaha* most frequently. There were not any guilds associated with *murabahacı* and it seems they were rich people enjoying the conditional needs in the credit market.¹⁷⁶ Although there is an archival document regarding the inquiry whether there will be a tax levied on usurers who were actually doctors and pharmacists, this assertion cannot be followed by any other supporting record.¹⁷⁷ Thus they did not have to obey the legal interest rates.¹⁷⁸ Although there is a document implying the lenders as a group of profiteers (*ashab-ı ribh*), this does not prove that they were a recognized and thus a legitimate group like the *sarrafi* community.¹⁷⁹ The *murabahacı* was also labeled as “*riba ekl edenler*” in the nineteenth century referring to *ribahor* from earlier centuries.¹⁸⁰ Çağatay states that *murabahacı* was the usurer who charged more than at twenty-five percent interest but it is not only about rate as observed from the complaints.

Local notables who gained more power by seizing the *malikanes* of provinces were also heavily involved in money lending.¹⁸¹ Thus we can encounter the complaints about them in the archives that they behaved as usurers and were called usurers as well as *murabahacı*. Some scholars assert that one of the reasons behind the innovation of *malikane* was to reduce the oppression of usurers in the rural areas. The important aspect is that these were not the sole group of money-lenders as the domestic credit need in the market was always

¹⁷⁵ This can also be observed from the local records like *ahkam* and *şerhiyye* registers. See: Kaya, "XVIII. Yüzyıl Osmanlı Toplumunda Nazari ve Tatbiki Olarak Karz İşlemleri." , Halil İnalçık, "Eyüp Sicillerinde Toprak, Köy ve Köylü," in *18. Yüzyıl Kadı Sicilleri Işığında Eyüp'te Sosyal Yaşam*, ed. Tülay Artan (İstanbul: Tarih Vakfı Yurt Yayınları, 1998).

¹⁷⁶ Rossitsa Gradeva, "Towards the Portrait of “the Rich” in Ottoman Provincial Society: Sofia in the 1670s," in *Provincial Elites in the Ottoman Empire (Halcyon Days in Crete V, a Symposium Held in Rethymno, 10-12 January 2003)*, ed. Antonis Anastasopoulos (Rethymno: Crete University Press, 2005).

¹⁷⁷ BOA, ŞD. 252/15, 18 S 1290 (17.4.1873).

¹⁷⁸ A group of money lenders from Edirne demands to be recognized as *sarrafs* and to have a guild, their claim is that they do not lend money as *murabahacı*s, in BOA, MVL. 256/50, 1 B 1269 (10.4.1853).

¹⁷⁹ BOA, C.. DH.. 15/737, 29 Z 1255 (4.3.1840).

¹⁸⁰ “...cümlemize zulm ve taaddi ve envai rezalet ve riba ekl (ألكل) ederek ...” in BOA, A. DVN. 45/100, 21 S 1268 (16.12.1851).

¹⁸¹ Well documented studies on the provincial families/local notables support this claim.

at higher levels than the supply. Mültezims were also involved in the *murabaha* credits.¹⁸²

To properly understand the usurers, one needs to know the methods they used in their praxis. This will help define what was considered as usury. First of all, the most extensive way of charging usury is well known; setting excess interest on loans and oppressing the debtors to pay the debt or seizing their properties. But the archival documents reveal that this term is backed by another labels which would precisely define the essence of usury as there were different methods.

Selem (bay' salam) is one of the methods of the usurers and it was widely used in the nineteenth century yet one sees it was a well-known practice throughout the ages. This is a kind of sale agreement that was generally used by merchants, which included the immediate payment for the good but with delayed deliverance.¹⁸³ The conditions of selem might be different; and there is no payment but an agreement on the sale price. These selem actions were experienced as follows; the demanding party would purchase the crop or agree to buy at a certain price before the harvest.

What caused wrongdoing in this transaction was the intention of the buyers to take over the crops by underpricing defined as *dûn baha* in the documents. Selem was sometimes used in the place of gain of the debts given by the usurers. Although it is anticipated that selem price could be lower than the actual price, the usurers carried it to excess cheapness such as ensuring a forty percent advantage by purchasing the crop with sixty piasters that would value to a hundred piasters. This was an indicator of usury oppression and was prohibited when it came to farmers' crops.¹⁸⁴

¹⁸² BOA, İRA. D. Nr.324, 19.11.1255 (23.2.1840) retrieved from Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*, 135.

¹⁸³ Khan, *Islamic Economics and Finance : A Glossary*, 28-29. The place of salam from the aspects of madhabs is discussed in Nicholas Dylan Ray, "The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations," *Arab Law Quarterly* 12, no. 1 (1997).

¹⁸⁴ ...mahsulatı idrakinden evvel dûn fiyat ile mukavele ederek bil-farz hîn-i idrakinde ila mahsusun 100 ğuruş raici var ise hasbe'l-mukabele 60, 70 ğuruş ve belki daha noksan ahalinin ellerinden almakda... BOA, A. DVN. MHM. d.258, 11-20 S 1268 (6-15.12.1851), 58-59.

The customer did not have to shoulder the burden of seasonal risks that the harvester suffered, which at times was overwhelming.¹⁸⁵ *Selem* was prohibited in *murabahacı* cases and occasionally some special edicts regarding *selem* were issued in the Empire. Records show that *selemci* merchants could be, both Ottoman and non-Ottoman subjects in the nineteenth century. As an example regarding the foreigners involved in such cases; there are documents mentioning that English¹⁸⁶ and Spanish¹⁸⁷ merchants who were accused of usury via *selem* and they were labeled as *selemci* and/or *murabahacı*. Güran admits the involvement of foreign merchants in the manner of tradable crops.¹⁸⁸ Moreover, in these matters non-Ottoman merchants were warned via their consuls for engaging in *selem*.

İhtikar is another harmful act that is seen in the naming of *murabahacı*. *İhtikar* mainly carries to stockpile money to lend usuriously so any rich money-lender would theoretically be a *muhtekir* (one practices *ihtikar*) of money with the harms the term carries.¹⁸⁹ The term originally refers to the hoarding of the commodities, mainly foodstuffs, in order to keep their prices up and make excess profit for future sales.¹⁹⁰ Since the economy relied mostly on agricultural products, unjust stocking of agricultural products is no doubt an effective way to put peasants along with the customers in the centers into harsh economic conditions for they have limited sources of wealth. People of *ihtikar* were called *muhtekir* but it is not to be thought that *muhtekir* is a term away from the *murabahacı*. Documents show us the act of *ihtikar* is covered by the term of *murabahacı* for that it is used for oppression.

Usurers also used kinds of profiteering such as tendering bonds with high discount rates or manipulating money exchange.¹⁹¹ The bonds tendered would

¹⁸⁵ Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*.

¹⁸⁶ BOA, A. MKT. UM.. 232/76, 9 § 1272 (15.4.1856).

¹⁸⁷ BOA, MVL 659/8, 19 Ca 1280 (1.12.1863).

¹⁸⁸ Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*.

¹⁸⁹ It is stated as follows: "...Murabahacılıkla meluf erbab-ı ihtikardan olduklarına dair vuku bulan şikayet üzerine..." BOA, DH. MKT. 2350/79, 27 M 1318 (27.5.1900).

¹⁹⁰ Cengiz Kallek, "İhtikâr," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2000).

¹⁹¹ BOA, DH. MKT. 1660/147, 29 M 1307 (25.9.1889).

be salaries of officers or different payments that were still due. We know from İstanbul that there were offices of *murabahacı*s that would tender such payments with high discount rates such as sixty percent.¹⁹² Although these methods differ from those of the above because mostly the sarraf community used them, in the documents they were labeled as *murabahacılık* and *poliçecilik*. A document informs us about establishing a commission in order that usurers (*murabahacılar*) cannot get involved in money exchange business.¹⁹³ Another record to set an example, an usurer from Aydın is shown that he is manipulating the debt contracts and after he changes the contents of the contracts, makes up new ones after due time and moreover claims three or four times higher interests and demands the assets of other side.¹⁹⁴

There could also be other manners of oppression that were employed by the lenders. Along with the methods defined above, the usual debt relationship was pawning a property in place of security. The debtors had the risk of losing their pawned/pledged properties when they were unable to meet the conditions of their debts. Losing land because of a debt was prohibited in Ottoman law but the documents explain how the peasants were losing their lands that I will mention later. The main point in these loan contracts was that the Empire demanded they be approved by the courts with the intention of keeping them under control. Although the debt contracts approved by the officers were acknowledged as valid, the possibility of charging usury was not eradicated. For the loans both paid in time and paid after the due date, the interest rate set by the state would only stay in writing and the usurer would demand an excess rate of interest. These sort of cases were mostly seen in the big/urban cities of

¹⁹² Advertisements of these usurers can be encountered in newspapers of late Ottoman Empire. For an example of the newspaper *Servet* from İstanbul, see , *Servet*, 1898 [1289]. Issue 87, 3. And Cemal Bora, "Murabahacılar Kooperatifi 1898," *Karınca: Kooperatif Postası* 43, no. 485 (1977).

¹⁹³ "...Murabahacı takımının kambiyo işrasını maddesinde olan ticaretine meydan verilmemek üzere... BOA, A. MKT. NZD. 122/14, 5 Ra 1271 (26.12.1854).

¹⁹⁴ BOA, BEO 97/7272, 8 R 1310 (30.9.1892). A similar case from Van: "...Nefs-i Van reayasının Van sakinlerinden ... oğlu Yusuf ve Mustafa ve Kilislü reayadan İbrahim nam kimesnelere memleketlerinin tesviye-yi umuru için istikraz ve poliçe tarikiyle almış oldukları malumu'l-mikdar mebalige deynleri merkumun ile mersum murabaha namıyla külli akçe zamm etmekte ve bu husus kendilerinin perişan-ı hallerine müsbetçe olmakda idüğünden..." in BOA, MVL. 2/19, 18 C 1261 (25 May 1845).

the Empire, which was suffering from the usury relatively less than the rural areas. The reason behind this was that there were creditor institutions in the cities such as cash *vakıfs* (*evkaf-ı nukud*) that provided credit to people.

Studies reveal cases about loan and credit in the cities, in which excess usury cases were resolved by lowering the interest rates. But another important subject arising from the court records is that people had denoted that some costs within the credit contracts such as *çuka bahası* and etc. to prove that the interest rate was not exceeded despite the accepted higher rates. This implies that the problem of usury was also valid for the cities, however it should be stressed that the issue was not as great as in the provinces as they were mostly individual cases.

From this standpoint, one might claim that the usurers did have the role of being middlemen between peasants and the state in the context of tax paying. One of the main concerns of the peasants was to pay their taxes fulfillingly.¹⁹⁵ Conditions of the agricultural economy along with the instability of weather conditions and some other natural disasters such as drought, and diseases¹⁹⁶ made it harder for peasants to pay their taxes in full and on time. Clearly, shortage of money could hit peasants hard in the Ottoman Empire as well as in other pre-modern empires. Periods of upheaval were seen in the Ottoman Empire when insecure conditions affected the peasants and the needy. Lack of synchronization in collecting taxes after the harvest plus the unnecessary spendings of the officers' results in more hardship for peasants.¹⁹⁷ Each

¹⁹⁵ Faroqhi shows from the debt registers of a wealthy that half of the loans were small amounts, in Suraiya Faroqhi, "Wealth and Power in the Land of Olives: Economic and Political Activities of Mürizade Hacı Mehmed Agha, Notable of Edremit," in *Landholding and Commercial Agriculture in the Middle East*, ed. Çağlar Keyder and Faruk Tabak (New York: State University of New York Press, 1991).

¹⁹⁶ An important subject of agricultural economics that were heavy relied on climates, disasters, rain frequency etc. For exemplar studies of this subject about the Ottoman Empire: Muhammad A. H. Abdulla, "Climatic Fluctuation and Natural Disasters in Arabia between Mid-17th and Early 20th Centuries," *GeoJournal* 37, no. 1 (1995); Sam White, *The Climate of Rebellion in the Early Modern Ottoman Empire* (New York: Cambridge University Press, 2011).

¹⁹⁷ BOA, MSM, nr. 47, 18.2.1261 (26.2.1845), retrieved from ,Güran, 19. *Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*, 134.

complaint of usury (with some exceptions of false accusations¹⁹⁸) is also a sign of the lack of control over suppressors and the inability of the state to prevent it. In most cases, mültezims, vekils and tımarlıs including kadıs and müftüs were involved in charging usury. Studies show the uprisings and unrest among the reaya had a relationship with usury as it was harming social harmony.¹⁹⁹ The reasons behind the expansion of the practice of usury are also related to the unstable coinages and price movements.²⁰⁰

2.2 Individual and common cases of usury as examples

After identifying the actors in money-lending, it would be useful to look at how the Ottoman bureaucrats acted in dealing with usury and usurers in a continuous pattern along with evolving and transforming policies in fiscal and legal aspects.

The first important question that now arises is whether lending money on interest was considered legal in intra-subject relations excluding official lenders, *vakıf* and orphan goods' trustees from the research. The state permitted its subjects to lend money on interest as long as they obeyed the legal transaction methods and get those loan contracts approved officially by the *kadı*. Another option is showing the debt as a *qard al hasan* meaning there shall be no interest levied on the debt whereas the demanded interest was given as a gift or a cost of something sold as *çuka*, *çuha*, soap etc.²⁰¹ Borrowing money in exchange of pawning was rather processed in the *Bey bi'l-vefa* transactions unlike the European experience therefore we do not see pawnshop-like mediary institutions but it seems the usurers filled this gap.

¹⁹⁸ In an example an ağa forces populations of some villages to give false complaints of charging usury about another ağa in Necdet Sakaoğlu, *Anadolu Derebeyi Ocaklarından Köse Paşa Hanedanı*, 2 ed. (İstanbul: Tarih Vakfı Yurt Yayınları, 1998).

¹⁹⁹ Mustafa Akdağ, *Türk Halkının Dirlik Düzenlik Kavgası* (İstanbul: Cem Yayınevi, 1995).

²⁰⁰ Elena Frangakis-Syrett, "The Trade of Cotton and Cloth in Izmir: From the Second Half of the Eighteenth Century to the Early Nineteenth Century," in *Landholding and Commercial Agriculture in the Middle East*, ed. Çağlar Keyder and Faruk Tabak (New York: State University of New York Press, 1991), 97-111.

²⁰¹ Ali Şeriati reports the same method was seen among the Safavids, Ali Şeriati, *Ali Şiası Safevi Şiası*, trans. Feyzullah Artinli (İstanbul: Yöneliş Yayınları, 1990), 121.

The Ottomans' method of dealing with *riba*/usury disputes in the classical age did not see much of an alteration in years. From the court records or other complaint records one can observe that; the interest rates exceeding that of the appointed rate (*hadd-ı azamî*) was considered as invalid. If the debt had an excess rate of interest, it was then exempted from the main debt/principal (*resü'l-mal*) and then divided into equal payments as instalments. If the debtor had no means to pay their debts, there was no clue of a kind of debt-remission, mostly because these were unofficial relationships and thus the intervention was considered invalid. In this sense, confiscation was not common for the debtors who were mostly the poor. When it came to establish justice (*ihkak-ı hak*) between the inequals in a manner of wealth; for example between a wealthy usurer and a poor peasant; the state always sided with the poor which meant that economic frame of the debt was not sought primarily. But those kind of cases show us that the loan relationship had already turned into a usurious one, indicating an oppression and an act against the economic and social harmony. In a sense, it could be stated that the state stood against the *riba of jahiliyya*, into which the credit relation might usually turn into. But what use was this advocating for the poor if they were already placed into the hands of the usurers?

In the classical period; *adaletnames* and *fermans* (edicts and writs) were delivered to the provinces in which it is claimed that usury was prohibited and that the usurers were not to take any more than fifteen percent interest which was the dominant approach of the state before the usurer cases came before the court or investigation. When it came to punishing such usurers, some inventive ways in accordance with the circumstances were applied. For example in the sixteenth century it can be seen alongside other guilty, harmful people; usurers were exiled to newly conquered lands.²⁰² Although that policy is not a strong punishment as the new lands were fertile and without danger, it was still a sentence to the usurer. During the same period, another method practiced against the usurers in the provinces was they were appointed with the duties of *celebs* or butchers. *Celebs* would collect sheep and transport them to the capital

²⁰² Ömer Lütfi Barkan, "Bir İskan ve Kolonizasyon Metodu Olarak Sürgünler," *İktisat Fakültesi Mecmuası* 11, no. 1-4 (1949-1950): 551.

and butchers were responsible for buying the sheep with a fixed *narh*²⁰³ price. The two professions were bound to bankruptcy, because the provisionist view of the state demanded such provisions that come with a relatively low price. Those who were recorded as celebs or butchers saw their wealth melt. In the orders sent from the center, all provincial kadıs were directed to report the usurers of their region with the information regarding their level of wealth.²⁰⁴

The main picture from the singular cases is alike. The Porte changed this picture when the usury case involved a high-ranking officer. After investigations were carried out, some punishments to officers can be observed. An investigation of allegations on the *kaimmakam* of the Yenişehir (northwest of Anatolia) district was carried out and he was found innocent of charging usury. If he was found guilty, there was a strong possibility that he would have been sent into exile. And most likely to be pardoned after no more than a year as the nefy and itlak registers (exile and pardons) show us. This was also the case of officers in Kütahya, as will be shown below.²⁰⁵

Other than the penances above, the standard punishment was exile but this was applied only in grave occasions and after investigations. One can claim that there were no set punishments for usurers although they were warned nearly in all the *adaletnames* with strong notices. Some scholars present the above-mentioned conditional measures against usurers while commenting that the usurers generally suffer strong punishments in the Ottoman Empire.²⁰⁶ Yet, these were some exceptional and conditional measures with other main aims than punishing usurers.

Usually, the *kadıs* were responsible to settle small-scale usury disagreement cases and the muhtesib would control the market/bazaar to eliminate any possibility of usury. The payment of the debts was desired nonetheless as instalments. In some cases, the inheritance of the usurer was confiscated,

²⁰³ M. S. Kütükoğlu, "Narkh," in *EI2* (Leiden: Brill, 1993).

²⁰⁴ See Antony Warren Greenwood, "Istanbul's Meat Provisioning: A Study of the Celepkeşan System" (Unpublished, University of Chicago, 1988).

²⁰⁵ BOA, DH. MKT. 1452/26, 13 M 1305 (1.10.1887).

²⁰⁶ Ahmet Tabakoğlu, *Türkiye İktisat Tarihi* (İstanbul: Dergâh Yayınları, 2012), 422.

depending on the profile of the usurer and the era.²⁰⁷ The modernization process in the legal apparatus did not affect the usury cases in the aspects of prescribed punishments. For instance, in some documents regarding usury, the complainant criticizes about the insufficiency of the penal code against the usurers. Debtors complained that the only thing done in such cases was the reduction of the rate and this was not an effective deterrent thus, there was no efficient method.²⁰⁸ Though the usurers did not face serious punishments, other than in collective usury cases; in singular lawsuits the debtor/borrower might end up in jail or had their assets confiscated unless if he/she claimed that the debt carried flagrant usury.²⁰⁹ One might say that the oppressed peasants could be considered lucky if they obtained their assets back from the usurers with the help of the State.

In the nineteenth century, some new measures began to take place as in all other areas. This was an eventual outcome of the changing era, setting aside the traditional one and accepting the Western phenomenon. As called the Tanzimat Era (the decree was promulgated in 1839 but the period covers the nineteenth century to the Hamidian Era), new applications in conjunction to older ones were applied; mostly the new administrations were established over the old ones. The Porte recognized the harsh conditions of the villagers and tried to help improve their fate. But the types of usury and profiting methods of usurers also changed. It is useful to see the reports of officers investigating the *taşra* (provinces) for they might provide some important clues about the economic and social situation of the credit relations. The situation was harsh, the reaya

²⁰⁷ Two similar documents from the late eighteenth century: Usurer İzmirli Manav Deli Hasan's assets are confiscated after his death, BOA, C.. ML.. 240/10023, 17 B 1214 (15.12.1799). And Berber Hüseyin of Gelibolu: BOA, C.. ML.. 85/3921, 26 N 1211 (25.3.1797).

²⁰⁸ "Adliye nezaret-i celilesine: Dahil-i vilayette faizciler pek ağır faizlerle fukarayı soymakta olup mahkemeye müracaat halinde bu babda medar-ı? takiye?-yi nizamiyeler bulunmamasına mebni nihayet yüzde dokuzdan ziyade faiz için hüküm verilememekten? başka bir şey yapılamamakta olduğu ve bu kabilden olarak yüzde on dört faizle verilen paradan dolayı medyunun emlakını müdayene? Vefaen bey eylediğine dair Bayburt kaimmakamlığınca elde edilüb gönderilen muamelesi ilmuhaberin irsal kılındığı beyaniyla fukara ahaliyi izrar eden murabahacılar hakkında mehakimce? Tabir et-tatbik olmak üzere ceza kanunnamesine ahkam konulmasına vaz'ı lüzumuna dair Erzurum vilayetinden alınan tahrirat melfufule beraber sevbi-i alilerine tesyar kılınmağla ...", BOA, DH. İD..87-1/24, 20 Ra 1329 (20.4.1911). And BOA, BEO 3762/282134, 1 C 1328 (11.5.1910).

²⁰⁹ BOA, DH. MKT. 2436/106, 17 Ş 1318 (10.12.1900).

(subjects) were heavily indebted to usurers who were the local notables of their neighborhood; ayans.²¹⁰ Some precautions had to be taken. I will start with the reports.²¹¹

The first known records of efforts regarding usury in the Empire can be tracked from the Tanzimat Decree. As the Tanzimat did not come from thin air, the modernization (*islahat*) movement clinched agricultural reforms. The Tanzimat was highly orienting tax payments, and usury was related to tax payments.

To improve and resolve the difficult conditions of the debt of the villagers, primary actions were undertaken in the Hüdavendigâr province. A *mühimme* record some months before the announcement of the Tanzimat Decree (3 November 1839) shows that the officers of State who were responsible for cadastering Hüdavendigâr and Gelibolu²¹² had encountered an enormous rate of usurious contacts that were damaging the living conditions of the population.²¹³ A group of usurers referred to as *deruhdeci*²¹⁴ were charging usury with twenty percent interest rates and buying the crop inexpensively via the *selem* method. Moreover, they were confiscating properties of the peasants such as chickens and timber.²¹⁵ To accomplish their intentions, they were oppressing the

²¹⁰ Studies on ayan families shows that none of them failed to act also as usurers in order to improve their powerful status.

²¹¹ Though I will insert a domestic report to begin with, reports from foreigners also proves the conditions. See one of them: Foster M. H., *Report on the Financial Condition of Turkey by Mr. Foster and Lord Hobart, Dated December 7, 1861, Presented to Both Houses of Parliament by Command of Her Majesty, 1862* (London: Harrison and sons, 1862).

²¹² The officers sent due to complaints of the population from the tax, we must add that the villagers did not usually have that confidence to issue a complaint against the usurers for usurers also had the power over them so the cases went as that whole villages applied to the state if they take the chance, for examples see: Sakaoğlu, *Anadolu Derebeyi Ocaklarından Köşe Paşa Hanedanı*.

²¹³ "...tekalif hususundan dolayı ve vuku bulmakta olan mezalim ve teaddiyatı men...Gelibolu ve Hüdavendigâr sancakları kazalarından bed ile zikr olunan kazalarda bil cümle nüfus u ahali ve uhdelerinde bulunan emlak ve arazi tahriri hususuna irade-i seniyye-yi mülukanem taallukuyla taraf-ı eşref-i salatanat-ı seniyyemden mahallerine mahsus memurlar tahsis ve tesyir olunarak el-haleti hazihi usulu vechle der desti tahrir olup ancak salifuz zikr kazalarda deruhdeci tabir olunan murabahacı makuleleri..." BOA, A. DVN. MHM. d 253, s.36-37 11-20 L(Şevval) 1254 (28.12.1838 – 6.1.1839).

²¹⁴ "...deruhdeci tabir olunan murabahacı makuleleri..." ibid. For the *deruhdeci*: Bruce McGowan, "The Age of the Ayans, 1699 - 1812," in *An Economic and Social History of the Ottoman Empire, 1300-1914*, ed. Halil İnalçık and Donald Quataert (New York: Cambridge University Press, 1994).

²¹⁵ "...birer mikdar akçe vererek verdikleri akçeleri üzerine onu on ikiden murabaha hesap edip asl-ı mala zam temessüke rabt birle fukaranın vakt-i harmanda hasıl olunan hıntalarını

peasants to pay their debts at once.²¹⁶ After the revealing part of the document, the measures to solve the usury case were explained. This was the classical approach to usury cases in both private and collective cases like this one. The order was to recalculate the debts with the proper interest rate which was fifteen percent not involving with the compound interest (each year had the same return, the percentage of the main debt), and not to charge interest if there was not any debt contract which was approved by the courts with *devr-i şeri* and *ilzam-ı ribh*. Lastly, if the debtors did not have the capability to pay the debt as a single sum, they could pay it in equal installments.²¹⁷ After the edict sent from the capital, another report from the aforementioned region would provide important information about the situation; firstly there needed to be more officers to deal with the case because numerous *kazas* needed immediate intervention.²¹⁸ It seems the problem of usury was present for more than eight years and the local officers (*voyvodas*) did not implement previous orders with the concern that the usurers/money lenders will not lend money afterwards if needed. The report also mentioned that the usurious contracts were accepted as normal over time as the need for credits were permanent.²¹⁹ The reasons why the officers left the usury unnoticed is of importance which can prove the usurers were the middlemen between the State and the peasants because there always remained a need for credit. It is known that within the modernization

rayicinden d n bahaya ahz ve bade gari baha ile yine kendilerine ...bittevzi mebalig-i mezbureye zam etmek ve beher haneden meccanen birer ikişer araba hatab ile tavuk vesair eşya ahz eylemek mis ll  mezalim ve tealliyatı i'tiyad etmiş oldukları mis l  itiyad etmiş olduklarından...." ibid.

²¹⁶ "...meram-ı kasidelerini icra edemeyeceklerini derk ve tefehh m ile ehali-yi fukarada minval-i muhayyed  zere matlubları mebaligi defaten tahsil daiyesiyle fukarayı izac ve tazyikden hali olmadıkları bu defa tahkik ve istihbar olunup..." ibid

²¹⁷ "...istikraz eyledikleri ak elerden beher sene  zerlerine devr-i şeri ve ilzam-ı ribh alınmış deęil ise min ba'd murabaha talep olunmaması eęer devr-i şeri ve ilzam-ı ribh alınmış dahi ise senede on bir bu uktan ziyade murabahaya ruhsat verilmemekle devr-i şeri ve ilzamı ribh alınan senelerde on bir bu uktan ziyade ve devr-i şeri ve ilzam-ı ribh murabaha namıyla alınan ak e asıl mala zam ve lahik ve kusur kalan deynlerin defaten edaya adem-i kudretleri olan dainleri muvacehesinde ber- nehci şeri sabit olan medyunun taksid-i şeri ile edayı deyn eylemesi ş rutu muktezasından..." ibid.

²¹⁸ "...me'mur-ı mahsus olmadık a emr-i ali-yi mezkur layığıyla? ittihaz ve icra olunamayacağı tahkik ve istihbar olunmuş ..." BOA, C. ADL. 3832, 16 R 1255 (30.5.1839).

²¹⁹ "...bu makule murabahacı taifesinden hin-i iktizada g zeşte-i fahişe ile ak e alıp vermeęe alışmış olduklarından o makule murabahacı taifesini habire? verdikleri halde bade hin-i iktizada taife-yi mezkurine ak e vermez m lahazasıyla...kazanın kurrası sekiz sene bu maddeyi ketm ve ihfaya sapsmış olduęundan..." ibid.

period, the State sought to improve cultivation and took some measures regarding this policy. This document would prove the importance of these measures.

Hüdavendigâr was not the only province suffering from the usurers. Reports state in other regions of the State, the vast amount of peasants/farmers were trapped in a never-ending debt relationship, which eventually resulted in finishing or by losing their lands. One can track other document from different provinces that show the cases of usurers and farmers. Another exemplary case is from Van in 1861, which involves the complaint of the populace of the villages of Van and perimeters. In the document it is stated that the interest rate of the usurers' credits were above thirty percent, sometimes even more than forty percent. The same methods of usury were used by the money-lenders and it is reported sometimes they would sell goods with excess prices to needy peasants.²²⁰ There is an interesting point in this document, which is the accusation of the *hile-i şeriyye* methods that were presumably used by the usurers.²²¹ The approach was the same when solving the situation where debts were to be calculated and excess usury was to be reduced from the main body (*asl-ı mal* and *resü'l-mal*) of the debt. It is also stated that even if the credit carried an "accepted" fifteen percent rate or lower than that rate, that gain would still be invalid (*fasid*) if the debt was not approved by the court with the *devr-i şeri*.²²²

One usury case in Kütahya in the following years (starting with 1848) stands out significantly as it involves some local officers of high rank (such as a *mufti*) who were directly related to usurious contracts and oppression. The amount of usury was vast according to the reports;²²³ a former *muhassıl* (officer

²²⁰ "...bala devr-i şeri onu on üç ve on dört ve daha ziyade akçe verilmek ile bazen akçe yerinde on gürüşlük eşyayı gâsb-ı baha ile vererek ashab-ı ihtiyaca gâdr etmek misüllü" BOA, MVL. 2/19, 18 C 1261 (25.5.1845).

²²¹ Mentioned as "hile-i şeriyye fesadı" ibid.

²²² "...lakin devr-i şeri ettirmeyip gerek onu on bir buçuktan bulunsun ve gerek ziyade ve noksan bulunsun nema olarak her ne miktar mebalîğ olmuş ise fasid ve hilaf-ı şer-i şerif olacağına bu makule ribh suretiyle alınan ..." ibid.

²²³ "...ortakçılık maddesi dahi taaddi suretine girmiş ve güzesteşeden dolayı ahali haylice medyun olduğu rivayet kılınmış ..." BOA, A. MKT. MVL. 8-A/75, 9 Ca 1264 (13.5.1848).

responsible of tax collection) and a member of the country council of Kütahya were reported of charging usury for a long period.²²⁴ They did not fail to do *selem* and *ortakçılık*, which is a kind of partnership.

The general result of these contracts was the loss of land and property of the peasant as usual. In this case, the former official Osman Seyfi *Bey* struggled to recover the damage inflicted upon the peasants but it is reported that most of the decrement was caused by the aforementioned officials.²²⁵ These two had most of the land on their hands and to solve this problem, either they or their attorneys had had to be present before court. Further in the document, the usurious interest rate was ordered to be solved by the methods mentioned above.²²⁶ And finally, when the investigations were carried on, the mufti of the province, Hacı İsmail Efendi was accused of actuating usury and helping the usurers, and he was dismissed from his duty and sent to exile with the approval of the bureau of Meşihat (Chief Religious Office).²²⁷ Following the records from Kütahya, I find that if cases were carefully reviewed, the debts of peasants were written and accounted. Such endeavor of responsible officers on this matter was then recognized and awarded by the Porte.²²⁸

2.3 Observatory discussions on the spread of murabaha/cı?

Conclusive remarks from this chapter are that the identity of the usurers varied, contrary to the claims of the existing literature. Some fruitful loan relations

²²⁴ "...muhasıl sabık İbrahim beğ ile azadan Hacı Hüseyin Efendi ve sair bazı --- öteden berü güzeşte ile akçe vermeğe alışmış..." ibid.

²²⁵ "...Osman Seyfi Beg o makule fahiş güzeştenin tesviyesine ve emlak ve arazinin teşebbüsle birazına muvaffak olmuş ise de ekserisi mumı ileyha İbrahim Beg ve Hüseyin Efendi yedlerinde olmuş ve onların dahi Dersaadet'e savuşmuş cihetle kesb-i tehir eylemiş olduğu..." ibid.

²²⁶ "...arazi ve emlak-ı merkumenin ekserisi mumı ileyha İbrahim ve Hüseyin efendi yedlerinde olarak anlar dahi Dersaadet'te bulunduğundan mumı ileyhanın azimetleri veyahud vekil göndermeleri...bi'l-devriye güzeştenin vech-i şeri ve nizamı üzere muhasebesi" ibid.

²²⁷ The document tells about the participation of the mufti to the "ğaddarane" (cruel) usury incident that he had to be disqualified from his duty, with a sidenote of the chief religious office: BOA, A. MKT. 205/83, 21 B 1265 (12.6.1849); "Kütahya murabahacı güruhuna muavenet eden Müftü Hacı İsmail Efendi'nin hizmet-i fetavadan hicriyle yerine murabaha muhasebat memuru Hoca Osman Efendi'nin hizmet-i fetavaya mezuniyeti..." BOA, A.MKT. MHM. 14/49, 25 B 1265 (16.6.1849).

²²⁸ BOA, A. MKT. MHM. 25/46, 21 M 1267 (26.10.1850).

were in practice in the Ottoman Empire (especially from the eighteenth century) as scholars like Jennings pointed out. We can further that assertion as such; some ordinary people made it a profitable habit to lend money on interest and they carried no official recognition, nor belonging to any social group. Also the absence of any prescribed punishments (except in some cases of local officers and conjectural measures) against usurers may have made it harder in eliminating usury. Excluding all the archival sources I presented regarding the annihilation of the usurers, in a religious source with no legislative force; the tefsir (commentation of the Quran) of Ebussuud Efendi, himself declared that *ribahors* were to be punished heavily if caught.²²⁹ One can discuss that these lenders were serving the duty to satisfy the fiscalist needs of the state. The Ottoman Empire had to choose side between the oppressor and the oppressed. The former was a threat to social harmony but also an important tool to maintain the fiscality and monetary operations. The latter was the backbone of Ottoman society and they were using an important discourse, tension between *zulm* and *adl*.

We will see in the next chapter the anti-usury process in the nineteenth century and have the chance to stress the measures administered. It is also observed in the documents that the usurers oft used cheats to deceive debtors. *Hile* carries the meaning of cheating in modern Turkish and this also begs the question that whether the *hile-i şeriyye* was used by the usurers for their wrongful deeds.

²²⁹ Ebussuud Efendi, *Ebussuud Tefsiri = İrşad-ı Aklı Selim ila Mezay-ı Kitabı'l-Kerim (Kur'an-ı Kerim'in Meziyetlerinin Akıselimle Açıklanması)*, trans. Ali Akın, 12 vols., vol. 2 (İstanbul: Boğaziçi Yayınları, 2006), 728.

CHAPTER 3

MEASURES AGAINST USURY

Taşrada eylemeğe kesb-i ğına
Ya ticaret ya ziraat ya *riba*²³⁰

In this chapter I will present the state-wide measures taken by the Porte against usury and usurers covering the Tanzimat era (1838 - 1876) and Hamidian era (1876 - 1909). The reason I am emphasizing such measures is that they were differing from the classical measures in economic and legal ways. These measures can be categorized as regulatory and preventive. The former can be read as the *nizamnames* and the latter as the *sandık*/banking process. I will emphasize the regulations in more detail since this topic is understudied and requires further explanation. Both policies put in act and the petitions about the subjects will demonstrate the trajectory of the changing mentalities in legal, economic and religious aspects. I will finish the chapter by illustrating the war waged against the usury oppression, and then utilize some documents about the efficiency of these measures.

3.1 Regulations against Usury and Usurers

The interest rate ceiling was fifteen percent in the sixteenth century. It was implemented as an *ictihad*²³¹ with a continuing legitimization by legal scholars and this interest rate limit stood with some exceptions about certain needs. These exceptions generally carried religious concerns such as the harshness of profiting from the cash of orphans or to save a cash *vakıf* from bankrupting

²³⁰ "In order to get rich in the provinces
Ways are trade, agriculture and usury." from the famous poet Nâbî, (d.1712), Nâbî, *Hayriyye-i Nâbî* (Kostantiniyye (İstanbul): Matbaa-yı Ebuzziya, 1307), 23. verse 416.

²³¹ The interest rates carried lesser importance than the validity of the *îne/muamele-i şeriyye* contracts in the eyes of *ulema*. The rate was considered a matter of fairness. Suavi, "Faiz Meselesi."

through allowing it to lend money on higher interest rates. On the other hand, the *sarrafs* had the privilege of lending money on a twenty to twenty-five percent for they carried official services.²³²

In assessing the interest rate regulations in the classical age of the Ottoman Empire, I observe that the *kanuns* issued by each sultan contained a note about the limits to the sums that a lender could charge. In the reign of Bayezid II (r. 1481-1512), the *kanun* warned not to charge more than twenty percent.²³³ The *kanun* of Selim I (r. 1512-20) noted that the contracts had to be carried out according to “*muamele*” methods and charge a maximum of ten percent.²³⁴ *Kanuns* of similar concerns were applied in the reign of Süleyman I (1520-66), Murad III (r. 1574-95) and Ahmed I (1603-17).²³⁵ *Fetva* records and archival documents indicate that the same limit was upheld until the new regulations of the Tanzimat Era.²³⁶

3.1.1 The First Usury Regulation (1851-52)

After inspectors investigated usury complaints in the province of Kütahya, they sent their reports to the capital. A decree from the state was issued regarding the usury cases in the province. In this decree it was noted that the interest rates were pulled back to eight percent. While this decree did not differ much from the previous decrees on the same subject, setting the rate at eight percent, the lowest rate ever, needs attention. The decree mentions the methods of usurers and then the policies that were to be pursued to check usury. Again, the only novel aspect of this decree about Kütahya was the new interest rate. Otherwise, the decree stipulated that the unpaid debts should be re-calculated

²³² Şahiner, "Sarrafs of İstanbul: Financiers of the Empire," 44-47.

²³³ Ahmed Akgündüz, *Osmanlı Hukukuna Giriş ve Fatih Devri Kanunnâmeleri*, 9 vols., vol. 2, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri* (İstanbul: Fey Vakfı, 1990), 295.

²³⁴ Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973), 122.

²³⁵ “Onu on bir” from Selim I to Ahmet I: Ahmed Akgündüz, *Osmanlı Hukukuna Giriş Ve Fatih Devri Kanunnâmeleri*, 9 vols., vol. 3, *Osmanlı Kanunnâmeleri Ve Hukukî Tahlilleri* (İstanbul: Fey Vakfı, 1990), 93.; *ibid.*, 4: 303.; *ibid.*, 8: 115.; *ibid.*, 9: 178. Also we see in the reign of Ahmet I that the usurers were ordered not to take more than fifteen percent: İnalçık, "Adâletnâmeler," 130.

²³⁶ Ahkam registers provide ample data about debt grouses and appointed interest rates from the eighteenth century: *İstanbul Külliyyâtı : İstanbul Ahkâm Defterleri*, ed. Ahmet Kal'a (İstanbul: İstanbul Araştırmaları Merkezi, 1997).

while clearing the usurious interests and then dividing the principal debts into installments up to five years.²³⁷ In addition, *selem* contracts were banned again.²³⁸ These orders should be carried out under the supervision of the *kadis* and the city councils. In the beginning this was a local arrangement, one that a researcher can frequently come across in local records. Then the same order was sent to every province to retain the new interest rates at eight percent.²³⁹ We can call this order the first *nizamname*. It did not have any significant difference from the one sent to Kütahya about three years earlier. Thus, the interest rate as well remained at eight percent.

The preamble of the order regarding the ways of oppression that the usurers employed in the rural areas listed these methods and emphasized that it was the duty of the Porte to guard the subjects from such oppressions (*zulm*). Consequently the High Council (*Meclis-i Vala*) had discussed and reached the indicated resolutions. The resolutions served as the basis of the regulations fixed the interest rate ceiling, stipulated that no extra administrative fees were to be charged in transactions involving debts and that no new interest were to be charged while paying these debts.²⁴⁰ Also the *selem* contracts were

²³⁷ "...zikrolunan murabahacı taifesıyla ahaliden medyûn olanların muhasebeleri ibtidasından başlanılarak şer-i şerif ve meclis marifetiyle bi'r-ruye îcâb eden güzeştesi senevî yüzde sekizden hesap olunarak asl-ı mala zam olunması ve bir güne iz'aç ve tazyik vukû bulmayacak surette terazi-i tarafeyn ile bir seneden beş seneye kadar munâsib taksitlere rabt olunarak fakat tekasit-i muayyene inkizâsına kadar mürur edecek müddet için bir akçe faiz aldırılmaması ve geçmiş muhasebesinde dahi kat'en güzeştenin güzeştesi sayılmayarak ve verilmeyerek ceste ceste istifasına bakılması ve bundan böyle ikraz ve istikraz vukûunda bu usûl ve hesabdan yani senevî yüzde sekiz guruşdan ziyâde güzeşte alınıb verilmemesine dikkat olunması..." BOA, A. DVN. MHM. d 257, 21-30 M 1265 (17-26.12.1848), 99-100.

²³⁸ "...ve bâdemâ mahsulât ile bi'l-mukavele akçe veyahud akçe yerine eşya ikraz ve istikraz edeceklere dîn fiyat ile mukavele etdirilmeyüb ve değerinden ziyadeye verdirilmeyüb râyic-i vakti ve değeri her ne ise ona göre mukavele olunarak istikraz etdirilmesi ve zinhâr gerek mukavele ve gerek güzeşte ile ikraz ve istikraz maddesinin dâin ve medyûn beyninde fîmâ-bâd hod be hod icrâsı tecviz olunmayarak behemehal marifet-i şer' ve bulunduğu kazanın meclisi marifetiyle icabına bakılması..." ibid.

²³⁹ BOA, A. DVN. MHM. d.258, 11-20 S 1268 (6-15.12.1851), 58-59; Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*, 147.

²⁴⁰ "...istikraz eylediği tarihten başlayarak şer-i şerif ve meclis marifetiyle meccanen ve hasbice bir akçe harç alınmayarak bi'r-ruye ican iden güzeştesi senevî yüzde sekizden hesap olunarak asl-ı mala zamm ve değeri fahiş guzeşte vermiş bulunanlara ziyade geldiği halde tenzil olunup müceddeden senede bir güne iz'al ve tazyik vuku bulmayacak surette terazi-i tarafeyn ile bir seneden beş seneye kadar münasib taksitlere rabt olunarak takasit-i muayyene inkizâsına kadar mürur edecek müddet için bir akçe faiz aldırılmaması ve geçmiş muhasebatta dahi kat'an guzeştenin guzeştesi sayılmayarak ve verilmeyerek..." ibid.

prohibited and if there were to be a sale of the crop, it was urged that the price to be nothing less than the market price.²⁴¹ Another important aspect of this text is that it treats the cash *vakıfs* and the administration of orphan properties as an exception.²⁴² It allows them to continue to charge interest at fifteen percent: (six *ğuruş* and a *rub* for a *kise*).²⁴³ The *sarrafs* had their own customary practices (*usul-ı kadim*) but they were not mentioned in this regulation as an exception. The *nizamname* obliged the registration of all the debt contracts by the local councils in the hope of preventing usurious contracts. This regulation was to cover all the loan relations except for the cases mentioned above.²⁴⁴ The final part of the regulation orders to send the names and occupations of the ones who disobeyed this new regulation to the Porte. Yet, there was no note or sign of the punishments that these usurers would suffer.²⁴⁵

The reason behind the reduction of interest rates might be the condition of the villagers, which were worse off and under a heavy burden. One might say that the change of economic thought could be the reason behind this, but the tension between *riba* and *faiz* (usury and interest) was not visible yet during this period. The same Islamic language was kept in the regulation.

In another local case in Antakya, the villagers were pardoned to pay their debts at ten percent interest rate to usurers, as they had no power to pay. Their debts were to be re-calculated at an interest rate of ten percent and enable the

²⁴¹ "...veyahud akçe yerine eşya istikraz edeceklere dun fiyat ile mukavele ettirilmeyip değerinden ziyadeye verdirilmeyip ve rayici ve değeri her ne ise ona göre mukavele olunarak istikraz ettirilmesi..." ibid.

²⁴² "...mal-ı eytam ve mal-ı evkaf ve bu nizamdan müstesna olarak bundan guzeştelerinin usul-i mer'iyye-i kadimesine tatbikan kisesi 6 ğuruş 10 para hesabıyla tesviye..." ibid.

²⁴³ One regular *kise*= Five hundred *ğuruş*, *Rub*, meaning a quarter= Ten para. A monthly six and a quarter *ğuruş* charge is thus seventy five *ğuruş* per year and makes it fifteen percent.

²⁴⁴ "...bundan böyle yani işbu emr-i alişanımın vusul tarihinden sonra gerek ahali-yi kura ve harasetten ve gerek ahali-yi saireden her kim olur ise olsun ve gerek esnaftan ve gerek düvel-i ecnebi tebaasından bulunsun akçe ve idane ve istidane idenler hakkında nizam-ı mezkurun bila-istisna tamamen icra kılınması hususları nizamı umumi iddihaz olunarak ol babda kaffe-i memalik-i mahruse-i şahanem evamir-i şerifim isdariyla i'lam olunması meclis-i valadan ba-mazbata ifade olunmuş..." ibid.

²⁴⁵ "...senevi yüzde sekizden ziyade guzeşte ahzına sirayet edenler olursa te'dibat-ı lazimelerinin icrası için isim ve şöhetlerinin ba-mazbata ilam ve der saadetime inha ve iş'arına müracaat ve sen ki reis-i meclis-i mevad ve kaimmakamlar ve naib ve müftiler vesair mumaiylehümasın işbu emr-i alişanım sicillat-ı muhakeme kayd olunarak daiman ve müstemilan mucib ve muktezası için kemaliyle ihtimam ve cesaret ve hiçbir vakitte mugayiri vez' ve halat vuku'a getirilmemesi begayat ihtimam ve dikkat eyleyesun." ibid.

villagers would pay their debt in instalments.²⁴⁶ This suggests that in the Tanzimat Era, interest rates were considered to be set lower in the heavy usury cases of peasants.

During the same period, other policies were planned to improve the conditions of the peasants due to oppressive consequences of prevailing usurious practices. The state did not adopt a new policy of provinces to defend peasants against the usurers. It dealt with pleas against usury by classical methods (*usul-i kadim üzere*) as mentioned above. The main aim of the state was to institute new debt contracts and abolish the unjust barter of the properties of the peasants as a result of usurious contracts. Yet, there remained the problem of the lack of credit institutions in provincial areas. This deficiency was one of the main problems of the peasants falling into the hands of usurers given their well-known need of credit to pay their taxes and other necessary transactions that involved cash payments. During the Tanzimat Era, changes in the government affected provinces and villages. Improving cultivating technics and helping the abled peasant with financial aid were some of the attempts to help. Also the establishment of new courts and commissions (*meclis*) and new ministries began to change the situation slowly. The local councils mentioned in the regulation dealing with usury were one of the new institutions of the era.²⁴⁷

Another important aspect of this regulation was that it had the same classical discourse of the *şer'iyye* stating that these relationships had to be made under Islamic obligations. Thus, the classical process implying the accordance with Islam was to be carried out in the language used. From this can be inferred that credit relations were still taken with the concern of Islamicity/sharia compliance (they need to be practiced as legal transactions or recognized sales) in the accounts.

In 1850, the French Code of Commerce of 1807 was translated into Turkish and with some changes (including additions and omissions) accepted as the Law of

²⁴⁶ BOA, C.. ADL. 88/5316, 29 Z 1255 (4.3.1840).

²⁴⁷ In this period the establishment of the new courts and the new *meclises* dealt with legal disputes and eventually transformed into a new legal system and a new provincial administrative system.

Commerce in the Land. In the original of this law, interest rates were set to twelve percent maximum. But the Ottomans did not put this ceiling into their translated version of the Code of Commerce. The changes of the Tanzimat were also the spreading of low-rated interest (twelve percent) credit to the peasants but this attempt was far from satisfying the credit need.²⁴⁸

The usury regulation was edited in 1852 and accepted by the *Meclis-i Vala* and then announced in the official newspaper of the Ottoman state.²⁴⁹ It appears that the first edition, with its wide perspective that indicated the reduction of all kinds of interest gains to eight percent, did not have solid grounds in practice. Although I did not encounter such complications about the application of the mentioned regulation, the new regulation replacing the regulation of 1851 provides some indications about the conditions. The document begins with an acknowledgement of the various problems that emerged in the implementation of the previous regulation.²⁵⁰ It occurs that the biggest difficulty involved the *sarrafs* community, which was not mentioned in the previous regulation except for the orphan and *vakıf* properties. The reason was that they had their own “old order” (*kadim nizam*) for centuries and could not manage their transactions with an eight percent interest rate. Clearly, the previous regulation did not take the *sarrafs* into consideration.²⁵¹ There was a need for a new regulation that recognized the exception to include the *sarrafs*. The nizamname also identified the problem of usurious rates charged by money-lenders and rich people in Anatolia and the Balkans. Hence, it stipulated that thereonward the interest (*güzeşte*) on borrowing and lending should not exceed twelve percent.²⁵² It also

²⁴⁸ Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*.

²⁴⁹ *Takvim-i Vekayi*, 1. Tertip, Issue: 468, 4 Şaban 1268 (24 May 1852), 2-3; and the same: *Takvim-i Vekayi*, 1. Tertip, Issue 478, 25 S 1269 (8 December 1852), 2.

²⁵⁰ “...geçenlerde bütün memâlik-i mahrûseme evâmîr-i aliyem neşr ü i’lân olunmuş ise de bu def’a istihbar ve tahkik olunduğuna göre nizâm-ı mezkûrun icrâsında ba’zı mertebe su’ûbet ve müşkilât görüldüğünden bunun ta’dîli icâb iderek keyfiyet mu’ahharan Meclis-i Vâlâ-yı Ahkâm-ı Adliye’nde bi’l-etrâf tezekkür ve mütâla’a olunub ...”, *ibid.*

²⁵¹ “...şöyle ki mâl-ı eytam ve evkâfın idânesi usûl-i meşrû’a tahtında olduğu gibi Dersa’âdet’im sarrâflarının dahi nizâm-ı mahsûs olduğundan bunlar kemâ-kân usûl ve nizâm-ı mukarreri vechile rü’yet ve icrâ olunmak üzere...”, *ibid.*

²⁵² “...bundan böyle ehl-i kurâ ve hırâsetden ve ahâlî-i sâ’ireden her kim olur ise olsun murâbahacıardan idâne ve istidâne itdikleri akçelerin güzeştesi kîsesi beş ya’nî senevî yüzde on iki guruş üzerine hesâb olunması...”, *ibid.*

included the Ottoman and non-Ottoman merchants but with due adjustments in accordance with contracts made before this regulation.²⁵³ This regulation differed little from the previous one. Likewise, it emphasized the payment of debts in instalments if the debtors were unable to pay their debt at once. But it added that if the debtors had the means to pay the debt at once, setting up instalments was accepted as unjust and unacceptable.²⁵⁴ The regulation used the same language on the need to be just in credit relationships and continued with a warning that this one would be applied properly, unlike the previous regulation.²⁵⁵

Otherwise, the regulation had the same discourse with its previous versions. It had the same emphasis on *şeri* (Sharia compliant) credits and setting relationships under *şeri* contracts. Likewise, the nizamname provided a short summary of the kind of usury methods seen especially in the *taşra* (provincial/rural) regions. For instance, merchants would buy produce of harvest for delivery of time before it ripened at a relatively cheap price and pay the producer a sum that would be practically credit at excess interest rates. The exceptional structure of cash *vakıfs* and orphan properties were once more defined and their difference from the normal credit institutions were distinctively agreed upon. Another important part of the regulations was that they were issued because of the struggle against usurers. The main aim was not to set the interest rate with economic concerns. It is now useful to have a look at some documents after the promulgation of the first usury regulation to measure its efficiency.

It appears that the regulation was sent to Arab provinces as well. Though there were not many cash *vakıf* institutions, the profitizing of orphan properties

²⁵³ "...berâtlı Hayriye ve Avrupa tüccârıyla düvel-i ecnebiye tebe'asından bulunanlar ekseri bazı mukâvele üzerine akçe ikrâz etmiş olacaklarından bunların nizâmdan evvel olan mukâvele ve senedlerine itibâr ile ona tatbîkan hesâbları görülüb bundan sonra olacak mukâvelelerine bakılmayarak ale'l-umum cümlesinin güzêsteleri yüzde on iki guruş hesâbıyla olması...", ibid.

²⁵⁴ "...ashâb-ı iktidârdan olmayan ve fukarâdan bulunanların deynleri de terâzî-i tarafeyn bir seneden beş seneye kadar tekâsît-i münâsibeye ve yeniden senedâta rabt ile tesviye olunub ashâb-ı servet ve iktidârdan bulunanlar zuhûr iden deynlerini tekâsîte rabt itmeğe kalkışmaları dayınlerine gadri mûcib olacağından bunların dahi münâsib mehîl ile ve dâyinlerin rızâsiyle tesviyesine bakılması...", ibid.

²⁵⁵ "...nizâm-ı mezkûr evvelki gibi sû-i istimâl olunmayarak...", ibid.

(*emval-i eytam*) applied also in these provinces. An order to Mecca shows that the new regulations were taken into consideration while collecting loans from money-lenders. New interest rates would apply except for *vakıf* and orphan properties where the rate of fifteen percent should be maintained.²⁵⁶

The same kind of complaints regarding usurers emerged in the provinces after the promulgation of the regulation. An example from Salonica provides data about peasants who had to take loans at a rate of thirty-five percent and were thus exposed to merchant oppression. At the same time an archival document explains that the regulation had not yet been promulgated in the province. Moreover the establishment of the council (which would set the trade and recalculate the debts with usurious rates) could not have been accomplished, and the need for members from both peasants and officials who need to receive proper salaries was crucial.²⁵⁷

There are more descriptive records that show the juncture in the provinces and how involved the officers were in these usurious transactions. Emphasis on taking advantage of the ignorance of the peasants is obvious as they were on the verge of losing their properties because of the phony agreements, the content of which they did not know.²⁵⁸ A record from Filibe provides information about peasants who had to take credit from usurers but did not have the means to pay the interest on interest (compound interest) because heavy rains damaged their crops. The state responded the same in the regulations.²⁵⁹ Yet, a debt dispute in Bursa in 1862 indicates that the usurer Ağa wanted to take the house of Ohan because of the money he owed him, although Ohan had paid the debt and he did

²⁵⁶ "Mekke-i Mükerrreme'de emval-i eytam ve evkaf için idanesi usul-ı meşrua tahtında olarak... ne vecihle olur ise olsun murabahacılardan istidane ettikleri akçelerin güzeştesi kisesi şehriye beş senede yüzde on iki ğuruş üzere hesap olunması ve evkaf ve eytam akçelerinde güzeşte ise yine usul-ı kadim vecihle altı ğuruş bir rubdan tesviye olunması ve bu nizam-ı usul-ı mübarekede dahi mer'i tutulması babında bala iki yüz altmış dokuz senesi şehri-i muharremü'l-haramdan"BOA, A. DVN. 82/52, 26 M 1269 (9.11.1852).

²⁵⁷ BOA, MVL. 254/42, 15 R 1269 (27.12.1852).

²⁵⁸ "...bazı mahallerde yine hilaf-ı halat zuhura gelmekte olduğu ve bir de taşralarda tüccar-ı ecnebiyyelerden... kocabaşları ve sairleri zuhur edip...ve muhtekir takımından...ahalinin olduğu üzere noksan baha ile almak ...ve hatta bazen yerine ğıyabından parmak dahi basarak kontrato..."BOA, A. MKT. UM. 211/45, 27 M 1272 (8.10.1855).

²⁵⁹ "...kesret-i barandan naşi ... mal ve sermayemiz ğaib olarak beldemiz murabahacılarından akçe istidanesine ihtiyaç olunmuş ise de..." , BOA, MVL. 395/3, 8 M 1279 (6.7.1862).

it at a rate of twenty percent interest, which seems not to have sufficed. The Porte instructed the province to investigate and resolve the matter according to the 1852 regulation.²⁶⁰

Some other illustrative documents about the first regulation shows the process of preventing the oppression of usurers in Ohri²⁶¹ and the gratitude of the Ohri Council regarding the operations to liberate the poor from the oppressors.²⁶² Lastly, a record indicates that the government warned an investigator in Bursa not to re-calculate the debt because a new regulation was being discussed in the Meclis-i Vala at that time.²⁶³

3.1.2 The regulation of 1864

While the cases about the proper appliance of the 1852 (1268) regulation were broadly encountered in the Ottoman Empire, editing and the extension of the regulation was discussed. As a result; a new regulation was promulgated. The regulation of 25 March 1864 (16 Şevval 1280) was more a transformation of the old *nizamname* into a new one with a new form and a different language. Although it was mentioned that this was a supplementary bill (*mutazammın layiha*), the change in both economic and legal thought are obvious. The note above the regulation mentioned the continuous pattern within the previous regulation.²⁶⁴ Yet this regulation must be analyzed from discursive or legal aspects that I will present in order to understand the essence of the period.

²⁶⁰ "...Brusalı Ohan'ın takdim eylediği arzıhalde murabahacı taifesinden Ağası? nam kimesneden ba-tahvil ma-güzeşte almış olduğu 4165 + 833: 4998 ğuruş bir kıta tahvile rabt olunmuş... 2418 ğuruş deyninden tenzil olundukda 2580 ğuruş matlubatının tahvili tebdil idüp? altı bin bu kadar ğuruş faiz (nema) talebiyle iskan eylediği hanesini zabt etmek iddiasına kalkışmış olduğundan bahisle...meblağ-ı mezkurun baki kalan deyninin tediyesi hakkında murabaha nizamı hakkında altmış sekiz tarihinde tamimen tastir olunan ferman-ı ali mucebince husus-ı mezkur dahi muhasebe..." BOA, A. MKT. DV.. 220/97, 21 L 1278 (21.4.1862); BOA, A. MKT. DV.. 221/15, 21 L 1278 (21.4.1862).

²⁶¹ BOA, A. MKT. MHM. 277/46, 5 R 1280 (20.8.1863).

²⁶² BOA, A. MKT. MHM. 280/22, 28 R 1280 (12.9.1863).

²⁶³ BOA, A. MKT. MHM. 284/3, 3 C 1280 (16.10.1863).

²⁶⁴ "Memalik-i Mahruse-i Şahane'de cari olan murabaha maddesi için altmış sekiz tarihinde yapılan nizamın tadiliyle bu kerre müceddeden kararlaştırılan bazı usul ve kaideyi mutazammın (içeren) layihadır..." in *Düstur*, 1. Tertip, 1. Cilt, 1289 (1872), Matbaa-yı Amire, 268.

This regulation is important for several reasons explained below. First, it was not a regulation that aimed to solve usurer cases directly as in the previous versions, but rather a usury regulation that broadened the meaning of usury by separating it from interest. It had the same rate limit of twelve percent. What did change in this regulation and what were the repercussions?

References of Islamic forms of credit relations and the emphasis on “*şeri*” disappeared. Though it was strongly recommended that the relations were to be set under Islamic legal methods, which provided the opportunity to escape from *riba*, the word “*şeri*” was only used as a reference to *vakıf* and orphan properties. Normal debt relations from that period did not contain a religious language anymore. *Kadis* who were responsible for preventing *riba* in earlier times lost most of their duties to the new courts established during the modernization era. *Devr-i şeri* does not only mean interest-bearing loan, it also implies that the court approved the loan, and thus it did not carry *riba*. Another fact behind this was the incompetence of the *kadis* who were not equipped with sufficient knowledge to organize *riba* prevention transactions in a sharia compliant manner. Several scholars and bureaucrats such as Ahmet Cevdet underline the insufficiency and inadequacy of the *ilmiyye* class.²⁶⁵ The regulation of 1864 aimed to solve certain conflicts regarding credit relations as well. Lastly, the regulation stipulated that the courts of Public Works (*Nafia*) and Commerce Courts would hear the disputes on interest. This is another embodiment of the transformation of the legal process.

The third and the fourth articles include the case of usurious interest rates and present solution methods. If it is proven legally that a usurious interest is actually included in the principal, then excess amount of interest is reduced from the debt (unless it did not surpass the original sum).²⁶⁶

²⁶⁵ Aydın, "Mecelle-i Ahkâm-ı Adliyye."

²⁶⁶ “Üçüncü madde: Hadd-i nizamisinden ziyade güzesteñin miktarı deyn senedinde musarrah (belirtilmiş) olmayarak re’s-i mala zamm olunup da medyun tarafından delail-i makbule yani senet veya mektup veyahut muteber defter ibraz ile veyahut dayine yemin teklifi ile ziyade güzesteñin re’s-i mala zammolunmuş olduđu inde’l-muhakeme sabit olur ise o halde madde-i atiyenin (sonraki maddenin) ahkamına tevfiķan muamele edilecektir.

Dördüncü madde: Deyn-i mutazammın senet ve medyun beyninde cereyan eden muhasebeden neşet etmiş ise muhasebe-i mezkurenin bed’i tarihinden ve eđer mezkur senet tecdid-i deyn

The fifth article stated that in the former debt relations even if the sum is fully paid at higher interest than in the regulation, no payback interest is permitted.²⁶⁷ This seems a different approach from that of earlier ones in the context of facilitating justice. The sixth article bans additional payments of debt such as *subaşılik aidatı* but still recognizes this kind of payment from the earlier periods.²⁶⁸ The usurers and their oppression was not mentioned in this regulation and thus solving such cases was not a concern in contrast to previous regulations.

Problems while applying this regulation did occur, e.g. when dealing with other institutions. In the cash *vakıfs* and orphan properties the limit was still fifteen percent and credit relations among them and others abrought upon disagreement, and confusion in borrowing. Banking processes (Ottoman Bank was established with some others) and the foreign loans was also the case in this period. The foreign borrowing process of the state was in a band between two and twelve percent interest.²⁶⁹ Some other administrative changes in both fiscal policies ²⁷⁰ and others can be related to the interest rate regulations. For instance in a *layiha* (an advisory letter/treatise) the writer marks that the rate of return must be lowered in order to develop into a more stable and a successful economy. The *layiha* proposed that the highest rate of interest should

mülabesesiyle yani akdemce medyunun diğer senedi olup da inkiza-yı vadede ziyade güzeşte zammıyla müceddeden tanzim olunmuş ise o halde atik senet tarihinden itibaren yürütülmüş olan faizden mikdar-ı fahişin nihayet on seneliği tenzil olunarak kusûrunun tahsiline hükmolunacaktır. Ve fakat bu on sene müddet murabaha fermanının tarih-i neşri olan bin iki yüz altmış sekiz senesini tecavüz edemeyecektir. Ve eğer hesap olunan işbu on senelik mikdar-i fahişi re's-i mal ile nizamen kabul ve tasdik olunan faiz mikdarından fazla zuhur eder ise işbu fazlanın dayinden istirdadı caiz olmayacaktır. Hatta dayinin yine o medyundan cihet-i saireden dolayı diğer matlubu olsa dahi işbu fazla o matluba mahsup olunamayacaktır.", ibid.

²⁶⁷ "Dayin ile medyun beyninde bi't-terazi hesabı kat' olunup re'sü'l-mal ve güzeştesi kamilen tediye olunmuş olan deyn için hadd-i nizamisinden ziyade güzeşte alınıp verilmiş olsa dahi iade-i hesabıyla güzeştesinin tenzili caiz olmayacaktır.", ibid.

²⁶⁸ "Güzeşteden başka, ahaliden subaşılik aidatı namıyla ve nam-ı aherle akçe alınmak katiyen memnu olduğundan böyle şeyler alınmış olduğu tebeyyün eder ise hükümetçe kabul olunacağı gibi bad-ez-in (bundan sonra) ahzına cüret edenlerin haklarında kanunen icra-yı ceza kılınacaktır.", ibid.

²⁶⁹ Emine Kıray, *Osmanlıda Ekonomik Yapı ve Dış Borçlar* (İstanbul: İletişim Yayınları, 1993). Christopher Clay, *Gold for the Sultan : Western Bankers and Ottoman Finance 1856-1881 : A Contribution to Ottoman and to International Financial History* (New York: I.B. Tauris, 2000).

²⁷⁰ Coşkun Çakır, *Tanzimat Dönemi Osmanlı Maliyesi* (İstanbul: Küre Yayınları, 2001); "Tanzimat," in *Encyclopedia of the Ottoman Empire*, ed. Gábor Ágoston and Bruce Alan Masters (New York: Facts On File, 2009).

be set at seven percent.²⁷¹ In the meantime, certain cases of usury and complaints about usurers indicated that the *nizamname* was not fully implemented in the provinces. Previously, the reports on the regions that were liberated from usury were encountered. Yet again, the complaints of heavy usury-infected regions were not demolished. This update-like regulation happened in a period where the highly reformative Provincial Degree (*Vilayet Nizamnamesi*) was promulgated and also the provincial cash funds (*sandıks*) were being established.

3.1.3 The regulation of 1887

The interest rate regulation of 3 April 1887 (9 Receb 1304), which was edited by Hirant Abro,²⁷² was not much different from that of 1864 (1280). The secularized language of the regulation continued. The basic change was the lowering of the interest rates to nine percent.²⁷³ The fourth article banned interest exceeding the main debt no matter how many years passed after the initiation of the debt.²⁷⁴ The fifth article informed about cases dealing with compound interest (*mürekkep faiz*), which was previously banned. It explains primarily that if there were no payments in three years, there would be liberty to charge interest if two parties agreed. But the three-year limit was not to be exceeded. It also recognized compound interest between merchants due to the Law of Commerce.²⁷⁵ The sixth article was the same as the previous one about the fulfilled usurious interests. The last article assigned the Ministry of Justice to

²⁷¹ BOA, Y. PRK. HH. 17/1, 2 B 1303 (6.4.1886).

²⁷² Son of Sahak Abro, an officer working in the department of foreign affairs, "Sahak Abroyan," in *Yaşamları ve Yapıtlarıyla Osmanlılar Ansiklopedisi*, ed. Ekrem Çakıroğlu (İstanbul: Yapı Kredi Kültür Sanat Yayıncılık, 1999), 78.

²⁷³ "Madde 1: İşbu nizamnamenin tarih-i neşrinden itibaren her nevi müdayenat-ı (borç) adiyeye ve ticariye faizinin hadd-i azamisi senevi yüzde dokuz olarak tayin kılınmıştır.", in *Düstur* (Mütemmim), (Dersaadet: Hilal Matbaası), 1335 (1917), 74.

²⁷⁴ "İkrazatın faizi her kaç sene mürur eder ise etsin nihayet re'sü'l-mal miktarını tecavüz etmeyecektir. Re'sü'l-malı tecavüz eden faizi hükmetmekten bi'l-cümle hükkam memnudur.", *ibid.*

²⁷⁵ "Madde 5: İkrazata faiz-i mürekkep yürütülmesi caiz değildir. Ancak; evvelen: meblağ-ı müstakrize mahsuben üç sene zarfında medyun tarafından akçe teslim olunmamış bulunduğu. saniyen: üç senede işlemiş bulunan faizin re'sü'l-mala zammı için dayin (borç veren) ve medyun beyinde ittifak hasıl olduğu halde yalnız üç senelik faiz-i mürekkep yürütülebilir. Ticaret kanunu hükmünce beyne't-tüccar hesab-ı cariden neşet eden faiz-i mürekkep muamelatı bundan müstesnadır.", *ibid.*

overlook the process. Similar to the previous regulation being synchronized with the establishment of *sandıks*, this regulation synched with the establishment of the Agricultural Bank.

There are some treatises about the usury regulations that were not enacted. The first one was from 1907. In it, the petitioner asserted that the banks during that time were accepting deposits at three percent interest rate thus the nine percent rate of the regulation was ineffective. He suggests lowering the interest rate on loans to seven percent. Lowering interest rates would have a positive impact on investment and thus the goal of development and enrichment should be reachable according to the treatise. But after this petition was discussed; the Porte claimed that this reduction could cause a disorder because the lenders might force the borrowers to retrieve their sum all at once. Thus it was noted that it would be better to put a six months enforcement process. Later on there was not any clue provided that this petition had been promulgated as a new regulation.²⁷⁶ There was another petition suggesting the same conditions mentioned above.²⁷⁷ Another petition from 1914 suggest lowering the rates to six percent. It states that the actual interest rate is two to five percent in the state and the rate of nine percent is a bad indicator. In such circumstances investors and entrepreneurs choose to lend their money on interest rather than investing it in other areas that may help improve the economy. The desired regulation was attached to the petition and not only was the rates altered, some other articles were also edited.²⁷⁸ The Commercial Law of the Republic of Türkiye about the interest rate ceilings in 1984 rates reads: “The *murabaha* regulation is now abrogated”.²⁷⁹ Setting aside the discussions on the relationship between the Ottoman Empire and Türkiye, this would prove that neither of these petitions was promulgated.

What does the usury regulation process for some decades tell us? This can be answered in realizing the two main aspects of these regulations. First, focusing

²⁷⁶ BOA, ŞD. 2761/15, 18 Kanunusani 1322 (31.1.1907).

²⁷⁷ BOA, BEO. 2921/219066, 24 N 1324 (7.5.1908).

²⁷⁸ BOA, HR. HŞ. İŞO. 53/14, 09. T. 1330 (13.7.1914).

²⁷⁹ *Kanunî Faiz ve Temerrüt Faizine İlişkin Kanun*, Resmi Gazete (19.12.1984) no: 18610. Article 5: “22 Mart 1303 tarihli Murabaha Nizamnamesi yürürlükten kaldırılmıştır.”

on the economy provides important clues about the fiscal change in the state. The attempt to set a just and applicable interest rate in the economy is an indicator of social concerns of the state. As mentioned, the standart interest ceiling was fifteen percent and for centuries this was an ancient ceiling. Then, in order to adjust the payments of debts that were mostly owed by the peasants to the usurers, the rate was settled to eight percent after investigating the needy people and some large disputes in the Empire. This change proved ineffective during the following years, so the twelve percent ratio was accepted in 1852. But in the following years, this also was found high since the actual rates were significantly lower and the rate was to be kept lower to speed up investments in the Empire. As a consequence it was set to nine percent in 1887 (1304). At the same time, the funds that were actively used after their establishment were accepting a six (seven, with additional costs) percent in loans. And a final draft regulation as one might put it, was presented to the Sublime Porte proclaiming that a six percent rate must be accepted in order to achieve development.

Another important transformation that can be seen in the regulations is the emphasis of the *riba – faiz* (usury - interest) distinction that can be regarded as a proof of the secularization of the empire at least in the economic thought. Actually the Ottomans were somewhat puzzling in this matter as they used three of the same meaning words (*faiz, güzeşte, murabaha*) in the same regulation. But with the legal transformation which can clearly be read as a secularization process, the jurisprudential matter; *riba* was to be reviewed in non-Islamic courts. Moreover, the state did not seek to investigate Islamic ways of crediting processes such as debt. The loan was more an economic issue if there was an excess and unjust intervention was upon it. On the other hand, the *ihkak-ı hakk* (solving the dispute in the just way) process was more a social and economic issue not a religious one. The vanishing of the *şeri* on the credit words and terms can be another proof for this transformation.

3.2 Preventive Measures: The Banking Process

Interest rate regulations show one side of the general measures taken by the Porte in the second half of the nineteenth century. Started as a provincial initiative; *sandıks* (cash funds, rural credit cooperatives) were established.²⁸⁰ Then these local initiatives evolved into the Agricultural Bank in a twenty five years period in the second half of the nineteenth century.

Documents from other provinces also record the condition of usury throughout the empire. On the basis of these records, some set of precautions, such as regional banks was applied. A petition from Sisam states that there is a need to establish a bank in order to provide credit with lower ratios and abolish usurer oppression on the island.²⁸¹ The appointed rate of the bank would be at ten percent.²⁸² The reply from the Porte was an approval but with a warning of not letting usurers and foreigners intervene in the establishment process.²⁸³ Although it is mentioned that the bank would serve Muslim subjects, it is not clear whether the bank would provide services to non-Muslim subjects as well given the fact that the island's population was mostly non-Muslim.²⁸⁴ The establishment of bank or cash funds/boxes was a well-known application in that

²⁸⁰ Roderic H. Davison, *Reform in the Ottoman Empire, 1856-1876* (Princeton: Princeton University Press, 1963), 152.

²⁸¹ "...cezire-yi mezburede kain murabahacı esnafı ahalinin yedlerinde bulunan mahsulatını dun baha ile almakta olduklarından ve ahali-yi merkum ise bizzarure fahiş güzeşte akçe alıp işlerini yürütmekte ve bu keyfiyet şiraze-yi nizam-ı memleketi ve ıslah-ı emniyet-i ahaliyi mudi olmakta idüğünden bunun indifaiyla asayiş-i ahali ve memleketin bir usul-ı seniyyeye konulması lazımadan ve bu ise cezire-yi merkumede bir bankanın teşkiline mutavakkıf olup ahali-yi merkumeden istekli olanların muavenetiyle 10000 keseden ibaret olan bir bankayı tertip ve teşkile müsaade buyurulması husus-ı ahali-yi merkumede tarafından istida kılındığı inha olunmuş olup..." in BOA, İ.. MTZ. SM.. 3/63, 3 § 1268 (23.5.1852).

²⁸² "...emanet-i emlakiye ile yüzde 10 gürüş güzeştesiyle ikraz etmek..." in ibid.

²⁸³ "...mazarratları saye-i inayetvaye-i hazret-i mülkdaride mündef'i olmak üzere teşkiline müsaade buyurulması istida kılınan banka mülkçe ve ahalice menafi ve muhasenatı müstelzim olacağından bir güne müdahale ve şirket-i ecnebiyye karıştırılmayarak sırf yerlü ve tebaa-yı devlet-i aliyyeye mahsus olmak ve yapılacak nizamı evvel emirde bu tarafa gönderilmek şartıyla işbu bankanın teşkili kaimmakam mumı ileyhe işar kılınması..." in ibid.

²⁸⁴ Evangelia Balta, "Sisam," in *TDV İslam Ansiklopedisi* (İstanbul: TDV, 2009).

period and it was advised in various *layihâs* of Ottoman bureaucrats such as Sadık Rifat,²⁸⁵ partly in light of the European experience.

The first bank established in the Ottoman lands is known the Bank of Smyrna, which was later, shut down due to not seeking approval of Ottoman government. As we have seen in conditions of approval to the bank in Sisam, another reason of shutting down the bank by Ottoman government was the intervention of foreign companies and bankers in the establishment. Then banks such as Dersaadet Bankası was established in the 1840s under supervision of the state to keep the exchange rate and the actual value of the fiat money. The bank initiative was a precautionary measure differing from that of the classical approach to excess usury cases to balance interest rates. There's no obvious reference to the running of the bank with special attention to make loan contracts under the Islamic rule defined as *muamele-i şeriyye*, it was mentioned to run as a pawn-based (defined as *emanet-i emlakiye*) credit institution, accepting estates as equity. This is the same period that other financial precautions were applied on the fiat money within the first attempts on taking foreign loans.²⁸⁶

This petition can be emphasized as predecessor of the banking processes in the empire. Later in 1279 (1863), the first cash box (*sandık*) that was called "Memleket Sandığı", was established in Pirot (Niş) by the Governor Midhat Paşa (d. 1885). This was accepted as the first act of fighting usury and improving agricultural credit relations in the Empire. In the petition of Midhat Paşa, he indicated that these funds were important to raise the living standards of the peasants by reducing their obligation to the usurers. Along with the banking process, *sandıks* were a kind of cooperatives working for a certain kind of profession or social division. This was not an original establishment, since the

²⁸⁵ Ahmet Güner Sayar, *Osmanlı İktisat Düşüncesinin Çağdaşlaşması (Klasik Dönem'den İ. Abdülhamid'e)*, 2 ed. (İstanbul: Ötüken Yayınları, 2000), 210-26.

²⁸⁶ Eldem, "Ottoman Financial Integration with Europe: Foreign Loans, the Ottoman Bank and the Ottoman Public Debt," 431-45.

Raiffeisen of Germany²⁸⁷ and other cooperatives were known to Midhat Paşa; most of which he had probably seen during his travels throughout Europe.

These were not the first applications in regional matters as I have shown the initiatives on banking such as the one in Sisam. But it becomes obvious that these funds were proven worthy and then broadened throughout the State; they had collected a good deal of money while giving lower interest than they collected along with the funds allocated. In the *nizamname* of these funds, the interest rate was set as twelve percent (one percent a month, not as a compound interest), which alone demonstrates that usury regulations were not successful in preventing the usurers to give credits at high interest rates as the regulated limit was also twelve percent.²⁸⁸ The main source of these funds were the cuts from certain taxes like *öşr*.

There remains a problem whether these cash funds gave credit in accordance with the legal strategems in a formal Islamic way to sidestep accusations of *riba*. Sources are scarce and historians in general do not discuss it. Yet, some scholars mentioning these institutions suggest that the officers undertook such transactions most notably the *bey bi'l-vefa* for it was close to a pawning transaction.²⁸⁹ After 1863, a funding (establishment of cooperations) process similar to that of the cash *vakıfs* was seen in Ottoman Empire. The pervasion of funds waited for some years until the “Memleket Sandığı Nizamnamesi” was promulgated in 1867.²⁹⁰ Records from different states show that the Tuna Province Cash Funds set a good example and the provincial officials recommended the establishment for the benefit of the local population.²⁹¹ In a

²⁸⁷ Yusuf Saim Atasâğun, *Türkiye Cumhuriyeti Ziraat Bankası 1888 - 1939*, 3 vols., vol. 1, *Türkiyede Zirai Kredi* (İstanbul: Kenan Basımevi, 1939).

²⁸⁸ Article 10 of the regulation: “Zirde beyan olunacak şerait üzere kefaletle veyahut rehin ile veyahut ikisi birlikte olarak Memleket Sandığından her kim talep eder ise yüzde bir faiz ile akçe ikraz olunacak ve fakat üç aydan aşağı ve bir seneden yukarı müddet verilmeyecektir.”

²⁸⁹ There are claims about the usage of muamele-i şeriyye in the *eytam sandıks*: Sabri Ülgener, “Monetary Conditions of Economic Growth and the Islamic Concept of Interest,” *The Islamic Review* 52, no. 12 (1964).

²⁹⁰ “Memleket sandıklarının sûret-i tertibi ve sermayesinin idaresi ve menafii ve temettüatının mahall-i sarfi hakkında nizamnamedir.” in *Düstur* 1. Tertip, 2. Cilt, (25.07.1867), 387.

²⁹¹ A record from Trablusgarp: “Trablusgarp vilayetinin bazı kazaları selemeçi takımı etmekte ve insafa mugayir güzesteler ile beldeyi hane-i harab eylemekte olduğundan bunun mütalebe-yi miriye-yi ve hasilatta temsil eylemek gibi esbaba ihtimam olunmakta ise de

sense this can be related to cash *vakıfs* and their rapid spread in the sixteenth century.²⁹² Other kinds of cash funds were also established such as *tekaüd*, *emniyet*²⁹³ and *eytam*²⁹⁴ for cooperative aid in certain provinces. Certain reports claim these funds helped improve the well being of the needy. The funds of orphans (*eytam sandığı*) once again had a privileged status in that they were allowed an interest rate above the regulated rate.

Then these provincial *sandıks* began to produce problems that firstly harmed themselves. These were mostly administrative problems such as providing credits to the rich and usurers instead of the needy. There also occurred the failure to collect the loans etc.²⁹⁵ Namık Kemal and other intellectuals for instance, evaluated the process and indicated that the efforts were positive yet unsatisfactory. They recommended some administrative measures in raising funds in order to continue operations.²⁹⁶ Moreover in the hope of a resolution, with some changes in the fund flowing and appointing of the officers, the *sandıks* were re-established with the name Menafi Sandıkları in 1883. Since the new *sandıks* were well recognized, all the cash funds of *memleket/menafi* and *emniyet* were united into one bank and The Bank of Agriculture (Ziraat Bankası) was founded in 1888 (1305). The bank incorporated all *sandıks* aiming to help the needy people and would lend money at an interest rate of six percent while accepting deposits at a four percent rate of interest. It was stated that the main

mukaddemden güzeştenin güzeştesi olarak kalmış olan düyünü görölmek ve ahalinin ihtiyacat-ı zarurilerinde dahi kendilerine isdar eylemek için daire-i vilayetce mevkiyesine göre bir iki memleket sandığı ittihazı halkça faideli bir tedbir ise de bunun bir daireye yapılması vech idüğüne ve bu kaidenin Tuna Vilayet-i celilesinde ittihaz ve kılındığı istihbar olduğuna mebni buna dair mahallerce mevki-yi icraya konulmuş olanlar ve seniyye buyurulan usul-ı icraat ve nizamatin lutfen olmağla ol babda..." in BOA, A. MKT. MHM. 354/49, 8 Z 1282 (24.4.1866).

²⁹² On the fast spreading of the cash *vakıfs*: Mandaville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire."

²⁹³ An İstanbul-based cash fund aiming to lend to the needy at low interest rates. This also was an initiative of Midhat Paşa. Ali Haydar Midhat, *Midhat Paşa : Tabsıra-ı İbret* (İstanbul: Hilal Matbaası, 1909-1910 [1325 R.]), 64.

²⁹⁴ The institutionalized system of the administration of goods of orphans. For more, see : Iris Agmon, *Family & Court : Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse: Syracuse University Press, 2006). Mehmet Çanlı, "Eytam İdaresi ve Sandıkları (1851-1926)," in *Türkler Ansiklopedisi*, ed. Hasan Celâl Güzel, Kemal Çiçek, and Salim Koca (Ankara: Yeni Türkiye Yayınları, 2002), 57-73.

²⁹⁵ Atasağun, *Türkiye Cumhuriyeti Ziraat Bankası 1888 - 1939*, 1, 6-7.

²⁹⁶ Namık Kemal, "Ziraatımız," *İbret (Yevmî Gazete)*1872 [1289], 1.

purpose of the Agricultural Banks was to redeem the peasants and thus help improving the wealth of the state in general.

The implementation of the Agricultural Bank took some years.²⁹⁷ It was to be established in every province of the empire. The bank was the incorporation of all sandıks aiming to help the needy rural people and would lend at a six to seven percent rate while accepting deposit at four percent.²⁹⁸

Güran observes that although The Agricultural Bank offered a vital service to the peasants, it could meet only a ten percent of the total credit demand.²⁹⁹ The bank did not show much efficiency in raising funds because the minimum-depositing limit was inefficient. Also the deposited funds were diverted to other fiscal institutions that had urgent cash needs at lower interest rates than that charged to peasants as records from the *Düstur* demonstrates.³⁰⁰ It also reports that the usurers or local notables (power magnates) used these funds for their own interests in the provinces.³⁰¹ The number of banks increased in the last years of the empire. Obviously people accepted them in general for all kinds of people deposited money and enjoyed interest generated by their deposits.

A petition from the Ottoman archives illustrates both the need for credits and the acceptance of such credits in the Ottoman Empire. An anonymous report advised to establish funds to help debtors (*İdane Sandıkları*) so the subjects did

²⁹⁷ A local news announcing about the bank , *Sabah Gazetesi (Pazar Sayısı)* 15 December 1889.

²⁹⁸ Sekizinci madde: Bankaya nakden akçe tevdi edenlere senevi yüzde dört faiz verilir. // Yirmi beşinci madde: Zürradan madaya akçe irbahı katiyen memnudur.

Yirmi Altıncı Madde: Akarı sırf mülk veyahut mukataalı vakıf yerlerden ise anı terhin ve arazi-i emiriye veyahut tahsisat kabilinden olan arazi-i mevkufeden ise vefaen ferağ ile temin-i deyn eyler ve vadesi hulülünde eda-yı deyn etmediği etmediği takdirde ol akarı ahale fûruht veyahut ferağ ile esmanından deynini eda etmek üzere Banka müdürünü vekalet-i devriye ile tevkil eder. *Düstur Tertip 1 Cilt 6, p 136 Ziraat Bankası nizamnamesi 19 Zilhicce 1305/ 27.08.1888*

²⁹⁹ Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*, 156.

³⁰⁰ Donald Quataert, "Dilemma of Development: The Agricultural Bank and Agricultural Reform in Ottoman Turkey, 1888-1908," *IJMES* 6, no. 2 (1975). Records from the *Düstur* shows the edicts about the allowance of such funds as domestic loans at five percent.

³⁰¹ "Teşkilâtlı Ziraî Kredi Tarihimize Toplu Bir Bakış," in *Yüz Yıllık Teşkilath Zirai Kredi* (Ankara: Ziraat Bankası Yayınları, 1964).

not fall into the hands of the *murabahacı*s or *sarrafs*. It was dated 1883 (1299). It gave such information on dealing with the usury in the provinces.³⁰²

3.3 Observations on the results of the war waged against usury

Were the anti-usury policies of Tanzimat governments successful? One can analyze this via the records of the Empire and by the social and cultural reflections of the concepts on the language. Political events and other important actions such as the first world economic crisis of 1878³⁰³ and the massive immigration into Anatolia with the loss of land in wars must all be taken into account when it comes to analyze a social and economic issue. The regulations were of minimal importance in the fight against usury because they were more likely to be a secondary application, mostly unable to prevent usurious transactions that would happen beyond the authority. However the funds/cooperations and banks that were established in the second half of the nineteenth century proved useful. On the other hand, no actual law or establishment could have full impact if it were not supported by both the government and the subjects whether wealthy or the poor.

In the Ottoman Empire, the *reaya* enjoyed use-rights in general while the state remained the custodian of this bare ownership, but new forms of proprietorship emerged. The wealthy *ağas* of the provinces used tools such as usurious credits and other methods mentioned to control and eventually own the land of the poor, indebted villagers/peasants. The Land Code of 1858 recognized the defense of land, preventing seizure due to unsatisfied loans, as it was also the

³⁰²“...Fukara ve muhtacin-i ahalinin sarraf ve murabahacılar tarafından duçar olageldikleri enva-ı suubat ve ağdar kulları zarar ve ziyanlar hakikaten merhamet ve atifet-i seniyye-i mülükanelerine şayan bir derecede olduğundan ... rıza-yı ali-yi hazret-i hilafetpenahileri hilafında olarak devam eden bu hale mani olmak niyet-i sadıka ve ubudiyet-i kâranesiyle gerek dersaadette ve gerek memalik-i mahruse-yi şahanelerinin bazı büyük şehirlerinde memalik-i sairede olunan bir nevi idane sandıkları tesisi zımında leffen atibe-yi ... hazret-i hilafetpenahilerine takdimine ictisar eylediğimiz layıha-yı bendeganemizde musarrah şerait-i esasiye ile bir idane şirketi teşkili için imtiyaz itasına müsaade-yi merhamet-i ... cenabı tacidarlarını istida ve istirhama mücaaseret eyledim...” in BOA, Y. PRK. AZJ. 6/95, 17 L 1300 (21 August 1883).

³⁰³ Şevket Pamuk, *The Ottoman Empire and European Capitalism, 1820-1913 : Trade, Investment, and Production* (New York: Cambridge University Press, 1987).

case earlier. But later, this ban on the seizure of property was lifted. Halil İnalçık's studies on big farms (*çiftlik*s) illustrate that the emergence of big farms and private proprietorship is linked to usury.³⁰⁴ The ban on seizing in such situations (*lex commisoria*)³⁰⁵ also applied in the Ottoman Empire though in reality the usurers did not obey it. Tefvik Güran also claims that this ban was overlooked in the eighteenth and the nineteenth centuries whenever the control was weak and thus the peasants were oftenly on the edge of losing their lands.³⁰⁶ Also, this ban was lifted gradually in 1860 and 1869.³⁰⁷ Documents and treatises report that such situations were common. For instance, a record of the early twentieth century claims a usurer-merchant had been taking the land of people for almost fifteen years in Palestine – Safed. Reported in the documents written by the population of the region that the way he attained those lands was by usurious means. This shows that the general situation did not change after the measures. There are exemplary cases mentioning about seventy-eighty percent interests charged. In one of them, the usurer is Kolalı Rüstem Ağazade Mehmet Ağa and he is of the merchant. When the people could not pay their debts to him, they eventually lose their land and house, which is a clear injustice. In the document, an investigator was being sent to Uşak for the matter.³⁰⁸ There are other documents about *muhtekir* and *murabahacı*s lending money to farmers with high interest rates and putting them in harsh conditions. One document warns about this condition and tells these were not normal debt cases. Therefore the verdict should be different.³⁰⁹

Such records show that while fighting usury, the state could not see all cases or respond to all complaints effectively due to the pressure of powers of that age.

³⁰⁴ Halil İnalçık, "The Emergence of Big Farms, Çiftlik: State, Landlords, Tenants," in *Landholding and Commercial Agriculture in the Middle East*, ed. Çağlar Keyder and Faruk Tabak (New York: State University of New York Press, 1991).

³⁰⁵ It was banned in European countries such as France, see: Hamide Topçuoğlu, *Kanuna Karşı Hile (Kanundan Kaçınma Yolları)* (İzmit: Selülöz Basımevi, 1950).

³⁰⁶ Güran demonstrates that such ban on seizing estates (*lex commissiora*) was inefficient in practice even in the eighteenth century. Güran, *19. Yüzyıl Osmanlı Tarımı Üzerine Araştırmalar*.

³⁰⁷ Ömer Lütfi Barkan, "Türk Toprak Hukuku Tarihinde Tanzimat ve 1274 (1858) Tarihli Arazi Kanunnamesi," in *Tanzimat 1*, ed. Commission (İstanbul: Milli Eğitim Bakanlığı, 1999).

³⁰⁸ BOA, BEO 286/21439, 22 Ra 1311 (2 October 1893).

³⁰⁹ BOA, MV. 83/125, 29 Ş 1312 (25 February 1895).

As mentioned, an important part of usurers were merchants of foreign countries and their rights were aggressively defended by those countries, along with the establishments of foreign courts.

CONCLUSION

In this research I examined the transformation of the *murabaha* and investigated its impact on common people in the Ottoman Empire. Although some studies on *riba* exist, the current literature does not cover all aspects of *riba*. A study in the field of economic history will have organic linkages to social history as well as political and legal histories. I assert that establishing the relationship between these sub-disciplines successfully necessitates close attention to language or the meanings carried by concepts.

While I focused on the nineteenth century Ottoman Empire, it is obvious that we need to look for the roots of credit/money-lending earlier in Ottoman history and indeed in the long Islamic tradition. The Ottoman administrators inherited the Hanafi doctrine and its methods to sidestep *riba* by means to use the gain on money in social and philanthropic purposes, some of which they created. The cash *vakıfs* and orphan properties were the main legitimizations of the Ottoman ulema, claiming the cash *vakıfs* maintained the Islamicity of the Balkans by aiding the population. There were cash *vakıfs* established for the sole purpose of helping out the members of some specific groups of artisans and shopkeepers (*esnaf*) in times of need. The establishment of *vakıfs* or funds to protect the property of orphans was common practice everywhere in the empire, providing a safe-haven for the orphans from mismanagement or consequent loss of their properties. This reveals the awareness of the Ottoman bureaucrats regarding the economic conditions such as inflation or debasements that would affect the well-being of its disadvantaged subjects. Since such institutions existed until the twentieth century, there was a continuation and consistency in the Ottoman bureaucrats' interest in the social welfare of their subjects. On the other hand the situation of usurers in Ottoman legal system can be considered as different as they faced no serious sentences. This was the case in most Islamic states in the course of Islamic history.

This study also investigated credit relations that were out of the reach of such institutions, i.e. cash *vakıfs* and orphan properties. The credit relations, the loans and debts that occurred among commoners, which can be tracked down in the law court and complaint records, reveal the approach of the state. There is not enough evidence suggesting that common people sought the dictated methods sidestepping *riba* such as legalized (borrowing) transactions or other sale agreements. The Ottoman administrators dictated these methods as a precaution for going around *riba*. In the provinces, it was a common practice for usurers to oppress those in need of money to gain more power.

Not all of the usury cases were presented before the courts, but available records present a representative sample both in terms of content and quantity. This paper uses cases from the nineteenth century seen in the reports of inspectors and other collective complaints. These cases were not normal debt grousers. Rather they mirror the conditions of the peasants. These peasants were on the edge of losing their properties due to usurious debt and other actions of usurers who took advantage of the neediness and ignorance of people. To settle such broad usury cases, the Ottoman Empire first issued a regulation to decrease the credit-grants to eight percent and made this a general regulation throughout the Empire. Gradually, the government increased the interest rate ceiling up to twelve percent since it was difficult to implement these regulations. The first two regulations used the same language. Clearly they were imposed on the *murabahacı* but not the cash *vakıfs* and orphan properties' establishments. Along with the regulations, the banking process had already started in 1852 as can be observed from a petition from the population of the Island of Sisam. The inhabitants of Sisam requested a bank to provide just interest rates, as they had suffered from usurers. The banking process continued with the establishment of cash funds, first in Piro; a town in the Tuna Province, where Midhat Paşa was governor. Due to its success, these funds spread to other provinces except the Arab lands, which did not approve legal transactions as they followed Hanbali and Maliki schools of law.

The next question I tried to answer has been legal strategems these cash funds and The Agricultural Bank used to justify their practices. One sees that the

banks worked on the basis of pawning with a more professional method thanks to the development of the European banking system. I assert that within the implementation of interest into the economy within such institutions, the concern regarding the sharia compliancy of profit on money vanished. Since the information provided that interest was not an alien to Ottomans, they took the sharia compliancy into account earlier.

The examination of interest rates shows another aspect of the Ottoman economic mindset. The standard rate ceiling was fixed at fifteen percent from the sixteenth century to the first usury regulation in the middle of the nineteenth century. This can be regarded within the *narh* regulation system in which the rates of gain and prices of foodstuffs were fixed in each region by both local actors and officials. This was an arrangement to control unjust income. Whether this policy succeeded or not is another issue.

This survey started with the recognition of key terms and concepts of Ottoman credit relations as it can be confusing and misleading because of the meanings they carry. Some scholars fall into the mistake of taking the concepts as stagnant similar to ones that are seen in Ottoman/Islamic law and such.

The evolution of *ribh* from a neutral concept to a negative one reveals the veils of *riba* in the Empire. *Murabaha*, a term used as the gain of credit is a case in point. Late Ottoman intellectuals came up with the idea of the evil *murabaha* and helpful *faiz*. They used *murabaha* to define usury and *faiz* to define interest, which they acknowledged as a natural phenomenon in economic life. This means *murabahacı* (that is the practitioners of *murabaha*) were perceived as oppressors who exercised power on others economically, essentially through lending practices. This reflection made way to the negative connotation of the concept. There are other transformations related to *murabaha*, *murabahacı* replaced and it is the change of *ribahor* (usurer) to the *murabahacı* and sometimes, if frequently, *muameleci* was used as a substitute especially in the second half of the eighteenth century.

The identity of these usurers still remains unanswered. They were labeled as *sarrafs*, *mültezims* or agents in the provinces. Merchants were labeled as

usurers as well. It is safe to claim that local notables were such as *ağas* and *beys* of villages and farms were usurers as well. The usage of *murabahacı* as an umbrella term to define different kinds of usurers might demonstrate the notion of economic oppression that leads us to *riba*. One also sees that ordinary people acted as usurers sometimes because of the absence of penalties and high profit margin.

The state did not intervene in the cases of usury unless it was brought to the judge. The main alarming point of usury for the state was obviously the well being of the reaya, namely peasants. Later came the more recent notion of economic development, which was accepted to be hand-in-hand with low (regulated) interest rates. Another concern of the state was the involvement of its officials in such cases. There were no penalties prescribed to the crime of usury with some exceptional pursuance that is to say unless usury involved other crimes. In addition, if an official with a relatively high rank (*kaymakam*, *mufti* or a similar ranking official) was caught red-handed in the practice of usury, he would be taken out or sent into exile. The modernist changes in legislation did not describe any measurements against the usurer although it was defined a crime that obligated penalty in the regulations. The structure of the Ottoman legal system within the changes it experienced in the nineteenth century is important in another sense. In the amended Land Code of 1858, one sees it was now possible to seize the land of someone as a penalty for not paying the debt. This was a new phenomenon, and obviously, usurers took advantage of it as one can observe from the complaints.

Some cases of usury as shown in Kütahya and Hüdavendigâr, present the failure of the Ottoman system in conserving socio-economic harmony. Although preventive measures in the second half of the nineteenth century proved efficient in part, they eventually failed because of the great amount of economic need for credits and the harsh fiscal problems the Empire encountered.

I can suggest many topics for further research since the topic is related to a good deal of other topics. The administration of orphan properties is a virgin area for example. The privileged status of cash *awkaf* along with the orphan properties in the Ottoman economy needs in-depth surveys. The money-lending

operations of *sarrafs* are another topic requiring attention. The actors of money-lending in the Ottoman Empire is an area that is virgin as well. Quantitative research regarding the relationship between price changes or profit rates and interest rates will also be welcomed in the area of economic history.

APPENDICES

Appendix A: Usury Regulations

The first state-wide usury regulation in 1852

Anadolu ve Rumeli taraflarında bulunan murabahacılar ve sair zengin kimesneler şuna buna ve hususuyla ashab-ı emlak ve çiftlikata ve ehl-i ziraat ve rencberlere fahiş ve ziyade güzeşte ile akçe virdiklerinden güzeştenin güzeştesini işletdiklerinden bunların muhâsebeleri görülerek ve güzeşmeleri senevi yüzde sekizden hesap olunarak fahiş ve ziyade güzeşmeler tenzil kılınmak ve icabına göre bir seneden beş seneye kadar münasib tekasite ve yeniden senedata rabt olunmak hususları nizam-ı umumi ittihaz olunarak geçenlerde bütün memalik-i mahruseme evamir-i aliyem neşr ü ilan olunmuş ise de bu defa istihbar ve tahkik olduğuna göre nizam-ı mezkurun icrasında bazı mertebe suubet ve müşkilat görüldüğünden bunun tadili icab iderek keyfiyet muahharan Meclis-i Vala-yı Ahkam-ı Adliye'mde bi'l-etraf tezekkür ve mütalaa olunub şöyle ki mal-ı eytam ve evkafın idanesi usul-i meşrua tahtında olduğu gibi Dersaadet'im sarraflarının dahi nizam-ı mahsus olduğundan bunlar kema-kan usul ve nizam-ı mukarreri vechile rüyet ve icra olunmak üzere bundan böyle ehl-i kura ve hırasetten ve ahali-i saireden her kim olur ise olsun murabahacıardan idane ve istidane etdikleri akçelerin güzeştesi kisesi beş yani senevi yüzde on iki guruş üzerine hesâb olunması ve beratlı Hayriye ve Avrupa tüccarıyla düvel-i ecnebiye tebaasından bulunanlar ekseri bazı mukavele üzerine akçe ikraz etmiş olacaklarından bunların nizamdan evvel olan mukavele ve senedlerine itibar ile ona tatbiken hesapları görülüp bundan sonra olacak mukavelelerine bakılmayarak ale'l-umum cümlesinin güzeşmeleri yüzde on iki guruş hesâbıyla olması ve evkaf ve eytam akçeleri ber-vech-i muharrer müstesna olduğundan bunların güzeşmeleri yine usul-i kadimesi vechile altı guruş bir rubdan tesviye kılınması ve bundan mukaddem ba-devr-i şeri kisesini altı guruş bir rub hesabıyla idane etmiş olan murabahacıların yedlerinde olan temessükleri tarihinden ve böyle olmayub da fahiş güzeşte ile vermiş olanların

ibtida akçe verdikleri tarihten itibar-ı muhasebelerine bakılıb kisesi beş yani senevi yüzde on iki guruş hesabıyla tesviye olunarak ziyadesinin tenzil olunması ve ashab-ı iktidardan olmayan ve fukaradan bulunanların deynleri de terazi-i tarafeyn bir seneden beş seneye kadar tekasit-i münasibeye ve yeniden senedata rabt ile tesviye olunub ashab-ı servet ve iktidardan bulunanlar zuhur eden deynlerini tekasite rabt etmeğe kalkışmaları dayinlerine gadri mucib olacağından bunların dahi münasib mehil ile ve dayinlerin rızasıyle tesviyesine bakılması ve işbu nizamdan mukaddem devr-i şeri ile idane olunmuş veyahud mutedil faiz yani yüzde on iki hesabıyla alınub virilmiş bulunan akçenin muhasebesi iade olunmayub da bi'l-karz bunlardan muhasebeleri iade olunmuşlar bulunur ise anların hal-i sabıkına ircayla on iki hesabdandan ziyade fahiş güzeşte ile alınmış akçe bulunduğu takdirde bu makulelerin işbu nizama tatbiken yüzde on iki hesabıyla muhâsebeleri rüyet ve tesviye etdirilmesi hususları nizam-ı umumi olarak tensib olunmuş ve keyfiyet taraf-ı eşref-i padişahaneme dahi arz ile lede'l-istizan nizam-ı mezkurun icrası hususuna irade-i seniyye-i mülükanem taallukuyla emr-i hümayun-ı şahanem sünuh ve sudur eylemiş mukteza-yı münifi üzre sair memalik-i mahruseme evamir-i aliyem takdir ve tesyir kılınmış olmağla siz ki müşar ve muma-ileyhimsiz size dahi Divan-ı Hümayun'umdan işbu emr-i celilülkadrım isdar ve tisyar olundu vusulünde keyfiyet-i irade-i seniyyem zir-i idarenizde bi'l-cümle mahallere ilan ve işaat ve kaffe-i mehakim-i şeriyeye ve mecalis-i memleket ceridelerine kayd ve sebt olarak ehl-i kura ve hırasetten ve ahali-i saireden murabahacılarla ahz u itası olanların muhasebe-i lazımleri hasbice rüyet birle balada muharrer nizamın hilafı bir mahalde bir güne harekete irae-i ruhsat olunmaması ve dayin ile medyunun rüyet-i muhasebeleri ve güzeşte ve tekasite rabtı hususlarında zinhar ve zinhar tarafeyne cebr ve ğadr muamelesi vukua getirilmeyerek ve nizam-ı mezkur evvelki gibi su-i istimal olunmayarak her halde hüsn-i icrası esbab-ı kaviyesinin istihsali irade-i katia-i mülükanem muktezasından olduğu malumunuz olduğda ana göre amel ve harekete ve mukaddemki emr-i şerifimde beyan olunduğu üzere idane ve istidane hususu dayin medyun beyninde hod be hod icra olunmayub meclis-i memleket marifetiyle ikraz ve istikraz itdirilmesine ve senedlerinin tanzimine hasbice dikkat ve nezaret olunub nizamdan sonra her kim olur ise olsun meclis-i memlekete haber virmeksizin hafice ikraz ve

istikraza ve hilaf-ı nizam senevi yüzde on ikiden ziyade güzeşte ahz u itasına cüret edenler olur ise tedibat-ı lazımelerinin icrasiyçün ism ü şöhretlerinin bamazbata ve ilam, Dersaadet'ime inha ve işarına sarf-ı vüs-ı makderet eylesiz.

The regulation of 1864

Memalik-i Mahruse-i Şahane'de cari olan murabaha maddesi için altmış sekiz tarihinde yapılan nizamın tadiliyle bu kerre müceddeden kararlaştırılan bazı usul ve kaideyi mutazammin layihadır.

Birinci madde: Devr-i şeri ile idane ve istidane olunan mal-ı eytamın ve kuyruklu tabir olunan senedi hamil olan sarrafanın ikraz eyledikleri akçenin faizleri hakkında mevzu olan nizam-ı bi'l-istisna sair şunun bunun ikraz eyledikleri akçelerin güzeştisi şehriye yüzde biri tecavüz etmemesi altmış sekiz senesinde neşr olunan nizam icabından olarak bundan ziyade faiz işlettirilmek devletçe memnudur.

İkinci madde: Dayin ile medyun beyninde yapılmış olan senette hadd-i nizamisinden ziyade faiz mukavelesi münderic olduğu surette işbu mukavele, muhakeme-i ticarete muteber tutulmayıp hadd-i mezkure tenzil edilecektir. Ve fakat bâlâda zikrolunan murabaha nizamının Memalik-i Mahruse'de neşr-i tarihi olan bin iki yüz altmış sekiz senesinden mukaddem vuku bulan istikrazatta yüzde birden ziyade faiz mukavele olunmuş olduğu takdirde tarih-i mezkure kadar mukavele ve senette muayyen olan güzeşte tamamı ile hesap olunacak ve o tarihten sonrası mikdar-ı nizamisine tenzil kılınacaktır.

Üçüncü madde: Hadd-i nizamisinden ziyade güzeştenin mikdarı deyn senedinde musarrah olmayarak re's-i mala zamm olunup da medyun tarafından delail-i makbule yani senet veya mektup veyahut muteber defter ibraz ile veyahut dayine yemin teklifi ile ziyade güzeştenin re's-i mala zammolunmuş olduğu inde'l-muhakeme sabit olur ise o halde madde-i atiyenin ahkamına tevfiikan muamele edilecektir.

Dördüncü madde: Deyn-i mutazammın senet ve medyun beyninde cereyan eden muhasebeden neşet etmiş ise muhasebe-i mezkurenin bed'i tarihinden ve eğer

mezkur senet teccid-i deyn mülabesesiyle yani akdemce medyunun diğer senedi olup da inkiza-yı vadede ziyade güzeşte zammıyla müceddeden tanzim olunmuş ise o halde atik senet tarihinden itibaren yürütülmüş olan faizden mikdar-ı fahişin nihayet on seneliği tenzil olunarak kusûrunun tahsiline hükmolunacaktır. Ve fakat bu on sene müddet murabaha fermanının tarih-i neşri olan bin iki yüz altmış sekiz senesini tecavüz edemeyecektir. Ve eğer hesap olunan işbu on senelik mikdar-i fahişi re's-i mal ile nizamen kabul ve tasdik olunan faiz mikdarından fazla zuhur eder ise işbu fazlanın dayinden istirdadı caiz olmayacaktır. Hatta dayinin yine o medyundan cihet-i saireden dolayı diğer matlubu olsa dahi işbu fazla o matluba mahsup olunamayacaktır.

Beşinci madde: Dayin ile medyun beyninde bi't-terazi hesabı kat' olunup re'sü'l-mal ve güzeştesi kamilen tediye olunmuş olan deyn için hadd-i nizamisinden ziyade güzeşte alınıp verilmiş olsa dahi iade-i hesabıyla güzeştesinin tenzili caiz olmayacaktır.

Altıncı madde: Güzeşteden başka, ahaliden subaşılık aidatı namıyla ve nam-ı aherle akçe alınmak katiyen memnu olduğundan böyle şeyler alınmış olduğu tebeyyün eder ise hükümetçe kabul olunacağı gibi bad-ez-in ahzına cüret edenlerin haklarında kanunen icra-yı ceza kılınacaktır.

Fi 16 Şevval sene 1280 - 25 Mart 1864

The regulation of 1887

Madde 1: İşbu nizamnamenin tarih-i neşrinden itibaren her nevi müdayenat-ı adiyeye ve ticariye faizinin hadd-i azamisi senevi yüzde dokuz olarak tayin kılınmıştır.

Madde 2: İşbu nizamnamenin tarih-i neşrinden mukaddem senevi yüzde on iki hesabıyla akdedilmiş olan faiz mukaveleleri işbu nizamın ilanı gününe kadar mer'i ve muteberdir.

Madde 3: Dayin ile medyun beyninde hadd-i nizamisinden ziyade faiz mukavelesi vaki olduğu ya da senette musarrah olmasıyla veyahut re'sü'l-mala

zammolunduđu isbat edilmesiyle tebeyyün eyler ise faizin miktarı senevi yüzde dokuza tenzil edilir.

Madde 4: İkrizatın faizi her kaç sene mürur eder ise etsin nihayet re'sü'l-mal miktarını tecavüz etmeyecektir. Re'sü'l-malı tecavüz eden faizi hükmetmekten bi'l-cümle hükkam (hakimler) memnudur.

Madde 5: İkrazata faiz-i mürekkep yürütülmesi caiz değildir. Ancak; Evvelen: Meblağ-ı müstakrize mahsuben üç sene zarfında medyun tarafından akçe teslim olunmamış bulunduğu Saniyen: Üç senede işlemiş bulunan faizin re'sü'l-mala zammı için dayin ve medyun beyninde ittifak hasıl olduğu halde yalnız üç senelik faiz-i mürekkep yürütülebilir. Ticaret kanunu hükmünce beyne't-tüccar hesab-ı cariden neşet eden faiz-i mürekkep muamelatı bundan müstesnadır.

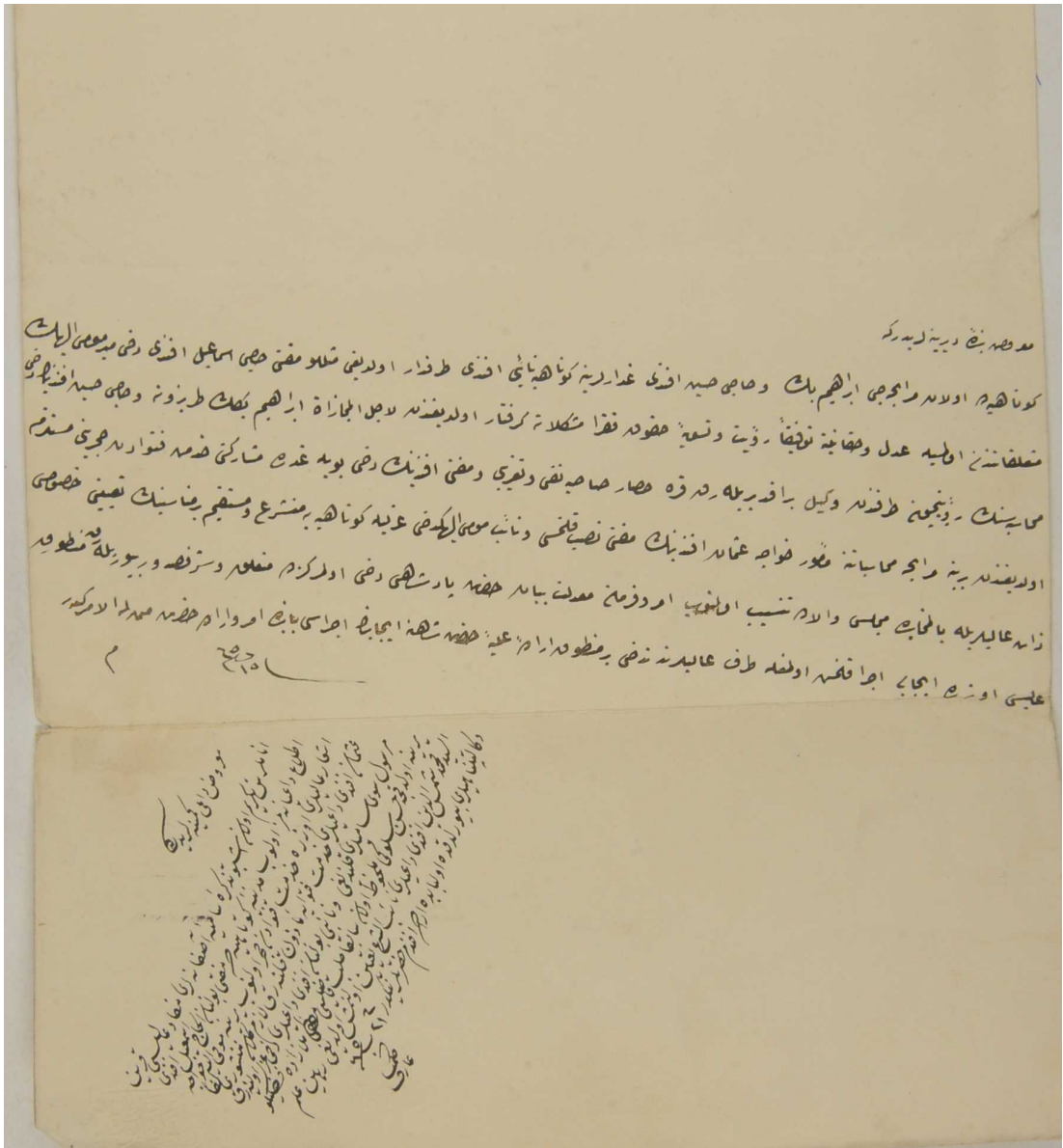
Madde 6: Dayin ile medyun beyninde muamele-i ikraz ve istikraz devam ettikçe, ister nakl-i hesap edilmiş olsun ve ister deyn senedi tecdid ve tebdil kılınmış bulunsun fahiş faizin hadd-i nizamisine tenzili iddiası mesmudur fakat kamilen tediye-i deyn edilmiş ve dayin ve medyun beyninde kat-i muamele kılınmış ise fahiş faizin istirdadı iddiası mesmu olmaz.

Madde 7: 16 Şevval sene 1280 (25 Mart 1864) tarihli Murabaha Nizamnamesi işbu nizamnamenin ilanı tarihinden itibaren mefsuhtur.

Madde 8: Adliye nezareti işbu nizamnamenin icrasına memurdur.

Fi 9 Receb sene 1304 Fi 22 Mart sene 1303 - 3 Nisan 1887

BOA, A. MKT. 205/83 (Religious officer is dismissed from his duty after involving in usurious transactions)



BOA, Y. PRK. AZJ. 6/95 (A treatise to establish a loan fund to help the needy against sarrafs and murabahacis, 1883)

شوکلو قدرتو عظمتو ملائلو مرصتو وضعتمت بتمت نادره من اذنه حضرت
جناب رب العالمیه دیا الرطو۔ رقم ذات اقدس لھیون لیری کلا شاک و شوکتند تحت عالیجت عمایانده بالصحی و العافی
دام و برقرار۔ یوسوه آمیه بجزت سیه المرسلیه فقرا و محتاجیه العالمیک صراف و مراجم جیلد طرقتند و وجہ اول
کله کدی انواع صعوبات و اوغرا و قری ضرر۔ و زیاندر حقیقه مرصت و عا طقت سیه ملولانه لریغ شایانہ بر درجه ده
اولد بقندہ مجرد رضای عالی حضرت خلد قینا لیری خلدندہ اولد رده و اولد ایدہ بوجاه مانع اولدو نیت صادق
و جوریکانہ سیه کون در سعادتده و کون محالک محروسه شہانہ لریک بعضه بون شہر لندہ مالک
سازده ده مودہ دویدیتہ بقید اولنامه بر نوع اولدہ صنف قری تأسیس ضمنہ لفاعتہ قلکمتہ حضرت خلد قینا لیری
تقدیم اجناس۔ ابلد بکنز لایحه نکلانہ مذده وضع شرائط اساسیہ ابلد بر اولدہ شرکتی تشکیلی اچوده اصناف اعصیه
ساعده مرصت عاده جناب تاجدار لیری استعما و استرمامه مجاست ابلد اولدایک و فاطمه احوالده ارضتند و
لطف و احسانه شوکتو قدرتو عظمتو مرصتو وضعتمت بتمت نادره من اذنه حضرت

وللی
وللی
عبدالکرم
جعف

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