INSTITUTIONALIZING JUSTICE IN A DISTANT PROVINCE:

OTTOMAN JUDICIAL REFORM IN YEMEN (1872-1918)

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İSTANBUL ŞEHİR UNIVERSITY

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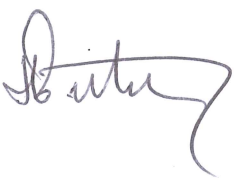
Signature: 

ABSTRACT

INSTITUTIONALIZING JUSTICE IN A DISTANT PROVINCE:
OTTOMAN JUDICIAL REFORM IN YEMEN (1872-1918)

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This study discusses the introduction of a new judicial organization in the Province of Yemen after 1872 with the second Ottoman conquest of the region. It presents the establishment and the abolition of the new Ottoman court system called the nizamiye courts and examines interim formulas produced to increase local people's inclination to the courts.

The Ottoman state transformed gradually its legal organization with the Imperial Decree of 1839. A codification of present Islamic principles and an adaptation of Western laws followed the Imperial Edict along with a new system of courts that began to take shape in 1864. Subsequently a new legal organization consolidated by 1879.

The state aimed to apply the new judicial organization in all provinces including Yemen after its conquest but it took some time to fully consolidate the new organization. The Ottoman government established nizamiye courts in the provincial center and in most sub-provinces and districts by 1879. Because the Yemenis were unaccustomed to applying to courts, the state reorganized the court system with some modifications. The state decided to abolish the nizamiye courts but sustained the şer'iyye courts in 1889. Subsequently, the government transformed the şer'iyye courts in ways that authorized them to implement nizami law.

This complicated and multi-dimensional story of the court organization in Yemen indicates the Ottoman state's commitment to its principle of providing justice to all its subjects. In addition, instead of interpreting the abolition of the nizamiye courts as a failure, this thesis argues that the flexibility of Ottoman practices

provided a gradual transformation of the legal system in Yemen that resulted in the re-establishment of the nizamiye courts with the agreement of local leaders. This thesis also demonstrates that in contrast to the common belief, the Ottoman state did not obtain uniform policies and practices while centralizing during the nineteenth century.

Keywords: Yemen, legal system, nizamiye courts, şer‘iyye courts.

ÖZ:

OSMANLI'NIN UZAK VİLAYETİ YEMEN'DE YARGI REFORMU
(1872-1918)

BOSTAN, HÜMEYRA.

MA, Tarih Bölümü
Tez Danışmanı: Doç Dr. Abdulhamit Kırmızı

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Bu çalışmanın amacı bölgenin 1872'de Osmanlı İmparatorluğu tarafından ikinci kez fethedilmesiyle beraber Yemen'de uygulanan yeni hukukî düzeni tanımlamaktır. Nizamiye mahkemelerinin kurulması ve lağvedilmesini ortaya koyarken yerel halkın mahkemelere rağbetini artırmak için kullanılan ara formüller de değerlendirmektedir.

Osmanlı devleti 1839 Tanzimat Fermanı'yla beraber adlî yapısını tedricî olarak dönüştürmeye başladı. Tanzimat'la beraber mevcut İslamî kurallar kanunlaştırıldı ve Batı kanunları kısmî olarak Osmanlı hukuk sistemine uyarlandı. Bunu müteakip 1864'de yeni mahkeme sistemi kurulmaya başlandı ve yeni adlî düzen 1879'da epeyce yerleşti.

Osmanlı devleti 1864 Vilayet Nizamnamesiyle beraber yeni hukuk düzenini tüm vilayetlerinde uygulamayı hedefledi ancak bu sistemin Yemen Vilayeti'nde uygulanması ve yerleşmesi diğerlerine nispetle geç oldu. 1879 tarihi itibariyle Yemen Vilayeti'nin merkezinde, pek çok liva ve kazasında nizamiye mahkemeleri kuruldu. Ancak halkın mahkemelere rağbet göstermemesi nedeniyle devlet mahkeme sisteminde bazı değişiklikler ve düzenlemeler yaptı. Bu çabaların da istenilen sonuçları vermemesi üzerine 1889 yılında nizamiye mahkemeleri lağvedildi ve yalnızca şer'iyye mahkemeleri varlığını sürdürmeye devam etti. Osmanlı hükümeti zaman içinde şer'iyye mahkemelerini de dönüştürerek nizami kanunlara göre hüküm vermeyle yükümlü tuttu.

Yemen'deki mahkeme sisteminin karışık ve çok boyutlu serencamı, Osmanlı devletinin adaletin tesisine verdiği önemi göstermektedir. Ayrıca nizamiye mahkemelerinin lağvedilmesinin bir başarısızlık olarak değerlendirilmesi de tartışılmaya muhtaçtır. Nitekim bu tez, Osmanlı uygulamalarının esnekliğinin Yemen'de hukuk sisteminin tedricî olarak dönüşmesini sağladığını ve belli bir müddet zarfında yerel halkın sisteme alışmasıyla beraber yerel liderler eliyle yeni mahkeme sisteminin kısmen tekrardan kurulduğu anlaşılmaktadır. Bu durum göz önüne alınınca, Osmanlı devletinin on dokuzuncu yüzyılda merkezileşerek tüm vilayetlerinde tek tip bir politika ve uygulama benimsediğine dair mevcut kanaatin de tashihe muhtaç olduğunu ortaya koymaktadır.

Anahtar Kelimeler: Yemen, hukuk sistemi, nizamiye mahkemeleri, şer'iyye mahkemeleri.

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ABBREVIATIONS USED IN FOOTNOTES

BOA, Başbakanlık Osmanlı Arşivi, İstanbul, Türkiye
(*Prime Minister's Archives Istanbul, Turkey*)

A. DVN. NMH.	Âmedî Dîvan-ı Hümayun Name-i Hümayun
BEO	Bab-ı Âli Evrak Odası (*Document Bureau of the Sublime Porte*)
DH. MKT.	Dahiliye Mektûbî Kalemi (*Ministry of Internal Affairs, Scribe's Office*)
DH.MUİ.	Dahiliye Nezâreti Muhaberât-ı Umûmiyye
İ. HUS.	İrade Hususi (*Special Decrees*)
MV.	Meclis-i Vükela Mazbataları (*Minutes of the Council of Ministers*)
Y. EE	Yıldız Esas Evrakı (*Basic Documents, Yıldız Palace*)

CHAPTER I

1. Introduction: Studying Judicial Reform in a Distant Province, Yemen

1.1. Introduction

Why should one study the reform of courts in the Ottoman state? A working legal system matters equally for the development of strong economies and long-lived states. An effective legal order provides a state that has both credibility among social actors and the capability of ensuring the implementation of the legislation adopted in political institutions. Thus, in order to understand how the Ottoman state lasted as long as it did, it is important to understand the effectiveness of its legal order including the legal reforms that it attempted and implemented in the nineteenth century. Nineteenth and early twentieth centuries are crucial to understand Ottoman transformation as well.

The Ottoman legal organization underwent a gradual but fundamental transformation after the Tanzimat edict launched on 3 November 1839. One of the significant changes that influenced the legal structure was the equality of all citizens before the law regardless of any religious or sectarian identity. The reforms sought to protect the rights of all Ottoman subjects before the law equally. Because of this, the legists wrote new codes according to new norms and the state decided to establish new courts that protected the rights of all citizens, including non-Muslims before the law.

A codification of present Islamic principles and adaptation of certain Western laws were among the immediate consequences of the Imperial Edict. The codification attempts were both a result of the Imperial Edict and a trigger of the new system of courts and eventually a new legal organization. A fundamental change in the court organization of the Ottoman state occurred in the Tanzimat era. The number and sort of cases brought before the courts in the nineteenth century increased and the classic style of Ottoman courts with only one judge could not manage increasing number of cases. These circumstances necessitated to establish new courts and to ease the burden of the şer'iyye courts.[1] In addition to this, codification was another factor that necessitated the establishment of new types of courts. There were no courts that could solve the legal controversies according to

[1] M. Akif Aydın, *Türk Hukuk Tarihi*, (Istanbul: Beta Basım Yayım, 2001), 423.

new codes and regulations. The şer'iyye courts were not able to apply new codes and regulations in their old style. Thus the state was in need of a new type of judicial organization. However, it cannot be possible to establish an entirely new type of organization abruptly given the existing social and political dynamics.[2] The statesmen of the Tanzimat period preferred to follow a gradualist road. Both the codification attempts and the introduction of new judicial bodies such as local councils and the like were a noticeable part of the judicial change that preceded the formal establishment of the new courts in 1864 and their final consolidation in 1879.[3]

The state aimed to bring the new judicial organization developed in the center to the provinces with The Provincial Law of 1864. Thus, the şer'iyye and nizamiye courts started to be established in all provinces of the Ottoman state gradually from places near to the center to the places remote from the center. Yemen was the remotest province to the center and one was only recently reincorporated into the general system of provincial administration. Thus, it took a bit longer to bring the new judicial organization to Yemen and to adopt it to local condition.

After Yemen became officially a province in 1872, the Ottoman administrative structure of the provinces began to be applied there too. The judicial organization present in all other provinces had to be applied in Yemen as well. The first governor of Yemen initiated the legal reforms by eliminating some old customs that contravened to Ottoman laws. Then, şer'iyye courts and the first instance courts were established in the provincial center and in most districts and sub-provinces and the appeal court was established in the center by 1879. However, the Yemenis were not used to applying to courts and showed no interest in Ottoman courts. In order to familiarize local people with new courts, the government warned the Ottoman judicial officials to be sympathetic toward people's customs.

Shortly after the establishment of the Nizamiye courts in Yemen, it became evident that these courts did not operate as desired and it was necessary to make some modifications in the court system. Moreover, certain judiciary practices and procedures further alienated the people from the government. Thus, the Ministry of

[2] Sedat Bingöl, "Tanzimat Sonrası Taşra ve Merkezde Yargı Reformu" *Osmanlı: Teşkilat*, ed. by Güler Eren, (Ankara: Yeni Türkiye Yayınları, 1999), 534-5.

[3] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity*, (New York: Palgrave Macmillan, 2011), 23.

Justice decided to abolish the nizamiye courts and to rule both civil and criminal cases in the şer'iyye courts where court observers selected from among local scholars served as consultants and facilitators of the courts' popular acceptance.

The story did not end here. The Ottoman government renewed its attempts to establish nizamiye courts. At the end, the government transformed the şer'iyye courts and let the implementation of some nizami laws under their authority. Then, the Ottoman state and the local ruler, Imam Yahya commonly decided to establish new courts similar to nizamiye courts with the Da'an agreement, which indicates that the court organization in Yemen was gradually transformed and bureaucratized.

The main questions that the thesis tries to answer are the following. What kind of a judicial system did the Ottoman state introduce in Yemen? How and why did people react to this system? How did the Ottoman government manage the indifference of local people to the courts? How was the court organization revised to local conditions? While trying to answer these and similar questions, I also reflect on the mentalities of the Ottoman leadership, their sense of "the rule of law" and their views of centralization. My main research question is to understand how and why the Ottoman judicial system changed in Yemen during 1872-1918. My main interest is to document how "legal reform" was instituted in Yemen and how or to what extent these new legal categories and institutions facilitated Ottoman rule. I argue that the abolition of the nizamiye courts was not a failure literally if we consider the gradual transformation of the court organization and the new legal system in time. The outcome deviated from the original plan, but it was also influenced by that plan.

1.2. Literature Review

The legal history of Ottoman Yemen is virgin territory. Only a few studies deal with the topic. However, books written about the legal organization of the Ottoman state in the nineteenth century and some books exploring the different aspects and dimensions of Ottoman rule in Yemen touch upon legal issues to some extent.

Before researching the case of legal reforms in Yemen, it is essential to understand the new court organization and its differences from the previous one. A few books discuss the emergence of new codes and courts in detail. Avi Rubin made an important contribution to the history of courts with his well-researched and well-argued *Ottoman Nizamiye Courts*, in which he concentrates on Ottoman judicial history during the reign of Abdulhamid II (1876-1909). His research provides great

background information about the establishment and operation of the courts as well as legal transformation. The book focuses on the history of nizamiye courts as a modern Ottoman institution and its relationship with the şer'iyye courts. Rubin thinks that the main target of the novelties in the Ottoman judicial system was creating a rational and professional bureaucracy.

One of the most significant arguments of the research is the need to move beyond the dichotomy of secular vs. şer'iyye courts that has dominated present historiography, Rubin claims that the nizamiye and şer'iyye courts were not contradictory but complementary with each other. Rubin claims that these new courts were a product of an amalgamation of Islamic and French judicial traditions instead of a replication of the French judicial system. He demonstrates that "the Ottoman project of judicial change was a typical case of legal borrowing that was highly selective, hence yielding a hybrid judicial legal system that consciously preserved indigenous, Islamic-Ottoman legal elements."[4] The Code of Civil Procedure clarified division of labor between the nizamiye and şer'iyye courts, as well as they "legitimized forum shopping by allowing litigants to take their civil cases to the şer'iyye courts under the consent of both parties."[5]

Rubin proves that the new judicial system fused traditional and modern elements in this transformation period. For instance, most presidents of the nizamiye courts were naibs, from the ranks of the ulema and employed by Şeyhülislam. The existence of naibs indicates legal pluralism instead of legal dualism as secular vs. şer'iyye. Jun Akiba deals with the transformation of the judgeship in the nineteenth century from kadı to naib not only in title but also in function and task.[6] Under the new system, the naib became the judge of both the şer'iyye and the nizamiye courts. Akiba sheds light on one aspect of the transformation but he prefers to use the title of secular court instead of the title of nizamiye court. This preferecnce indicates his approach that the legal system began to secularize at this time period, which is challenged by Rubin.

[4] Rubin, *Ottoman Nizamiye Courts*, 15.

[5] Ibid., 73.

[6] Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period." *Frontiers of Ottoman Studies: State, Province, and the West*. Vol. 1, ed. by Colin Imber and Keiko Kiyotaki (London and New York: I.B.Tauris, 2005).

Returning to Rubin, he observes that legal pluralism was not only at the level of courts and personnel but also at the level of legal texts. Instead of interpreting the codification attempts as sign of secularization in law, he writes, "the selective transplantation of French legal concepts, evident in the council system and the codification of criminal and commercial law was followed by the reinforcement of shari'a law in the form of the Mecelle."[7] According to Rubin, all these new codes were hybrid texts based on Islamic law and French legal texts. Rubin's work focuses only on the center, Istanbul. New studies of court organization in the provinces will likely raise questions about his interpretations. Still, Rubin's work is a significant contribution to our understanding of the legal transformation of the Ottoman Empire.

Avi Rubin interprets efforts to establish nizamiye courts and their quick abolishtment in Yemen as a "striking failure" in the history of the nizamiye courts. He claims that the effectiveness of the judicial reforms can be examined by an assessment of the implementation of the judicial reforms in regions that were considered culturally and geographically "remote" from the imperial center such as Yemen.[8] Rubin interprets the abolishment of the nizamiye courts in Yemen as a failure without considering the policies of the Ottoman government there and its several attempts to establish the nizamiye courts again. Instead of dealing with this topic in the context of success and failure as if things are only black and white, it will be more useful to understand the character of the Ottoman court system composed of a more bureaucratic, graded, having multiple judges and more systematic procedural laws and codes and trying to understand the motivations and conditions of the Ottoman government to abolish the courts and their efforts to reestablish them again. The interim formula according to which the state refashioned judicial regime is also important in understanding legal transformation in Yemen. Ottoman attempts at legal reform appear to have failed; they may be considered a partial success story in the long term. Even in 1911, the Da'an agreement referred to the re-organization of nizamiye courts in Yemen. Furthermore, in the long run, in the Republican period in Yemen in the 1960s, the court organization resembled the Ottoman system. Thus, it

[7] Rubin, *Ottoman Nizamiye Courts*, 32.

[8] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity*, (New York: Palgrave Macmillan, 2011), 51.

is necessary to consider the reconciliatory and accommodationaist policies of the Ottoman state to establish its bureaucratic structure there.

Another important contribution to Ottoman legal history of the Tanzimat period is Fatmagül Demirel's *Adliye Nezareti* (The Ministry of Justice).[9] The book is about the formation of the Ministry of Justice beginning in 1876 and its activities and operation until 1914. Demirel does not why she ends her research in the year of 1914. This study provides valuable information about the judicial organization managed by the ministry. She examines the ruler's regulations about the organization and operation of courts in the center and the provinces in detail. She describes the tasks of newly emerging services such as judicial inspector, public prosecutor, indictment committee, notary, attorney etc. She also looks at the process of transformation from şer'iyye courts to modern courts. She questions to what extent this newly established ministry could meet the needs.

Demirel does not question the secular vs. şer'iyye approach of conventional historiography and secularization of the legal system. Her study reflects the shari' backgrounds and foundations of the judicial logic of the Ottoman state, although she does not elaborate on this background. She focuses only on the institutional operation of the new system. She thinks that the establishment of the nizamiye courts was based on European legal system and that the codification attempts were likewise adaptations from Europe. Thus, she reproduces the well-known story. In addition, similar to Rubin's work, she does not much question the applicability of the theoretical organization and the actual cases in the provinces. Thus, the provincial application of the nizamiye courts is a great niche of nineteenth-century Ottoman legal historiography. Although historians can grasp the theoretical operation of the nizamiye courts in general with the guidance of these works, they remain insufficient in depicting the legal organization in the Ottoman Empire, which is certainly not composed of only the center, Istanbul.

Another account dealing with the topic of the nizamiye courts established after the Tanzimat is Ekrem Buğra Ekinci's *Osmanlı Mahkemeleri*. The book narrates the reasons and legitimacy basis of legal reform in the Ottoman Empire during the nineteenth century. He depicts the process of the establishment of the nizamiye

[9] See Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri (1876-1914)* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2010).

courts, the differences made at the legal organization throughout the century and the new implementation the şer'iyye courts. He touches upon the implementation of new court organization in privileged provinces such as Egypt, Sudan and Yemen but the information given in the book is limited to general information based on a few decisions in *Düstur*. Still, it is iseful to understand the general structure of the new types of courts in the Ottoman Empire.[10]

Only a few sources gave some opinions about the judicial organization in the provinces.[11] Abdulkerim al-Ozair wrote a doctoral dissertation, which is a comprehensive research about the administrative structure, judicial organization, military and security forces, and economic structure of Yemen.[12] Although the thesis aims at dealing with many significant issues, its descriptions remain insufficient to describe and understand the structures. Instead of making the effort to bring the conditions in Yemen to light, he presents the theoretical structure that likely influenced and altered the implementation of the regulations and the practice on the ground. Thus, it is not possible to see in this study the local conditions and dynamics that caused in high probability to the emergence of different practices. Al-Ozair does not provide much specific, empirical information about the judicial organization but repeats the general court organization of the Ottoman state in the nineteenth century.

On the other hand, books about various Ottoman provinces in the nineteenth century cover some aspects of the judicial organizations. For instance, Engin Deniz Akarlı analyzes the judicial organization as a mechanism of social consolidation in Mount Lebanon in his *The Long Peace: Ottoman Lebanon 1860-1920*.[13] He aims to understand the influence of reconciliatory policies of the government on the judicial

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[10] Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası*, (İstanbul: Arı Sanat Yayınları, 2004).

[11] See Khaled Fahmy, "The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth-Century Egypt" *Islamic Law and Society*, Vol. 6, No: 2. (1999) pp. 224-271; Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth-Century Egypt: The Role and Function of the Qadi" *Islamic Law and Society* Vol. 4, No. 1 (1997), pp. 70-90.

[12] See Abdulkerim Al-Ozair, "Osmanlı Devrinde Yemen'de Mahalli İdare (1266-1337/1850-1918)", (Phd. Diss, Marmara University, 2000). For his sources later published in Arabic, see. *Et-Teşkîlâtü'l-Merkeziyyetü'l 'Osmaniyye ve'l- İdâretü'l Mahalliyye fi'l-Yemen: 1850-1918*. San'a, 2003; Tetavvuru'l- *İdâretü'l Mahalliyye fi'l-Yemen*, San'a, 2012.

[13] See Engin Deniz Akarlı, *The Long Peace: Ottoman Lebanon: 1861-1920*, (London: The Centre for Lebanese Studies, 1993).

system in Lebanon. Similarly, Haim Gerber discusses the administration of Nizamiye justice in Ottoman Palestine concluding that the nizamiye court in the Jaffa strictly adhered to the procedural law and the court worked with integrity and fairness.[14]

Another account similar to Gerber's but directly relevant to Yemen is written by Thomas Kuehn. He studies the Ottoman administration of Yemen in order to understand Ottoman governance "of the periphery" and to expand the recent scholarship on modern imperialism. Kuehn claims that the Ottoman Empire developed colonialist attitudes toward the province of Yemen and its people. He distinguishes between imperial governance from colonial governance: whereas in the context of the former, difference did not always imply discrimination and a binary split into "we/they," colonizer and colonized, it did in the context of the latter. He wants to tell to what extent –if any- did Ottoman politics of difference in Yemen resembled the British, Dutch, French, or Russian colonial policies during the same period.[15]

Difference but not uniformity was the basis of pre-modern empires and the classical period of the Ottoman Empire was not an exception. However, since the 1840s, the Ottoman central government and its representatives sought to implement a uniform system of administration, taxation, military recruitment, and education throughout the empire, in an attempt to ward off both the encroachments of European imperial powers and the separatist challenges domestically. Despite Ottoman target to build a uniform rule in all parts of the Empire, Kuehn finds that Yemen was an exception because of the politics of difference applied there. Kuehn thinks that similar to their European counterparts, the Ottomans believed that that the Yemenis were not ready for the introduction of censuses, conscription, or the nizamiye courts.[16]

He interprets the abolition of the nizamiye courts as an indicator of the Ottomans' policy of difference in Yemen. As indicated above I disagree with him. Although Kuehn's book has a title that covers the period from 1849-1919, he talks

[14] See Haim Gerber, *Ottoman Rule in Jerusalem: 1890-1914*, (Berlin: Klaus Schwarz Verlag, 1985).

[15] Kuehn, *Empire, Islam, and Politics of Difference: Ottoman Rule in Yemen, 1849*-1919, (Leiden: Brill, 2011), 11. Also see. Ed. Thoms Kuehn. *Borderlands of the Ottoman Empire in the 19th and early 20th centuries.* "An Imperial Borderland as Colony: Knowledge Production and the Elaboration of Difference in Ottoman Yemen, 1872-1918."

[16] Kuehn, *Empire, Islam, and Politics of Difference*, 93.

about only the establishment and the abolishment of the nizamiye courts and does not take into consideration the remaining years where şer'iyye courts were charged with some nizami responsibilities. His research on the judicial organization does not cover the early twentieth century, thus his claim on the policy of difference could only be relevant for the immediate decade that followed reestablishment of the Province of Yemen in 1872. Even then certain important aspects of the Ottoman efforts to build a new judicial organization in Yemen should force him to revise his claim about the policy of difference, which in turn indicated Yemenis as being different in a colonialist mentality. Although Kuehn's well-researched thesis is helpful for understanding different ways of relationship between the center and the periphery, it is necessary to review his findings critically taking account that the Ottoman state in its leadership were so vulnerable to colonialist manipulations and condescension.

I do not discuss the concept of Ottoman colonialism here but it is important to note that Kuehn should have taken into consideration the political and economic context of the issue which is very essential for claiming a colonial situation because the colonial domination of the economy and to transfer economic surplus to the home country is the most basic feature of colonialism. Although the discourse of "difference" may be considered as an indicator of modern colonialism, it is important to take into account a huge literature that puts economic exploitation at the foundation of colonialism. It is necessary to have better grounded findings than a "discourse" of resemblance to attribute colonialism to a party that was half dominated by colonial powers. Despite this weak link in his argumentation, his valuable findings about the establishment and the abolition of the nizamiye courts provide insightful information and prepare the ground for a fruitful discussion.

Kuehn thinks that the abolition of the nizamiye courts was an indicator of the Ottoman government's colonial attitudes toward the indigenous population, conceived as savages incapable of benefiting from a civilized judicial administration. Most of the archival documents mentioned that because new court organization was against to the customs and dispositions of the Yemeni people, the nizamiye courts should be abolished. In my opinion, in contrast to other provinces that had been under Ottoman rule for hundreds of years, Yemen was unprepared for and unaccustomed to the Ottoman administrative structure and they could not easily adapt to the new system. The local conditions were not excuse for Ottoman

colonialism, but indicators of a need for gradual transformation. I will discuss my points further in my thesis.

Another significant account developing an insightful approach about the judicial structure of Yemen is Brinkley Messick's *The Calligraphic State*.[17] This anthropological account examines the "hegemony of the text" to understand different aspects of authority, its transmission to the society through education, its various interpretations, and versions of documentation. Thus, the book aims to understand the "hegemony of the text" from the main text of the Qur'an to daily legal recordings. His anthropological account has contributed much to our understanding of the operation of the Yemeni legal system focused in the city of Ibb from the Ottoman period to the Zaidi Imamate and the Yemeni Republican era.

Messick's central concern is to explore the relationship between knowledge, texts, text-makers and hegemony with regard to the specific textual category of the shari'a. The shari'a, he argues, should not be narrowly defined as "Islamic law", but as a "general societal discourse" expressing divinely-sanctioned rules and ideas relating to all spheres of life-familial, religious, economic and political.[18]

This account is a story of Yemen's transformation from a patrimonial to a bureaucratic state. Its bureaucratization began with the Ottoman administration in the nineteenth century and continued until the republican era. He describes in detail legal procedures such as arbitration, witnessing, hearing of petitions, and "open court" sessions held by rulers and judges. He also mentioned the role of muftis who "provided the sharia with an interpretive dynamism through the exercise of ijtihad in their fatwas" in informal dispute resolutions.[19] Messick describes how bureaucratization of the courts with Ottoman practices continued to be applied in the Republican age. Thus, the book is also valuable for providing information about the long-term consequences of the Ottoman practices.

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[17] See Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, (Berkeley: University of California, 1996).

[18] The Calligraphic State: Textual Domination and History in a Muslim Society by Brinkley Messick, Review by: Shelagh Weir, British Journal of Middle Eastern Studies, Vol. 21, No. 2 (1994), pp. 286-288. Published by: Taylor & Francis, Ltd.Stable URL: http://www.jstor.org/stable/195500. Accessed: 07/02/2013 13:50.

[19] Messick, *The Calligraphic State*, 149.

Another important source about the Ottoman rule in Yemen is Caesar Farah's *The Sultan's Yemen*, a historian famous for his studies on nineteenth century Yemen and conflicts between the Ottomans and the British for achieving sovereignty over Yemen.[20] Farah describes the Ottoman concerns over Yemen especially after the British incursions in the Arabian peninsula entail power struggles between the Ottomans and the British as well as local rebellions against the Ottoman rule provoked by the Italians and the British and for other reasons. However, Farah's account does not shed light on the legal aspects of the problems that the Ottomans faced in Yemen. It is not possible to explain the challenges to Ottoman efforts to reestablish sovereignty in Yemen without considering the challenges to the efforts establish a new judicial system there. Establishing an organized system of justice in Yemen was an indicator of Ottomans sovereignty there.

Overall, the present literature on the nineteenth-century Ottoman Yemen does not deal with the legal aspects of the Ottoman rule in Yemen as elaborately as the significance of the issue warrants. Some accounts have a few times to say about the judicial organization but none of them explains the judicial issues and pertinent detail using archival sources. There is also a tendency to see the abolition of the nizamiye courts in Yemen as a failure, which is open to discussion as well. This thesis aims to fill this gap. It will examine the judicial organization in Yemen and evaluate the abolition of the nizamiye courts in a broader context and with due attention to relatively long-term developments.

1.3. Research Sources

My research is based on such such as Ottoman and Yemen archival documents and the Yearbooks of the Province of Yemen. There are several Correspondences between the province of Yemen and the Sublime Porte about the issues, needs and requirements of the courts have been particularly useful. The Yearbooks of Yemen inform us about the organization of the courts in different sub-provinces and districts as well as the numbers, sorts and names of their staff.

In addition, there are many memorandums and reports written by Ottoman senior officials informing Istanbul about the conditions of Yemen and the problems

[20] See Caesar E. Farah, *The Sultan's Yemen: Nineteenth-Century Challenges to Ottoman Rule*, (London: I. B. Tauris, 2002).

of the existing courts. The reports written by the Commission of Reform established specifically to look into the problems encountered in Yemen inform us about both the conditions in Yemen and the priorities of the Ottomans regarding the betterment and reform of these conditions, including courts.

The thesis benefits from the relevant secondary sources as well, such as articles, theses, and books. Although there are no books and articles written about the organization of the nizamiye and şer'iyye courts in Yemen, Kuehn and Messick's books reviewed above present some evaluations about the novelties that the Ottoman judicial system introduced in Yemen. Thus, this study depends on governmental reports, memorandum, articles, journals, books, and works related to the judicial organization in the province of Yemen.

1.4. Outline of Chapters

The aim of this thesis is to reveal the Ottoman court organization in the province of Yemen and the novelties it brought to the legal understanding of the region. The thesis also questions the success and failure of the organization. It consists of five chapters as well seven appendices.

The introductory chapter covers the research objectives, literature review, research methodology, and research background. It starts with a brief history of the nizamiye courts and their implementation in the province of Yemen. Research methodology outlines the historiographical interpretations that inform the studies discussed and points to the positions adopted in this thesis. The literature review contains brief critical assessments of the most important books and articles written on the transformation of the legal system during the long nineteenth century and those about the history of Yemen regarding political and judicial reforms. Finally, the research background focuses on the materials on which the thesis relies and the main questions that the thesis tries to answer.

Chapter 2 outlines the transformation of the legal system after the promulgation of the Imperial Edict of Gülhane in 1839, which pointed to the shortcomings of the legal system as a reason for the regression of the state and mentioned the necessity of new legal arrangements. This chapter introduces the reader to the new codes promulgated in the new "reform" era initiated by the Gülhane edict, the effect of the conditions that the Ottoman state faced on legal reform efforts and the newly established courts which differed from the previous

organization in many aspects. The chapter also focuses on the establishment of the Ministry of Justice, for it systematically organized all new practices introduced into the legal system.

Chapter 3 provides a brief history of Yemen as an Ottoman province and its administration both in the sixteenth and nineteenth centuries. This chapter introduces the reader to previous legal practices in Yemen before the Ottoman rule and the new court organization introduced by the Ottoman government there. In addition, it explains the novelties that the new court organization brought to the region. The chapter also discusses the difficulties and problems that the government faced in Yemen in establishing the nizamiye courts, problems, which led to their abolishment at the end.

Chapter 4 shows how the existing şer‘iyye courts that began to work as nizamiye courts in time by hearing and settling cases according to the Mecelle, and the Ottoman criminal code and the new procedural laws. The chapter aims at explaining why people hesitated and refrained from applying to the Ottoman courts and preferred to apply to their fuqaha. In addition, the chapter aims to explain the insistence of the Ottoman state on integrating the local people into the new legal organization.

The conclusion summarizes the research findings and the main arguments of the thesis. It then discusses their historiographical implications and offers suggestions about future research prospects.

CHAPTER II

2. The Transformation of the Ottoman Legal Organization

2.1. Tanzimat: A Legal Transformation

During the long nineteenth century, the Ottoman Empire experienced a continuous process of change and transformation that had begun in the eighteenth century. In this new age, the state began to lose its large territories, became economically more dependent on foreign countries but also centralized and penetrated the society deeper than ever. The most radical change occurred in the relationship between the state and its subjects: whereas the Ottoman order was based on religious differences in its classical age, the state aimed to make such differences invisible and aimed to establish equality between Muslims and non-Muslims, through several economic, administrative, bureaucratic and legal reforms undertaken during the nineteenth century. The government declared this aim publicly with the Imperial Edict of Gülhane, on 3 November 1839. A whole series of reorganizational reforms called the *Tanzimat* followed the edict.

The Imperial Edict, after various explanations and assessments, showed the deficiency of the legal system as a reason of regression of the state and mentioned the necessity of new legal arrangements.[21] A significant aspect of the Tanzimat is that the state took international pressure and models into consideration in shaping its domestic law.[22] Subsequently, the Royal Edict of Reform, of 18 February 1856, confirmed that the ideals of the Tanzimat would apply to all people irrespective of their religion and sect. The edict declared that the courts would sentence punishments according to religious doctrines and codes; and the members of some specific commissions who would express their opinions freely would prepare the legal codes. Besides the statements that guaranteed the security of life, property and honor, the principle of not sentencing any extrajudicial punishment was taken as a

[21] Mustafa Şentop, "Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü" (On the Literature of Legislation Movements in the Tanzimat Era), *Türkiye Araştırmaları Literatür Dergisi,* Türk Hukuk Tarihi, vol. 3. No. 5 (2005): 647.

[22] Ibid., 652.

basis.[23] According to this edict, non-Muslim subjects would serve in government offices and they would be accepted at military and civil schools.

An effective legal system is an important principle of good governance embedded in the notion of "circle of justice", one of the providers of Ottoman longevity. Law is also an important instrument in transforming the society, economy and administrative structure. Therefore, Tanzimat was a gradual legal reform in itself and the novelties made in the legal system were "the most important and the most enduring".[24] It is significant to understand the process of legal transformation where Western ideas of law were introduced gradually since the experience and knowledge of Islamic legal practitioners and scholars remained insufficient.

2.2. Codification Activities

One of the consequences of the Imperial Edict was seen as a codification of present principles of Islamic law and an adaptation of Western laws. The codification attempts were both a result of the Imperial Edict and triggered by a new system of courts and legal organization. The earliest codified law was 1840 Criminal Code. Although some assert that it amalgamated provisions derived from both contemporary European codes and shari'a principles[25]; there is a general tendency to accept that there was no Western influence in its content.[26] This was the first original code prepared in the Tanzimat period and, in the words of Hıfzı Veldet, "it was influenced not by European regulations but by European worldview."[27] Although this code did not have the features of standard criminal codes of today and did not

[23] Bülent Tahiroğlu, "Tanzimat'tan Sonra Kanunlaştırma Hareketleri", *Tanzimattan Cumhuriyete Türkiye Ansiklopedisi* (İstanbul: İletişim Yayınları, 1985), 588.

[24] M. Akif Aydın, *Türk Hukuk Tarihi*, (Istanbul: Beta Basım Yayım, 2001), 421.

[25] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity*, (New York: Palgrave Macmillan, 2011), 24.

[26] M. Akif Aydın, "Ceza" *TDV İslam Ansiklopedisi*, Vol. VII: 481-2.

[27] Hıfzı Veldet, "Kanunlaştırma Hareketleri ve Tanzimat," *Tanzimat I*, (İstanbul: Milli Eğitim Basımevi, 1999), 176.

meet the needs of the society, it is the first code that adopts the principle of the legality of crimes and provisions that prevent to penalize arbitrarily.[28]

The second criminal code (*Kanun-ı Cedid*) dated 1851 did not include any novelty in its content compared to the previous one, but was more systematically organized and precise in its correspondence to Islamic criminal law provisions.[29] A significant principle accepted in this code is that in cases that require talion, there is no bindingness of the remission of criminals by their inheritors for the state. That is, even if the criminal was remissioned, the state would punish him/her. By this way, the institution of public prosecution entered Ottoman law.[30] The most significant criminal code of the Tanzimat was released in 1858, created as a combination of the 1810 French criminal code with local provisions.[31] This was the first systematic treatment of official transgression through codification.[32]

A committee under the chairmanship of Ahmed Cevdet Paşa collected all old and new land codes and regulations from the Supreme Court Office in addition to all fatwas and imperial decrees regarding land[33], and the Land Code (*kanunnâme-i arazi*) was promulgated in 1858. It was a significant attempt because the existing rules, which parted land into different types and divided each type of land into subcategories, were codified and they were gathered as determined, lucid and classified regulations.[34] Having almost no influence of Western regulations and thoughts on it[35], it was the most remarkable one among the codes prepared during the Tanzimat for its language, form and codification style.

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[28] Sedat Bingöl, "Tanzimat Sonrası Taşra ve Merkezde Yargı Reformu" *Osmanlı: Teşkilat*, ed. by Güler Eren, (Ankara: Yeni Türkiye Yayınları, 1999), 534.

[29] Şentop, "Tanzimat Dönemi Kanunlaştırma", 653.

[30] Ahmet Mumcu, "Tanzimat Dönemi'nde Türk Hukuku" *Adalet Kitabı* ed. by Bülent Arı, Selim Aslantaş (Ankara: Adalet Bakanlığı, 2007), 197.

[31] Aydın, "Ceza", 482.

[32] Rubin, *Ottoman Nizamiye Courts* 114.

[33] M. Akif Aydın, "Arazi Kanunnamesi." *TDV İslam Ansiklopedisi*. vol. III: 346.

[34] Veldet, "Kanunlaştırma Hareketleri ve Tanzimat", 186.

[35] Ibid., 180.

When the Ottomans granted commercial privileges to Russian merchants as well as unrestricted access to the Black Sea and the Mediterranean Sea with Küçük Kaynarca Treaty of 1774,[36] other foreign countries joined them and since the mid-eighteenth century, a growing number of Ottoman individuals, including Ottoman employees of foreign consulates and embassies, dragomans, merchants, moneychangers enjoyed the desirable official status of foreign protégés.[37]

The increase of commerce between Ottomans and Europeans posed a judicial challenge since Europeans did not want to go to the şer'iyye courts where they were in a disadvantageous position against Muslims because non-Muslims' testimony against Muslims and foreigner's testimony against *zımmî*s were not counted valid.[38] The influence of European countries on Ottoman policies turned oppressive eventually. Some European countries wanted the Ottoman state to adopt their legal system and regulations in order to obtain a political and judiciary upper hand in it.[39] European presence and oppression obliged the Ottoman state to use a new type of code and as a consequence of these, some commercial codes started to be adapted from European codes. Thus, in 1850, the Code of Commerce (*Kanunname-i Ticaret*) was adapted from the first section about general laws and the third section about bankruptcy of 1807 French Commercial Law. For this code, commercial law was considered as a separate field and whether this adaptation accorded with Islamic law and Ottoman practices were not considered. Then the Procedural Code for the Commercial Courts (*Usul-i Muhakeme-i Ticaret Nizamnamesi*) was promulgated in 1861. Because the commercial code was already adapted from French commercial code eleven years earlier, it was considered suitable to adapt the procedural method as well. The significance of this code is that it was the first regulation that differed, from shari'a proceedings.[40]

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[36] Kahraman Şakul, "Treaty of Küçük Kaynarca", 317-8.

[37] Rubin, *Ottoman Nizamiye Courts,* 27.

[38] Osman Öztürk, "Osmanlılarda Tanzimat Sonrası Yapılan Hukukî Çalışmalar ve Mecelle-i Ahkâm-ı Adliye", *Osmanlı: Teşkilat*. ed. by Güler Eren, (Ankara: Yeni Türkiye Yayınları, 1999), 504.

[39] Seda Örsten Esirgen, "Osmanlı Devleti'nde Medeni Kanun Tartışmaları: Mecelle mi, Fransız Medeni Kanunu mu?" (*OTAM*, v. 29, Spring 2011), 34.

[40] Şentop, "Tanzimat Dönemi Kanunlaştırma", 655-656.

The code of maritime commerce (*Ticaret-i Bahriye Kanunnamesi*), promulgated in 1863, was also adapted from the second section of the French Commercial Law in addition to being influenced by the maritime commercial codes of Prussia, Holland, Belgium, Spain and Italian city-states like Sardinia and Sicily.[41] Avi Rubin explains the significance of the adaptation of the commercial codes for it commenced the process of legal borrowing in general: "In the minds of the reformers and the legal community, it was recognized as a precedent that made a massive transplantation of civil law into the Ottoman legal system a viable option."[42]

The Mecelle was the first civil code of the Ottoman state and the first attempt to codify a part of Islamic law. Reasons that encouraged Ottoman jurists to create a code were the influence of codification activities in Europe, Bab-ı Ali's wish to appeal to European countries for some political reasons, the French pressure on Ottomans for the adaptation of the French *Code Civil*, and the desire to protect sharia law, and the establishment of the Council of Judicial Ordinances (*Divan-ı Ahkam-ı Adliye*) as being the highest of nizamiye courts under the presidency of Ahmed Cevdet Paşa.[43] In addition to these reasons, the Hanafi School was the most expanded, applied and developed one among the legal schools. As a consequence of this, there emerged a very rich legal literature, which also created different opinions and judgments on the same topic. Before the preparation of the Mecelle, the Ottoman jurists selected and used the most accurate opinion from among many but it was also difficult for judges to decide which was the most accurate and authoritative. Thus, it was deemed necessary to collect all authoritative majority view into one formal code to provide easiness and certainty.[44]

Two kinds of tendency emerged to meet the need for a new type of codification: the first group wanted to translate the French *Code Civil* into Turkish and the second group preferred to codify Islamic law which gained at the end the

[41] Şentop, "Tanzimat Dönemi Kanunlaştırma", 656.

[42] Rubin, *Ottoman Nizamiye Courts,* 26.

[43] Hulusi Yavuz, "Mecelle'nin Tedvîni ve Cevdet Paşa'nın Hizmetleri," *Ahmed Cevdet Paşa Semineri: 27-28 Mayıs 1985: Bildiriler* (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi Tarih Araştırma Merkezi, 1986), 62-3.

[44] M. Akif Aydın, "Mecelle'nin Hazırlanışı," *Osmanlı Araştırmaları*, no. 9 (1989), 41.

supremacy over the first one. Ahmed Cevdet Paşa, the Head of Council of Judicial Ordinances, was appointed to preside over the committee to draft the first Ottoman civil code called the Mecelle. The Mecelle Commision was established in 1868.[45] The committee created a one-hundred-articles draft and presented it to the *Meşihat* (the Office of the Chief Jurisconsult) and to the most notable jurists of the era. The introduction part and the first book were completed with necessary corrections in the lights of their criticisms. It was put in force on 20 April 1869 (8 Muharrem 1286). The rest of the Mecelle was prepared in parcels. As the committee completed each book, it became law with the decree of the sultan. The codification process continued for eight years. Having been prepared through such a process, Mecelle found easier acceptance. The opposition both from European countries and the *Meşihat* where *Şeyhülislam* thought that Mecelle should be prepared by themselves, not by the Ministry of Justice, remained in effective.[46] In 1879, the activity of the Mecelle Commission ceased because it was thought that it accomplished its mission.

Mecelle, which was consisted of sixteen books and 1851 articles, was prepared based on the *Hanafi* fiqh and on the assumption that cases not mentioned in the Mecelle should be handled according to the *Hanafi* fiqh. The aim of preparing the Mecelle was to use it at *Nizamiye* courts because the duties of aforementioned courts were limited to cases mentioned in Mecelle while şer'iyye courts continued to rule cases regarding the law of persons, family and inheritance.[47] Mecelle is an attempt to codify provisions regarding general principles and injunctions of Islamic law of things and law of obligations as well as procedures.[48] It can be said that the jurists who prepared the Mecelle gave priority to rules that could be applied to all Ottoman citizens equally, irrespective of their religion or sect. Each religion and sect applied its own civil law of persons, family and inheritance. It might be predicted that

[45] Aydın, "Mecelle'nin Hazırlanışı," 227.

[46] Ibid., 49.

[47] Osman Kaşıkçı, "Osmanlı Medeni Kanunu: Mecelle," *Adalet Kitabı*. ed. by Bülent Arı, Selim Aslantaş (Ankara: Adalet Bakanlığı, 2007), 230, 234-236.

[48] Şentop, "Tanzimat Dönemi Kanunlaştırma", 653.

applying a standard law for all religions and sects particularly in the cases aforementioned would draw a great reaction at that time.[49]

There are different interpretations of the Mecelle as a code of sorts. It was undertaken under the influence of European ideas, and was not an Islamic but a secular code, according to Schacht. The Mecelle was not a code in the European sense but rather a "nonconclusive digest of existing rules of Islamic law", for Khadduri and Liebensky. Rubin criticizes both interpretations for their "either-or" approach as if there were only two ends: the shari'a and European codes, or religious and secular laws. He writes: "These options do not take into account the possibility that a full-fledged civil code could be a hybrid legal artifact, containing both Islamic and European features."[50] Although European influence and enforcement is obvious in the codification of Mecelle, it is crucial to see its roots in the Hanafi fiqh and the effort it represents to systematically express certain maxims, principles and injunctions embedded in Islamic legal tradition.

The codification activities of the Tanzimat were crowned with the first Ottoman constitution (*Kanun-ı Esasi*), which was enacted in 1876. Some think that it took the 1831 constitutions of France and Belgium and some the 1850 constitution of Prussia as a model. In any case, it maintained the basic essences of Ottoman political and legal structure in addition to integrating some new rules and institutions.[51] The promulgation of the first constitution was similar to that of the 1839 and 1856 reform decrees. It was a natural continuation of the modernization process. It consisted of one hundred and nineteen articles collected under twelve different topics.[52] The first article of the constitution emphasized "the preservation of the independence and the territorial integrity of the Ottoman Empire". The sultan retained great powers and his *irade* was required before any bill became law. No time limit was set for the Sultan's veto power implied by this provision. The constitution emphasized the equality of all Ottoman subjects—again an extension of the *Osmanlılık* doctrine characteristic of

[49] Kaşıkçı, "Osmanlı Medeni Kanunu: Mecelle", 235-6.

[50] Rubin, *Ottoman Nizamiye Courts,* 30-31.

[51] Şentop, "Tanzimat Dönemi Kanunlaştırma", 657.

[52] M. Akif Aydın, "Kanun-ı Esasi" *TDV İslam Ansiklopedisi*. Vol. XXIV: 329.

the Tanzimat period. Millet distinctions were then conscientiously eliminated as far as possible. All Ottoman subjects were stated to be equal before the law, to have the same rights and duties, and to be equally admissible to public office according to merit.[53] This code shows that the state was determined to provide equality among its citizens and realized that this equality could be sustained primarily through legal system.

The Procedural Code for the Criminal Courts (*Usul-i Muhakemat-ı Cezaiye Kanunu*) was promulgated in 1879. It was almost completely adapted from the French equivalent. French books served as models even for the commentaries written on this code.[54] The legists did not consider the compatibility of it to the general structure of Ottoman and Islamic law probably because the criminal law in force was based on the French Penal Code and the Mecelle's section on procedures had little direct reference to criminal matters.[55] Besides, Islamic law books did not deal with criminal procedure in detail. The provisory law for the procedure of civil courts (*Usul-i Muhakemat-ı Hukukiye Kanun-ı Muvakkatı*) promulgated in 1880 was more in accordance with Islamic legal principles. The procedural code for civil courts was prepared by the Mecelle Commission based on a draft law which was actually written ten years earlier when the *Şura-yı Devlet* was first established at a time when the legists were more sensitive to be compatible with Islamic law. Also, the Mecelle as a law in effect included procedural injunctions and a law about the same issue had to be compatible with it.

2.3. The Establishment of New Councils and Courts

A fundamental change in the court organization of the Ottoman state occurred in the Tanzimat era. The number and sort of cases brought before the courts in the nineteenth century increased and it could not be managed with the classic style single-judge, first-instance Ottoman courts. These circumstances necessitated to

[53] Davison, Roderic H. Davison, *Reform in the Ottoman Empire: 1856-1876* (Princeton: Princeton University, 1963), 386-388.

[54] Veldet, "Kanunlaştırma Hareketleri ve Tanzimat", 199.

[55] Şentop, "Tanzimat Dönemi Kanunlaştırma", 657-659.

establish new courts and to ease the burden of the şer'iyye courts.[56] Codification was another factor that necessitated the establishment of new types of courts. There were no courts that could solve the legal controversies according to new codes and regulations. The şer'iyye courts were not able to apply new codes and regulations in their old style. Thus the state was in need of a new type of judicial organization. However, the social and political dynamics did not allow establishing a completely new type of organization abruptly.[57] The statesmen of the Tanzimat period preferred to follow an evolutionary road. Both codification attempts and the introduction of new judicial bodies such as local councils etc. were a noticeable part of the judicial change that preceded the formal establishment of the new courts in 1864 and their final consolidation in 1879.[58]

Sultan Mahmud II established the *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* (the Supreme Council of Judicial Ordinances) in 1838, which might signify the beginning of the process that eventually led to the emergence of the Nizamiye courts. Rubin evaluates the establishment of such a high court as a "potential to challenge the judicial monopoly of the şer'iyye courts."[59] It took over the legislative duties of the old Divan-ı Humayun in order to originate or review proposed legislation and thereby create an "ordered and established" state by means of "beneficent reorderings" (tanzimat-ı hayriyye) of state and society.[60] The Supreme Council was primarily in charge of legislation in certain, limited fields, but it also served as a high court for cases that originated from such legal bodies as the governors' divans in the provinces and other qualified judicial organs.[61]

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[56] Aydın, *Türk Hukuk Tarihi*, 423.

[57] Bingöl, "Tanzimat Sonrası Taşra ve Merkezde Yargı Reformu", 534-5.

[58] Rubin, *Ottoman Nizamiye Courts,* 23.

[59] Ibid., 24.

[60] S. J. Shaw, "Medjlis-i Wala", *The Encyclopaedia of Islam*, vol. VI: 973. For detailed information about the authority and duties of *Meclis-i Vâlâ-yı Ahkâm-ı Adliye*; see. Ali Akyıldız. "Meclis-i Vâlâ-yı Ahkâm-ı Adliyye.", *TDV İslam Ansiklopedisi,* Vol. XXVIII: 250-251.

[61] M. Macit Kenanoğlu, "Nizamiye Mahkemeleri" *TDV İslam Ansiklopedisi*, (Vol. XXXIII), 185.

There were also similar attempts to create a new kind of local administrative structure as a result of which, new local councils, referred to as *Meclis-i Muhassılin* (Council of the Overseas of Tax Collection) were established in 1840, and renamed as *Memleket Meclisi* (Provincial Council) in 1842. These councils replaced the role of şer'iyye courts in administrative affairs but not their judicial functions in shari'a cases.[62] Administrative councils in the provinces and sub-provinces were modeled after the examples of *Meclis-i Vala* (Supreme Council) in the center. They also performed judiciary duties from 1849 until 1862. Although these councils were not being established as courts, the task of adjudication was given to them after the criminal code of 1840 and they turned into courts later.[63] Findley interprets the assignment of judicial functions to local councils as a mark for another important step toward the creation of the nizamiye courts, which were similarly collegial bodies.[64] However, it is still significant that the şer'iyye courts, being a well-developed institution, were defined as *mahkeme* (court of law), the non-shari'a judicial organs were still defined as *meclisler* (councils).[65]

The 1840s witnessed the development of a system of commercial courts, beginning with a single one in Istanbul, where cases between Ottoman subjects and non-Ottomans were tried before a panel of judges, also of mixed nationality.[66] A system of penal courts to hear cases between parties of mixed nationality also came into existence, starting in 1847. In commerce and criminal courts, if one side was Muslim and the other non-Muslim, or if one was non-Muslim and the other a foreigner, then the trial should be done publicly at *muhtelit* (mixed) courts. For some legal cases, non-Muslims could apply to their own patriarchate.[67] Accepting the testimony of non-Muslims might be considered as a turning point in Ottoman legal understanding as it differentiated from a basis of Islamic law.

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[62] C. V. Findley, "Mahkama", *The Encyclopaedia of Islam*. vol. VI: 7.

[63] Kenanoğlu, "Nizamiye Mahkemeleri", 185.

[64] Findley, "Mahkama", 7.

[65] Rubin, *Ottoman Nizamiye Courts,* 28.

[66] Findley "Mahkama", 7; M. Akif Aydın, "Mahkeme." *TDV İslam Ansiklopedisi*. Vol. XXVII: 344.

[67] Mumcu, "Tanzimat Dönemi'nde Türk Hukuku", 193.

During the 1840s and 1850s, the government began to establish such criminal courts such as *Meclis-i Zabıta* (the Gendarmerie Council) for *kabahat* (misdemeanors); *Divan-ı Zaptiye* (the High-Council of the Gendarmerie) for *cünha* (serious offenses); and *Meclis-i Tahkik* (the Council of Investigations) for *cinayet* (homicide) in Istanbul. This move initiated the separation of the criminal cases from şer'iyye courts.[68] The councils consisted of a president (reis), a member of the ulema (the learned class), five Muslim members (âza), and four representatives of the non-Muslim communities. The inclusion of non-Muslims in the administration of justice exhibited the Ottoman commitment to the modern principle of equality before the law, a principle that was stated in the Imperial Decree of 1839 as indicated above.[69]

The Council of Investigations, which were established for the application of the criminal code in 1854 created the core of nizamiye courts.[70] The court system developed with the courts of commerce that were established under the Ministry of Commerce according to the 1860 Supplement to the Code for Commerce (Ticaret Kanunname-i Hümayununa Zeyl)[71]. Until 1879, the commercial courts were subordinate to the Ministry of Commerce, and there was a court for commercial appeals at the ministry in Istanbul. These commercial courts had one or more presidents and four or more members (aza), two of the latter being "permanent" and two "temporary". The presidents and the permanent members were to be officials, while the "temporary" members were to be merchants, chosen by assemblies including the prominent merchants of the locality, or later, once such bodies had come into existence, by the local chamber of commerce.[72] All these innovations in the court organization led to the establishment of nizamiye courts.

[68] Veldet, "Kanunlaştırma Hareketleri ve Tanzimat", 203.

[69] Rubin, *Ottoman Nizamiye Courts,* 24-5.

[70] Kenanoğlu, "Nizamiye Mahkemeleri", 185.

[71] Veldet, "Kanunlaştırma Hareketleri ve Tanzimat", 203.

[72] Findley, "Mahkama", 7; Aydın, "Mahkeme", 344.

2.4. The Establishment of Nizamiye Courts

The promulgation of the *Tuna Vilayeti Nizamnamesi* (Regulation of the Danube Province) of 7 November 1864 represented an important step in judicial reorganization.[73] This regulation initiated a pilot project. After its successful implementation in the Province of Danube under Governor Midhat Pasha, the model served as the basis of a new law of Provincial Administration for the entire empire in 1867.[74] Signifying a transition from the phase of administrative experimentation to that of a generalized system of administration, this legislation redefined the imperial administration of the provinces. The laws established new administrative units arranged in a hierarchical structure and run by salaried bureaucrats appointed by the central administration. This was the first move to abolish the former *eyalet* system and to introduce the term *vilayet* in the formal administrative vocabulary on this date. The regulation defined the borders and the administrative authorities of the province. Each province (*vilayet)* was divided into *liva*s (sub-provinces), *liva*s into *kaza*s (districts) and *kaza*s into *kura* (villages). They were governed respectively by *liva kaymakamı, kaza müdürü* and *muhtar*.[75] Provincial capitals had an administrative significance and were responsible for the lower administrative units in their jurisdictions.[76]

The regulation also formalized the legal organization that continued to change since the 1840s. As a result of the administrative, civil and criminal cases all being discussed in the same place, there occurred some confusion in the local councils,

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[73] *Düstur (Birinci Tertip),* İstanbul-Ankara: Başvekalet Neşriyat ve Müdevvenat Dairesi Müdürlüğü, 1289-1322, p. 625; *Takvim-i Vekayi,* def'a 773, (7 Cumadelahire 1281/26 Teşrin-i Evvel): "*Tuna Vilayeti nâmiyle bu kerre teşkîl olunan dairenin idare-i umumiyye ve hususiyyesine ve ta'yin olunacak me'murlarının suret-i intihablarıyla vezâif-i dâimesine dair nizamnamedir*." (p.2) The date of the Provincial Law of 1864 is given mistaken in most of the present literature. See. Seyitdanlıoğlu in "Yerel Yönetim Metinleri III: Tuna Vilayeti Nizamnâmesi" (7 Cemaziyelevvel 1281/8 Ekim 1864), p.81; Seyitdanlıoğlu, *Tanzimat Döneminde Modern Belediyeciliğin Doğuşu* (7 Cemade'l-ahir 1281/8 Ekim 1864), p. 67.

[74] Abdulhamit Kırmızı, "Rulers of the Provincial Empire: Ottoman Governors and the Administration of Provinces: 1895-1908" (PhD diss., Boğaziçi University, 2005), 33; Abdulhamit Kırmızı, *Abdülhamid'in Valileri: Osmanlı Vilayet İdaresi: 1895-1908* (İstanbul: 2008), 26.

[75] Kırmızı, Rulers of the provincial Empire", 33; Kırmızı, *Abdülhamid'in Valileri*, 26-27.

[76] Rubin, *Ottoman Nizamiye Courts,* 28.

making it difficult to build a working legal system. The Provincial Law stated that the administrative and judicial functions of the local councils should be separated in order to resolve the confusion. To this end, the judicial function became independent of the duties of the local councils and was taken over by the new courts.[77]

Numerous features of the system of 1864 reflect its incipient state of development. These include reliance on şer'iyye court judges, as well as the fact that the hierarchy of courts thus far had only two echelons. [78] According to the Provincial Law of 1864, a *Meclis-i Temyîz-i Hukuk* (Council of Judicial Appeals) and a *Meclis-i Kebîr-i Cinayet* (High Council of Crimes) should be established at each *vilayet* and *liva*. *Müfettiş-i hükkâm* (judicial inspector of judges) presided over the Council of Judicial Appeals in the provincial center and the qadı (judge) presided over the council in sub-provinces. These courts were in charge of cases that were appealed from the council of sub-provinces and from the council of districts, respectively. [79] Both councils consisted of three Muslim and three non-Muslim members in addition to one *memur-ı mahsus* (special officer). The members were to be elected by the same procedure as the elected members of the local administrative council (meclis-i idare) that became the successor, under the 1864 law, to the earlier *memleket meclisi*. [80]

Deavî meclisi (a council of legal cases) was to be established in each *kaza* (i.e. the administrative district headed by the *kaymakam*) and this council was to be presided over by hakim (shari'a judge) and it was consisted of two elected Muslim and two non-Muslim examiners (*mümeyyiz*).[81] The councils at subdistricts were in

[77] Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period." *Frontiers of Ottoman Studies: State, Province, and the West*. Vol. 1, ed. by Colin Imber and Keiko Kiyotaki (London and New York: I.B.Tauris, 2005), 54.

[78] Findley, "Mahkama", 7.

[79] Bingöl, *Tanzimat Devrinde Osmanlıda Yargı Reformu*, 157-9; Seyitdanlıoğlu, 54 article 18-19; Seyitdanlıoğlu, 58: article 40-41.

[80] Findley, "Mahkama", 7.

[81] Seyitdanlıoğlu, *Tanzimat Döneminde Modern Belediyeciliğin Doğuşu,* 61: "*Ellibeşinci madde: Her re's-i kazâda bir meclis-i daâvi olub iş bu meclis hâkim-i kazânın riyâseti tahtında olmak üzere mümeyyiz nâmıyla ikisi müslim ve ikisi gayrimüslim dört a'zâdan mürekkeb olacaktır ve bunlar beşinci bâbda mestur olan nizâma tatbîkan intihâb olunacaklardır.*"; Bingöl, *Tanzimat Devrinde Osmanlıda Yargı Reformu*, 160; Kenanoğlu, "Nizamiye Mahkemeleri", 185: Kenanoğlu gives the number of members mistakenly three.

charge of hearing to cases regarding misdemeanors and serious offences (kabahat and cünha). şer'iyye courts would continue to hear all legal cases –except those handled by the provincial councils, non-Muslim community institutions, and the commercial courts.[82]

The reform established a centralized judicial organization, in which one sharia court and one nizamiye[83] court were set up in each administrative unit, and one judge was appointed by the centre to preside over both of these courts. In this new order, sharia judges assumed a new duty: the office of the chief judge of the nizamiye court.[84] The shari'a judges, now termed *naib*s, were members of both the judicial and the administrative councils. At this stage, the entire judicial system, including the commercial and criminal courts but excluding the administrative cases, was still subordinate to the office of the Şeyhülislam.[85]

After a three-year successful experience in the Danube Province and a few other places, the state decided to generalize the regulation to all provinces with some revisions. A new *Vilayet Nizamnamesi* (Provincial Regulation) became law in 21 June 1867 (18 Safer 1284). The differences of this regulation from the previous one in legal matters was the abolishment of the *Meclis-i Cinayet* (the council of crimes) in the provinces, sub-provinces and districts; and the increase in the number of members at districts from four to six.[86]

A new policy of separation of powers had been already introduced in 1838 with the establishment of *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* (the Supreme Council of Judical Ordinances). The Supreme Council was then separated into two bodies; one called the *Şura-yı Devlet* (Council of State) that was intended as the main legislative body of the state and the other was called *Divan-ı Ahkam-ı Adliyye* (High Court of

[82] Bingöl, *Tanzimat Devrinde Osmanlıda Yargı Reformu*, 160; Seyitdanlıoğlu, 61: article 56.

[83] Although Jun Akiba calls it "secular court", I prefer the title of nizamiye to use the original name of the court used by the Ottoman state and to avoid different connotations of the word, secular.

[84] Akiba, "From Kadı to Naib", 53-54.

[85] Rubin, *Ottoman Nizamiye Courts,* 29.

[86] Bingöl, *Tanzimat Devrinde Osmanlıda Yargı Reformu,* 178.

Justice) and had judicial functions.[87] The highest level of nizamiye justice became the responsibility of the High Court of Justice, which was a court of appeal for criminal and civil courts.[88] The new regulations separated the high court of justice, the nizamiye courts and the şer'iyye courts from each other formally. However, because their position and authority were not differentiated clearly, this separation this separation continued to cause confusions for long years.[89]

Three regulations about nizamiye courts were promulgated successively in 1869, 1870, and 1872. There are many common points between all three but there are some differences as well. The promulgation of these regulations one after another signifies the administration's endeavor to improve the nizamiye courts and to make them effective as well as centralizing the legal system.[90] With these regulations, in order to reduce the financial burden, the offices of the inspector of judges and the *merkez naibi* in provincial centers were abolished and replaced by the single office of the *naib* called *merkez-i liva naibi* and an inclusive system of naibship was finally established.[91] The nizamiye courts were also divided into two levels as *bidayet mahkemesi* (the court of first instance) and *istinaf mahkemesi* (the court of appeals).[92] These regulations reflect the Ottoman state's desire to transform and develop the legal system step-by-step while keeping the social and political dynamics in perspective.

2.5. Nizamiye Courts After the Establishment of the Ministry of Justice

The changes in the legal organization and promulgation of new codes and courts after the Tanzimat reform rescript in 1839 culminated in the establishment of the *Adliye Nezareti* (Ministry of Justice). Because the establishment and organization

[87] Findley, "Mahkama", 8.

[88] Aydın, "Mahkeme", 344.

[89] Veldet, "Kanunlaştırma Hareketleri ve Tanzimat", 203.

[90] Bingöl, *Tanzimat Devrinde Osmanlıda Yargı Reformu*, 208-9.

[91] Akiba, "From Kadı to Naib", 54.

[92] Bingöl, *Tanzimat Devrinde Osmanlıda Yargı Reformu*, 212.

of nizamiye courts and restricting the authority of şer'iyye courts took some time, the foundation of the Ministry of Justice was extended over a period of time.[93] The promulgation of the "*Islahat-ı Adliye Hakkında Ferman-ı Ali*" (The Rescript on Judiciary Reform) on 11 December 1875 (13 Zilkade 1292), initiated significant changes. The archival sources begin to refer to the Ministry of Justice from 1876 onward.[94] The nizamiye court organization also changed with the foundation of the Ministry of Justice to some extent and it became systemized. The general structure of the *Nizamiye* court system was formed of three judicial levels: the court of first instance (*bidayet mahkemesi*), the court of appeal (*istinaf mahkemesi*) and the court of Cassation (*temyiz mahkemesi*).

2.5.1. The Courts of First Instance

There were three levels of the Courts of First Instance: *kaza* (the district), *liva* (the sub-province), and *vilayet* (the provincial center). In each of these units, there was a court of first instance that heared cases in accordance with its hierarchical status.[95] *İhtiyar meclisleri* (the councils of elders) in villages and *nahiye meclisleri* (the councils of sub-district) in sub-district examined and heared minor offenses, which did not exceed one hundred and fifty *kuruş*es and cases that a peaceful settlement could not be achieved.[96] However, Rubin claims based on his findings at the British National Archives that these councils were not recognized as courts of law proper and the agreements they facilitated could not be brought before the courts as legal evidence.[97]

Kaza Bidayet Mahkemesi (The District Courts of First Instance) examined the civil and criminal cases that did not exceed five thousand *kuruş*es without the

[93] Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri (1876-1914)* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2010), 31.

[94] Ibid., 31-2. Demirel gives the gregorian date mistakenly as 12 December.

[95] Rubin, *Ottoman Nizamiye Courts,* 34.

[96] Demirel, *Adliye Nezareti*, 144-5.

[97] Rubin, *Ottoman Nizamiye Courts,* 33.

possibility of appeal. The cases that exceeded this amount were examined open to appeal. Because there were low numbers of cases in the districts, the same council heared both the criminal and the civil sections, except in the Rumelian districts. The District Courts of First Instance could hear cases from the councils of sub-districts open to appeal. These courts could also place final judgments for misdemeanors or minor offences (*kabahat*) of crime courts but their judgments for crimes of medium severity (*cünha*) were open to appeal. As for the court's jurisdiction regarding civil cases, they decided the cases that did not exceed five thousand *kuruş*es but their judgments regarding cases about real estate properties that had annual benefit of five hundred *kuruş*es were open to appeal.[98] In districts that lacked courts of commerce, the courts of first instance addressed commercial disputes as well. In the late 1880s, there were forty-seven specialized courts of commerce in the empire.[99]

The Courts of First Instance in Sub-provinces and Provincial Centers had an equal status. They had civil and criminal sections. Each section had its own panel, consisting of a president and two members. Additional clerks, assistants, and bailiffs as needed assisted the panels.[100] However, these divided sections were united later on. The president of the civil section, the *naib,* became the president (*reis-i evvel)* and the president of the criminal section became the vice-president *(reis-i sani)*. The Ministry of Justice nominated and the Sublime Porte appointed them.[101] In courts of first instance that maintained the division between the civil and the criminal sections, the president was a Ministry of Justice official.[102] The Courts of First Instance at

[98] Demirel, *Adliye Nezareti*, 147-148.

[99] Rubin, *Ottoman Nizamiye Courts,* 34.

[100] Ibid., 34. Demirel gives such a standard for the staff of the courts: 1 *reis* (president) + 2 *aza* (member) + 1 *aza mülazımı* (junior clerk). There should also be 2 *kâtip* (court clerk) + 1 *icra memuru* (debt enforcer) + 2 *mübaşir* (bailiff) + 1 *müdde-i umumi muavini* (vice public prosecutor) + *mustantık* (investigating magistrate) in each section. (Demirel, *Adliye Nezareti*, 150)

[101] Demirel, *Adliye Nezareti*, 150. Akiba mentions that after the establishment of the Ministry of Justice, the Ministry began to appoint judges of the criminal courts directly. The law also introduced the new procedure of recruitment and appointment of nizamiye court judges. While it was never fully realized, the law provided that an official from the Ministry of Justice should be present at the Committee for Selection of the Sharia Judges to check the naibs' qualifications for serving at the nizamiye courts. In spite of these pressures, the naibs' double role continued until the end of the Empire. (Akiba, "From Kadı to Naib", 55)

[102] Rubin, *Ottoman Nizamiye Courts,* 34.

Sub-provinces and Provincial Centers could place final judgments for offences (*kabahat*) of crime courts but their judgments for crimes of medium severity (*cünha*) were open to appeal. The cases that were open to appeal at the districts were examined in the sub-provinces again remaining open to appeal. The Courts of First Instance at sub-provinces could also hear cases from the district courts of first instance; their decisions were open to appeal.[103]

The Ottoman Empire had huge territories that were governed from the center to some extent. There always was a difference between the *Dersaadet* as being not only "the administrative nerve center of the empire, but in its capacity as the city where the sultans resided" and *taşra* (the provinces). The division between the center and the provinces was reflected in institutionalized markers of prestige, namely, the establishment of first-class and second-class judges.[104] This division between the center and the provinces can be observed in the applications of *nizamiye* court system, as well. *Dersaadet Bidayet Mahkemesi* (the Court of First Instance in Istanbul) had a different structure than its equivalents in the provinces. It was divided into three sections, namely the courts of first instance in Istanbul, Beyoğlu and Üsküdar. There was a president, two court members and one junior clerk (*aza mülazımı*) at the court of first instance in Istanbul. The number of sections at the courts had a higher number of sections in Istanbul in comparison to the provincial courts.[105]

2.5.2. The Courts of Appeal

The court of appeal is a place to request a formal change to a decision issued by a court of first instance.[106] These courts would hear only the cases that were already decided in the courts of first instance. As prescribed by the Code of Civil

[103] Demirel, *Adliye Nezareti*, 151.

[104] Rubin, *Ottoman Nizamiye Courts,* 33.

[105] Demirel, *Adliye Nezareti*, 152.

[106] For more information about the appeal and cassation in Islamic law, see Şentop, Mustafa. "Şer'iyye Mahkemelerinde Temyiz ve İstinaf XIX. ve XX. Yüzyıl." Master Thesis. Marmara Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, 1995.

Procedure, litigants could appeal decisions of the lower civil courts in civil disputes that involved the minimum amount of five thousand *kuruş*es, or which pertained to properties of a similar value.[107] There was a formal guideline for the appellate petitions to follow. For instance, it was important to consider the time within which to appeal – as determined by the law. For instance, the litigants were allowed to appeal the judgment of a court of first instance in sixty-one days (thirty days after 1911) and they should appeal the judgment of a sub-district council in ten days.[108]

The provincial courts of appeal could be divided into civil and criminal sections according to the size of the province. Each section consisted of one president and four court members (two permanent and two temporary). The president of the civil section in the provincial courts of appeal was the *naib* as *reis-i evvel* and the president of the criminal section was *reis-i sani* nominated by the Ministry of Justice and appointed by the Sublime Porte. The president of the provincial courts of appeal that was not divided into two sections was *naib* (shari'a judge) however because the *naib* was also the president of şer'iyye courts and had duties on the administrative council, he could not attend most of the courts and the second judge took his place. The provincial courts of appeal had the authority to hear cases that came from the courts of first instance open to appeal and they could hear crime cases of medium severity (*cünha*) but their judgment were open to appeal.[109] The criminal sections of the appellate courts also served as first- instance courts for homicide (cinayet) that occurred in their respective sub-province, upon the recommendation of an investigatory body called Indictment Committee (*hey'et-i ithâmiye*) and the public prosecutor. A judgment about a murder case would be appealed only at the Court of Cassation.[110]

Each province was required to have a court of appeal but this was not possible in practice. Because there was not a court of appeal in each province, going to another province was time-consuming and expensive. This situation discouraged the

[107] Rubin, *Ottoman Nizamiye Courts,* 35.

[108] Demirel, *Adliye Nezareti*, 162-3.

[109] Ibid., 155-7.

[110] Rubin, *Ottoman Nizamiye Courts*, 35; Demirel, *Adliye Nezareti*, 157.

litigants. The courts of appeal were abolished in 1924 because they delayed the ruling process and increased expenses. The Court of Appeal in Istanbul (*Dersaadet İstinaf Mahkemesi*) differed from its equivalents in the provinces. It was divided into four sections for cinayet (murder), *cünha* (crime of medium severity)*, hukuk* (civil) and *ticaret* (commerce). The president of the murder section was *reis-i evvel* (the first judge) and the presidents of other sections were *reis-i sani* (the second judge) and each section had four members.[111]

2.5.3. The Court of Cassation

With the foundation of the Ministry of Justice, *Divan-ı Ahkam-ı Adliyye* (High Court of Justice) was abolished and *Mahkeme-i Temyiz* (Court of Cassation) was established. [112] The task of the Court of Cassation was to reverse or to approve the sentences of the courts of first instance and appeal after duly review.[113] The court did not revise the actual ruling of a lower court. If the Cassation Court found an irregularity in a civil, commercial, or criminal court decision and hence reversed it the case had to be retried in the same court that originally heard it or depending on the agreement of both parties it was sent to another of the same instance for retrial.[114]

The court consisted of a civil, criminal and petition sections. A civil section to reverse or approve the certain sentences coming from the courts of first instance and appeal; and a criminal section to examine sentences regarding crimes of low and medium severities and examined sentences of murders ex officio. *İstida dairesi (*the petitions section) was added in 1887. The task of this new section which was to examine appellate petitions and decide whether they met legal requirements or not. The civil and criminal sections had six members each and the petition section had four members. [115] There were head examining official (*mümeyyiz*), necessary number

[111] Demirel, *Adliye Nezareti*, 168-161.

[112] Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası* (İstanbul: Arı Sanat Yayınları, 2004), *Osmanlı* Mahkemeleri, 214.

[113] Demirel, *Adliye Nezareti*, 166

[114] Rubin, *Ottoman Nizamiye Courts,* 36.

[115] Demirel, *Adliye Nezareti*, 167-170.

of examining official and a court clerk present in the court. In order to be a member of the Court of Cassation, it was required to be over forty years old and have served as the president of court of first instance or have served as member of the court of appeal for four years. The presidents of the Court of Cassation could only be selected from among the members of the same court or from among the members of the appellate courts. Both the members and the president were nominated by the Minister of Justice and appointed by the Sultan.[116]

2.5.4. The Courts of Commerce

The Courts of Commerce that were a part of the Ministry of Commerce, were put under the Ministry of Justice in 1875. There were several commercial courts in the provinces and the imperial center. If the provincial courts of commerce were not divided into land and maritime sections, it was composed of one president, two permanent and four temporary members in addition to one or two junior clerk, one head clerk, necessary number of court clerk and bailiff. In those provinces where court of commerce was not established, the civil section of the courts of first instance heared commercial cases on condition that there was a temporary commercial member.[117]

The capital had its own unique arrangement: *Birinci Mahkeme-yi Ticaret* (the First Court of Commerce) addressed disputes between Ottoman and foreign merchants; each day was dedicated to merchants of a specific nationality. *İkinci Mahkeme-yi Ticaret* (the Second Court of Commerce) addressed disputes between Ottoman merchants regarding, commerce and bankruptcy.[118] *Ticaret-i Bahriye Mahkemesi* (the Court of Maritime Commerce) decided the cases about maritime commerce and addressed disputes that involved both Ottoman and foreign merchants. The court should have a foreign member and a translator in disputes that

[116] Ekinci, *Osmanlı* Mahkemeleri, 214.

[117] Demirel, *Adliye Nezareti*, 186-189.

[118] Rubin, *Ottoman Nizamiye Courts,* 34; Demirel, *Adliye Nezareti*, 194.

involved foreigners. It was also an appellate court for maritime commercial cases.[119]

The Ottoman legal organization underwent a gradual but fundamental transformation in the Tanzimat era. A significant change in legal outlook that influenced the new legal structure was the commitment to the idea of the equality of all citizens before the law irrespective of their religious or sectarian identity. The reforms sought, on the one hand, to eliminate the Muslims' legal privileges and, on the other, to bring its Christian subjects back under direct Ottoman state jurisdiction who had become protégés of foreign states.[120] Consequently, the legists wrote new codes according to their new perspective and the state established new courts that protected the rights of all Ottoman subjects before the law equally.

A famous historian of the Reform Age, Carter Findley draws attention to the change in the terms from *nizam* or *nizam-name* to *kanun* or *kanun-name*. However, he thinks that the change in the terms does not obscure the continuity, at least as far as the underlying legislative authority is concerned, between the reformist legislation and the kanuns of earlier centuries. He thinks that "Rather, the two sets of terms are nearly synonymous; and the designation of major political periods of the reform era in terms of nizam or its derivatives is symbolic of the new shift in the historic balance between kanun and sharia. The practice of referring to the new courts created in this period as nizamiyye courts signifies that they were responsible for trying cases under the new laws."[121]

Another significant change after the Tanzimat was that the old courts had only one judge while the new nizamiye courts had more. Although the court organization underwent many changes during the nineteenth century, the basic concept remained the same: the court consisted of several judges, both Muslim and non-Muslim members from the local community, and was presided over by a professional judge appointed by the imperial center.[122]

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[119] Demirel, *Adliye Nezareti*, 194-5.

[120] Quataert, *The Ottoman Empire*, 66.

[121] Findley, "Mahkama", 6.

[122] Rubin, *Ottoman Nizamiye Courts,* 24-5.

By the 1870s, these regulations covered subjects such as appointment by examination, ranks, duration of terms of service, maintenance of systematic service records, and—once again—salaries. While some of these concepts, such as examinations and ranks, had long been known among the ulema, others were new. Taken as a whole the regulations signify the evolution, here as in other branches of government service, of essentially modern patterns of personnel administration.[123]

The concept of separation between the judicial and the administrative powers, which emanated from the French doctrine of the separation of powers, was stated in the Ottoman provincial laws. However, the new councils were dynamic sites of social and political interactions at the local level, involving the imperial government, members of the local elite, and the wider population. Local notables served in both judicial and administrative councils at the same time, while identifying the new opportunities for exercise of power that were embodied in the new councils. The tension between ideals and realities with regard to the concept of separation of powers persisted in later years.[124]

[123] Findley, "Mahkama", 6.

[124] Rubin, *Ottoman Nizamiye Courts,* 29.

CHAPTER III

3. The Legal Organization in the Province of Yemen

3.1. A Short History of Yemen under the Ottoman Rule

Yemen was an important region for the Ottoman state for its role in the protection of the Hijaz and especially for being located on the intersection point of spice trade routes as well as having a shoreline on the Red Sea. The northern region of Yemen where almost everything can be grown makes Yemen a fertile country. It is known in the Ottoman sources as "*Khıtta-i Yemaniyye*" means the lands of Yemen.[125] It became a part of the Ottoman State for the first time in 1538 with the initiatives of Hadım Süleyman Paşa, the governor of Egypt, during his campaign to India. He organized Ottoman Yemen as a sanjak composed of Zebid and Aden and laid the foundations of the Governorate of Yemen by appointing Mustafa Beg as "governor and judge".[126]

Following their naval victory, the Ottomans besieged Ta'iz by the year 1539 and San'a by about 1547 after a prolonged siege. Then, San'a became the capital of Ottoman Yemen being the official residence of the governor-general, the first being Özdemir Paşa.[127] During Özdemir Paşa's governorship (1549-1555), Yemen was under full control. Due to its wide territories, Yemen was separated into two provinces for a while but as a result of the conflicts between the governor-generals and internal disturbances, the two provinces were united again. Because a stable order could not be provided because of the rebellions between 1598-1635, the administration of Yemen was gradually transferred to Zaidi Sheikhs.[128]

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[125] Mustafa L. Bilge, "Agricultural and Industrial Development in Yemen during the Ottoman Era", in *Proceedings of the International Congress: Yemen During the Ottoman Era: Sana'a 16-17 December 2009*. Ed. Halit Eren. (İstanbul: IRCICA, 2011), 21.

[126] İdris Bostan, "Yemen" *TDV İslam Ansiklopedisi*, Vol. XXXXIII, 407.

[127] G. R. Smith, "al-Yaman" *The Encyclopaedia of Islam*, vol. XI: 273.

[128] Bostan, "Yemen", 408-9.

Map 3.1. Map of Ottoman Egypt and Arabia During the Sixteenth Century[129]

After the withdrawal of the Ottoman army, the major force throughout the country was the Qasimi dynasty that was composed of Zaidi Imams. The Qasimi rule followed the administrative and financial structure established by the Ottoman state in Yemen and the Ottoman officials and soldiers remaining in Yemen ranked in this new administration. The Ottoman merchants also continued to shuttle around the coasts of Yemen to conduct coffee trade.[130]

However, the Ottomans awoke and remobilized when they realized the British demand to occupy the region and promote British commerce there by obtaining permission to make a coal depot in Aden in 1839.[131] The British colonized the port-

[129] Donald Edgar Pitcher, *An Historical Geography of the Ottoman Empire*, (Leiden: E. J. Brill, 1972), 142.

[130] For a detailed information about the relations of Qasimis and the Ottoman state during the 18th century, see. Ayşe Kara, "XVII. ve XVIII. Yüzyıllarda Osmanlı Yönetiminde Yemen ve Kasimiler Dönemi", (MA diss., İstanbul Universityi 2011).

[131] Caesar E. Farah, The Sultan's Yemen: Nineteenth-Century Challenges to Ottoman Rule, (London: I. B. Tauris, 2002), 120-130. For the confrontation between the Ottoman state and the British, see.

city of Aden in Yemen (bordering the Red Sea and the Indian Ocean) in 1839, and the Ottoman Empire incorporated the highlands to the north in 1872.[132]

The second arrival of the Ottomans to Yemen occurred when *Türkçe Bilmez* Bey revolted against Mehmed Ali Paşa, the Governor of Egypt, and entered Yemen in 1833 with the soldiers gathered from Jiddah. Hodeida and Asir had been taken and valis and mutasarrıfs started to govern a part of Yemen under Ottoman administration. Then, other parts of Yemen gradually came under the Ottoman rule.[133] The Ottomans' second move to the highlands, unlike their first, won effective support locally and the Ottomans co-opted successfully local magnates, dominating systems of inequality on their own ground and granting notables such titles of respect as Paşa.[134]

Yemen became officially a province in 1871. Ahmad Muhtar Paşa, Yemen's first Ottoman governor in the modern era, repressed uprisings in Asir; took San'a and reestablished Ottoman authority. He transformed Yemen into an Ottoman province militarily and administratively and made public improvements. He built a fortress, a mosque and an imaret in San'a as well as establishing a printing press. He also installed a telegraph line between San'a and Hodeida. Ahmad Muhtar Paşa and the following governors maintained the peace for almost twenty years in Yemen. However, administrative and financial problems led to another Zaidi rebellion against the Ottoman government in 1895. Governor Hüseyin Hilmi Paşa suppressed the rebellion militarily in two years but at a very high cost to the Ottoman Treasury. In order to establish an enduring peace in Yemen, Ottoman governors attempted to make some reforms. Meanwhile Sultan Abdulhamid II invited a committee consisting of ulama and notables from Yemen to Istanbul to discuss reforms needed in Yemen. Differences of opinion within the committee and later a reshuffle in high government positions undermined the reform plans and the effectiveness of the

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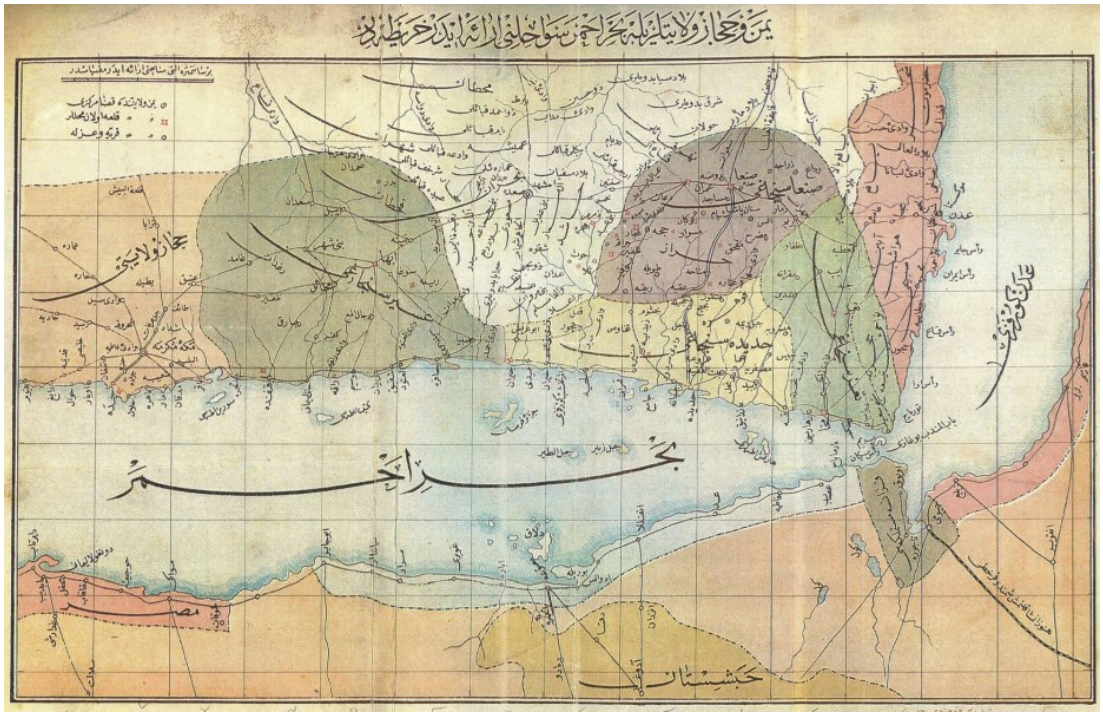
Caesar E. Farah, "Anglo-Ottoman Confrontation in the Persian Gulf in the Late 19th and Early 20th Centuries", in *Proceedings of the Seminar for Arabian Studies*. Vol. 33, pp. 117-132; For the British plans to build coal depot in Aden, see Robin Bidwell, *The Two Yemens*, (Essex: Longman, 1983), pp. 30-32.

[132] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, (Berkeley: University of California, 1996), 8.

[133] Bostan, "Yemen", 410.

[134] Paul Dresch, *A History of Modern Yemen*, (Cambridge: Cambridge University Press, 2000), 4-6.

attempted reforms. Yemenis' displeasure of Ottoman rule in some regions persisted.[135]



Map 3.2. Ottoman Map of the Province of Yemen, 1908.

Imam Yahya who enjoyed the allegiance of the Zaidi population in the north, then successfully challenged Ottoman authority. At the end of 1910, Yahya blocked the Hodeida-San'a road and declared a holy war against the Ottomans. The government responded by dispatching a major force under the command of Ahmed İzzet Paşa that set out from Istanbul in February 1911. This force failed to overcome Yahya. In October 1911, the Ottoman government signed an agreement with Imam Yahya. This agreement did not only give a measure of autonomy and made financial concessions to Yahya in exchange for his termination of hostilities and pledge of loyalty to the sultan. It also allowed him to apply Zaidi legal practices free of government judicial controls.[136] The agreement left to Imam Yahya the administration of San'a and the mountainous regions populated by the Zaidis mostly. In return, Imam Yahya pledged not to make an agreement with any foreign country.

[135] Bostan, "Yemen", 410-11.

[136] Hasan Kayalı, *Arabs and Young Turks: Ottomanism, Arabism and Islamism in the Ottoman Empire: 1908-1918*. (Berkeley: University of California, 1997), 145.

Imam Yahya also had to relinquish the title of the "commander of Muslims" (*amiru'l-mu'minin*) that he had adopted. In return, the Ottoman government agreed to pay him 20,000 Ottoman gold coins annually.[137] The peace thus established continued throughout World War I and Imam Yahya helped to fulfill the needs of the Ottoman army during the war. [138]

3.1.2. Provincial Administration in Yemen in the Nineteenth Century

Back in 1871 Governor Ahmed Muhtar Paşa began to organize the necessary administrative and supervisory mechanisms in Yemen's center, sub-provinces, districts and sub-districts and to establish municipal councils in its major cities in accordance with the Law of Provincial Administration. He appointed officials from the Sublime Porte to these units.[139] Many educational institutions were established in Yemen such as primary (*ibtidaiye*), secondary (*rüşdiye*), and high schools (*idadiye),* craft (*sanat*) schools, and teacher (*muallimin*) schools.[140] The Ottoman state paid attention to healthcare services as well because of the presence of a large number of Ottoman troops in Yemen as a consequence of the ongoing tensions with rebellious elements of the population, security issues, and political instability. The Seventh Imperial Army was stationed in San'a. Numerous hospitals were built for the treatment of soldiers and other military personnel who were wounded in combat and these hospitals were provided with specialist doctors and necessary drugs.[141]

However, the Ottoman state had difficulty in establishing his governonance in Yemen, thus, Abdulhamid II requested memorandums from governors, military officers and officials about Britain's activities, the tribes, and the political, geographical, economic and social conditions in Yemen.[142] One of the problems

[137] Bostan, "Yemen", 411. For the document of the agreement, see Appendix F.

[138] Metin Ayışığı, *Mareşal Ahmet İzzet Paşa: Askeri ve Siyasi Hayatı,* (Ankara, TTK, 1997), 45.

[139] Abdulkerim Al-Ozair, "Osmanlı Devrinde Yemen'de Mahalli İdare (1266-1337/1850-1918)", (Phd. Diss, Marmara University, 2000), 127.

[140] Ibid.,159. For the list of schools in the sub-provinces of San'a, Hodeida, Taiz and Asir, see. al-Ozair, "Osmanlı Devrinde Yemen'de Mahalli İdare (1266-1337/1850-1918)", 159.

[141] Al-Ozair, "Osmanlı Devrinde Yemen'de Mahalli İdare (1266-1337/1850-1918)", 160.

[142] Mustafa Oğuz, "II. Abdülhamid'e Sunulan Layihalar" (Doktora Tezi, Ankara Üniversitesi, 2007), 164.

highlighted in these memorandums is the administrative weakness and the incompetency of the governors in charge. Increase in bribery and corruption of the government officials, the inadequacy of their salaries and delays in the payment of their salaries were a few of the other problems expressed in these documents. Governor Osman Nuri Paşa (1887-1889) began to act independently and established an administrative system in the province that contravened Ottoman policies. The Yemenis disliked him for his unfair arrests, illegal appointments and transfers, and oppression of sheikhs.[143]

The president of the appeal court in Yemen, Muhammed Hilal Efendi, described the administrative disorder of the villages and indicated how the village headmen (*mukhtar*s) embezzled state assets. Most of these headmen denied the accusation against them when the government put pressure on them but continued to oppress people after gaining favor with district governors and caused many problems.[144]

Hasan Halid stated that unqualified people took office in Yemen and artisans and lower-class people who behaved contrary to the government principles and the security of local administration took charge as policemen (zaptiye). On the other hand, persons who had dignity, integrity, public credibility, and sense of honor were not employed as police officers. Thus, because of such lower class people who bothered elites and gentry, those local elite people resisted to the Ottoman government and acted like bandits.[145]

The most important problem mentioned in the memorandums other than the administrative disorder was the problem of tax arrears (*bekaya*) and inability to collect taxes in full. The central government could not establish an bureaucratic financial administration in the countryside to collect the taxes effectively, and thus relied on locally influential people working as tax farmers (*mültezim*). Officials of

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[143] İ. Süreyya Sırma, *Belgelerle II. Abdülhamid Dönemi*, (İstanbul: Beyan Yayınları, 2000), 59.

[144] İdris Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası," *Osmanlı Araştırmaları/Journal of Ottoman Studies*, (İstanbul: Enderun Kitabevi, 1982, vol: 3), 304.

[145] Y.E.E. 143/29, 1318/1900. "Vilâyetde müstahdem zabtiyelerin her ne fikre mebnî ise hikmet-i hükûmete muhâlif ve te'mîn-i idare-i mahalliyenin vaz'iyeti sahîhasına mübâyin olarak esnaf ve esâfil gürûhundan intihâb edilmiş olmasıyla erbâb-ı haysiyet ve nâmusdan olan mu'teberân-ı ahâlîden bir ferdin bile bu silkde istihdâm olunmaması ve esâfil gürûhunun şu sûretle hükûmete âlet olarak eşrâf ve mu'teberân-ı ahaliye musallat olmaları yüzünden erbâb-ı haysiyet muğber kalıp hükûmetden tebâüd etmiş ve ba'zıları dahi tarîk-ı şekâveti ihtiyar etmeye mecbur olmuşdur."

the central government were not eager to serve in Yemen, which was thought to be unsafe and having difficult living conditions. This situation forced the government to engage local notables, sheikhs and village headmen (*muhtar*). The business of tax-collection went out of control and the consequent irregularities damaged the established notions of justice. Only half of the levied taxes could be collected from people and the rest remained in arrears (*bekaya*). The reason for this dramatic rise in tax arrears every year was not the excessiveness of the tax burden but its unjust collection and the sheikhs' misconduct. People were unable to discharge their debts although they paid one and a half times or twice the amount of tax that the government imposed on them. By this way, both the Treasury and the tax-paying subjects ran into difficulty.[146]

In Yemen and Hijaz the government ran into difficulties in the implementation of the provincial law because of their remoteness and largely tribal populations.[147] İsmail Rahmi was one of the officials who referred to the necessity of drafting new administrative regulations designed specifically for Yemen. According to Ismail Rahmi, although there was an industrial and commercial development to some extent in some parts of the Ottoman lands, this development was not very evident in Yemen. The trade was limited to foreigners and to foreign goods. Thus, he suggests that the government should consolidate and increase the moral and material loyalty of Yemeni people to the state by adopting a specially designed administrative regulation for Yemen considering these requirements.[148]

The provinces that were far from the center and that had problems because of their social structure were the most difficult to communicate with. Yemen was one of these provinces that did not have a regular postal service (*muntazam postası bulunmayan vilayât ve elviye-i gayri mülhaka*) in 1911.[149] For example, Muhammed Hilal Efendi, mentioned the difficulties in communication by telegram between San'a and Istanbul stating that a telegram sent from Dersaadet could not directly

[146] YEE. 9/12, 23 Ağustos 1307/04 Eylül 1891.

[147] Yakup Akkuş, "Osmanlı Taşra Maliyesinde Reform: Merkez-Taşra Arasındaki İdari-Mali İlişkiler Ve Vilayet Bütçeleri (1864-1913)", (Doktora Tezi, İstanbul Üniversitesi İktisat Fakültesi İktisat Bölümü, 2011), 64.

[148] YEE. 11/15. 27 Kanun-ı evvel 1320/9 January 1905.

[149] Akkuş, "Osmanlı Taşra Maliyesinde Reform", 217.

reach San'a but was received in British-controlled Aden first and then dispatched to San'a on foot. This journey took almost a month. In order to prevent such a waste of time and to reduce the problems that stemmed from miscommunication, he proposed the setting up of a telegraph line between Istanbul and Aden via the telegraph line in Hodeida and thus, to provide direct communication with San'a.[150]

Evidently, the Provincial Law of 1871 could not be implemented in Yemen for its special conditions and thus, the desired administrative organization could not be accomplished. Memorandum writers recommended the following solutions to overcome these problems, including the tax collection problems indicated above: Conducting censuses and cadastral surveys as soon as possible; restoration of the security destroyed by rebellious tribes and leaders; the appointment of conscientious and reliable people instead of selfish, corrupt and incompetent ones as tax collectors; extension of telegraph lines and roads to facilitate communication and transportation, levying taxes at rates compatible with agricultural and stockbreeding capacity of every region in Yemen; introduction of efficient and effective methods of tax collection and drafting an administrative regulation (*nizamname*) specially designed for Yemen. In conclusion, one can argue that while the conditions and problems in Yemen made the implementation of a centralized provincial administration difficult, this difficulty aggravated the problems.

3.2. The Legal System in Yemen Before the Ottoman Rule

Various authors estimate Yemen's population to be around 3 to 6 million people in the nineteenth century. Almost all of this population was Muslim.[151] Sharia law was valid in the province, where most of the people were affiliated with the Shia-Zaidi doctrine (*madhhab*) and the most of the rest with the Sunni-Shafii doctrine.[152] Sharia law was in effect during the first and the second periods of the Ottoman rule and during the Qasimi period under the rule of Zaidi Imams. Since the

[150] Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası", 305.

[151] Ibid., 313. Different authors' estimates of Yemen's population to the end of the nineteenth century are as follows: Muhammed Hilal: three million (7a); A. Ziya: 2,452,150, including the region of Asir (vr. 2b); Hasan Kadri: two and a half million; H. Hâlid: four million (Muslims); and M. Emin Paşa: up to six million (1b).

[152] Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası", 316-7.

Yemenis embraced Islam, they accepted and upheld shari‘a as the basis of justice. However, it is not possible to say that there was a systematic and fully organized legal system.

When a civil or a criminal case occurred, people applied to the local fuqaha for the settlement of the case in the absence of a precisely defined judicial system. [153] The fuqaha "made their rounds" in the sub-districts and villages. The fuqaha of the region would solve cases relying on the Shari‘a and the customs and customary procedures of the region. However, the implementation of judgments could be a problem probably because of inoperative executive organs.[154]

When both parties of a conflict (or in a case) assented to the judgment of the faqih, there would be no problem. When this was not the case, the intervention and mediation of a sheikh or tribal leader might have been necessary. For example, if one or both parties do not assent to the judgment, resist it, and not do what it requires, the sheikhs and peacemakers would step in and the fuqaha would intervene for the execution of the judgment. As a result of the involvement of peacemakers in the case, the parties sometimes agreed on the shari‘a. However, the power of the sheikhs and the tribal leaders generally remained inadequate and their efforts for peacemaking and reconciliation achieved no results. In such cases, when the two parties could not come to an agreement or did not recognize the judgment, the judge's decision could not be implemented and the conflict between the parties would be prolonged and might result in murder. If the parties in such unresolved disputes were members of different tribes, then the case would acquire tribal proportions and the hostility between the two parties would transform into hostility between the tribes. If the two parties came from the same tribe, this time, the case would involve their families and relatives and the dispute would turn into hostility between families.[155]

[153] Fuqaha (s. faqih): Islamic jurists.

[154] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi" in *Yemen Salnamesi 1299*, 31. Hamid Vehbi was the author of *San‘a* newspaper and he republished a collection of his writings that appeared in *San‘a* on judicial issues in Yemen in the 1299 [1882] Yearbook (*Salname)* of Yemen.

[155] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 32.

As a consequence of the absence of an official institution holding the power of enforcement to maintain justice, there existed a status of endless hostility and quarrel between the tribes, neighbors and families. A fight among a family or tribe would cease only when an incursion or attack from outside occurred. They would suspend internal hostilities and unite against the external enemy. After fighting off the attack, the temporary alliance would cease and they would return to their internal hostilities.[156]

The judiciary relations worked in such a manner in almost all parts of Yemen according to Hamid Vehbi, the columnist of the *San'a* newspaper. However, Hamid Vehbi does not mention the existence of qadi in Yemen but we learn from an important explorer of Arabia that there was qadi.[157] The Yemeni Imam hosted Carsten Niebuhr in July 1763 and Nieburh's observations gave an idea about the legal practices in Yemen before the Ottoman rule. He writes that justice was the responsibility of the *qadi* and, Niebuhr thought, was generally honestly administered. The *qadi* of San'a, not the Imam, gave judgment in major cases.[158] Thus, it seems that Hamid Vehbi might be exaggerating as if the justice system was rambling in Yemen. It is crucial to consider Vehbi's narrative in the context that he wanted to show a need for the Ottoman judicial organization. This is probably the reason that he did not mention about the existence of qadi and his role in Yemen. Still, if we consider the political weakness of the Zaidi state, we can think of that qadi was not much powerful throughout the region.

3.3. The Ottoman Court Organization in Yemen: Early Practices

Once the Ottomans reasserted their sovereignty in Yemen and decided to integrate it into the empire more effectively, they declared it a province and began to implement the reformed system of Ottoman provincial administration there. The judicial organization that was in place in all other provinces had to be applied in

[156] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 32.

[157] Qadi means "judge" in Arabic, but in Yemen the word also refers generally to educated individuals of other than sayyid (descendant of the Prophet) background. (Messick, *The Calligraphic State,* 283)

[158] Robin Bidwell, *The Two Yemens*, (Essex: Longman, 1983), 27.

Yemen as well. The government appointed Ahmed Muhtar Paşa as the first Ottoman governor of Yemen in 1871. He introduced the necessary military and administrative reforms, quelled rebellions and maintained the Ottoman penetration into Yemen. He also took measures and made some arrangements in order to regularize the legal procedure. For instance, he announced that personal hostilities and blood revenges that occurred when disputing parties did not assent to a judicial decision concerning their differences ought to stop; otherwise, the government would treat all vengeful acts in such situations as crimes subject to capital punishment irrespective of possible justifications. Ahmed Muhtar Paşa's announcement had been effective to some extent but fights and murders resulting from vendettas continued to occur probably less than in previous periods.[159]

Ottoman writers generally accept that the Ottoman administration should be compatible with the customs and dispositions of the local community, taking into consideration the local practices and laws when establishing a new judicial order. It was particularly a Hamidian policy to consider different features of local people and to adapt the central system to the local conditions. Abdulhamid II and the officials of his era realized that it was not possible for the state administration to work effectively in a province without understanding the local traditions and expectations. For example, the people of Yemen were accustomed to taking their cases to a *faqih* who gave a non-binding opinion, thus, they could not be expected immediately to get used to the new judicial order where judges reached binding decisions. Therefore, the Ottomans decided not to totally implement the new judicial organization in Yemen and instructed the court officials to be moderate and to interpret the laws flexibly.[160]

It was also a state policy to consider the former conditions when establishing a new judicial order. For instance, the Ottomans made an effort to incorporate the *fuqaha* into the new legal order, for the fuqaha used to handle legal cases in Yemen and were its legal authorities. Some of the *fuqaha* who had a reputation for their good knowledge of shari'a-based law were appointed to the position of *niyabet* and others were appointed to membership of the courts. Being appointed as members of

[159] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi" 33.

[160] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi" 34.

the courts honored most sheikhs who played an active role in the region.[161] Because of this tactic, local leaders and notables had the opportunity to work in civil service positions in the new Ottoman order. This policy might mean that the government sought not to push away the local notables from the system but integrate them into it. Simultaneously, the government wanted to eliminate the possibility of the rise of fuqaha as an alternative source of authority by integrating them into its own system. Furthermore, the help of the local officials who knew the dispositions and nature of the region and its people would facilitate the work of the Ottoman administration. Thus, it was beneficial for both parties.

3.3.1. The Establishment of the Nizamiye Courts

Although the exact date of the establishment of the nizamiye courts in Yemen could not be determined, apparently the government initiated their organization as soon as Yemen became a province. According to the provincial yearbooks (*vilayet salnameleri*), naibs were appointed to Yemen beginning in 1871.[162] However, the foundation date of the first court could not be confirmed. Hamid Vehbi described in detail the implementation of the organization in the 1881/82 Yearbook but did not provide dates. According to the information found in that yearbook, the government established first instance courts and appeal courts in the districts, sub-provinces and the provincial center. The courts' structure improved gradually. There existed also *şer'iyye* courts under the presidency of a *naib*. The names of the naibs appointed to these courts between 1871 and 1887 are shown in Table 3.1 below.

[161] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 33.

[162] *Yemen Salnamesi 1306*. After the establishment of Yemen as a province, *naib*s were appointed to the provincial center and the sub-provinces of Hodeida, Asir and Taiz. For the list of *naib*s, See *Yemen Salnamesi* 1306, 34-35.

Naibs of the Provincial Center	Naibs of Hudeyde Sanjak	Naibs of Asir Sanjak	Naibs of Taiz Sanjak
Ekve' Efendi 288-290	Sıdkı Efendi 287-290	Tevfîk Efendi 287-290	Yahya Efendi[163] 288-289
Abdullah Efendi 290-291	Emin Efendi 290-291	Râsih Efendi 290-292	Abdullah Efendi 289-289
Sıdkı Efendi 291-292	Hulusi Efendi 291-294	Avni Efendi 292-295	Abdulgani Efendi 289-291
Ali Rıza Efendi 292-294	'Arif Efendi 294-295	Rağıb Efendi 295-296	Sıdkı Efendi 291-294
Hulusi Efendi 294-296	Hayri Efendi 295-298	Tahmas Efendi 296-298	Said Efendi 294-296
Ekve' Efendi 296-296	Süleyman Efendi 298 (by proxy)	Abdullah Efendi 298 (by proxy)-299	Ahmed Pîr Efendi 296-299
Birinci Efendi 296-301	Nuri Efendi 298-	Halil Hulusi Efendi 299-303	Yahya Efendi 299-299 (by proxy)
Ahmed Hamdi Efendi 301-304	Süleyman Ruhi Efendi 300-		

Table 3.1: The list of naibs in the provincial center and sub-provinces.[164]

[163] He is at the same time mufti of the region.

[164] *Yemen Salnamesi 1304-1306.*

As in all provinces, the *şer'iyye* courts and the office of *niyabet* continued to exist in Yemen. The naibs were educated in the law school in Istanbul, advanced in their career gradually and reached the level/rank of court presidency. The public naib resided in San'a, the center of the province. The deputy naibs, who worked under the public naib, resided in the sub-provinces, districts and sub-districts.[165] In contrast to the previous system, there was a hierarchy of judges, as the top of the hierarchy was the naib of the provincial center and others were subordinated to him. There was a parallel between the court organization and administrative organization actually. For instance, the hierarchy in the Ottoman district administration paralleled that of the hierarchy between the judges in the judicial organization, as a district director (*kaymakam*) was at the top and all other sub-district officers (*müdir*) were subordinated to him.[166] This was a modern organization becoming valid in the nineteenth century over all provinces.

There were *şer'iyye* courts in every sub-district under the presidency of a naib chosen from among the local fuqaha, approved by the niyabet of the sub-province and appointed by the government. The sub-district courts heard and adjudicated the cases that came before them according to shari'a and tried to settle differences peacefully, through the reconciliation of litigants (*sulh*). These courts did not have permanent members working with the naibs. However, the cases were heard before a gathering of local sheikhs when need be. The place of appeal for these courts was the courts of district and/or sub-province. However, litigants rarely appealed the types of cases heard in sub-district courts.

Likewise, there was a naib in each district chosen and ratified by the *niyabet* of the provincial center from among the local fuqaha and appointed by the Chief Jurisconsult (*şeyhülislam*). The district naibs as well heard the cases that came before them according to shari'a and tried to settle difference peacefully through reconciliation. The judges in the sub-districts and districts heard only civil cases. If there occurred a homicide case, the application would be made to the sub-province enters, where authorities inform the provincial center about the case and request the

[165] Uthman, *al- ukm al-Uthmānī fī 'l-Yaman 1872–1918*, (Cario: al-Maktabat al-Arabiye, 1975), 419.

[166] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, (Berkeley: University of California, 1996), 190.

provincial center to do the necessary.[167] As in the sub-districts, the cases settled in the district courts rarely came before the courts of the sub-province centers for appeal or retrial.

Because some people did not have the means to travel to the district and sub-districts to apply to the courts, there were some jurists called "*me'mun*" among the appointed naibs who "made their rounds" to the district and sub-districts to hear cases. Sometimes the cases were heard by one of the fuqaha upon the common agreement and application of the litigants.[168] In order to exert at least some influence over judicial affairs in the hinterland, some nizamiye judges had to cooperate with "*me'mun* fuqaha" especially in the rural areas. [169] On the other hand, the naibs of the sub-districts sometimes traveled to villages to register the estates of the deceased or to draft a contract or agreement for people's important transactions. [170] The hierarchical and bureaucratic structure of the court organization in the provincial center, San'a is shown in the figure below.

[167] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 36. "cinayete müteallık mevâdda sancak merkezlerine müracaat ve oralardan merkez vilayete arz-ı keyfiyet ile vilayetçe icabı icra kılınmakda"

[168] Ibid., 35.

[169] Thomas Kuehn, *Empire, Islam, and Politics of Difference: Ottoman Rule in Yemen, 1849-1919*. (Leiden: Brill, 2011), 108.

[170] Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası", 312.

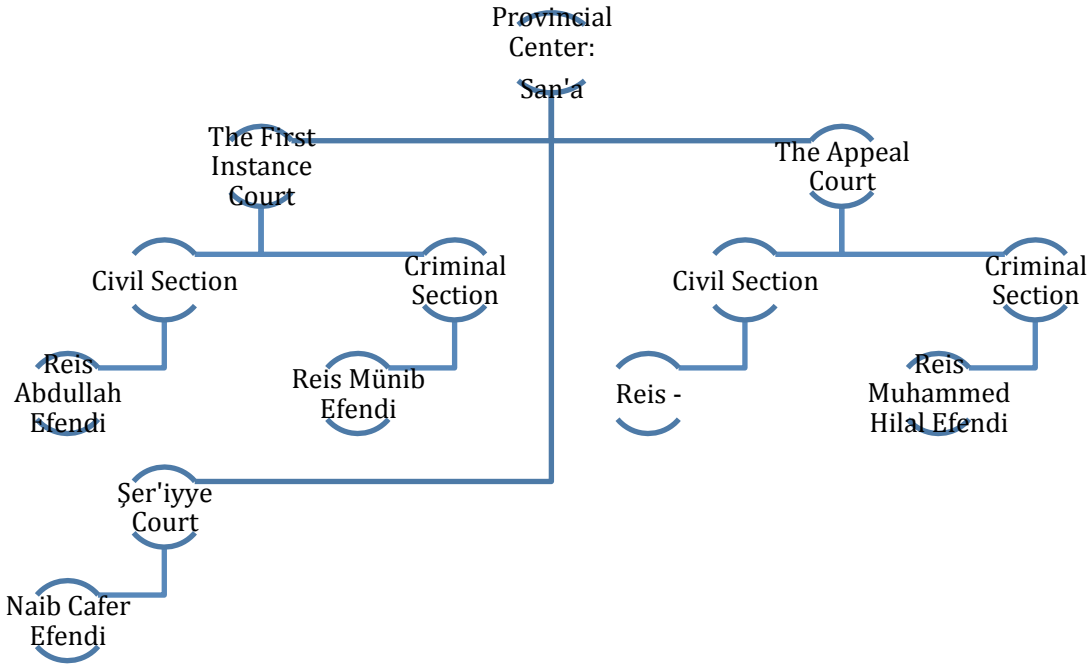

Figure 3.1. The Court Organization in the Province of Yemen in 1879

The most significant novelty for Yemeni people about the Ottoman court organization was the concept of the appeal court. It was a new concept because prior to the introduction of new Ottoman regulations, people were not much familiar with appealing to the judgments though they could apply to other fuqahas to retry their cases. The state established a court of appeal located in the capital; San‘a and this court presided over all other courts. This court was charged with reviewing the decisions of the first instance courts of the sub-provinces. It was possible to take the decisions of the San‘a court could be taken from San‘a to Istanbul for appeal and cassation. The existence of the appeal court undercut the sanctity and finality of the judge's word, opening the door to continuing reinterpretation of decisions.[171] The concept of appeal was the most difficult one for Yemeni people to adopt and become accustomed to.

The president of the provincial appeal court in the center was the naib who was also the shari‘a judge of the provincial center and he was appointed to the presidency of the appeal court by the sultan’s decree. The members of the appeal court were

[171] Messick, *The Calligraphic State*, 190-91.

chosen and appointed from among the *faqih*s. After the separation of the civil and the criminal sections of the appeal court, the naib became the president to of the civil section and a president came from Istanbul to take charge of the criminal section.[172] Muhammed Hilal Efendi, the former naib of Hama, was appointed to the presidency of the Criminal Section of the Appeal Court in the provincial center on 5 September 1879.[173] In addition, Mehmed Hilmi Efendi, the former *naib* of Oltu, became the public prosecutor (*müddeî-i umumi*) of the same court on the Grand Vizier, Arifi Paşa's request.[174]

It is usually thought that the Ottoman state introduced multiple judges and the office of public prosecution to the Islamic legal system. The presidency of the criminal section of the appeal court was the highest judicial position in the court organization. Having multiple judges ranked in a hierarchical order was an introduction of Ottoman legal institutions in Yemen. According to Messick it made inroads to "the essential oneness of the judicial presence, fracturing the unitary quality of the judge's face and voice" in an open court called *muwajaha*.[175]

It is also usually thought that the Ottomans introduced the office of public prosecution to Islamic law. Schacht's claim that there was no office of public prosecution in classic Islamic law implies that the Ottomans introduced this concept as well into Yemen.[176] Schacht qualifies his assertion in two ways. The first concerns the role of the Islamic judge, the qadi, who had a range of "public" responsibilities as the "guardian of those who have no other guardian," orphans, for example, and for "public welfare in general". Both of these areas of public responsibility inherent in the Islamic judgeship were built into the mandate of the new Yemeni *niyabet*. The second qualification concerns a distinctive Islamic concept, *hisba*, and the public official embodying the concept, the *muhtasib*. For Schacht, the activities of the

[172] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 33-36.

[173] İ.DH. 790/64194. 23 Ağustos 1295/ 4 September 1879.

[174] İ.DH. 790/64194. 24 Ağustos 1295/ 5 September 1879.

[175] Messick, *The Calligraphic State*, 191.

[176] Joseph Schacht, *An Introduction to Islamic Law*, (Oxford: Clarendon Press, 1982), 189.

muhtasib constitute, in practice, an office of public prosecution.[177] Rubin points to the fact that the appointment and dismissal of public prosecutors were subject to imperial decrees (*irade-i seniyye*), which in itself indicates the importance central administration attributed on these offices.[178] It is also remarkable that the legal opinion of public prosecutors had a special weight in court cases because of being a representative of state authority not only a jurist.[179] Thus, although the new Ottoman judicial organization did not seem to conflict with Islamic law in essence, it was a deviation from the classic tradition and there might be need for people to become accustomed to the new system.

The civil section of the appeal court was composed of two members in 1880-81: a junior clerk (*aza mülazımı*) and two clerks.[180] In the criminal section of the appeal court, there was one head-clerk in addition to the staff of the civil court.[181] There were two court members, namely a head clerk and two clerks in the civil section,[182] while there were two members, a junior clerk and two clerks in the criminal section of the first instance court.[183] The first instance courts were composed of two to four members working under the presidency of a *naib*. The first instance courts were established in the sub-province of Ta'iz, Hodeida and Asir. These courts were later separated into civil and criminal sections.[184] These early

[177] Brinkley Messick, "Prosecution in Yemen: The Introduction of the Niyaba", *International Journal of Middle East Studies*, Vol. 15, No. 4 (Nov., 1983), 510.

[178] Rubin, *Ottoman Nizamiye Courts*, 137.

[179] Ibid., 142.

[180] *Yemen Salnamesi 1298*, 93. The civil section of the appeal court: Two members: Seyyid İsmail bin Muhsin İshak Efendi and Seyyid Ali bin Abdurrahman Efendi. Junior Clerk: Abdullah Efendi. Two clerks: Abdi Efendi and Seyyid Ahmed Efendi.

[181] Ibid., 93-4. The criminal section of the appeal court: Two members: Seyyid Mehmed bin Hüseyin bin İshak Efendi and Kadı İsmail Cafer Efendi. Junior Clerk: Seyyid Mehmed eş-Şâmi Efendi. Head clerk: Hamdi Efendi. Two clerks: Yaver Efendi and Ali Cum'a Efendi.

[182] Ibid., 94. The civil section of the first instance court: Two members: Seyyid Yahya bin Mehmed Mansur Efendi and Seyyid Hüseyin bin Kâsım Fayi' Efendi. Head clerk: Seyyid Mehmed Efendi. Two clerks: Seyyid Hüseyin Salâh Efendi and Ahmed Muhtar Efendi.

[183] Ibid., 94. The criminal section of the first instance court: Two members: Seyyid Abdullah bin Ahmed Efendi and Seyyid Mehmed bin Mehmed Sâdık Efendi. Junior Clerk: Seyyid Hüseyin Fâyi' Efendi. Two clerks: Seyyid Ahmed Efendi and Rüstem Efendi.

developments indicate that the Ottomans were determined to apply the court system they had in other provinces in the Province of Yemen as well. They managed to fully establish the first instance and appeal courts in the center as in other provinces. The court organization in the sub-provinces is shown in the figure below.

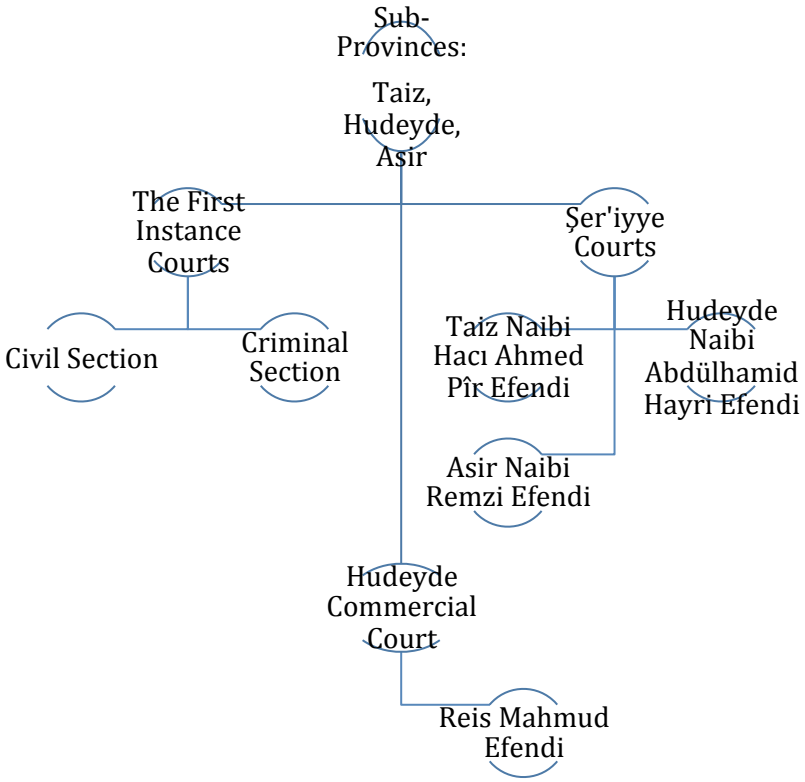

Figure 3.2. The Court Organization in the Sub-Provinces.[185]

The first instance court in the center operated under the presidency of a *reis-i mahsus* appointed by the sultan's decree. The *naib*s appointed by the Chief Jurisconsult (*şeyhülislam*) presided over the first instance courts established in the sub-province centers. These *naib*s had a dual role. In addition to being *naib* of the *şer'iyye* courts, they served as presidents of the nizamiye courts. Thus, they

[184] *Yemen Salnamesi 1298*, 98: The sub-province of Taiz: *Naib* Hacı Ahmed Pîr Efendi, two members each in civil and criminal sections of the first instance court and a court clerk in the civil section; 100: in the sub-province of Hodeida: *Naib* Abdulhamid Hayri Efendi, the criminal section of the first instance court: *Reis-i sani* Abdullah Niyazi Efendi and four members; 103: the sub-province of Asir: *Naib* Remzi Efendi, two members each in civil and criminal sections of the first instance court.

[185] The *Naib*s also presided over the first instance courts.

adjudicated sharia trials as much as they heard the cases according to the nizamiye law in the nizamiye courts composed of members, chosen and appointed from among the local scholars and other notable people.[186]

Upon the request of Ahmed Cevdet Paşa, the Minister of Justice at the time, Münib Efendi, the former head clerk of the Hodeida Council of Appeal, was appointed to the criminal section of the central first instance court as vice president (*reis-i sani*) in 1880. Necib Efendi, the former head clerk of the appeal court, was appointed to the criminal section of the central first instance court as vice public prosecutor (*müddeî-i umumi muavini*).[187] In addition, Abdullah Efendi was charged with the task of presidency in the civil section of the first instance court.[188]

Furthermore, the government decided to establish a commercial court in Hodeida in view of its special situation. Hodeida was a port-city carrying a great portion of Yemen's exports and imports. Much commercial litigation and other legal transactions occurred in Hodeida. Its first instance court was unable to bear that heavy a workload or handle transactions that went beyond its normal sphere of authority. The Commercial Court in Hodeida was established on 21 January 1881. It consisted of a president, a member, a court clerk and a janitor.[189]

Not only the existence of the appeal courts and the multiple judges but also the diversity of the court staff was a new one for Yemen. While the Yemeni people applied only to a judge, they were the objects of different types of officials in the new courts. This staff was categorized according to the grade of position, duty, age, salary etc. Local court functionaries were organized in ranked grades—head secretary, second, third, and so forth—in accord with a preexisting bureaucratic plan. In this bureaucratic structure, "age, educational attainment (associated with

[186] *Yemen Salnamesi 1298*, 89. For the dual role of *naib*s being the president of both şer'iyye and nizamiye courts, See. Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period." *Frontiers of Ottoman Studies: State, Province, and the West*. Vol. 1, ed. by Colin Imber and Keiko Kiyotaki (London and New York: I.B.Tauris, 2005): 43-60.

[187] İ.DH. 799/64797. 27 Mart 1296/ 8 April 1880.

[188] *Yemen Salnamesi 1298*, 89.

[189] İ. DH. 66275. 9 Kânun-ı sâni 1296/21 January 1881; *Osmanlı Arşiv Belgelerinde Yemen.* Project Supervisor: Yusuf Sarınay. Eds. Mümin Yıldıztaş, Sebahattin Bayram, Yıldırım Ağanoğlu. (Ankara: Osmanlı Arşivi Daire Başkanlığı, 2008), 42-43.

examinations and attestations), procedures for appointment, trial periods and inspections by superiors, rules about time in service and seniority, eligibility for promotion, transfer and retirement, and an array of position specific duties" came into play in the organization of court staff. [190]

The establishment of the courts occurred through a process. The special conditions of the province necessitated some alterations and adjustments in the original plan in the process of its application. The information given above indicates that this process began right after the decision to incorporate Yemen into the Ottoman state's reorganized system of provincial administration. The officials appointed to the new judiciary positions heard and decided legal cases according to both şer'i and nizami rules as in the other provinces.

3.3.2. The Abolition of Some Court Units

However, the court organization established in the provincial center, sub-provinces and in some districts did not always function effectively. For example, the inhabitants of the regions outside of the major urban centers such as Hodeida and San'a continued to solve their civil or murder cases in two ways. They would apply to the nearest faqih in order not to travel to the courts or they would apply nowhere and take the law into their own hands to avenge the harm inflicted on them –as they did in earlier periods. Some "barbaric" tribes (*vahşi olan bazı kabail*) would even refuse to apply to the official courts because the courts did not accommodate or take into account their customs and traditions, which they were keen to preserve.[191] As a result, people's access to justice would be compromised and hostilities and fights would increase. This situation would make it even more difficult for the government to establish security and order while trying to consolidate its authority in Yemen.

[190] Messick, *The Calligraphic State*, 188.

[191] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 34. "*Bir de pek vahşî olan bazı kabâil her şeyden ziyade 'örf ve te'amül-i kadîmlerinin muhafaza ve vikâyesi gayretinde bulunduğundan ülfet ve 'âdetlerine muvafık teshîlat ve mu'âmelata müsâade olunmayacak olsa hükkâm ve hükkâm-ı resmiyyeye müracâat etmekden bütün bütün ferâgat ederek izâa-i hukuk-ı nâsa sebebiyet verileceği ve bundan dolayı beynlerinde husûmet ve cidâlin tezâyüd ve tekessürüyle asayiş ve emniyet-i vilayete hâl-i târî olacağı emr-i meczûmdur*."

Therefore, the Ottomans took into consideration the demands and customs of the people instead of insisting on the precise implementation of the rules and regulations. For example, the suspects in some cases of homicide, wounding or altercation could not be arraigned. When bringing the accused before the courts took a long time, this delay tended to fan hostilities between tribes and cause havoc. In such cases, the administration was forced to allow/overlook the settlement of the differences through negotiations that aimed at reconciliation and the restoration of peaceful relations in keeping with local custom.[192] More important still, if criminal cases involving tribesmen were brought before a local *nizamiye c*ourt, judges often saw that they could not enforce the court's decision unless they made or sought an arrangement with the offender's sheikh for the payment of the charged fines, since the courts lacked the means to summon the accused party to the court.[193]

Although *şer'iyye* and nizamiye courts were established in the administrative units of the province, the courts did not function according to the originaş plan. According to Vehbi, it was in the "uncivilized" regions (*ahalisi medenî değilse de*) where people continued their nomadic life style that the local courts did not be become properly established/functional. The Ottoman officials thought that the "people with Bedouin-style customs" (*ahalinin etvâr-ı bedavetkârânesi*) needed to become familiar with and accustomed to the new order. For instance, various schools and training schools (*ıslahhane*) should be opened in Yemen and Asir for training judicial officials who knew Turkish and understood the rules and regulations well.[194] Because of the specific conditions of the region and the intolerance of even the people of the provincial center to certain aspects of the new judicial order, the Ottomans decided to abolish parts of it until adequate number of qualified personnel became available and the people acquired familiarity with the system. Thus, the public prosecution and the presidency of the criminal section of the provincial appeal court, the presidency of the civil and the criminal sections of the first instance court

[192] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 36-7.

[193] Kuehn, *Empire, Islam, and Politics of Difference*, 108.

[194] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 35. "*Bu esbaba mebni Yemen ve Asir kıt'alarında müteaddid mektebler ve ıslahhaneler açılarak lisan-ı Türkîye ve istinbat-ı dakik-i kavânîn ve nizâmâta muktedir aza ve ketebenin tedariki mümkün olacak ve ahalinin etvar-ı bedavetkârânesi kesb-i hıffetle tedricen telakkî-i malumat-ı nizamiyeye isti'dâd ve kabiliyyet hasıl idecek bir zamana kadar nizamat-ı cedide-i adliyemizin şimdilik bi'l-mecbûriyye Yemen'de mevki'-i fii'le konulamayacağı tabii idi*."

and the positions of the vice prosecutor and junior clerk were abolished by the sultan's decree.[195]

After serving as the president of the criminal section in the appeal court for seven months, Muhammed Hilal Efendi's salary decreased from 4,000 *kuruş*es to 3,500 *kuruş*es according to the Ordinance for Reorganization of the Judiciary (Tensikât-ı Adliye Kararnamesi). He became unemployed when his office was abolished on 16 August 1881.[196] After the abolition of the presidency of the appeal court's criminal section, Cafer Efendi assumed the presidency of the appeal court while he continued in his position as the *naib* of the provincial center.[197]

3.3.3. New Implementations in the Nizamiye Courts

As indicated above, the government recognized that Yemen (along with a few other regions) was ill-prepared for the implementation of the new judicial order and decided to adopt a gradualist approach, taking measures to increase the applicability and the acceptability of the system and the regulations that governed it. These measured proved feasible. For example, they decided that there was no need to have vice public prosecutors in the district courts because they could not function properly under the circumstances that prevailed in Yemen then. Thus, the positions of public prosecution and vice presidency in the district courts; the presidency and vice public prosecution in the first instance court of the provincial center and the junior clerkships (*aza mülazımlıkları*) were abolished. The total monthly sum allocated for the salaries of these positions was 20,600 kuruşes. After a reduction of 3,624 kuruşes, the remaining 17,976 kuruşes of this sum was allocated for the once-again appointed investigating magistrates (*mustantık*) and for clerks and other officers. In addition, this amount of money remained after the reduction was allocated for the salaries of members, clerks, vice investigating magistrates, bailiffs (*mübaşir*s) and janitors (*odacı*s) who were going to be appointed to judicial positions in courts that

[195] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 38.

[196] Nejat Göyünç, "Trablusgarb'a Ait Bir Layiha", Osmanlı Araştırmaları/Journal of Ottoman Studies, (İstanbul: Enderun Kitabevi, 1982, vol: 1), 236.

[197] *Yemen Salnamesi 1298*, 89.

were going to be established anew in the Cebel-i Hiraz, Zebîd, Lahej, Ibb and Kunfede districts – which were left outside of the organization until then.[198]

According to article seven of the Law of Court Organization (*Mahkemelerin Teşkiline Dair Kanun*), the provincial nizamiye courts would hear civil cases in accordance with the nizami law. The *şer'iyye* courts composed of two or three local scholars including court observers would rule other cases according to shari'a. By doing so, there was no need to separate the courts into civil and criminal sections. In addition, the *naib*s who would be appointed to chair the *şer'iyye* courts would be chosen from among virtuous and judicious people who had a good grasp of the legal issues of shari'a and spoke the local language.[199]

There would be only one section in the first instance courts of sub-provinces and districts, which were presided by *naib*s chosen from among the local people. The section would be composed of four members and a sufficient number of clerks who spoke both Turkish and the local language. They would be paid an appropriate salary. The first instance courts would adjudicate only the criminal cases and nizami civil cases. The *şer'iyye* courts would hear (or handle or adjudicate) other cases, such as the common law (*hukuk-ı adiye*) cases. However, full adherence to the criminal and civil procedural laws, Mecelle-i Ahkam-ı Adliye and the Criminal Code was required. The provincial appeal court would be composed of four members and a sufficient number of clerks. One of its members would serve as president. Civil and police officials (mülkiye ve zaptiye memuru) would be appointed to the Office of the Judicial Police (*adliye zabıtası*). The existing Office of Public Prosecution would be abolished.[200]

Istanbul appointed the former *naib* of the Ta'iz sub-province, Abdulgani Efendi, to the presidency of the appeal court. He took his office as soon as he arrived San'a. It was decided that the appeal court of San'a would be composed of four members, a head clerk, four clerks and also an accountant. The former members would continue their work and in addition, İsmail Efendi arrived at San'a as being

[198] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 42.

[199] Ibid., 40, "*Teşkil-i mehâkim kanununun yedinci maddesi mucebince vilayet mehâkim-i nizamiyesinde rü'yet olunacak mevâdd-ı hukukiyye sırf kanunî ve nizâmî hususata münhasır olarak ma'dâsının şer'an rü'yet ve fasl olunması evla olacağına ve bu takdirde mehâkimin ceza ve hukuk i'tibariyle ikişer daireye inkısamına lüzum ve ihtiyaç kalmayacağına binaen*."

[200] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 40.

appointed by Istanbul as the head-clerk. Behçet Efendi who was the former financial office clerk of the judiciary was appointed as the financial office clerk.

It was decided that there would be four members, an investigating magistrate (mustantık), a head clerk, four clerks and three members of the *şer'iyye* court in the central first instance court.[201] It was also decided that the former members of this office would continue in their posts. A special council (*meclis-i mahsus*) under the presidency of the Chief *naib* Seyyid Cafer Efendi, would choose the "court observers" from among the members of the *şer'iyye* court. Ahmed Bey, who used to serve at the abolished position of vice prosecutor, was appointed to the investigating magistracy and Hamdi Efendi, who used to be the head clerk of the abolished appeal court, was appointed to its head clerkship.

Four members, a head clerk, three clerks, an investigating magistrate and two *şer'iyye* court members with court observers were appointed to the First Instance Court of Hodeida. The sub-province governance was informed that the former head clerk would continue in his office and Abdullah Efendi was appointed to the post of investigating magistrate. However, Mahmud Efendi was appointed as the investigating magistrate of the Ta'iz sub-province and Derviş Efendi as the investigating magistrate of the Asir sub-province.[202]

The above-mentioned position of the "court observers" was also a distinguishing characteristic of Ottoman judicial organization. Judgeship was a position filled by a single person in classic Islamic tradition but the Ottoman courts began to have multiple positions, such as a presiding judge accompanied by court members and "court observers," following their reorganization in the nineteenth century.[203] Not all people could be a court observer/witness. The court judge made the necessary inquiries to check the reliability and impartiality of people who were going to testify in courts to assure the validity of their testimony.[204]

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[201] *Yemen Salnamesi 1299*, 90. The central first instance court: investigating magistrate: Ahmed Beğ; head clerk: Hamdi Efendi; four clerks: Seyyid Mehmed Hudad Efendi, Ahmed Mütevekkil Efendi, Seyyid İsmail Birzinci Efendi and Seyyid Ali Muhsin Efendi; four members of şer'iyye court: Seyyid Yahya Efendi, Seyyid Abdullah Efendi, Mehmed Efendi, Seyyid Hüseyin Efendi. (There is one more şer'iyye court member in the list)

[202] *Yemen Salnamesi 1299*, 43-44.

[203] Messick, *The Calligraphic State*, 190. This innovation was eliminated in Yemen with the return of Zaidi rule in 1919, but reappeared after 1962 under the Republic.

[204] YNDC. 3-8, 1 and YNDC. 3-8, 6. See Appendix G for the documents of Yemen Archives.

The decisions of the district courts that required imprisonment for more than three months should be confirmed in the sub-provinces. The provincial appeal courts would review the decisions of the sub-province courts that required imprisonment for more than a year. If these decisions were found contradictory to the law, they would be cancelled and revised or returned to the court of their origin for retrial. These measures aimed at maintaining the lawfulness of the decisions taken by the first instance and sub-province courts in criminal cases.

The homicide cases were ruled at the district and sub-province courts should send the files of the homicide cases that they heard to the appeal court for examination by the Indictment Committee (*hey'et-i* ithâmiye) and their deficiencies were eliminated, the cases would be sent to the first instance court of the provincial center or to the place of the case according to a few criteria: the importance of the murder; the distance of the original place of the case; and the existence of any demand or claim of one of the parties worthy to be heard.

The sub-province governors (*mutasarrıf*s) or district governors (*kaymakam*s) executed the court orders regarding criminal cases and presidents of the courts executed the court orders regarding civil cases in accordance with their special law (*kanun-ı mahsusa*). However, if there were any obstacle to or difficulty in the execution of a civil court order for any reason, the district or the sub-province governor would execute it.[205]

According to the first section of the Law of the Court Organization (*Mahkeme Teşkili Kanunu*), a necessary number of peace courts should be established in the sub-district of the province. The civil and misdemeanor cases that could be resolved peacefully through the reconciliation of the parties would be handled in these courts.[206] They dealt with tribal conflicts that fell within the realm of civil law "in accordance with tribal custom" (*örf-i kabâile tevfîkan*).[207] The reconciliation agreements (*sulhname*s) made in accordance with the civil law in the peace courts were also valid in the nizamiye courts.

[205] Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 41-2.

[206] Ibid., 42.

[207] Kuehn, *Empire, Islam, and Politics of Difference*, 111.

The judicial order was thus amended in the case of Yemen in accordance the nature and disposition of the local people and because of local reactions to the new judicial system. The information given above so far indicates that the Ottoman state desired to establish its new court system in Yemen as in its other provinces. Almost all personnel that should be found in a provincial appeal court and first instance courts were appointed in Yemen in keeping with the structure of the nizamiye court system outlined in the first chapter. The Ottoman state did not treat Yemen differently from other provinces and adopt a special attitude toward the Yemenis. It is also remarkable that the court members were usually Arabs insofar as one can judge from their names. The appellation of "seyyid" that frequently occurs before names suggest that many of the court members were chosen from among tribal chiefs and leading sheikhs.[208]

3.3.4. A New Attempt: The Reorganization of the Nizamiye Courts

The information given in the Yearbook of 1305/1888 indicates that some of the positions abolished in 1881 were reestablished and filled while the court organization extended to most of the districts by 1888. For instance, the appeal court was again separated into civil and criminal sections and Muhammed Hilal Efendi was reappointed to the presidency of the criminal section on 14 November 1887.[209] However, he was discharged later, based on an official letter of the Governor of Yemen, Osman Paşa, which refers to complaints that express local people's dislike of Muhammed Hilal Efendi.[210]

The civil and criminal sections of the appeal court were each composed of a president, four members, a head-clerk, a recording clerk (*zabıt katibi*) and three clerks in 1888.[211] *Naib* Ahmed Hamdi Efendi resumed the presidency of the first

[208] Seyyid is a title used by people who are accepted as the descendants of the Islamic Prophet Muhammed.

[209] *Yemen Salnamesi 1305*, 44.

[210] Göyünç, "Trablusgarb'a Ait Bir Layiha", 236.

[211] *Yemen Salnamesi 1305*, 44. The central appeal court: President: Muhammed Hilal Efendi; Four members: Seyyid Mehmed bin Hüseyin Efendi, Seyyid Ali bin Mehmed Efendi, Seyyid Ali bin Abdurrahman Efendi and İsmail Cafer Efendi; Head clerk: Mehmed Reşid Beğ; Recording clerk: Ahmed Muhtar Efendi; Three clerks: Seyyid Abdurrahman Efendi, Mehmed Yüdûmu Efendi and Ahmed Abdurrahman Efendi.

instance court because the presidency of the appeal court was reestablished and Muhammed Hilal Efendi was reappointed to that position. A central first instance court was formed under the presidency of a *naib* and consisting of four members, a head clerk, a civil section recording clerk (*hukuk zabıt katibi*), a criminal section recording clerk (*ceza zabıt katibi*) and two clerks.[212] Moreover, investigating magistracy (*ıstıntak dairesi*) and execution office (*icra dairesi*) was added to the first instance courts for the first time.[213] The president of the first instance court Ahmed Hamdi Efendi was also the *naib* of the *şer'iyye* court. There also was a head clerk besides the president in the *şer'iyye* court.[214] Evidently, the formerly abolished public prosecution position in the appeal court and the vice-prosecution position in the first instance court were also reestablished.

First instance courts were established in the center, in the sub-provinces of Hodeida, Taiz and Asir as well as in the districts of these sub-provinces, according to the Yearbook of 1888.[215] The commercial court that the government had established in Hodeida with the insistence of Britain continued its existence. Although the Provisional Law for the Organization of Nizamiye Courts (*Teşkilat-ı Nizamiyye Teşkilâtı Kânûn-ı Muvakkati*) necessitated the establishment of commercial courts in province centers, sub-provinces and sub-districts, there was only one commercial court in Yemen. The Commercial Court of Hodeida heard only the cases between Ottoman subjects and foreigners.[216] It was the first new court in Yemen. Its staff included one president, two permanent and two temporary members, one clerk, and

[212] *Yemen Salnamesi 1305*, 44 The central first instance court: President/*Naib*: Ahmed Hamdi Efendi; Four members: Seyyid Ali el-Mağribî Efendi, Abdullah 'Azânî Efendi, Seyyid Abdullah bin İshak Efendi and İbrahim Cafer Efendi; 1 head clerk: vacant; civil recording clerk: Seyyid Mehmed Hâşim Efendi; criminal recording clerk: Seyyid Mehmed Haddâd Efendi; two clerks: Seyyid Ahmed Efendi and Ali Efendi.

[213] Ibid., 45. The office of investigation magistracy in the first instance court: investigating magistrate: Tahir Efendi; The office of execution: debt enforcer Yaver Efendi.

[214] Ibid., 45. The şer'iyye court: *Naib* Ahmed Hamdi Efendi; Head clerk: Seyyid Abdullah Efendi.

[215] Ibid. for the first instance court of Hodeida, see. 70; for the first instance court of Taiz, see. 81; for the first instance court of Asir, see. 90.

[216] Abdulkerim Al-Ozair, "Osmanlı Devrinde Yemen'de Mahalli İdare (1266-1337/1850-1918)", (Phd. Diss., Marmara University, 2000), 197.

one deputy clerk.[217] The government appointed Mahmud Nedim Bey as interim president of the commercial court of Hodeida on 27 August 1886 with a 1,250-kuruş salary and then permanently to the same position on April 1888 with a 1,500-kuruş salary. He eventually served as the last Ottoman governor of Yemen .[218]

The number of members that would be appointed to the first instance courts in districts was determined according to the size of the district. There should be at least one *naib* and one clerk in a first instance court in a district but the number of members and clerks could be raised according to the size and the needs of the district. There were also investigating magistrates and vice investigating magistrates in some districts.

The establishment of the court organization in most of the districts is an indicator of the Ottoman state's determination to extend its judiciary organization to Yemen. The existence of courts would prove the existence of the Ottoman rule and sovereignty in the region. However, this rule did not exclude local customs and the established practices in the region.

Despite the fact that the Ottoman government made some modifications and changes in the judicial organization, it is necessary to consider the measure of the operation of the courts. A memorandum describes the degree of court usage in different sub-provinces in Yemen. For example, the inhabitants of the Asir avoided the government courts from the beginning and continued to take their civil and criminal cases to sheikhs and tribal chiefs. The people of the Hodeida seldom took their civil cases to government courts -except those who lived in the district center and the districts of Zebid and Beytü'l-fakih. They generally brought their civil cases to the Sâdât[219] and to the local fuqaha. The people of Ta'iz were afraid of applying to

[217] *Yemen Salnamesi 1305*. 70. The commercial court of Hodeida: President: Mahmud Efendi; permanent members: Kadızade Mehmed Efendi and Ali Bahemdûn Efendi; temporary members: Cüveyd Bakdîm Efendi and Bâ'îsi Efendi; clerk: Süleyman Efendi; deputy clerk: Hamdi Efendi.

[218] Sert, *Son Osmanlı Yemen Valisi Mahmut Nedim Bey*, 3. The last governor of Yemen, Mahmud Nedim Bey served in important judicial positions in Yemen earlier in his career. He was appointed as debt enforcer in the first instance court of Hodeida on 4 March 1881 with a 450-kuruş salary. Then, he served as the head clerk of the first instance court of Taiz beginning on 25 October 1883 with a 750-kuruş salary. Then he became the head clerk of the first instance court of Hodeida on 14 April 1884 with a 750-kuruş salary. After his presidency at Hodeida commercial court mentioned above, he became a president of the first instance court of Hodeida on 23 March 1892 with a 1,500-kuruş salary (Sert, 3-4).

[219] Sâdât: a synonymous word for Seyyid.

the governmental courts just as Asirians were and preferred to take their civil and criminal cases to people who could settle them according to their "old manners and customs" (*örf ve âdât-ı kadîme*). If a case somewhat came to the attention of the government, it initiated an investigation without waiting for an application, the parties involved would rush to resolve the issue peacefully through whatever means were available to them–to avoid further government involvement. These examples indicate that the Yemenis practically protested the government courts and held back from applying to them and from dealing with official authorities.

The overwhelming majority of the population of the San'a was of the Shia-Zaidi school. Their attitudes toward the official courts were twofold. The people of Haşid, İrhab, Havlan, Tehim, Amran, Rida districts and sub-districts would never apply to Ottoman courts for any reason although they lived under the Ottoman administration. However, the inhabitants of the districts of Kevkeban, Anis, Perim, Zemar, Haraz and San'a appeared pleased to apply to government courts. Most of them took their cases to the Ottoman *şer'iyye* courts. However, the Yemeni people regarded testifying against their people and compatriots an offence. They maintained this tradition and refused to testify against each other. Therefore, reaching a decision in certain cases took a long time, and at the end, the parties took their dispute to their own fuqaha for settlement.[220] These observations as well indicate that Yemenis preferred to work with their own fuqaha to resolve their legal issues instead of traveling to the Ottoman courts for a lawsuit.

It seems that an overwhelming segment of Yemenis did not recognize Ottoman legal authority and turned instead to other, parallel legal forums. Kuehn interprets local people's disinterest to Ottoman legal institutions and practices as a kind of local opposition and non-violent revolt.[221] There were many uprisings and rebellions in the province led by Zaidi Imams especially. This disinterest was most likely related to political issues. Apparently, many people were displeased with and had complaints against the administration. Thus, they might have shown their reaction by not applying to the Ottoman courts as well.

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[220] YEE. 35-74, undated. For the transcription and review of the memorandum, see. İhsan Süreyya Sırma, "Yemen Valisi Osman Nuri Pasa'nın Yolsuzluklarına Dair İmzasız Bir Layiha", İ.Ü.E.F. Tarih Enstitüsü Dergisi, vol. 10-11; years. 1979-1980, (İstanbul: Edebiyat Fakültesi Matbaası, 1981), p. 395-412; İ. Süreyya Sırma, Belgelerle II. Abdülhamid Dönemi , İstanbul 2000, 159-183.

[221] Kuehn, *Empire, Islam, and Politics of Difference*, 107.

An anonymous report that was written to report the corrupt deeds of Osman Nuri Paşa, the governor of Yemen in1887-89, indicates that the courts did not function properly and some changes should be made in the system. According to the author, the recovery of the courts and the removal of their deficiencies would be a difficult, expensive and time-consuming task. However, the author thought, leaving people with their own local methods would not be good either, because the old manners and customs of the Yemenis were in accord with neither the consent of Allah nor shari'a (*çünkü kabâilin örf ve âdet-i kadîmeleri ne şer'-i şerîfe ve ne de rızâ-yı Bârî'ye muvâfık olmayup*). For example, people from the Haşid and İrhab tribes cut off hands as a punishment for breaking a promise. The author reacted to this type of execution because it "stemmed from ignorant thoughts that were against the Islamic law and should not spread to other tribes." In addition, it was necessary to provide justice to foreigners living in Yemen. Thus, there should be a criminal court in every sub-province center with one investigating magistrate in each of them and a prosecutor in the court of the provincial center to examine the procedures and implementations.[222] The state aimed to control all legal practices throughout the province and not to allow those conflicting with sharia.

According to the memorandum, an appeal court should be established in the provincial center for cases that needed to be retried. However, the establishment of a new court would be costly. Thus, the *naib* of the provincial center should serve as the president of the appeal court and the mufti of the center and the vice-governor or accountant (*defterdar*) would serve as members while continuing to fulfill their own duties. However, if the government decided to abolish the nizamiye courts and not to maintain the criminal courts anymore, then, the *şer'iyye* courts should hear the criminal cases according to the criminal law.[223]

Osman Nuri Paşa, the governor of Yemen, reported from Yemen to Istanbul that the nizamiye courts should be abolished. Quite obviously, he considered the changes introduced in 1880 as insufficient. He indicated that the abolishment of the first instance and appeal courts was necessary because the Yemenis were accustomed to living like Bedouins (*hal-i bedeviyyetde olmak mülâbesesiyle*) and hence kept away from the nizamiye courts. The abolishment of these courts would "endear the

[222] YEE. 35-74, undated.

[223] Ibid.

state to the people" and relieve the Treasury of the expenses of an inefficient institution. Osman Nuri Paşa thought that there should be şer'i judges chosen from among local scholars and accompanied by one or two members in the province and sub-province centers. This would be more economical in contrast to complexly organized nizamiye courts –composed of a staff of presidents, members, prosecutors, vice prosecutors, head-clerks, clerks and others. *Şer'iyye* courts would have fewer personnel and their establishment would save the Treasury more than 606,000 kuruşes.[224]

Although Osman Nuri Paşa was very eager for the abolishment of the nizamiye courts, he had his opponents. For instance, Muhammed Hilal Efendi, the president of the appeal court in Yemen, strongly criticized Osman Nuri. The decision of the abolishment of nizamiye courts was wrong in Muhammad Hilal's opinion. He asked how the sub-district people would have their cases (deâvî-i vâkıa) tried if these courts were abolished.[225] In his view, the dismantling of the nizamiye court undermined the efforts to "spread justice and civilization" (*neşr-i adâlet ve medeniyet*) in this part of the empire. Far from winning local support for the government, he believed it would generate hopes of independence among the Yemenis.[226] He stated that nobody complained about the officials or the courts and even did not apply to the courts of appeal and cassation. According to Muhammed Hilal, these were the indication of their obedience to the state authorities and the good manner of the Yemeni people.[227]

Muhammad Hilal Efendi disagreed with the governor's view that the courts were almost universally rejected and cited reports of the administrative council of Asir that had called for the creation of a nizamiye court in the district of Ghamid.[228] According to Muhammed Hilal Efendi, the critics of the system were exaggerating the circumstances when they said people applied only to their own *faqih*s. In fact,

[224] İ.DH. 1083/84941. 23 Mayıs 1304/ 4 June 1888.

[225] İdris Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası," *Osmanlı Araştırmaları/Journal of Ottoman Studies*, (İstanbul: Enderun Kitabevi, 1982, vol: 3), 312-313.

[226] Kuehn, *Empire, Islam, and Politics of Difference*, 130-31.

[227] Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası,", 313.

[228] Kuehn, *Empire, Islam, and Politics of Difference*, 130-31.

people applied both to their *faqih*s and the district and sub-district councils for their cases to be settled –as in other provinces.[229] Osman Nuri Paşa in turn, complained about his critic to the minister, claiming that Muhammad Hilal Efendi's insistence on retaining the nizamiye courts reflected mere self-interest and caused people to resent the authorities.[230]

Muhammed Hilal Efendi spoke out of experience as a member of the judiciary. Court decisions and other documents in the Ottoman and Yemen archives confirm that the courts were not completely inactive places.[231] Still, Osman Nuri Paşa requested the abolishment of the courts and asserted that they were useless. However, an undated memorandum accuses Osman Nuri for his illegal practices and for causing the failures of the operation of courts. According to the author of the memorandum, Osman Nuri took many unlawful decisions and acting on his own in conducting government's business instead of consulting with the government. For instance, Osman Nuri Paşa dismissed the Müfti of Hodeida, Mehmed Efendi, based on the accusations of an enemy of Mehmed Efendi although previous governors had appreciated and honored him. Osman Nuri Paşa appointed someone else to the same position on his own, although a mufti could only be appointed with the request of the people and the approval of the Office of the Chief Jurisconsult (*Meşihat*). Such an act indicated that his behavior was against the judicial system and the law.[232] According to the same memorandum, Osman Nuri Paşa even gave orders to prevent the implementation of a summon to court in the case of some people. For example, Rahman Efendi, a rich person in Hodeida, applied to Osman Nuri Paşa in order not to appear before the court where he was called to appear as a defendant. Osman Nuri Paşa issued an order accordingly.[233] This information suggests that Osman Nuri Paşa intervened arbitrarily in the operation of the judicial institutions and compromised the people's right to have fair access to justice.

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[229] Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası," 312.

[230] Kuehn, *Empire, Islam, and Politics of Difference*, 130-31.

[231] See. Appendix G: YNDC. 3-8, 1; 2; 3; 4; 5; 6; 7; 8; 9.

[232] YEE. 35-74, undated.

[233] YEE. 35-74, undated.

This controversy continued among senior officials in the imperial capital. Ahmed Cevdet Paşa, the Minister of Justice, refused to support the reforms requested by Osman Nuri. He was willing to formally abolish the remaining nizamiye courts, but wanted to see as many of their features as possible preserved in the new şer'iyye courts, especially in the field of criminal justice. For example, nizamiye criminal court procedure was to be followed, only the Ottoman penal code should apply, the members of the nizamiye criminal courts were to continue under a different name, and the province would receive one public prosecutor. Members of the Commission of Jurists at the Office of the Chief Jurisconsult, however, favored Osman Nuri's initiative and criticized Ahmed Cevdet Paşa's proposal as mere window dressing that would defeat the purpose of winning the support of the local population.[234]

3.4. The Abolition of the Nizamiye Courts

After the establishment of the Nizamiye courts in Yemen, the government recognized that these courts did not operate as desired and it was necessary to make some reorganization and modification in the court system. The government decided not to insist on the implementation of the new order in Yemen, because the people of Yemen and Asir were accustomed to their previous practices and rules and found the new order unsuitable to their own dispositions and customs. Kadı Hüseyin Cağman Efendi, a San'a scholar, who had a good knowledge of the conditions and needs of the region, submitted a report to the Sultan on 4 October 1885. He provided information on the current situation of the nizamiye courts and made suggestions about the reforms they needed. Cağman indicated that the local ulama did not hesitate to pursue their own interests at the highest levels of government. However, he stressed local people's aversion toward the nizamiye courts and proposed that a single court in San'a staffed exclusively with local ulama replace the nizamiye courts.[235] The Ministry of Interior requested from the Ministry of Justice to review the recommendations in the report and to convey their opinions with the Porte.[236]

[234] Kuehn, *Empire, Islam, and Politics of Difference*, 131.

[235] Ibid., 129.

[236] DH.MKT. 1390/4. 25 Kanun-ı evvel 1302/6 January 1887.

The news arriving from Yemen indicated that people disliked the nizamiye courts and found them odd. Moreover, the method of operation of the judiciary turned the Yemenis against the government. The expenses of this ineffective judicial organization constituted an unnecessary burden for the Treasury as well.[237] Reports and petitions from the Province of Yemen stated that the judicial organization was not implemented fully, the existing organization did not produce the desired results, and thus the nizamiye courts should be abolished. In view of these demands, the government decided to see to the reorganization and modification of courts in accordance with local needs. The Ministry of Justice reviewed the suggestions of the province regarding the requested and proposed changes, prepared a report on possible new arrangements, and presented it to the Porte. The Office of the Chief Jurisconsult likewise formed a commission to examine possible changes and to formulate suggestions upon the Porte's request and submitted its report. The Council of Ministers reviewed these reports and decided to put both the civil and the criminal cases under the authority/jurisdiction of the şer'iyye courts. However, court observers chosen from among the local fuqaha and other scholars should serve on these courts in addition to a kadi (judge). [238]

The report of the Ministry of Justice reminded the government of the need for an examining official (*mümeyyiz*) in the adjudication of the criminal cases. This official should work under the presiding judge in criminal trials in a capacity comparable to court observers. He should observe the proceedings, conduct investigations, and to pursue the implementation of the decision. This arrangement would assure the conducting of the criminal cases according to the law and check abuses of authority (*suistimal*). Thus the government abolished the nizamiye courts and transferred their tasks to şer'iyye courts in Yemen. [239]

Appointing a public prosecutor to the council of provincial center, who was charged with retrying the criminal court orders given by the courts of counties and

[237] MV. 45/20. 28 Haziran 1305/10 July 1889.

[238] MV. 45/20. 28 Haziran 1305/10 July 1889.

[239] MV. 45/20. 28 Haziran 1305/10 July 1889.

provincial districts that were found to be against the law and sending the documents regarding şer'iyye and nizamiye courts to the concerned authorities, would be the continuation of previous practices that were announced to be abolished within new and different regulations only in name. However, the previous practices were abolished because it was understood that such an operation did not work in the local conditions and needs of Yemen. [240]

In addition, the government decided to appoint court observers to the şer'iyye courts. These observers should be selected from among the fuqaha or other local scholars in order to gain the confidence of people and to consult with them on some issues when need be. Their salary, which summed up one hundred and eighteen thousand and eight hundred kuruş should be allocated from the budget of şer'iyye courts. [241]

The existing courts for the trials of criminal cases found to be useless and their budget up to almost six hundred and seventy four thousand kuruş wasted. The first instance courts in the sub-provinces and districts charged with criminal trials and the criminal appeal court in the provincial center were abolished. Thus, the trial of criminal cases was transferred to şer'iyye courts to be ruled according to shari'a. In the cases of crimes that required *ta'zir* and *tahzir* according to shari'a, the judges should impose punishments according the criminal code. By doing so, there would be no need for criminal courts in Yemen and after the abolishment of them; their budget should be transferred to the Public Treasury. However, the commercial court in the capital city of commerce, Hodeida would continue its existence and operate as it did before. [242]

With the abolishment of nizamiye courts, there remained only şer'iyye courts in Yemen. According the Yearbook of Yemen dated 1308/1891, there were şer'iyye courts in the provincial center, the sub-provinces of Hodeida, Asir and Ta'iz, and the districts attached to these sub-provinces.[243] Despite the fact that the nizamiye courts

[240] MV. 45/20. 28 Haziran 1305/10 July 1889.

[241] MV. 45/20. 28 Haziran 1305/10 July 1889.

[242] MV. 45/20. 28 Haziran 1305/10 July 1889.

[243] *Yemen Salnamesi 1308*, the şer'iyye court in the center: President: *Naib* Ezherîzâde Mehmed Said Efendi, Court Observers: Ali Mağribî Efendi and Seyyid Cevad Efendi; Head clerk: Seyyid Abdullah Efendi, 91; the şer'iyye court in Hodeida: President: *Naib* Efendi; Court Observers: Abdurrahman Efendi and Mehmed Hatîb Efendi; Clerk: Mehmed Cemân Efendi, 126; the şer'iyye court in Asir:

were abolished, the existence of several şer'iyye courts in the center, sub-provinces and districts throughout the province indicates the decisiveness of the Ottoman state to provide justice under its control.

The conflict with Yemeni people and their reaction to the Ottoman legal institutions was very much related to the political affairs as well. The Zaidis were considered to be the legal descendants of the Prophet Muhammad (pbuh) and considered themselves as the representatives of Islamic religion. This is one of the reasons they did not want to obey the Ottoman rule. In discourse, both Zaidis and Ottomans did their actions in the name of religion. The Zaidis declared war upon Ottomans by legitimizing this "that they were corrupt, allowed the drinking of wine, had a taste for small boys, exploited the poor, failed to uphold God's law and, in short, were scarcely Muslims."[244] They protested Ottoman legal institutions because they believed that the Ottomans broke the Islamic law. On the other hand, the Ottomans thought that the Yemeni people were not prepared for their law because of their "mode of civilization". Thus, the rivalry between them continued for a long time and both sides compensated from their principles in order to agree. For instance, the Ottoman state compensated from its centralization policy and abandoned its target to establish nizamiye courts in all provinces.

To sum, after the establishment of the Nizamiye courts in Yemen, it became evident that these courts did not operate as desired and it was necessary to make some modifications in the court system. Moreover, certain judiciary practices and procedures further alienated the people from the government. Thus, the Ministry of Justice decided to abolish the nizamiye courts and to rule both civil and criminal cases in the şer'iyye courts where court observers selected from among local scholars served as consultants and facilitators of the courts' popular acceptance. However, the story did not end here. The Ottoman government renewed its attempts to establish nizamiye courts and the government transformed the şer'iyye courts and let the implementation of some nizami laws under their authority as described in the next chapter.

President: *Naib* Efendi; member: Müfti Abdullah Efendi; second clerk: Mehmed Efendi, 131; the şer'iyye court in Taiz: President: *Naib* Efendi; Head Clerk Efendi; Members: Ahmed Efendi and Seyyid Kâsım Efendi, 137.

[244] Dresch, *A History of Modern Yemen*, 5.

CHAPTER IV

4. Transformation of the Şer‘iyye Courts and Negotiations with Local Leaders

4.1. The Inadequacy of the Şer‘iyye Courts in Some Trials

After the abolition of the nizamiye courts, there occurred two kinds of tendency in hearing cases in the Hamidian era and later during the CUP period. Abdulhamid II and his officials inclined to adapt the legal system to the local conditions. Abdulhamit II realized the need for a popular legitimacy of policies and hence negotiations at the local level. After all, some of the best minds of the era (above all Ahmed Cevdet Paşa) urged him to heed local realities while pushing for reform. This was the reason that the Ottoman officials in the Hamidian era decided to abolish the nizamiye courts when they realized local people’s indifference to the courts. Instead of forcing their central legal system, they preferred to find a midway. On the contrary, the Unionists were far more centralistic and they shifted the policy of adapting to local conditions and had been more decisive in protecting nizami regulations and law, as discussed below.

The Yemenis’ disinterest in the *nizamiye* courts led to their abolishment. The government moved their civil and criminal legal responsibilities to the *şer‘iyye* courts, with the approval of the Ministry of Justice and the Office of the Chief Jurisconsult and with interesting adjustments discussed below. An imperial decree put the new court system into force on 15 August 1889. In fact, some cases that should be decided at *nizamiye* courts, where specific procedural and substantive laws applied, started to be heard at *şer‘iyye* courts and administrative councils (*mecâlis-i idâre*). Although the şer‘iyye courts were in force, the decisions of the Ottoman officials that transfer some cases to the administrative councils indicate that they did not desire a complete return back to the previous legal order where only şer‘iyye courts had supreme authority. For this reason, they charged administrative councils with the trial of some cases.

The legal procedure that should be observed in the trial of bandits caught in the Province of Yemen and gathering the necessary legal evidence had ran into some

difficulties even in the abolished *nizamiye* courts. When this task was assigned to the *şer'iyye* courts, it continued to be a bigger problem. For this reason, the Province of Yemen requested from Istanbul on 8 October 1889 soldiers for arresting bandits and the permission to set up a *divan-ı örfi* to conduct a trial according to martial laws. However, the Council of Ministers (*Meclis-i Vükela*) disapproved and declined this request after discussing it in its meeting on 27 November 1889.[245] The Ministers thought that there were not necessary conditions to set up a *divan-ı örfi*. Their decision may also imply their desire to protect the rules of the new judicial order. This indicated that the abolishment of the nizamiye courts and the operation of the *şer'iyye* courts do not mean a return back to the previous order. Although the Ottoman government authorized *şer'iyye* courts about judicial cases, they also concerned to emphasize the validity of the new legal system.

The abolishment of the nizamiye courts and the transfer of their duty to the *şer'iyye* courts created questions regarding the handling and settlement of cases related to the Public Treasury, such as those that involved tax-farmers (*mültezim*s), contractors (*müteahhid*s) and guarantors (*kefil*s). This issue had been discussed in the Council of Ministers in detail covering all bases on 17 August 1891. The Ministers thought that if they have the impression that the şer'iyye courts will hear the cases brought against the government officials because the nizamiye courts were abolished in the Province of Yemen, this would be wrong. The administrative councils (*mecâlis-i idâre*) would continue –as in the past– to have jurisdiction over charges brought against government officials for their job-related acts and behavior that call for punishment. The government should consider putting these matters under the jurisdiction of the administrative councils for the proper implementation of the relevant regulations. If the government deemed this inexpedient, then it should see to it that the attorney prepares a petition and report to appeal a court decision against the Treasury and to take it up for cassation too and submits it to the local government within the time limitations set by the relevant regulations for the local government to send it to the Office of the Chief Jurisconsult (*Meşihat*) and also to inform the Treasury. In the case of the earlier nizamiye court decisions that were reviewed by the Court of Cassation and returned to Yemen for due completion of their files, these files would have to be passed on to the şer'iyye courts. It can be understood that the

[245] MV. 49. 19 Teşrin-i sani 1305/27 November 1889.

Ministers insisted on the need to obtain permission for the authorization of the administrative councils to hear the case of litigations against government officials and those between the Treasury and the tax farmers, contractors or their guarantors.[246]

The criminal section of the nizamiye courts heard the criminal cases that required talion such as willful or unjust homicide and bodily harm normally in the new legal order of the Ottoman state.[247] The criminal cases that were settled at provincial appeals court could not be appealed again but they became final only after their review and approval by the Court of Cassation.[248] Because the nizamiye courts were abolished in Yemen and their responsibilities were given to the *şer'iyye* courts, the *şer'iyye* courts' sentences involving talion had to be approved with an imperial decree.[249]

The city of Hodeida was a trade center and thus the foreign population was probably higher than in the other regions. The British government also intervened Ottoman policies to some extent there. For instance, Mahmud Nedim wrote in an almost twenty-year later report that a first instance court established in the center of Hodeida upon the insistence of the British government.[250] The First Instance Court for Black Slaves (*Üserâ-yı Zenciyye Bidayet Mahkemesi*) was charged with the specific duties of hearing cases about black slaves.[251] However, it was not long-lived because only the provincial annual dated 1311/1893-4 mentioned the court.

[246] MV. 66/92. 4 Ağustos 1307/16 August 1891.

[247] Şamil Dağcı, "Kısas" *TDV İslam Ansiklopedisi*. Vol. XXV: 488-494.

[248] Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri (1876-1914)* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2010), 157.

[249] DH.MKT. 2298/116. 11 Kanun-ı Sani 1315/23 January 1900; DH.MKT. 2342/52. 25 Nisan 1316/8 May 1900.

[250] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 3.

[251] *Yemen Salnamesi 1311*, The First Instance Court for Black Slaves (*Üserâ-yı Zenciyye Bidayet Mahkemesi*): President: none; Head clerk: none; Members: 'Abîd Yetâbîle Efendi, Hasan Hîbetullah Efendi; Recording Clerk: Seyyid Mehmed Bâfir Efendi; Investigating Magistrate: Süleyman Efendi; Vice Public Prosecutor: none; Bailiff: Salim Bânbîle Efendi.

Another issue regarding the task of the *şer'iyye* courts in Yemen was about penalty articles defined in the *İntihab-ı Mebusan* code.[252] The Council of Ministers decided (and duly informed all provinces) that district (*kaza*) courts would hear misdemeanors that required a jail sentence up to a year and sub-province (*liva*) courts would hear felonies that required a jail sentence for more than a year. The Province of Yemen asked Istanbul where to rule these cases whether at *şer'iyye* courts or at administrative councils in the absence of nizamiye courts.[253] The Council of Ministers informed the provincial authorities to rule such cases at administrative councils instead of the *şer'iyye* courts.[254]

On the request of the Province of Yemen, the Ministry of Interior consulted with the Ministry of Justice about how to carry out the sentences of the commercial court at Hodeida.[255] Manyasîzade Refik, the Minister of Justice, approved the authorization of the Commercial Court located in the center of Hodeida district for the execution of court orders given by *şer'iyye* and nizamiye[256] courts and for adjudicating practices contradictory to stamp act in 1908.[257] The phrase "till the re-establishment of a new legal order" that the Minister of Justice used suggests that the government intended to reestablish the nizamiye courts in Yemen.

4.1.2. The Problem of Appeal and Cassation

After the transfer of the task of nizamiye courts to the *şer'iyye* courts, a new appellate and cassation authority had not been determined for the *şer'iyye* courts.

[252] The Sultan approved the *İntihab-ı Mebusan* code prepared by the first General Assembly in 1908. This code had been in effect until 1942. The code declared some penalties regarding administrative affairs. For instance, imams, priests, rabbis, and muhktars who declined the information request of the Municipality or the inspector and election commission (*hey'et-i teftişiyye ve intihabiyye*) would be punished. Another example is that if people who were not eligible to be elected as deputy became a candidate with an alias or if people register two times would be punished with cash fine and prison sentence. There are also penalties for people who threaten or incite others with bribes about registering to the elections. For more information about the penalty clauses, see *İntihab-ı Meb'usan Kanunudur: Layiha*, pp. 24-28.

[253] DH.MKT. 2614/16. 11 Eylül 1324/ 24 September 1908.

[254] 17 Eylül 1324/30 September 1908, *Düstur*, İkinci Tertip, (Dersaadet: Matbaa-i Osmaniye, 1911, Vol.1), 83-84.

[255] DH.MKT. 2679/48. 27 Teşrin-i sani 324/10 December 1908.

[256] The nizami court orders were probably given only by the Commercial Court in Hodeida.

[257] DH.MKT. 2720/85. 14 Kanun-ı sani 324/27 January 1909.

Consequently, the decisions of the *şer'iyye* courts on issues that normally came under the jurisdiction of the nizami courts were considered to be final. People did not know that they could appeal *şer'iyye* court orders by applying to the Office of the Chief Jurisconsult.[258] This situation denied people's full rights and harmed them. In order to eliminate this problem, İsmail Rahmi suggested that the right of appellate for shar'i court orders at the Office of the Chief Jurisconsult should be kept as it was and nizami court orders given by *şer'iyye* courts at the district should be appealed at sub-province courts and nizami court orders given by *şer'iyye* courts at the sub-province should be appealed and examined at *şer'iyye* court in the provincial center.[259]

Mehmed Ali, the Governor of Yemen in 1910-1911, acknowledged, on 18 June 1910, that the Zaidi Imams who played an active role in political affairs in Yemen incited people against the Ottoman government by claiming that the it did not put shari'a law into effect in a response to the Grand Vizir's inquiry. However, according to Mehmed Ali, Zaidi Imams actually guised their main political aims and alleged such an excuse to make an uprising. The declaration of shari'a provisions and the application of *ta'zir*[260] punishment would deal a deathblow to the presence and influence of Imams. Mehmed Ali pointed out the necessity of a cassation court in San'a under the presidency of a qualified judge (*naib*) with two members appointed from Istanbul and two members from among the local ulama in order to provide

[258] There was a different procedure before. They could object to the qadi's decision by applying to a higher-degree qadi or to the Supreme Court (*Divân-ı Hümayun*) in Istanbul. Two of the highest-ranking judges (*kazaskers*) of the Ottoman judicial hierarchy were members of the imperial divan, which was the highest executive organ of the Ottoman government and they advised the divan in legal matters and made up its legal branch, which functioned as a high court. The two judges heard appeals against the decisions of regular courts. They also examined the legal validity of objections to previous decisions of the divan. The litigants presented their respective views, claims, and documentary evidence. The judges checked government records and copies of former divan decisions to verify claims and called in witnesses and experts as needed. (Engin Deniz Akarlı, "Law in the Marketplace, 1730-1840," *Dispensing Justice in Islam: Qadis and Their Judgments* Prep. By. M. Khalid Masud, Rudolph Peters and David S. Powers (Leiden and Boston: Brill, 2006), 247.

[259] YEE. 11/15, 27 Kanun-ı evvel 1320/9 January 1905 İsmail Rahmi, 14. bend.

[260] *Ta'zir* are discretionary punishments in general and covered regulations regarding criminal matters and offenses intended to complement the *hudud* (crimes and offenses described in the Quran and the hadith) and prepared under the responsibility of rulers (*ulû-l-amr*). In the Ottoman state, they included a beating, exile, similar punishments, and/or monetary fines graded according to the economic position of the offender. See Joseph Schacht, *An Introduction to Islamic Law*, (New York: Oxford University Press, 1982), 91; Ahmet Akgündüz, *Introduction to Islamic Law: Islamic Law in Theory and* Practice, Rotterdam: IUR Press, 2010), 235.

justice and to investigate civil and criminal cases. Besides, as it was very difficult to communicate with Yemen, the farthest province from the center, it would be better to execute immediately the judgments of martial courts regarding misdemeanors (*cünha*) by military and to send the related documents to the Ministry of War for further investigation.[261] The Province of Yemen also informed the Ministry of Interior about the need to establish an inspection court (*teftiş mahkemesi*) and the Porte asked the Office of the Chief Jurisconsult for further action accordingly.[262]

As a result of these discussions and correspondence about the necessity of establishing an appeal authority[263] the government decided to establish an investigation committee in the provincial center of Yemen that would work also as the place of appeal for the sentences of the *şer'iyye* courts. The committee would consist of a president appointed by the Office of the Chief Jurisconsult, four members and a sufficient number of clerks. Istanbul would appoint two of these members. The governor and president of the committee would jointly select the remaining two members from among the local ulama and the Office of the Chief Jurisconsult would appoint them.[264]

4.1.3 The Problems of Charging *Şer'iyye* Courts with Nizami Responsibilities

In fact, some cases that should be decided at *nizamiye* courts, where specific procedural and substantive laws applied, started to be heard at *şer'iyye* courts and administrative councils (*mecâlis-i idâre*). However, determining the procedural laws and codes that should apply in certain cases became an issue. These cases involved, in general, disputes related to public treasury, crimes that required talion; crime cases regarding the articles in the crime section of the *İntihab-ı Mebusan* code; cases that involved Ottoman subjects and foreigners; cases about black slaves, and officials who committed an offence related to their duty or a theft. These questions came to

[261] BEO. 3777/283208. 25 Haziran 1326/ 8 July 1910.

[262] BEO. 3790/284196. 26 Temmuz 1326/ 9 August 1910.

[263] BEO. 3812/285843. 3 Teşrin-i evvel 1326/ 16 October 1910.

[264] 29 Eylül 1326/12 October 1910. *Düstur*, İkinci Tertip. (Ankara: Başvekalet Neşriyat ve Müdevvenat Dairesi Müdürlüğü, 1326-1338. Vol. 2), 748-749. For detailed information about the regulations that the committee based on their investigations and appeal decisions etc, see. 748-754.

the fore in the correspondences between the Province of Yemen and Istanbul. During the Hamidian era, the government usually charged şer'iyye courts and administrative councils to hear some cases that needs to be ruled at nizamiye courts. However, it is possible to see a policy shift in the subsequent years. The Unionists had a more centralist and statist policy and wanted to apply central regulations to the provinces more strictly. It is inevitable that this political change in the center influenced the whole provinces throughout the empire. The legal organization and the government's solutions to the problems regarding the courts changed from 1900s onward. For instance, the new government placed more emphasis on the application of nizami law and regulations. However, the Da'an agreement had bindingness and according to the agreement, there were only şer'iyye courts in Yemen. Thus, the government found a different solution: charging the *şer'iyye* courts with nizami responsibilities. It seems that the Ottoman officials wanted to reduce the degree of different policies in relation to provincial governance. It was their goal to move away from the different politics in the Province of Yemen.

The absence of the nizamiye courts in Yemen raised the question of where and how to conduct the trials of officials charged with embezzlement or other offenses related to their duty (*ihtilâsât ve vazife-i me'mûriyetlerine muteallık sair hususatdan münbais cerâimden*). The Province of Yemen applied to the Ministry of Interior on 19 April 1914 asking for permission for the trial of such cases at the first instance court of Hodeida. The Council of State (*Şura-yı Devlet*) approved this suggestion after considerable debate on 11 October 1914.[265] Nizamiye courts were abolished and their responsibilities passed on to the *şer'iyye* courts in Yemen. However, the disappearance of the nizamiye courts might have been a problem for especially foreign merchants. Probably as a consequence of such need, a first instance court reestablished in the center of Hodeida upon the insistence of the British government in around 1911-three years before Mahmud Nedim reports-and with the specific duties of hearing civil cases between Ottoman subjects and foreigners. A year later (on 31 October 1915), the Governor of Yemen, Mahmud Nedim Paşa, wrote to Istanbul that local conditions in Yemen made the trial of officials in Hodeida impractical and how it was difficult for Yemenis to apply there.[266]

[265] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915, Leff 3.

[266] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 3-4.

Mahmud Nedim informs that the only place of appeal for court orders given by the first instance court in Hodeida was in the Province of Beirut. It took a litigant who would like to appeal a Hodeida court order seven to eight months to travel from to Beirut. Given the high cost and the waste of time that appeal entailed, litigants did not want to use this option. Thus, their rights were wasted and they complained for not having prompt access to justice. At any rate, since the Ottoman government had abrogated all the capitulatory treaties by now, the *şer'iyye* courts should hear all civil and criminal cases between Ottoman subjects and foreigners. The treaty signed with Imam Yahya in 1911 necessitated that the government should enforce only shar'i rules and regulations throughout the province. Consequently, the first instance court in Hodeida should be abolished.[267]

On the other hand, Mahmud Nedim Paşa thought that *şer'iyye* courts would be insufficient in ruling official trials. Nizamiye and administrative courts could make decisions by considering bail bonds and documentaries having evidential value and any kind of clues about offenses as evidence. However, *şer'iyye* courts could not give judgment only with such clues and bonds. It was necessary for *şer'iyye* courts to rely on witnesses in order to reach a decision and conviction in such criminal cases. If an official is accused of embezzlement or any other offense related to his duty without the presence of any witness during the trial, then the case would be dismissed and the accused official would be acquitted. Proving such offenses in *şer'iyye* courts would thus be difficult and most cases would be treated as if it never happened. Thus, the rights of the plaintiffs who timidly go to law would be harmed. Mahmud Nedim gave the example of the administrator of Hubeyş, who was accused of such an offense and the litigants could not travel even to Taiz, which was at a fourteen-hour distance.[268]

All court personnel including the judges, court observers, bailiffs, and janitors employed at the appeal court, which Imam Yahya established according to his agreement with the Ottoman state, three courts in the center of San'a and other districts and sub-districts were selected from among the local people. Similarly, most court officials -except some section presidents- employed in the courts at sub-provinces of Ta'iz and Hodeida were selected and appointed from among the local

[267] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 3.

[268] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 3.

people. Because most of the accused officials or the witnesses summoned to the court lived in places distant from Hodeida for fifteen days or more, it was almost impossible to bring them into court. In addition, Imam Yahya would not probably allow the travel of people living in the Zaidi region to Hodeida or to Beirut to appeal a court order because this act would contravene his agreement with the government. In any case, traveling such long distances had many risks for all people living in different parts of Yemen. After listing all these reasons, Mahmud Nedim suggested that that administrative council of each district should hear both the cases about officials and the cases regarding the Public Debt Administration and the Tobacco Monopoly (Régie).[269] Because there was not an appeal court in Yemen, he proposed that the Cassation Court in Istanbul could examine and approve the legal judgments of the Provincial Administrative Council (*vilayet idâre meclisi*) in Yemen. Mahmud Nedim argued that his proposition would not be contravening the agreement with Imam Yahya.[270] It is possible to interpret Mahmud Nedim's decision that he inclined to think more bureaucratically in a modern sense and he distinguished administrative/public law as a separate field. The Minister of Interior Talat Bey agreed with Mahmud Nedim and applied to the Sublime Porte (*Sadaret*) to put his suggestions into action.[271] The Porte approved these suggestions[272] and requested from the Ministry of Justice what was needed to abolish the first instance court at Hodeida –in keeping with Mahmud Nedim's opinion. [273]

Both the ministry of Interior and the Sublime Porte made these decisions. However, one aspect of the problem remained unsettled because the Council of State (*Şura-yı Devlet*) could not reach a final opinion on it. Despite the persistent inquiries of the Province of Yemen, the council remained silent about the place of trial of the officials charged with crimes or misdemeanors related to their duties. [274] Apparently,

[269] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 4.

[270] Ibid.

[271] Ibid., Leff 2.

[272] BEO. 4382/328637. 26 Teşrin-i Evvel 1331/ 8 November 1915. Leff 1.

[273] Ibid.

[274] BEO. 4419/331387. 5 Haziran 1332/18 June 1916. leff 1; BEO. 4419/331387. 28 Mayıs 1332/10 June 1916. leff 2; BEO. 4419/331387. 21 kanun-ı evvel 332/3 January 1917. leff 3.

the Section of Penal Affairs (*umur-ı cezaiyye*) was charged to form an opinion on the issue,[275] but it was delayed and the report of the Council of State was still pending in May 1916.[276]

As indicated above, the *şer'iyye* courts were charged with nizami responsibilities along with the gradual abolishment of the nizamiye courts in Yemen. Furthermore, the structure of the new *şer'iyye* courts, very much like that of the dismantled nizamiye tribunals, reflected the idea of a court as a collegiate body, in that it featured not only a presiding judge (naib) but also two subordinate members, the court observers (*şuhudu'l-hükm*). More importantly, court decisions were at least in part based on the Ottoman penal code and on the Mecelle. Retaining the penal code and the Mecelle as the basis for the administration of justice in Yemen reflected the government's determination to uphold a central aspect of its sovereignty over the new province.[277]

4.2. A Commission of Reform: What Needs to be done in Yemen?

The abolition of the nizamiye courts and the existence of only şer'iyye courts in the Province of Yemen did not complete the mission of the Ottoman state to place its new legal system there. The Ottoman state could not achieve a full political control of the Province of Yemen as a consequence of local challenges to the administration. Thus, Abdulhamid II wanted to create a commission of reform to take their advices on the betterment of the Province of Yemen and how to integrate the province to the Ottoman system. A commission was established in 1898 to determine the conditions of Yemen and to scrutinize how to provide a good administration there.[278] Memduh Paşa, then Minister of the Interior, led the commission to seek a non-military solution with a view to bringing Yemen in line with other Ottoman provinces enjoying progress and development. The commission

[275] BEO. 4419/331387. 28 kanun-ı evvel 1331/10 January 1916. leff 4.

[276] BEO. 4419/331387. 9 mayıs 332/22 May 1916. leff 7.

[277] Thomas Kuehn, *Empire, Islam, and Politics of Difference: Ottoman Rule in Yemen, 1849-1919*. (Leiden: Brill, 2011), 115.

[278] BEO. 1123/84200. 10 Nisan 1314/ 22 April 1898; BEO. 1123/84206. 10 Nisan 1314/ 22 April 1898.

reviewed the recommendations made during the 1898-1904 period. The Council of State dealt with a range of suggestions including criminal law procedures and the organization of *şer'iyye* courts, as well as steps needed to establish peace through enforcing law and order.[279]

Memduh Paşa gathered some of these reports together in *Yemen Kıt'ası Hakkında Bazı Mütalaat*. Three of them (dated 2 November 1898) touch on court organization in Yemen. The commission made many suggestions. It is interesting to see in the first report that the Yemenis had become used to the criminal law. They said that though there were many problems and incompetence in the operation of Ottoman courts in Yemen, the judges applied the criminal law when punishing acts that required *ta'zir* and *tahzir* and the people became familiar with the provisions of the criminal law. The local ulama also accepted and adopted the necessity of investigation and taking oath from the litigants and witnesses. Thus, the commission concluded that the region was ready for the establishment of a "central first instance criminal court" in the provincial center and first instance criminal courts in other sub-provinces and some districts. They suggested that a "provincial court" (*vilayet mahkemesi*) should be established to hear the appeals to the decisions of the *şer'iyye* courts. The provincial naib should serve as president and four court observers should accompany him in this provincial court.[280]

Establishing new courts require new regulations as well. The commission offered that the court orders that required prison sentences for more than three months given by the courts of the districts should be confirmed in the sub-provinces and the court orders that required prison sentences for more than a year given by the courts at sub-provinces should have to be investigated by the provincial courts. If they were found contradictory to the law, they would be cancelled and would be corrected there or in the place where the decision was made at first. [281]

After the murder cases were heard at the district and sub-province centers, their case files should be sent to the "provincial court" for examination by the Indictment

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[279] Caesar E. Farah, *The Sultan's Yemen: Nineteenth-Century Challenges to Ottoman Rule*. (London: I. B. Tauris, 2002), 255.

[280] Mehmed Memduh, *Yemen Kıt'ası Hakkında Bazı Mütalaat*, (Dersaadet: Numune-i Tıbaat Matbaası, 1324), 47

[281] Ibid.

Committee (*hey'et-i ithâmiye*) and the elimination of their deficiencies. Then the cases should be sent to the provincial court or to the place where murder occurred according to a few criteria: the importance of the murder; the distance of the original place of the case to the center; and the existence of any demand or claim of one of the parties worthy to be heard. The civil service officers should execute the penalty orders and this decision would be suitable to a previous notification by the Ministry of Justice in 18 May 1882 and to the conditions of the region.[282]

The second report was about how the trial of civil cases. Local people in Yemen did not want to take their civil cases to nizamiye courts partly because they were unfamiliar with the procedural laws applied in civil law cases in the courts. Thus, according to the opinion of the commission, it would be better if *şer'iyye* courts continued to hear the civil cases. However, the appeal and investigation of court orders given by *şer'iyye* courts in Istanbul should be changed to some extent. The court decisions about crimes that required talion and cases regarding estates that valued more than ten thousand kuruşes should continue to be appealed and investigated at the Office of the Chief Jurisconsult but the guarantors of the defendant should be listened. The judicial inspector of judges (*müfettiş-i hükkâm*) should examine the courts sentences regarding estates that valued less than ten thousand kuruşes in the case of appeal.[283]

The third report urged for the appointment of a judicial inspector of judges, who should be responsible for examining whether civil and criminal cases were decided timely and in accordance with the current rules and provisions; eliminating deficiencies; making the necessary investigations about judges and officials accused of misconduct; and investigating the conditions [in courts] in all parts of the province. The appointment of a judicial inspector would be doubly necessary if he would serve as the examiner of the decisions of şer'iyye courts as the proposal discussed above called for. The commission pointed out that an upright man with integrity from among the members of *ilmiye* with a good grasp of şer'i rules and the provisions of nizami laws (*dirayet ve istikâmetiyle hüsn-ü sülûk ve sîreti fîîlen mücerreb olan ricâl-i ilmiyeden münâsib bir zât*) should be appointed as an inspector with a salary of 7,500 kuruşes. A court clerk having necessary qualities and

[282] Memduh, *Yemen Kıt'ası Hakkında Bazı Mütalaat*, 48.

[283] Ibid., 49.

knowledge of şer'i and nizami rules should assist him and have a salary of 2,500 kuruşes.[284]

On 3 January 1899, the Grand Vizier's Office requested from the Office of the Chief Jurisconsult its opinion about the proposal of the Ministry of Justice regarding how to handle the criminal and civil cases in Yemen.[285] Then, the Council of State sent its minute on dated 13 June 1316, stating that it examined the suggestions of the commission carefully, found them appropriate and is recommending further action accordingly.[286]

Another suggestion of the reform commission was about the training of judges. Many memorandums and other archival documents point to the need to establish schools in order to raise the quality of education in Yemen. **"**Yemenis are intelligent,**"** one observer noted, **"**but education is lacking.**"** Yemen was too important to be ignored. **"**If we are to win the loyalty of these subjects, then changes must be made and soon."[287] The naibs who presided over şer'iyye courts in the districts and sub-districts (*nahiye*) were not well educated and did not have a good grasp of şer'i rules and the Mecelle. Consequently these courts remained inadequate and ineffective and the cause of a just order was poorly served. The training of judicial officials was necessary to have an adequate number of local ulama who were properly trained to adjudicate in accordance with *şer'iyye*, serve as jurists with a competent knowledge of the Mecelle, and work as clerks who were familiar with the established methods of preparing legal documents (*sakk*)[288]. The reform commission proposed the appointment of Seyyid Abdullah Efendi, a court clerk at *şer'iyye* court, as a teacher with a monthly salary of 250 kuruşes. A decree to this effect was issued on 9 October 1898.[289]

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[284] Mehmed Memduh, *Yemen Kıt'ası Hakkında Bazı Mütalaat*, 49; BEO. 1238/92802. 25 Teşrin-i Sani 1314/ 7 December 1898.

[285] BEO. 1251/93751. 22 Kanun-ı Evvel 1314/3 January 1899.

[286] Mehmed Memduh, *Yemen Kıt'ası Hakkında Bazı Mütalaat*, 59-62. There is a detailed information about the procedure and operation of courts in the report.

[287] Farah, *The Sultan's Yemen*, 268.

[288] A method of *sakk* (*sakk-ı şer'i usulü*): all court orders and sentences were written according to this method as explained in *Düstur*.

[289] DH.MKT. 2122/8. 11 Teşrin-i evvel 314/23 October 1898.

There were many other recommendations for legal reform in the commission reports. For instance, Kaymakam Rehmi suggested, "Justice, criminal and civil courts had failed and were abolished. Şer'iyye courts should be given precise instructions by the *Mufti* to gain confidence of inhabitants, and process of appeal defined in order to prevent the loss of the plaintiff' s case by default." On the other hand, the commission led by Ferid suggested the regulation and standardization of shari'a laws and courts for the entire province. They observed that the complaints submitted to courts were not uniformly acted upon in the whole of the province; often it was the customary practices of the tribes that prevailed. It was necessary to operate courts on uniform basis. The areas where tribes observed the Jewish laws should be subject to the same regulations.[290]

Although the reform commission proposed many reforms, they could not be implemented. Yemeni people continued to show indifference to the Ottoman courts. Cases were heard not in the courts but by local faqihs and the Ottoman courts had limited authority to hear and adjudicate disputes.[291] Zeki Ehiloğlu's observations are instructive in this regard. He served as a judge advocate in the Imperial Army stationed in Yemen in ca. 1908-14.[292] He talks about his experiences, observations, and memoirs in his *Yemen'de Türkler*, which also gives an idea about the way justice mechanisms worked in Yemen.

Although the existence of the şer'*iyye* courts is recorded throughout the archival documents, memorandums and annuals, he narrates legal practices that were described by Hamid Vehbi, the author of *San'a* newspaper, as legal practices before the Ottoman rule in Yemen. However, it should be considered that the Ottoman state signed an agreement with Imam Yahya and started to evacuate parts of Yemen when Ehiloğlu was there. He indicates that all civil and criminal cases were settled according to *şer'iyye* by the local fuqaha. Before the evacuation, there was only a president called *reîs'ül-hükkâm* appointed by Istanbul at *şer'iyye* court in the center of province, San'a.[293] This was probably a consequence of the Da'an agreement,

[290] Farah, *The Sultan's Yemen*, 293-294.

[291] Ibid., 268.

[292] Yayınevinin Önsözü, Zeki Ehiloğlu, *Yemende Türkler: Tarihimizin İbret Levhası*, (İstanbul: Kitabevi, 2001), 10.

[293] Ehiloğlu, *Yemende Türkler*, 113.

which recognized Imam Yahya's right to establish courts and appoint the judicial officials their with Istanbul's approval. The information given by Ehiloğlu indicates that despite all efforts of the state, villagers did not acquire the habit/inclination of applying to the courts. As a matter of fact, Ehiloğlu indicates that people continued to apply their local fuqaha for the settlement of their cases:

> Most jurists in San'a gathered around the Great Mosque (*Cami-i Kebir*). Some faqihs stayed in a small shop and some who could not open an office ruled cases by sitting on any stone in a street corner or a step of a ladder as our scriveners. There was no need to write a petition, stick a stamp, and put any signature or seal. As there is no need for a stamp, ruling a case did not require any court fees or taxes. There was not any procedural code either. The fuqaha had own methods of notification and judgment.[294]

If the litigants did not apply to the faqih together, the plaintiff described her/his case and whom s/he sued and why. The faqih appointed a day and sent a notification to the defendant. If the defendant was not present at the designated place (court) on the appointed day and time, then the faqih gave a default judgment usually to the detriment of the defendant.

> Hereby, when the plaintiff or either party was present there, the faqih rolled up his large sleeves of his loose robe. He prepared his inkwell and his reed pen. Then, after he wrote the case and defenses briefly on the paper that he held, he pronounced his judgment. By this way, the trial ended and its sentence was written.[295]

There was no need for an official record when neither party objected to this decision. However, if one of the parties objected to it, it was possible to apply to the qadi to confirm the judgment. This shows that the *şer'iyye* courts were still functional authorities and had the power of sanction.

4.3. The Da'an Agreement and The Establishment of New Courts

The Ottoman state failed to suppress the rebellions and uprisings in Yemen especially led by the Zaidi population and tried to find a way out. The state made long negotiations with the Imam of Yemen but was unable to reach an agreement one way or another. At last, after long years of negotiation, the Ottoman governor Izzet

[294] Ehiloğlu, *Yemende Türkler*, 113.

[295] Ibid., 114.

and the commandant of the Zaidi Imam, concluded a truce on October 1911[296] at the village of Da'an. Sultan Mehmet Reşat approved and countersigned it on 22 January 1912. The terms of the truce were to apply to all the areas inhabited by Zaidis from Ta'iz in the south, and Amran and Kawkaban in the north to Haraz to the west.[297] The Ottomans continued to administer the Tihamah.[298]

The imam had not only requested that "judgments be in conformity with the shari'a," but also sought to have complete control of all judicial appointments in his previous negotiations. At Da'an, which recognized the Zaidi Imam as the legitimate leader of the Zaidi people living in northern Yemen, the first point agreed to was that "the imam will nominate judges of the Zaidi School, [then] inform the provincial administration, which will [in turn] inform Istanbul for the confirmation of this nomination by the Judicial Office."[299] Although the Ottoman state agreed to give authority to Imam Yahya, it can be assumed that the legal organization that the state aimed to establish in Yemen started to emerge gradually. For instance, it was decided to establish an appeal court in San'a, which was also the headquarters of the courts. The punishment decisions given by the courts had to be approved by the local sheikhs and sent to Istanbul for approval after the judge failed to achieve reconciliation, and a decree of confirmation to be issued within four months. The Ottoman government had the right to appoint judges for Shafi and Hanafi Yemenis and to appoint Shafi and Hanafi judges outside mountain region; mixed courts to be organized to look into disputes involving Zaidis and others. The government would also appoint supervisors for courts that seek to adjudicate disputes in villages of the countryside to lessen the burden of travelling to the locality of the fixed court.[300]

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[296] There are different dates given for the date of the agreement: 9 October 1911 in Caesar E. Farah, The Sultan's Yemen; 11 October 1911 in Metin Ayışığı, *Mareşal Ahmet İzzet Paşa: Askeri ve Siyasi Hayatı,* (Ankara, TTK, 1997), 45; 13 Ekim 1911 in Yusuf Hikmet Bayur, *Türk İnkılabı Tarihi*, (Ankara: TTK, 1943; vol: II, part: I), 46.

[297] Farah, *The Sultan's Yemen*, 271. The original document of the agreement is A.DVN.NMH. 37/1 (31 Kanun-ı sani 1327/13 February 1912). See Appendix F.

[298] Robin Bidwell, *The Two Yemens*, (Essex: Longman, 1983), 57.

[299] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, (Berkeley: University of California, 1996), 189-190.

[300] Farah, *The Sultan's Yemen*, 297-8.

The head judges of the courts were usually appointed from Istanbul. Muhammed Hilal Efendi, an Ottoman Syrian, who was the president of criminal section of the provincial appeal court, and Muhammad Nuri, another Ottoman Syrian, who was the head judge of Ibb, are cases in point. Otherwise however, men from the town and region filled the entire subordinate and lesser-paid court positions.[301] In addition to this, Kuehn determined that most of the jurists employed in Yemen courts were almost never posted outside the Province of Yemen while jurists from other parts of the Ottoman Empire were given judicial appointments in Yemen.[302]

In addition to dividing up the appointment of judges according to spheres of influence, the seventh article of the agreement is remarkable for the creation of "mixed courts" with "Shafi and Zaidi judges" to handle claims of "mixed schools."[303] With this truce, the Ottoman state had to grant significant rights to the Zaidi Imams in the appointment of court staff and its organization. It is also remarkable that after the abolishment of the appeal courts in Yemen established by the Ottoman state, the Imam accepted to establish an appeal court to be located in San'a. The Imam would nominate the staff of this court but the Ottoman government would approve and appoint them.[304]

4.4. Was it a Failure or a Success?

Avi Rubin interprets the establishment and a quick abolition of the nizamiye courts in Yemen as a "striking failure" in the history of the nizamiye courts. He claims that the effectiveness of the judicial reforms can be examined by an assessment of the implementation of the judicial reforms in regions that were

[301] Messick, *The Calligraphic State*, 189.

[302] Kuehn, *Empire, Islam, and Politics of Difference*, 137-8.

[303] Ibid., 189-90.

[304] Messick writes that "The imamic appeals courts have a somewhat complicated subsequent history, involving a Ta'iz-based and sometimes more Shafi-oriented second branch. Soon after he took control of Lower Yemen from the Ottomans, Imam Yahya appointed Abd al-Rahman al-Haddad, the noted Shafi'i scholar from Ibb, to head the appeals court in Ta'izz. Imam Yahya's son Ahmad, whose governorate seat and then capital as imam was in Ta'izz, operated with a branch there and another in San'a. (Messick, *The Calligraphic State*, 190-191)

considered culturally and geographically "remote" from the imperial center such as Yemen.[305] I will discuss here whether the story of the nizamiye courts was a success of failure story.

Most officials who served in Yemen wrote in memorandums, other archival documents, and memoirs about the ineffectiveness of the Ottoman courts in Yemen as a consequence of their incompatibility with Yemeni customs and dispositions. Although they do not explain what these customs and dispositions were, most officials who lived in Yemen for a while thought that the Ottoman court system was ill suited to Yemeni customs and dispositions (*emzice ve tabiatına aykırı*).[306] By saying this, some of the Ottoman officials implied a low level of civilization. Others had different practices and customs in mind or the different (Zaidi) schools of Islamic understanding that most Yemenis upheld. For instance, as mentioned in the previous chapter, they had a tradition of cutting hands of those who did not keep their promise[307] though such a norm does not exist in Islamic law.

Mehmed Tevfik Bey, Governor of Yemen between 4 July 1904-5 March 1906, wrote that in order to increase the recourse of Yemenis to Ottoman courts, the judges adjudicated the cases that involved Zaidis according to their own customs. Because the court presidents appointed by Istanbul did not know the Zaidi law, two so-called court observers (*şâhidü'l-hüküm*) were selected from among local jurists and appointed as court consultants to bring the Zaidi interpretations of Islamic law and Zaidi customs to the president's attention. For instance, they had their own notions of succession and norms of inheritance.[308]

Thomas Kuehn interprets these attitudes as a sign of Ottoman statesmen's feeling of superiority over Yemeni people to legitimize their administration there. He writes:

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[305] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity*, (New York: Palgrave Macmillan, 2011), 51.

[306] Thomas Kuehn uses this phrase in his book as a translation of "emzice ve tabiatına uygun" which is a phrase used several times in Yemen annuals, archival documents and memoirs.

[307] YEE. 35-74, undated.

[308] Mehmed Tevfik Biren, *"Bir Devlet Adamının" Mehmed Tevfik Bey'in (Biren) II Abdülhamid, Meşrutiyet ve Mütareke Devri Hatıraları*. ed. F. Rezan Hürmen, (İstanbul: Arma Yayınları, 1993, vol. 1.), 280.

> Many senior officials placed the blame for the limited acceptance of the Ottoman judicial system on the indigenous population: the Yemenis were simply too "savage" (*vahşi*) and "primitive" (b*edavetkarane*) to understand the new judicial institutions and practices. The full implementation of the Ottoman legal system, therefore, had to wait until the new, state run rüşdiye schools raised the locals to the cultural level of the administrators. These officials thus perceived indigenous legal practices, too, as markers of cultural boundaries or, more precisely, of civilizational hierarchies.[309]

Ottoman officials writing from Yemen thought in general that the Yemenis remained indifferent to the courts because they were unprepared to make a smooth adjustment to the new organization. However, the local dynamics played a role as well. The author of *San'a* newspaper wrote that "some wild tribes" (*bazı vahşi kabâil*) ceased applying to official courts so long as the Ottoman government did not accommodate their customs.[310] Local people insisted on preserving their customs and the Ottoman state insisted on building a justice system that preserved people's right to access justice.

Kuehn also asserts that when the Ottoman officials realized that Yemen could not be governed like those parts of Rumelia, Anatolia, Ottoman Syria, and Ottoman Iraq, where government influence was much stronger, they elaborated a form of governance for Yemen that was based to a much greater degree on the institutionalization and reproduction of difference. Rather, they institutionalized it by adapting modes of taxation, the judicial system, and military recruitment to what they perceived as the "customs and dispositions" (*âdât ve emzice*) of the local people.[311] According to Kuehn, the abolition of the nizamiye courts was a confirmation of the Ottoman state's perception of the indigenous population as "savages" who could not be ruled like more civilized Ottoman subjects in other parts of the empire.[312]

The information given throughout this thesis indicates that most of the different practices specific to Yemen originated from local demands. It seems that

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[309] Kuehn, *Empire, Islam, and Politics of Difference*, 109-110.

[310] Vehbi, *Yemen Salnamesi 1299,* 34.

[311] Kuehn, *Empire, Islam, and Politics of Difference*, 91.

[312] Kuehn, *Empire, Islam, and Politics of Difference*, 115-116.

the Ottoman state made concessions from its centralization policies for the sake of the continuation of its authority/sovereignty in Yemen. However, their several attempts to establish nizamiye courts showed their desire to eliminate this deviation. The language of archival documents suggest that the Ottomans neither desired nor preferred to create such a difference although some state officials who served in Yemen underlined the need for different policies in their memorandums. For instance, when the Province of Yemen requested from Istanbul on 9 April 1895 to increase the number of members employed in the administrative councils from three to four, the Council of State objected. Yemen's argument was that the unavailability of nizamiye courts increased the work of the administrative councils in Yemen. The Council of State disapproved this request because it contravened the Law of Provincial Administration and Yemen should have its nizamiye courts instead.[313] Apparently, the Ottoman state continued to benefit from its imperial experience of using politics of difference as a tool although it gradually transformed to a modern centralized state.

In addition, although Kuehn covers a period ends in 1919, he ignores Ottoman policies regarding the şer'iyye courts in Yemen after the abolition of the nizamiye courts. He does not place emphasis on the suggestions of the Reform Commission all of which indicate the Ottomans' desire to eliminate the difference policy in the Province of Yemen. Charging şer'iyye courts with nizami laws and regulations is also an important indicator of the government's desire to eliminate the difference.

It was the nineteenth century idea that the best governments are centralized governments keen to build a uniform set of laws and to implement them consistently hence predictably. Kuehn and Rubin approach the nineteenth century Ottoman policies from this point of view. According to them, the Ottoman state wanted to become centralized and their difference policies and the abolition of the nizamiye courts indicate the failure of centralization policies and even its colonialist attitudes toward the region. Based on Kuehn's observations and findings, Akiba writes that the abolition of the nizamiye courts in the face of fierce opposition from the local population in Yemen indicates the state's colonialist attitude toward Yemen. Local Zaidi and Shafi judges mostly took over the judicial posts in the Yemeni şer'iyye courts, despite the Ottoman attempt to appoint judges of the official Hanafi School of

[313] DH.MKT. 373/51. 29 Nisan 1311/11 May 1895.

law from Istanbul, which lasted only for a short period. Thus, local forms of Sharia were uplifted to official status and incorporated into the Ottoman legal hierarchy.[314]

All these approaches consider the nineteenth century Ottoman Empire as a centralized government aimed to build a uniform set of administration in the provinces. Any deviation from central policies means a failure or colonialism for them. This approach embodies a centralist/statist approach in itself that can be challenged as well. Is the way of best governance can be maintained only with a commitment to central policies? The Ottoman Empire is well-known for its decentralized structure for the previous centuries. Although it began to centralize in the nineteenth century, it is misleading to think that the Ottoman state turned its back on its previous imperial experiences. The state's main target was to establish Ottoman rule in the Province of Yemen and to provide justice to all its subjects. It was a classical and Hamidian policy to make adjustments and negotiations with local actors and to consider the local realities. From a centralist point of view, the different policies in Yemen might be considered as a failure but if we consider Hamidian policies in long term, it was succeeded in integrating Yemeni people into the new legal system.

If the Ottoman state had a colonialist attitude toward Yemen, how can we explain its several attempts to establish courts in Yemen? If the Ottoman state used the incapability and savageness of the local people as an excuse for its "policy of difference", why did they give up their policy of difference in some periods and aimed to establish nizamiye courts again? In my opinion, in contrast to other provinces that had been under Ottoman rule for hundreds of years, Yemen was unprepared and unused to the Ottoman administrative structure because it became province through the end of the nineteenth century and they could not easily adapt to the new system. The local conditions were not excuse for Ottoman colonialism but an indicator of a need for gradual transformation. Despite all of this, there seems to be an incompatibility between the Ottoman legal system and local traditions and customs. Because of this disconformity, the Yemeni people did not welcome the nizamiye courts. In order to accustom the local people to the new system, the

[314] Jun Akiba, "Preliminaries to a Comparative History of the Russian and Ottoman Empires: Perspectives from Ottoman Studies," *Imperiology: From Empirical Knowledge to Discussing the Russian Empire*, edited by, Matsuzato Kimitaka. (Sapporo: Slavic Research Center, 2007), 42-43.

Ottoman state preferred to transform the legal system in the Province of Yemen gradually.

The most significant characteristic of the Tanzimat, which was the equality of Muslims and non-Muslims before the law, might have been another reason for the local people's reaction to the Ottoman courts. There was a population of Jews in Yemen and the Zaidis did not consent to the idea of the equality of a Jew's testimony with that of a Muslim in courts. Zaidi imams "denounced the Ottoman authorities for according Christians and Jews in Yemen more influence than was their due."[315] Moreover, the Ottoman government had to accept Imam Yahya's demand that "the procedure about the *zımmi*s in Yemen is as the procedure of the second caliph Omar and according to the *şer'iyye* of Hanafi and Zaidi schools of law.[316]

Another issue was communication problems. Several documents and reports underline that most of the presidents and some members of the courts did not know the local language, Arabic. For instance, Hasan Halid mentions that most *naib*s whom he met in Yemen did not know Arabic and translators were not available during trials. Conducting a healthy hearing became almost impossible under the circumstances. Communication problems discouraged people from applying to Ottoman courts. They went to their local jurists instead. Hasan Halid suggests that in order to solve this problem, judges and members of the courts should be selected from among people who were respectful, trustworthy and spoke Arabic.[317]

Muhammed Hilal Efendi, who was the president of the criminal section of the appeal court, also emphasized the significance of Arabic and familiarity with local culture. He recommended the appointment of court members from among the local people or people who spoke Arabic and had a good knowledge of the region's culture. He reminds the Quranic verse "We did not send any messenger except

[315] Kuehn, *Empire, Islam, and Politics of Difference*, 109.

[316] A.DVN.NMH. 37/1 (31 Kanun-ı sani 1327/13 February 1912) Leff 20, 6. Madde; Leff, 10. 6. Madde (mukarrerat-ı hafiyye): "Yemen'deki Museviler'den olan zımmilere de ahkam-ı şer'i serif mucebince muamele olunacaktır." For the original document of the agreement, see. Appendix F. For an interpretation of the document, see. Hanioğlu, 298; Kuehn, 109.

[317] Y.E.E. nr.143/29 Hasan Halid Bey Layihası, 1318/1900, 27-28.

(speaking) in the language of his people to state clearly for them..."[318] to show the necessity of appointing members who speaks local language.[319]

Mahmud Nedim Bey became the president of the first instance court in Hodeida because of such language problem. The former president of this court, Abdulhamid Efendi, rejected to hear a case if not presented in Turkish. Consequently, reaching a final verdict took a long time. This situation weakened the authority and power of the Ottoman government and prepared the ground for foreign interference. It became necessary to replace him with someone who knew Arabic when the problems intensified to an extent that Abdulhamid Efendi could not even communicate with the court assistant.[320]

The incompetence of officials was another important reason of the inoperativeness of the courts. One of the memorandums mentions that because the court officials thought only their own interests, people became disgusted with Ottoman courts and government.[321] Another reason of people's disinterest to the Ottoman courts might be the hugeness of the province. The Province of Yemen had a huge territory. The Ottoman government thought about dividing it into two *beylerbeylik*s in the sixteenth century[322] and into three or four provinces in the nineteenth century in order to manage the territory effectively, but kept it as one province. However, the distance that most people had to cover and the time they needed to spend on the road to apply to the court of appeals in the provincial capital discouraged them from using this right they had.[323] For instance, the Minister of the

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[318] http://quran.com/14 Sahih International. 14/4.

[319] İdris Bostan, "Muhammed Hilal Efendi'nin Yemen'e Dair İki Layihası," *Osmanlı Araştırmaları/Journal of Ottoman Studies*, (İstanbul: Enderun Kitabevi, 1982, vol: 3), 318.

[320] Serap Sert, "Son Osmanlı Yemen Valisi Mahmud Nedim Bey Hayatı ve Faaliyetleri (1857-1940), (MA diss., Marmara University, 2009), 4.

[321] YEE. 35-74, undated. For more information about the need for educating court members, see. DH.MKT. 2122/8. 11 Teşrin-i evvel 1314/23 October 1898

[322] For a long narrative on the division of Yemen into two beglerbegliks, see Feridun Ahmed Bey, *Nüzhet-i Esrarü'l-ahyar der-ahbar-ı Sefer-i Sigetvar: Sultan Süleyman'ın Son Seferi*. *991/1583*, prep. by Ahmet Arslantürk and Günhan Börekçi, redacted by Abdulkadir Özcan, trans. by Vural Genç and Derya Örs. (İstanbul: Zeytinburnu Belediyesi, 2012).

[323] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 4.

Interior Mehmed Memduh wrote in his *Miftah-ı Yemen* that because a sub-district of Yemen was as large as a sub-province in other provinces and yet there were many sub-districts in Yemen without an appointed judge or mufti.[324] By referring to the hugeness of the territory, they might also mean the difficult geographical conditions of the province. These conditions might have caused people to abstain from traveling to the courts to apply.

As the Province of Yemen reported to the Ministry of the Interior, the most important reason of Yemeni people's disinterest in Ottoman courts was that they did not want to pay the court fee. The provincial authorities wrote that the Yemenis would not apply to courts and continue to rely on their own jurists if the government continued to charge a court fee. This situation would entail certain political disadvantages as well. In order to eliminate such political disadvantages and to make people applying courts, the court fees that summed over one hundred and thousand *kuruş*es per annum had been cancelled.[325] Instead of collecting court fees, the government decided to raise the taxes collected from the province on 14 June 1910, with the consent of the Office of the Chief Jurisconsult.[326] By doing so, the government aimed at increasing people's application to courts and to win their sympathy for the Ottoman government. However, we learn from Rubin that the court fee had been problem in all other provinces, thus, this problem was not specific to Yemen. A requirement to pay a fee for basic procedures rendered nizamiye court operations a rather expensive public service since it was not possible for average Ottoman subjects to pay for these services.[327]

According to Thomas Kuehn, another reason that drew people back from applying to Ottoman courts was "the introduction of secular criminal law; replacing shariʿa law with the Ottoman criminal code meant that criminal justice no longer included the application of the *hudud* punishments that many ulama considered a crucial element of righteous government."[328] This argument contradicts with what

[324] Mehmed Memduh, *Miftah-ı Yemen*. (İstanbul: Matbaa-i Hayriye ve Şürekası, 1330), 27.

[325] DH.MUİ. 68-2/23. 3 Nisan 1326/16 April 1910.

[326] DH.MUİ. 68-2/23. 1 Haziran 1326/14 June 1910.

[327] Rubin, *Ottoman Nizamiye* Courts, 47.

[328] Kuehn, *Empire, Islam, and Politics of Difference*, 108.

the reform commission observed and wrote in their reports. As Memduh cited, Yemeni people learned the provisions of the criminal law and became accustomed to them The local ulama recognized the necessity of investigation and taking oath from the litigants and witnesses.[329] Furthermore, whether the criminal law was a secular one or not is open to discussion as well. Although it was amalgamated provisions derived from both the contemporary European codes and shari'a principles, it still protected some bases of shari'a in its content. For instance, in the cases of murder, the criminal code stipulated that judges would impose shari'a punishments through the principle of talion or the payment of blood money as in the Islamic law.[330] Thus, the criminal code may not be considered as an indicator of the failure of Ottoman court organization.

It is significant to define how to measure "failure" and "success" in this case. The abolition of the nizamiye courts might be seen as a failure from a centralist and statist approach because the abolition indicated a deviation from systematic structure of the central state. However, if we think in long terms, the adaptation of the system to the local conditions may contribute to successful results. The interim formula that the state refashioned judicial regime is extremely important to consider in understanding the legal transformation in Yemen. Although it seems to be a failure in appearance, it may be considered to be a success story in long term when the 1911 Da'an agreement considered for its articles about the re-organization of the nizamiye courts in Yemen. Even in the Republican era in 1970s, the court organization in Yemen resembled to the Ottoman legal system. For instance, there were the first instance, appeal and cassation courts in Republican Yemen. The codifications that they applied in their courts very much resembled in title and form to the Ottoman codes.[331] Thus, it is also necessary to study the continuity between Ottoman legal institutions in the Province of Yemen and their later applications in the Republican era. Understanding this continuity might change our perspective that the Ottoman

[329] Mehmed Memduh, *Yemen Kıt'ası Hakkında Bazı Mütalaat*, 47.

[330] Aydın, "Ceza", 482.

[331] For the codifications and court system in Republican Yemen, see. Dr. S. H. Amin, Law and Justice in Contemporary Yemen: People's Democratic Republic of Yemen and Yemen Arab Republic, (Glasgow: Roston Limited, 1987), 57-83.

government's different policies in Yemen was not a failure but a success in long term.

4.5. Why the Insistence on a Bureaucratic Court System?

The Ottoman state's several attempts to establish nizamiye courts indicate that it was quite resolved to establish a bureaucratically organized court system in Yemen. A case in point is the implementation of certain standard norms, regulations and measures that aimed at standardizing and controlling the legal practice in Yemen. Thus, even the şer'iyye courts became subject to checks through the installation of appeal and cassation processes. Why did the Ottomans insist on building a bureaucratic judicial system?

One reason that comes to mind is that their decisiveness is indicative of the Ottoman commitment to the "rule of law." Professor Akarlı writes "no state could maintain itself over such a broad area, over such a diverse population and for such a long period without a working legal system and notion of legitimacy."[332] Therefore, it is possible to assume that maintaining a working legal system was the one of the main targets of the long-lived Ottoman state. Historians usually connect the success and longevity of the Ottoman social and political order to its notion of the circle of justice. We can outline this notion as follows. No political sovereignty can be attained without the military; yet, no military can be sustained without financial resources. These resources can be raised only through levying taxes, which presuppose continuous economic activity on the part of the subjects; but to maintain a level of prosperity that can sustain taxable income, justice needs to be ensured. Thus, to be attained, justice requires public order, all-important social harmony, and control of abusive and greedy government servants. To achieve all this, the shariʿa, clearly the axis of governance, points the way. Nevertheless, the shariʿa cannot be implemented without political sovereignty, and this cannot be attained without the military. Here, the circle is joined.[333] This indicates that maintaining an order where people had an easy access to justice was an aim of the Ottoman state. Although their

[332] Akarlı, "Law in the Marketplace, 1730-1840", 245.

[333] Wael B. Hallaq, *An Introduction to Islamic Law*. (New York: Cambridge University Press, 2009), 73-74.

legal practices may change in time, their aim to provide justice did not. They tried to keep open the way to access to justice.

Although the Ottoman state was in a transformation period in the nineteenth century and their notions of good governance were changing, certain deeply established principles continued to influence their policies and policy objectives. The state believed in this era that they could provide justice to its subjects with the new and hybrid legal system. The importance of providing justice and protecting people's access to justice hence rights is mentioned several times in the archival documents. For instance, Hamid Vehbi mentions that if the government does not allow assistance and procedures agreeable to their customs and what is familiar to them, they will altogether cease/stop applying to official judges and [courts] and thereby people's rights will be wasted.

> ülfet ve 'adetlerine muvafık teshilat ve muamelata müsaade olunmayacak olsa hükkâm ve hükkâm-ı resmiyyeye müracaat etmekden bütün bütün feragat ederek izâa-i hukuk-ı nasa sebebiyet verileceği.[334]

This statement indicates that the Ottoman government did not adopt the policy of difference on the pretext that new laws would be "contrary to their customs and dispositions" as Kuehn claims. Instead, the government seems to have been more attentive to providing justice based on the long tradition of Islamic legal practices. The state paid attention to protect people's rights and to provide them new ways to access justice.

For the Ottoman statesmen, people's lack of knowledge or not being informed of their right of appeal to the Office of the Chief Jurisconsult was a problem that needed urgent attention and correction, so as not to deny them access to justice and waste/compromise their rights.

> *Bâb-ı Fetva-penâhîye takdîm ile temyîzen taleb-i tedkîki usûlünü ekser ahâlî-i vilâyet bilmedikleri içün kesb-i kat'iyet etmekde ve bu ise ashâb-ı de'âvînin ziyâ'-ı hukukunu mûcib olmaktadır.*[335]

[334] *Yemen Salnamesi* 1299, 34-35.

[335] YEE. 11/15, 27 Kanun-ı evvel 1320/9 January 1905 İsmail Rahmi, 14. bend.

Similarly, the state did not want to leave the litigants in a situation that would deprive them of their right to justice:

> *aksi halde muhtelis veya vazife-i me'mûriyyetinden mücrim olan bir me'mûrun men'-i mu'ârazasına ve hatta berâetine hüküm verileceği ve bu ise ekseriya şuhûd ile isbatı mute'assır ve belki de gayr-i mümkin ihtilas da'valarını keen-lem-yekün ve müteneffiren müdde'î olanları hakkından mahrum bırakacağı melhuz olub*[336]

The Zaidi people had a tradition of cutting the hands of people who did not keep their promise. In order to remove such customs and provide justice adhere to Islamic law and the rules of the state, the Ottoman state aimed to succeed in making people apply to the courts and controlling the legal order there. By doing so, the rights of foreigners would be protected as well:

> *ba'zı kabâil-i baîdede sözünde sebât etmeyenin eli kesilmek gibi câhilâne ve gaddârâne mu'âmelât vâki olduğundan bu gibi muâmelât kabâil-i sâireye sirâyet etmemek ve oralarda bulunan ecnebîler temîn edilmiş olmak içün elviye merkezlerinde birer cezâ mahkemesinin*[337]

As a final example, in one of the reports written by the reform commission dated 1314, the commission pointed out the necessity of eliminating the deficiencies of the courts and providing justice on time without reason:

> *Mehakim-i deavi nâsı evkât ve ezminesinde temşiyete dikkat ve ihtimam edecek ve bilâ sebeb meşru hukuk-ı ıbâdı sürüncemede bırakmayacaktır*.[338]

These examples from many Ottoman documents indicate that one of the main concerns of the state was to provide justice to its subjects. In order to adhere to the principle of securing the rights of its subjects, the state insisted to establish nizamiye courts and allowed for some different practices even for the sake of making concessions to its centralization policies.

The disinterest of people to the nizamiye courts forced the state to leave only *şer'iyye* courts in Yemen but it charged them with some nizami responsibilities. For

[336] BEO. 4382/328637. 18 Teşrin-i evvel 1331/31 October 1915. Leff 3.

[337] YEE. 35-74, undated.

[338] Mehmed Memduh, *Yemen Kıt'ası Hakkında Bazı Mütalaat*, 123.

instance, *şer'iyye* courts gave judgments in accordance with the Mecelle and the penal code, both of which were actually prepared for use in the nizamiye courts.

The second reason of the state's insistence on the court organization is about its centralization policies. Especially from the early years of the twentieth century onward, the Ottoman state started to adopt more centralized policies. The participation of the CUP intellectuals in the government apparently had led them to value state. This new governing elite had consolidated and cemented its control over the Ottoman civil and military administration by 1913. As empire-savers the Young Turks always viewed the problems confronting the Ottoman Empire from the standpoint of the state, placing little if any emphasis on the people's will. Thus, the Young Turks' inclination toward authoritarian theories was by no means a coincidence.[339] It is inevitable that this political change in the center influenced the whole provinces throughout the empire. The legal organization and the government's solutions to the problems regarding the courts changed from 1900s onward. For instance, the new government placed more emphasis on the application of nizami law and regulations.

Centralization was hardly a process of mere domination of the provinces by the capital. Istanbul extended itself more deeply into provincial politics, economy, and society.[340] The state aimed to apply strong centralization policies and to control the legal procedure by creating a uniform and standardized court organization with the law of provincial administration and other legislation. As Yemen became province, they immediately tried to establish a new court organization there. In order to eliminate plurality and to win recognition as the single legal authority, the Ottoman state reached a compromise with the local ulama and sheikhs and tried to incorporate them into the state's legal institutions/system and to remove them as an alternative to its courts.

In conclusion, it is possible to make observations in the policy shifts of the Ottoman Empire during a short period of time and their reflections in the legal

[339] M. Şükrü Hanioğlu, *Preparation for a Revolution: The Young Turks, 1902-1908*. (New York: Oxford University Press, 2001), 312-3.

[340] Donald Quataert, *The Ottoman Empire: 1700-1922* (Cambridge: Cambridge University Press, 2005), 63.

system of a far province, Yemen. Although the Hamidian officials inclined to adapt the legal system to the local conditions, the Unionist officials had been more insistent to implement central regulations in the Province. The story of Ottoman legal system in the Province of Yemen indicates that the Ottoman state gradually transformed the judicial organization. It is also possible to observe that although the state made concessions to its policies in the provinces, it did not compromise its ideal of providing justice to all its subjects.

CHAPTER V

5. Conclusion

This study has aimed at revealing the introduction of the new Ottoman court organization in the province of Yemen and the novelties it brought to legal understanding in the region. It tried to understand different dynamics at place during the gradual transformation of the judicial organization in the Province of Yemen from 1872 to 1918. The thesis also questioned the success and failure of the effort.

The state aimed to apply the new judicial organization in all provinces with the Provincial Law of 1864, including Yemen after the government's determined efforts to build corporation in 1872. However, it took some time to fully consolidate the new organization. The Ottoman government established nizamiye courts in the provincial center and in most sub-provinces and districts by 1879. The thesis reveals the novelties that the new court organization brought to the region such as the bureaucratic and hierarchical organization of the nizamiye courts, multiple judges, and the office of public prosecution. However, the Yemeni people were unaccustomed to applying to courts and the Ottoman state faced resistance. Thus, the state reorganized the court system with some modifications to bring the judicial organization into conformity with local conditions. When the effort did not yield the desired results, the state decided to abolish the nizamiye courts and sustained the şer'iyye courts in 1889. Subsequently, the government transformed the şer'iyye courts and tasked them with nizami law such as Mecelle and criminal code.

The study also tried to explain why people hesitated and refrained from applying to the Ottoman courts and preferred to apply to their fuqaha instead. Some of these reasons were that the new organization was not suitable to their local customs and traditions. The Province of Yemen was a huge territory and the distance that most people had to cover and the time they needed to spend on the road to apply to the courts discouraged them from applying to the Ottoman courts. Another reason of Yemeni people's disinterest in the Ottoman courts was the requirement to pay a fee for even basic procedures. The court fee turned the courts into an expensive public service and people shunned applying to the Ottoman courts. The equality of Muslims and non-Muslims before the law was another reason of the local people's reaction to the Ottoman courts. There was a population of Jews in Yemen and the

Yemenis did not consent to the idea of the equality of a Jew's testimony with that of a Muslim in courts.

The thesis also aimed to understand the insistence of the Ottoman state to integrate the local people into the new legal organization. I explained the government's decisiveness as an indicator of their commitment to the "rule of law." The Ottoman state succeeded to survive for centuries with a working legal system and maintaining an order where people had easy access to justice was one of the most significant aims of the Ottoman state. The state's main target was to establish Ottoman rule in the Province of Yemen and to provide justice to all its subjects. Although its legal practices may have changed in time, the state's aim to provide justice did not. The Ottomans tried to keep open access to justice.

In addition, instead of interpreting the abolition of the nizamiye courts as a failure, this thesis argued that the flexibility of Ottoman practices provided a gradual transformation of the legal system in Yemen that resulted with the establishment of new courts again with the consent of the local leaders at the Da'an agreement in 1911. The Yemeni people became accustomed to Ottoman practices in time partly because of the reconciliatory attempts of the Ottoman government. Remarkably, a court organization similar to the Ottoman judicial system was established in Yemen in the Republican era. This thesis also proved that in contrast to common belief, the Ottoman state did not pursue uniform policies and practices while centralizing during the nineteenth century. Apparently, the Ottoman state continued to benefit from its imperial experience of using politics of difference as a tool of governance although it gradually transformed to a modern centralized state.

Some historians have studied the history of the Ottoman nizamiye courts based on the applications and changes in the center, Istanbul. Although we learn about the formal structure of the nizamiye courts from these studies, we do not know much about the implementation of the nizamiye courts in different provinces. Each province had its particular conditions and the implementation of the nizamiye courts probably showed some differences in each province. Avi Rubin suggested in his *Ottoman Nizamiye Courts* that future microhistories of specific nizamiye courts in various provincial localities would enable us understand better the dynamics of Ottoman sociolegal change. This thesis aimed to contribute to the present literature

by studying the implementation of the new court organization in a far away Ottoman Province, Yemen.

This research will become more meaningful for Ottoman historiography if additional studies on the implementation of the new legal system in other provinces become available. This study aims to serve as a step toward comparative studies of judicial organization in Rumelian, Anatolian and Arabian provinces. Such comprehensive studies should provide an insightful point of view in understanding the legal transformation of the Ottoman state and its centralization process. We would then be in a better position also to understand interactions between the center and the peripheries and the influence of local power relations on judicial proceedings.

Appendices

Appendix A

Court Staff in 1880/1 according to Yearbook of Yemen 1298

The Provincial Center

Nâib: Cafer Efendi

The Civil Section of the Appeal Court
The President: Muhammed Hilal Efendi.
Public Prosecutor: Hilmi Efendi.
Members: Seyyid İsmail bin Muhsin İshak Efendi; Seyyid Ali bin Abdurrahman Efendi.
Junior Clerk: Abdullah Efendi.
Clerks: Abdi Efendi; Seyyid Ahmed Efendi.

The Criminal Section of the Appeal Court
The President: Naib Cafer Efendi.
Members: Seyyid Mehmed bin Hüseyin bin İshak Efendi; Kadı İsmail Cafer Efendi.
Junior Clerk: Seyyid Mehmed eş-Şâmi Efendi.
Head clerk: Hamdi Efendi.
Clerks: Yaver Efendi; Ali Cum'a Efendi.

The Civil Section of the First Instance Court
The President: Abdullah Efendi.
Members: Seyyid Yahya bin Mehmed Mansur Efendi; Seyyid Hüseyin bin Kâsım Fayi' Efendi.
Junior Clerk: none.
Head clerk: Seyyid Mehmed Efendi.
Clerks: Seyyid Hüseyin Salâh Efendi; Ahmed Muhtar Efendi.

The Criminal Section of the First Instance Court
The President: Münib Efendi.
Deputy Public Prosecutor: Ahmed Beğ.
Members: Seyyid Abdullah bin Ahmed Efendi; Seyyid Mehmed bin Mehmed Sâdık Efendi.
Junior Clerk: Seyyid Hüseyin Fâyi' Efendi.
Clerks: Seyyid Ahmed Efendi; Rüstem Efendi.

The Sub-province of Ta'iz

Naib: Hacı Ahmed Pir Efendi

The Criminal Section of the First Instance Court
Members: Abdullah bin Abdülaziz Efendi; Seyyid İsmail bin Ali Efendi.

The Sub-province of Hodeida

Naib: Abdulhamid Hayri Efendi

The Criminal Section of the First Instance Court
The Second President: Abdullah Niyazi Efendi.
Members: Mekkeli Mehmed Sağid Efendi; Seyyid Ali bin Ahmed Efendi; Seyyid Ali bin Bekir Efendi; Kadızade Mehmef Efendi.

The Sub-province of Asir

Naib Remzi Efendi

The Civil Section of the First Instance Court
Members: Abdullah bin Muaz Efendi; Meşît bin Salim Efendi.

The Criminal Section of the First Instance Court
Members: Mehmed bin Ali Murhan Efendi; Abdurrahman bin Süleyman Efendi.

Court Staff in 1888/9 according to Yearbook of Yemen 1306

The Provincial Center

The Civil Section and Execution Office of the Appeal Court
President: none
Members: Seyyid Mehmed bin Hüseyin Efendi; Seyyid Ali bin Mehmed Efendi; Seyyid Ali bin Abdurrahman Efendi; İsmail Cafer Efendi.

The Clerk's Office of the Appeal Court
Head Clerk: Mehmed Reşid Beğ
Clerks: Seyyid Abdurrahman Efendi; Seyyid Mehmed Şah Efendi; Mehmed Yüdûmu Efendi; Diğeri Ahmed Semmân Efendi

The First Instance Court
President – Naib Hacı Ahmed Pîr Efendi
Members: Seyyid Ali el-Mağribî Efendi; Abdullah 'Azânî Efendi; İbrahim Cafer Efendi; Seyyid Abdullah bin İshak Efendi.

The Clerk's Office of the First Instance Court
Head Clerk: Beşir Mecidî Efendi
Recording Clerk of the Civil Section: Seyyid Mehmed Hâşim Efendi and Seyyid Ahmed Efendi
Recording Clerk of the Criminal Section: Seyyid Mehmed Haddâd Efendi and Ahmed Muhtar Efendi.
The Office of Investigating Magistrate of the First Instance Court: Investigating Magistrate Tahir Efendi
Execution Office: Execution official Yaver Efendi

The Sub-province of Hodeida

The First Instance Court
President: Naib Efendi Müderris
Members: Seyyid Şeyh Efendi; Seyyid Ömer Maslah Efendi; Seyyid Ali Saim Efendi; Seyyid Süleyman Hücûm Efendi.
Investigating Magistrate: Raşid Efendi
Head Clerk: Mehmed Cemal Efendi
Clerks: Mahfuz Efendi; Bâf Efendi; Ahmed İsa Efendi; Abdullah Muhtar Efendi.
Execution official: Ahmed Receb Efendi

Commercial Court

President: Mahmud Efendi
Permanent Members: Ali Bahemdûn Efendi; Mehmed Bâbki Efendi; Ömer Henumi Efend; Salih Şevâf Efendi.
Temporary Members: Abdullah Bâbki Efendi; Süleyman Ömer Henumi Efendi; Abîd Banbile Efendi; Mehmed Abdurrahman Efendi
Head Clerk: Süleyman Faik Efendi

The Sub-province of Asir

The First Instance Court
President: Naib Efendi.
Members: Said bin Sâ‘d Efendi; Hüseyin bin Müte‘âlî Efendi; Meşît Efendi; Mehmed bin Şeblân Efendi.
Head Clerk: Abdullah Efendi.
Clerks: Mehmed Efendi; Mevlüd Efendi
Investigating Magistrate: Derviş Efendi.
Execution official: Mehmed Efendi.

The Sub-province of Ta‘iz

The First Instance Court
President: Naib Efendi
Members: Seyyid İsmail Efendi; Kasım Ayânî Efendi; Abdurrahman Mücahid Efendi.
Head Clerk: Bilal Lütfi Efendi.
Clerks: Hüseyin Efendi; Ahmed Ketef Efendi; Nuri Efendi.
Investigating Magistrate: Emin Efendi.
Execution official: Hafız Efendi

Court Staff in 1895/96 according to Yearbook of Yemen 1313

The Provincial Center

Şer‘iyye Court
President: Naib Ezherîzâde Mehmed Said Efendi müderris
Head Clerk: Seyyid Abdâh Efendi müderris
Court Observers: Ali Mağribî Efendi; Seyyid Ali Kebsî Efendi.

The Sub-province of Hodeida

Şer‘iyye Court
Clerk: Ahmed Receb Efendi
Court Observer: Seyyid Mehmed Mebûl Efendi

The Office of the First Instance Court
President: Bekir Sıdkı Efendi
Vice Public Prosecutor: Nesîb Efendi
Head Clerk: Ahmed Câr Efendi
Recording Clerks: Es-Seyyid Mehmed Bâkır; Mahmud Efendi
Deputy Investigating Magistrate: Abid Efendi
Member: Kadızâde Mehmed Efendi

Commercial Court
President: Halil Kâmil Efendi
Head Clerk: Mehmed Medenî Efendi
Permanent Members: Salih Receb Efendi; Yahya Davud Efendi; dâimi Salih Şazeli Efendi; Ebubekir Bârâsi’ Efendi.

The Sub-province of Ta‘iz

Şer‘iyye Court
Clerk: Ali Abdulkerim Efendi
Court Observers: Mehmed Davud Efendi; Seyyid Kasım Efendi.

The Sub-province of Asir

Şer‘iyye Court
Court Observer: Mehmed Hüseyin Efendi

Appendix B

MV. 45/20 1306 Za 12

Özet: Yemen vilâyeti adliye teşkilatı bünyesinde bulunan ceza, adi hukuk, bidayet ve ceza istînâf mahkemelerinin lağvıyla, tahsîsâtının hazine-mânde olması ve bunların yerine kurulan mahkeme masraflarının buradan karşılanması.

Meclis-i Vükelâ Müzâkerâtına Mahsûs Zabıt Varakasıdır.

Hâzır bulunan zevât-ı fihâmın esâmîsi.

Müzâkere olunan mevâdda müteallık varakanın nev‘iyle hülâsa-i meâli ve Bâb-ı âli Evrak Odasınca olan numerosu ve Meclise havalesi tarihi ve melfûfatı kaç kıt‘a olduğu

28 Haziran 1305

12 Zilka‘de 1306

Müzâkere olunan mevâdda müteallık varakanın nev‘iyle hülâsa-i meâli ve Bâb-ı Âlî Evrak Odasında olan numerosu ve Meclise havalesi tarihi ve melfûfatı kaç kıt‘a olduğu

Nev’i: Muhâbere-i tezkire-i sâmiye ve mazbata

Hülâsa-i Meâli:

Yemen’de teşkîlât-ı adliye henüz kâmilen icrâ edilmemiş olduğu gibi teşkîlât-ı vâkı‘ada matlûb olan netâyici temin edemediği cihetle mehâkim-i adliyenin ihtiyâcât-ı mahalliyeye tevfikan sûret-i tensîk ve ta‘dîli hakkında sebk eden karar ve iş‘âra cevâben Yemen vilâyetinden gelen tahrîrât üzerine Adliye Nezaretiyle muhâbereyi şâmil tezkirenin leffiyle fukahâdan mürekkeb bir encümen akd olunarak keyfiyetin bi’l-etrâf tedkîk ve müzâkeresiyle hâsıl olacak netîcenin iş‘ârı zımnında makām-ı vâlâ-yı meşîhat-penâhî ile icrâ kılınan muhâbereyi şâmil tezkire-i sâmiye heyet-i ilmiyyenin mazbata-i melfûfesiyle beraber kırâat olundu.

Karârı:

Sâlifü’z-zikr heyet-i ilmiyye mazbatasında Hıtta-i Yemâniyye ahâlisinin mehâkim-i nizâmiyeden nihâyet derecede müteneffir ve mütevahhiş oldukları cihetle usûl-i adliye oraca ahâliyi hükûmetden tebrîde ve bi-gayri-lüzûm hazîne-i celîleye masraf vukūuna sebebiyet vermekde olduğu Yemen vilâyetinin evvel ve âhır vukū‘ bulan iş‘ârâtından müstebân olacağına nazaran Adliye Nezâretinin cevâbında gösterildiği vechile de‘âvî-i cezâiyyenin esnâ-yı rü’yetinde şuhûd ale’l-hükm olmak ve cerâim-i vâkıa içün hâkimü’ş-şer‘in riyâseti altında ve a‘zâ sıfatında bulunup mahkeme-i cezâiyye şeklinde icrâ-yı tahkīkāt ve muhâkemât ile cezâ kanûnuna tevfîkan tayîn-i mücâzât etmek üzere mümeyyiz nâmiyle a‘zâ ve deâvî-i cezâiyyenin kanûna muvâfık sûretde hüsn-i cereyânına nezâretle sû-i isti‘mâlâta meydan vermemek ve livâ ve kazâ mecâlisinden sâdır olacak i‘lâmât-ı cezâiyyeden mugāyir-i kanûn

görünenleri merkez-i vilâyetdeki meclisde istînaf etmek ve evrâk-ı şer‘iyye ve nizâmiyyeyi merci‘lerine göndermek üzere bir müddeî-i umûmî nasbı vilâyet-i mezkûrede kābilü’l-icrâ olduğu beyân olunan kavânin-i cedîde-i adliyeyi nâm-ı âharla ibkā ve icrâ etmeğe çalışmak demek olup bu ise ahvâl-i mevki‘a icâbınca münâsib olmayacağı anlaşıldığından mukaddemâ mehâkim-i nizâmiyyenin hukūk kısmı lağv olunarak hukūk-ı ‘âdiye davaları mehâkim-i şer‘îyyeye havâle olduğu gibi umûr-ı cezâiyyeye bakmak üzere livâ ve kazâlardaki bidâyet mahkemeleriyle merkez-i vilâyetdeki cezâ istînâf mahkemesinin dahi lağvıyla mesâlih-i vâkıanın vech-i vecîh-i şer‘î üzere fasl ve rü’yet olmak üzere mahkeme-i şer‘iyyeye tevdîi ve fakat ticaretgâh olan Hudeyde’deki ticâret mahkemesinin ibkāsı ve muhâkemât-ı şer ‘iyyede ahâlînin bir kat daha temîni içün hazır bulunmak ve lede’l-hâce yalnız mesâil-i lâzımede istişâre olunmak üzere mahallî ulemâ ve fukahâsından evsaf-ı matlûbeyi câmi‘ şühûd ale’l- hükmün dahi mehâkim-i şer‘iyyede bulunduğu ve bunda tahsîsi lâzım gelen senevî yüz on sekiz bin sekiz yüz guruşun mehâkim-i şer ‘iyye hâsılâtından mal sanduklarına âid olan mikdârdan iş ‘âr-ı mahallî vechile tesviyesi husûsunun merciine havâlesi der-meyân kılınmışdır. Vilâyet-i mezkûrede teşkîlât-ı adliyenin tesîsi ve icrâsı husûsiyyet-i mevkīaya ve emzice-i ahâlî-i mahalliyeye göre kābil olamayup el-yevm umûr-ı cezâiyyeye bakmak üzere mevcûd olan mehâkim-i adliye içün senevî altı yüz altmış dört bin bu kadar guruşun beyhûde sarf olunmakda idüğü anlaşıldığından mesâlih-i hukūkiyyenin hey’et-i ilmiyye mazbatasında muharrer olduğu vechile mahallince ulemâ ve fukahâdan intihâb ve ta‘yin edilecek şühûd ale’l-hükümler huzûrunda ahkâm-ı şer‘iyyeye tevfîkan hâkimü’ş-şer‘ bulunanlar tarafında kemâkân rü’yet ve fasl edilmiş ve umûr-ı cezâiyyenin dahi yine bu hey’etler huzûrunda ta‘yin ve tedkīk olunmak üzere oraya havâlesiyle ta‘yîn-i cezâ husûsunun yani şer’an ta‘zir ve tahzîr misillü mücâzâtı istilzâm eden ef‘âlin tatbîkātında cezâ kanûnnâme-yi hümayûnu ahkâmına tevfîk-i muâmele edilmesi ve bu halde vilâyet-i mezkûrede lüzûmu kalmayacak olan mehâkim-i cezâiyyenin dahi lağvıyla tahsîsâtın hazîne-mânde olunması ve şühûd ale’l-hükümlere verilecek maâşâtın dahi zikr olunan karşılıkdan tesviyesi münasib görünmekle ol vechile îfâ-yı mukteziyyâtının bâ-mazbata arz ve istinafı tezekkür kılındı.

15 Zilka‘de 1306

Appendix C

MV. 66/92 1309 M 11.

Özet: İrâde-i seniyye ile lağvedilen Yemen vilâyeti mehâkim-i nizâmiyesine ait vezâifin mehâkim-i şer‘iyyeye havâlesinden dolayı Hazine ve mültezim, müteahhidîn ve kefiller arasında ortaya çıkacak da‘vâların sûret-i halli ile ilgili mütâlaalar.

Meclis-i Vükelâ Müzâkerâtına Mahsûs Zabıt Varakasıdır.

Hâzır bulunan zevât-ı fihâmın esâmîsi.

Müzâkere olunan mevâdda müteallık varakanın nev’iyle hülâsa-i meâli ve Bâb-ı âli Evrak Odasınca olan numerosu ve Meclise havâlesi tarihi ve melfûfatı kaç kıt‘a olduğu

Târih-i havâlesi:
Arabî: 11 Muharrem 1309
Rûmî: 4 Ağustos 1307

Hülâsa-i Meâli:

Yemen vilâyeti mehâkim-i nizâmiyesinin bâ-irâde-i seniyye-i hazret-i pâdişâhî lağvıyla vezâifinin mehâkim-i şer‘iyyeye havâlesinden dolayı memûrîn muhâkemâtıyla Hazîne-i celile ve mültezimîn ve müteahhidîn beyninde vukū‘a gelen deâvîde ukūd ve muâmelâtın vukū‘unu isbât içün ibrâz olunan sened taraf-ı hasımdan inkâr olunacak olur ise mazmûnunu ve hasbe’l-usûl makbûz senedi almak lazım gelen teslîmâtı isbât içün şahid taleb olunması ve a‘şâr nizâmnâmesine tevfikan taleb olunan fâizle mesârif-i muhâkeme ve ücret-i vekâletin dahi kabûl ve istimâ‘ olunmaması envâ-ı mehâzîr ve müşkilâtı dâ‘î olduğu gibi kaza ve liva mehâkim-i şer‘iyyesinden verilen i‘lâmâtın talimât-ı mahsûsasına tevfîkan istînâfı makām-ı meşîhatdan istîzâna mütevakkıf olmağla beraber istinâf ve temyîz içün Ahvâl-i Muhâkemât-ı Hukūkiyye Kanûnu’nda münderic istinâf ve temyîz müddetleri i‘lâmât-ı şer‘iyyenin teblîğinden mi mu‘teber olacağı bilinemediği ve mehâkim-i nizâmiyyenin lağvından mukaddem tanzîm olunup temyîzen nakz ile ikmâl-i noksânı içün iâde olunan i‘lâmât hakkında i‘lâm-ı şer‘î istihsâline kadar medyûnlar ellerinde bulunan emvâl ve emlâki âhara bey u ferâğ ederek hukūk-ı hazînenin istifâsına imkân kalmayacağından ne yolda muâmele olunmak lâzım geleceğine dair vilâyet-i mezkûre valiliğinden vukū‘ bulan iş‘âr üzerine Mâliye Hukuk Müşâvirliği’nden tanzîm olunan mütâlaanâmenin leffiyle Maliye Nezareti’nden vârid olup Şûrâ-yı Devlet’e havâle olunan tezkire ve Islâhât-ı Adliye Komisyonuyla cereyân eden muhâbere üzerine Tanzîmât Dâiresinden kaleme alınan mazbata okundu.

Karârı:

Meâlinden müstebân olduğu üzere mezkûr mütâlaanâmede memûrîn muhâkemâtı nizâmât-ı mahsûsası ahkâmınca mecâlis-i idâreye mufavvaz olup vilâyet-i merkūmece mehâkim-i nizâmiyenin ilgāsı eşhâsa müteallık hukūk-ı âdiyye ve şahsiyye da‘vâlarının ahâlinin ülfet-i kadîmeleri vechile mehâkim-i şer‘iyyede

rü'yeti maksadına müstenid olduğu cihetle, vilâyet-i mezkûrece memûrîn muhâkemâtı içün mehâkim-i şer'iyyeye mürâcaat lüzûmuna zehâb olunmuş ise yanlış olacağından memûrînin sıfat-ı memûriyetlerinden mütevellid cezâyı müstelzim fiil ve hareketleri vukū'unda Memûrîn Muhâkemesi Nizamnâmesi'yle ânı müfesser olan izahnâme ahkâmına tevfikan kemâkân mecâlis-i idârede muhâkemelerinin icrâsı ve a'şâr nizamnâmesinin otuz dokuzuncu maddesi hükmünce a'şâr taksîtlerinin tahsîli içün mehâkimden istihsâl-i hükme hâcet olmayup vilâyet-i mezkûredeki ahkâm-ı i'lâmât kangı vâsıta ile icrâ olunmakda ise mültezimîn ile küfelâsından alınacak senedât-ı musaddakada muayyen tekāsît bedelâtı bey'-i emvâl ve emlâk ile istîfâ edilmek üzere o vasıtaya mürâcaat olunması lâzım geleceği ve Hazîne-i Celîle ile mültezimîn ve müteahhidîn beyninde zuhûr eden deâvîye gelince hazînenin bi'l-cümle ukūd ve muâmelâtı ve teslîmâtı senede ve fâiz ve mesârif-i muhâkeme ve ücret-i vekâlet gibi fürû'ât dahi hükm-i nizâm ve mukāveleye merbût olduğundan akd-i iltizâmı isbât içün şühûd tedâriki esâs muâmelede bulunan memurînin tebeddülü gibi esbâbdan nâşî kesb-i taazzür edeceği gibi, teslîmâtın şuhûd ile isbâtı cihetine gidilmesi de mültezimîn ve müteahhidîn tarafından bilâ-sened der-meyân olunacak teslimât iddiâsında hasmın berâatına hükm olunmuş ve teslîm olunan mebâliği sandık eminlerinden veya kabz eylediği iddiâ olunan memûrlardan aramak lazım gelüp halbuki usûl ve nizâmât-ı mâliye icâbınca mal sandıklarına giren meblağ içün mahtûm ve musaddak makbûz senedi verilerek yevmiyye defterlerine kayd ve terkīm edilmek iktizâ etdiğinden mücerred şehâdet-i şahsiyye üzerine hükm edilen akçelerden dolayı usûlen ve nizâmen anları mesûl tutmak caiz olamayacağına ve faiz ve mesârif-i muhâkemenin mahkûmun-aleyhden istihsâli ise mültezimîn ile küfelâsının te'diye-i deynden imtinâlarına ve binâenaleyh bedel-i a'şârın külliyen bekāyâda kalmasına sebeb olacağına mebni, hazîne-i mâliyenin mültezimîn ve küfelâsı ile olan davâlarını nizâmât-ı mahsûsası ahkâmına tevfîkan mecâlis-i idarede rüyetlerine cevâz gösterilmesi münasib olacağı ve deâvî-i mezbûrenin mecâlis-i idarede rü'yeti tecvîz olunmadığı halde çünkü hazîne aleyhinde sâdır olan i'lâmâtın derecâtdan imrârı bâ-irâde-i seniyye mer'îyyü'l-icrâ olan Hukūk Müşavirliği Talimâtı iktizâsından bulunduğundan mehâkim-i şer'iyyeden hazine aleyhine verilen i'lâmâtın talimât-ı mahsûsasında gösterilen müddet zarfında istinâf ve temyîzi hakkında davâ vekîli tarafından istid'a ve lâyihası tanzîm olunarak hükûmet-i mahalliyeye bi'l-i'tâ Makām-ı Meşîhat'a irsâl ile hazîneye dahi malûmat i'tâ olunması ve mehâkim-i nizâmiyeden mukaddemâ verilüp temyîzen nakz ile iâde olunan i'lâmât içün mehâkim-i şer'iyyeye mürâcaat edilmesi lüzûmu gösterilmiş ve ıslâhât-ı adliye komisyonu riyâsetinin cevâbında hazîne-i mâliyenin mültezimîn ve müteahhidîn ile olan dâvâlarının nizâmât-ı mahsûsasına tevfîkan mecâlis-i idârede rü'yeti usûl-ı mâliye ve nizâmât-ı mevcûdeye göre münâsib ve menâfi'–i hazîneyi dahi mûcib olacağı bildirilmiş ve sûret-i muharrere muvâfık-ı maslahat görülmüş olmağla, gerek memurîn muhâkemâtının ve gerek a'şâr tekasîtinin tahsîli ve hazîne-i celîle ile mültezimîn ve müteahhidîn ve küfelâ beynlerinde tahaddüs edecek dâvâların mecâlis-i idarede rü'yeti husûsuna bi'l-istîzân irâde-i seniyye-i hazret-i pâdişâhî şeref-müteallık buyurulduğu halde îfâ-yı muktezâsı tezekkür kılınmış ve karâr-ı vâki' münâsib görünmüş olmağla mûcebince keyfiyyetin zeylen bâ-mazbata arz ve istîzânı kararlaştırıldı.

Zabıt sûretinin tarihi: 13 M 309
Zabıt sûretine mahsûs imzalar:
Âmedî muavini: Nizameddin, Âmedci: Ali, Müsteşar: Tevfik

Appendix D

MV. 49/19 1307 R 03

Özet: Yemen vilâyetinde yakalanan eşkıyanın hukūki davâlarına bakmak ve hukûkī cezâlarının mehâkim-i şer‘iyyede görüşülüp ta‘yîni içün mahallin ulemâsından müşavirler tayini.

Meclis-i Vükelâ Müzâkerâtına Mahsûs Zabıt Varakasıdır.

Hâzır bulunan zevât-ı fihâmın esâmîsi.

Müzâkere olunan mevâdda müteallık varakanın nev‘iyle hülâsa-i meâli ve Bâb-ı âli Evrak Odasınca olan numerosu ve meclise havalesi tarihi ve melfûfatı kaç kıt‘a olduğu

Tarih-i havâlesi

Arabî: 3 Rebi‘ülâhır 1307
Rûmî: 15 Teşrînisâni 1305

Hülâsa-i meâli:

Yemen vilâyetinde der-dest olunan erbâb-ı şekāvet haklarında muâmele-i kanûniyyenin icrâsınca mehâkim-i nizâmiyeye muâmelât-ı ibtidâiyye icrâsı ve delâil-i kanûniyyenin istihsâli husûsunda tesâdüf edilen müşkilât sâikasıyla maksad hâsıl olamamakda olacağı ve ahâlî-yi vilâyet da‘vâlarının şer‘an fasl ve rü’yet edilmesini istid‘âdan gayr-i hâlî bulunduğu cihetle mehâkim-i nizâmiyyenin lağvına icâbât-ı mevki‘iyye ve emzice-i ahâlî ve memlekete muvâfık olacağından icrâ-yı icâbıyla beraber asâkir-i şâhâne sevkiyle ahz ve girift olunan eşhâs-ı muzırra haklarında dahi te’dîbât-ı kanûniyyenin tahrîr ve icrâsı içün yalnız merkez-i vilâyetde bir Divân-ı Örfî teşkîli ifâdesine dâir Yemen vilâyeti valiliğinden meb‘ûs 12 Safer 1307 tarihli tahrîrât kırâat olundu.

Karârı:

Vilâyet-i mezkûrede bulunan mehâkim-i nizhamiyenin îcâbât-ı mevkı‘iyyeye binâen lağvıyla ve mahallî ulemâsından müşâvirler ta‘yîniyle de‘âvî-i hukūkiyye ve cezâiyyenin ta‘yîn olunan usûl dâiresinde mahkeme-i şer‘iyyede rü’yeti hakkında vilâyet-i mezkûre makāmından vukū‘ bulan iş‘ârât ve ol babda Adliye Nezareti ve taraf-ı sâmî-i Meşihat-penâhî ile cereyân eden muhâberât üzerine sebk eden karâr vechile bâlâsından 18 Zilhicce 1306 târihinde irâde-i seniyye şeref-sâdır olarak îcâbı icrâ kılındığı anlaşılmış ve Divân-ı Örfi teşkîli bahsine gelince sâye-i âsâyiş-vâye-i hazret-i pâdişâhîde vilâyet-i mezkûrece Dîvân-ı Harb-i Örfî teşkîlini icâb eden esbâb olmadığı cihetle bu babdaki iş‘âr şâyân-ı tervîc görülmemiş olmağla vilâyet-i müşûrunileyhâya ol vechle cevabnâme-i sâmî tasdîri tezekkür kılındı.

Appendix E

BEO. 4382/328637 1333 Z 30

Özet: Yemen'deki memûrin muhâkemâtının ve da'vâların her mahallin kendi meclis-i idaresi mahkemesinde görülmesi ve Hudeyde'deki Bidâyet Mahkemesi'nin lağvı.

Leff 1:

Daire-i Sadâret Umûr-ı Adliye Kalemi

29 Zilhicce 333
26 Teşrînievvel 331

Adliye Nezâret-i Celîlesi'ne

16 Eylül 331 tarihli ve 168 numerolu tezkireye zeyldir. Yemen'de gerek memûrîn muhâkemâtının ve gerek rüsûmât ve düyûn-ı umûmiyye ve rejiye aid deâvînin şimdiye kadar olduğu gibi her mahallin kendi meclis-i idâresi mahkemesinde rü'yet etdirilmesi ve vilâyet meclis-i idâresinden sâdır olacak ahkâma da Dersaâdet mahkeme-i temyîzinin mercî-i temyîz ittihâzı hem ahvâl-i mahalliyeye muvâfık hem de İmam Yahya ile mün'akid îtilâfnâme ile kābil-i tevfîk bulunduğuna ve Hudeyde'de İngiltere devletinin ısrârıyla te'sîs edilmiş olan bidâyet mahkemesinin vücûdundan istifade edilmediği cihetle bunun da lağvı icâb eylemekde olduğuna dâir bazı ifâdât ve mütâlaâtı hâvî Yemen vilâyetinden Dahiliye Nezâret-i celîlesine gönderilen ba-tezkire tevdî' olunan tahrîrâtın sûreti leffen irsâl kılınmağla tahrîrât-ı mezkûre mündericâtına ve iş'ârât sâbıkaya nazaran vâki' olacak mülâhazât-ı aliyyelerinin serîan inbâsına himmet.

Bâ-emr-i âlî-i müsteşârî

Muktezâ-yı maslahat teemmül ve icrâ edilmek üzere.

BEO. 4382/328637 Leff 2:

Huzûr-ı âlî-i sadâret-penâhîye

Ma‘rûz-ı çâker-i kemîneleridir

1 Eylül 331 tarihli ve 580 numerolu tezkire-i aliyye-i fahimâneleri cevâbıdır. Hudeyde’de İngiltere devletinin ısrârıyla te’sîs olunan bidâyet mahkemesinin vücûdundan bir istifade görülmediğinden lağvı îcâb etdiğine ve gerek me’mûrîn muhâkematının ve gerek rüsûmat, düyûn-ı umûmiyye ve rejiye aid de‘âvînin şimdiye kadar olduğu gibi her mahallin kendi meclis-i idâresi mahkemesinde rü’yet etdirilmesi vilâyet meclis-i idâre mahkemesinden sâdır olacak ahkâma da Dersaâdet mahkeme-i temyîzinin merci‘-i temyîz ittihâzı hem ahvâl-i mahalliyeye muvâfık ve hem de İmam Yahya ile mün‘akid itilâfnâme ile kābil-i tevfîk bulunduğuna dâir Yemen vilâyetinden meb‘ûs 13 Temmuz 331 tarihli ve 67 numerolu tahrîrât cevâbının sûreti leffen takdim kılınmış olmağla ol-babda emr u fermân Hazreti veliyyü’l-emrindir.

22 Zilhicce 333
18 Teşrînievvel 331

Dahiliye Nâzırı
Tal‘at

BEO. 4382/328637 Leff 3:

Yemen vilâyetinden mürsel 13 Temmuz 331 tarihli 67 numerolu tahrîrâtın sûretidir.

21 Kânûnısânî 330 ve 14 Mayıs 331 tarihli iki kıt‘a telgrafnâme ve 19 Mart 331 tarihli ve on dokuz umûm ve on beş husûsî numerolu emirnâme-i âlî-i nezâret-penâhîlerine arîza-i cevâbiyyedir.
Evvelce 6 Nisan 330 tarîhli otuz dört numerosuyla makâm-ı ‘âcizîden sebk iden arz ve iş‘âra cevâben şeref-vârid olduğu bi’t-tedkīk anlaşılan sâlifü’l-arz 19 Mart 331 tarîhli emirnâme-i nezâret-penâhîlerinde Hudeyde’de me’mûrîne âid muhâkemâtın mahallî bidâyet mahkemesinde rü’yeti hakkında mukaddemâ Şûrâ-yı Devletçe ittihâz olunan karâr 28 Eylül 330 tarîhli ve yüz doksan altı numerolu tahrîrâtla vilâyete teblîğ edilmiş olmağla karâr-ı mezkûr mûcebince muâmele îfâsı ve mezkûr tahrîrâtın fıkra-i âhıresinde münderic bulunan diğer husûsâtın da iş‘âr-ı sâbık vechile bi’l-etrâf tedkīkiyle vâki‘ olacak mütâla‘a-i âcizînin inhâsı emr u izbâr buyurulmuş, fakat mezkûr tahrîrat şimdiye kadar şeref-vârid olmadığından bi’t-tab‘ ne îcâbı ve ne de fıkarât-ı ahîresi anlaşılamadığına binâen arz-ı mütâla‘a olunamamışdır.

Geçen sene devren Luhayye’de bulunulduğu esnâda 11 Nisan 330 tarîhinde takdîm kılınup henüz emr-i cevâbîsi şeref-vürûd etmeyen arîza-i âcizîde arz ve izâh edilmiş bulunduğu üzere vilâyetin hiçbir livâ ve kazâsında mehâkim-i adliye olmayup evvelce İngiltere devletinin ısrârı üzerine yalnız üserâ-yı zenciye da‘vâlarının rü’yetine mahsûs teşkîl olunmuş ve ol târîhe kadar de‘âvî-i cezâiyye bütün Yemen vilâyetinde cezâ kanûnnâmesine tevfikan mehâkim-i şer‘iyyede rü’yet olunmakda bulunmuş iken üç sene evvelleri İngiltere devletinin ikinci bir ısrârı ve vilâyetin mütâla‘ası üzerine Hudeyde’de hakk-ı kazâ nefs-i kasabaya maksûr ve sırf devlet-i aliyye ile ecnebi teb‘ası arasında tekevvün edecek de‘âvî-i hukūkıyye ve cezâiyyenin rü’yetine me’mûr bir bidâyet mahkemesi vardır ki mercî’-i istinâfı Beyrut vilâyeti olmak mülâbesesiyle orada da‘vâların istînâfen tedkīk ve rü’yeti ve müste’niflerin Hudeyde’den ta Beyrut’a kadar azîmet ve avdeti, yedi-sekiz aya mütevakkıf ve bunun içün geçecek uzunca müddet ve ihtiyâr edilecek masrafdan dolayı erbâb-ı de‘âvî müterеddid ve müteneffir görünmekde binâenaleyh vaktiyle ihkāk-ı hak olunamamak hasebiyle de adeta kendilerini müteneffir göstermekde olup zaten ahîren kapitülasyonların ilgā edilmesi cihetiyle de‘âvî-i hukūkiyye ve cezâiyye içün gerek devlet ve gerek ecnebi teb‘asının mehâkim-i şer’iyyeye mürâcaâtı tabî’î ve vilâyetin her tarafında kable’l-i’tilâf irâde-i seniyye ve ba‘de’l-itilâf fermân-ı hümayûn ile tasdîk ve te’yîd buyurulmuş olan i’tilafnâmenin mevâdd-ı mahsûsasına tevfikan ahkâm-ı şer‘iyye cârî bulunduğundan mezkûr bidâyet mahkemesinin de külliyen lağvı îcab eder. Me’mûrîne gelince ihtilâsât ve vazîfe-i me’mûriyetlerine müteallık sâir husûsâtdan münbais cerâimden dolayı muhâkemeleri mehâkim-i şer‘iyyeye tevdî olunursa mehâkim-i adliye ve idârede olduğu gibi kefâlet senedâtı “emârât” ve sübût-ı cürme medâr vesâik ve evrâk-ı sâire ile i’tâ-yı hükm olunmayarak cürmün isbâtı içün şühûd istenileceği ve aksi halde muhtelis veya vazife-i me’mûriyyetinden mücrim olan bir me’mûrun men‘-i mu‘ârazasına ve hatta berâetine hüküm verileceği ve bu ise ekseriyâ şühûd ile isbâtı müteassir ve belki de gayr-i mümkin ihtilâs da‘vâlarını ke-en-lem-yekün ve müteneffiren müddeî olanları hakkından mahrûm bırakacağı melhûz olup hatta geçenlerde bu kabîl bir da‘vâdan dolayı muhâkemesi îcâb eden Hubeyş müdîri müdde‘îlerinin on dört saatlik mesafede Taiz’e bile celbi mümkün olamadığından ve İmam hazretleri tarafından

BEO. 4382/328637 Leff 4:

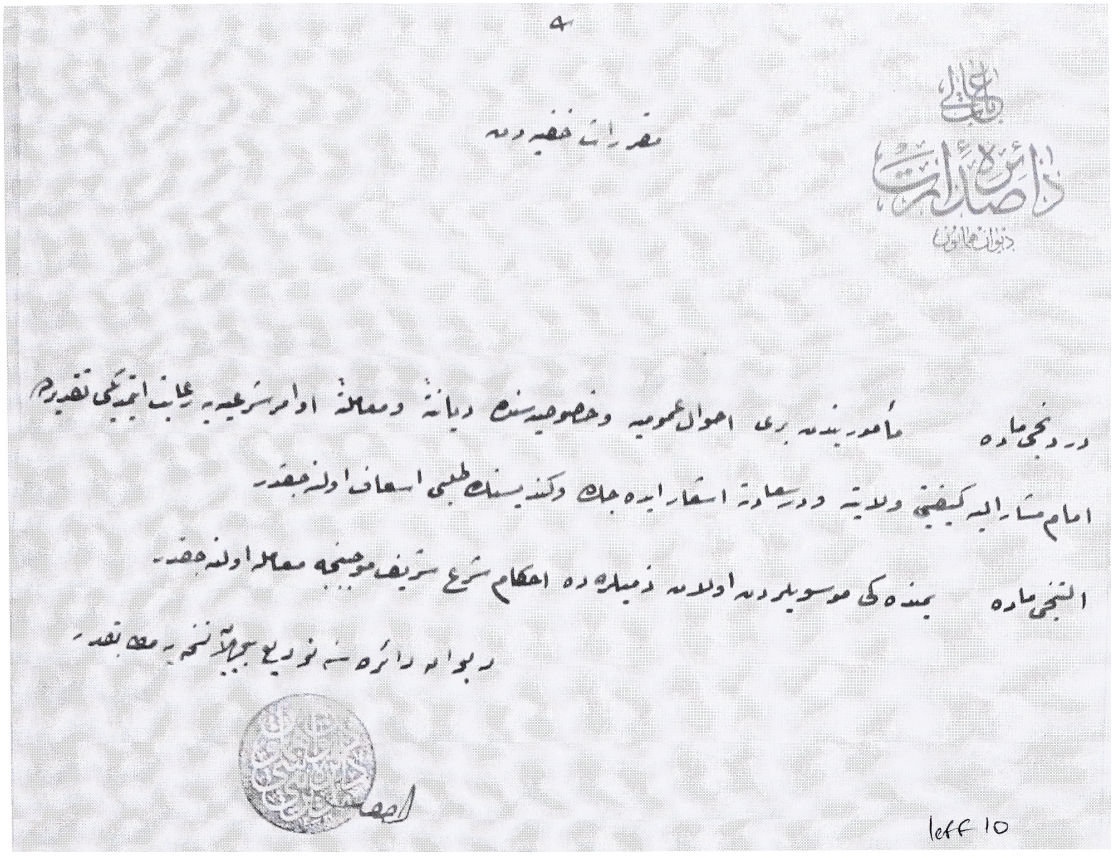
intihâb oluna gelmekde bulunan mahkeme-i istinâfiyye ile nefs-i San‘a’da teşkîl buyurulan üç mahkeme ve merkeze tâbi‘ sekiz kazâ ve merkez ile mezkûr kazâlara mülhak bi’l-cümle nevâhî hukkâmı ve şühûdü’l-hüküm ve ketebe ve mübâşirler ve hademe ve kezâlik merkez-i vilâyet ile mülhakātı ve Taiz ve Hudeyde sancakları mülhakātının –yalnız bazı rüesâ-yı devâiri müstesnâ olmak üzere – memûrînin kısm-ı küllîsi yerli ahaliden olup bu mülhakāt dâhilinde bulunan ve ekser ikāmetgâhları Hudeyde’den on beş gün ve daha ziyâde uzak olan kazâlardan maznûn memûrînin ve şühûdun celb ve ihzârıyla Hudeyde’ye sevki ba‘îdü’l-imkân olmakla beraber Zeydî mıntıkasında bulunanların Hudeyde’ye sevkinde ve bi’l-âhıre berâ-yı istînâf Beyrut’a i‘zâmlarına, i’tîlâfa münâfî bulunduğu cihetle İmam hazretleri muvâfakat buyurmayacakları gibi mülhakāt-ı sâirece de mehâzîr-i azîmeyi mûcib olacağına binâen gerek umûm me’mûrîn muhâkemesinin ve gerek rüsûmât-ı düyûn-ı umûmiyye ve rejiye âid de‘âvînin şimdiye kadar olduğu gibi her mahallin kendi meclis-i idâre mahkemesinde rü’yet etdirilmesi ve şu suretle derecât-ı mehâkim teşkili âsân- ve kâbil olup vilâyet meclis-i idâre mahkemesinden sâdır olacak ahkâmın da Dersaâdet mahkeme-i temyîzince bi’t-tedkīk kesb-i kat’iyyet etmesi imkânı dâimâ mevcûd ve şu sûret İmam Yahya hazretleriyle mün‘akid i’tîlâf ile de kâbil-i tevfîk bulunduğu mütâla‘asında isem de ol-bâbda emr u fermân hazret-i men-lehu’l emrindir. 18 Teşrînievvel 331

Yemen valisi
Mahmud Nedim

İş bu sûret aslına mutâbıkdır.
18 Teşrînievvel 331

Appendix F

A.DVN.NMH. 37/1. Leff 10.



The Document of the Da‘an Agreement

A.DVN.NMH. 37/1. Leff 19.

بسم الله الرحمن الرحيم

١ يصير الايتلاف بين سمو الامام المتوكل على الله يحيى بن محمد حميد الدين وبين صاحب العطوفة رئيس الاركان الحربية
وقومندان القوة التجهيزية عزت باشا المأذون من طرف الحكومة السنية على الوجه الآتي ويكون تصديقه من المرجع العالي
وذلك فيما يتصالح به احوال جبال اليمن الآتي بيانها التي تجري فيها الآن ادارة الحكومة السنية العثمانية فعلاً
وهي لواء صنعا وما يحويه من اقضية صنعا وعمران وحجة وكوكبان وحراز وعاعد وصعفان وبني مطر [illegible]
وذمار ويريم ورداع ومن لواء تعز من الزيديين ان كانوا في نفس الناحية فصاعدا

٢ يكون اجراء الاحكام الشرعية بين المتخاصمين ممن يسكن البلدان المذكورة آنفاً في جميع المواد واقامة الحدود على
كل مرتكب لاسبابها كل ذلك على المذهب الزيدي ويكون تعيين الحكام وتبديلهم من طرف الامام وذلك
بان يكتب الامام الى الولاية [illegible]
الوظيفة من عند ان يكتب الامام وتنفذ الحكومة جميع الاحكام التي تصدر من حكام الشرع [illegible] حكام الاستيناف
ان لم يقنع المحكوم عليه وطلب الاستيناف

٣ اذا تظلم احد من محكمة الاستيناف واشتكى الى الامام فيسأل سمو الامام الحكومة عن حقيقة ذلك واذا ظهر صدقه
على صحة تظلمه اعيدت المحاكمة

٤ محكمة الاستيناف تشكل في مركز الولاية من رئيس واعضاء ينتخبهم الامام وكما يصدق تعيين الحكام
يصدق تعيينهم

٥ اذا حكمت محكمة الاستيناف المشكلة على الوجه المتقدم ذكره بالقصاص الشرعي الذي هو اعدام شخص قاتل
قد استحق الحكم عليه بالاعدام شرعاً فعلى الحاكم السعي اولاً في طلب العفو عن القاتل من ورثة المقتول او ارضائهم
بقبول الدية من القاتل فان لم يساعدوه رفعت المحكمة الاستينافية الاوراق الى الاستانة وطلبت الاذن باجراء
القصاص بعد التصريح بان الحاكم قد بذل مجهوده عند الورثة في طلب العفو او قبول الدية فلم يسعفوه بشرط
ان لا تزيد مدة صدور الارادة في ذلك على اربعة اشهر من عند ارسال تقرير المحاكمة المذكورة

٦ عند ظهور ما يستوجب تبديل احد الحكام من سوء حاله فعلى الولاية ان تخبر الامام بذلك مع تبيين
الاسباب الموجبة لتبديله والدلائل الشرعية وعلى الامام ان يبدل ذلك القاضي

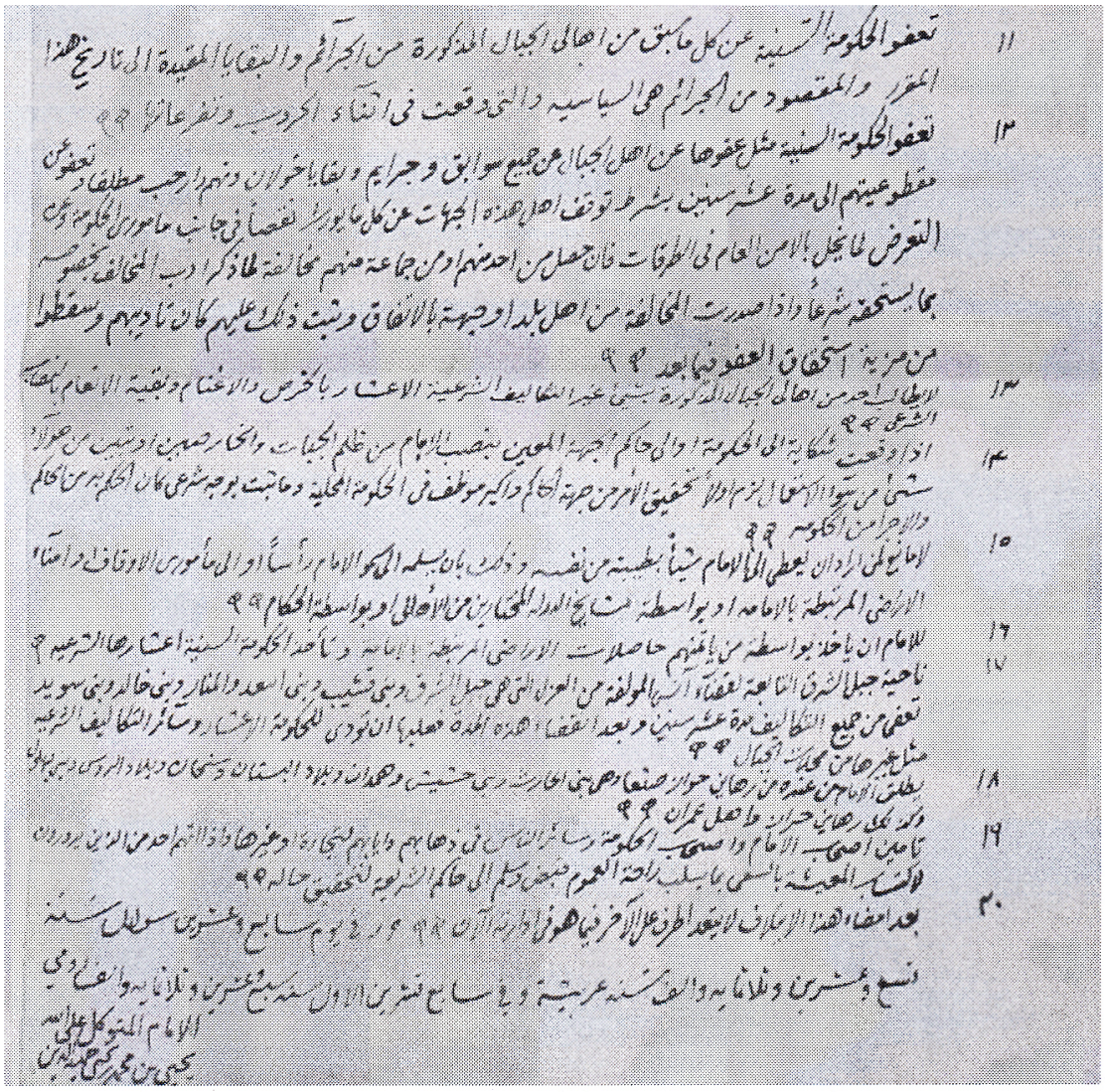
٧ للحكومة ان تنصب قضاة يحكمون بمذهب الامام الاعظم ابي حنيفة النعمان بين من كان حنفياً من غير اهل جبال
اليمن

٨ اذا حصلت دعوى بين زيدي وآخر من اهل المذاهب الاخرى الاسلامية من غير اهل الجبال يكون الرجوع في تلك الدعوى
الى محكمة مختلطة تتألف من قضاة زيديين وحنفيين واذا اختلف القضاة في الحكم فالمعتبر حكم القاضي الذي
من جهة المدعى عليه

٩ للقضاة المعينين في النواحي والاقضية ان يتخذوا لهم معاونين ممن يثقون بهم يستخدمونهم في امورهم المحافظة
على انفسهم وفي احضار الخصوم على شرط ان لا يزيد عددهم على ستة رجال في النواحي وثلاثة في الاقضية وعلى
الحكومة ان تؤدي لهم رواتبهم بصفة مباشرين او شرطيين اما اذا كان هؤلاء غير كافين فالحكومة تقدم معاونين
من رجال الضبط بحسب ما تقتضيه الحال

١٠ ولاية الاوقاف والوصايا الى الامام

A.DVN.NMH. 37/1. Leff 19.



A.DVN.NMH. 37/1. Leff 20.

بسم الله الرحمن الرحيم

١ تعطى الحكومة السنية لسمو الامام عشرين الف ليرا ذهباً عثمانيا سنوياً فى مقابل ما يفوته من الأموال يدفع الى سموه مقسطاً فى كل ثلاثة شهور ربع المبلغ ؟؟

٢ لا يتعاهد سمو الامام مع الدول الاجنبيه ؟؟

٣ اذا ظهرت محاربة بين الامام واحدى القبايل وطلب من الحكومة السنية ان تمده بجنودها او بجبخانة فعلى الحكومة ان تجيبه الى هذا الطلب ؟؟

٤ من لم يراع الاوامر الشرعية فى خصوصياته وعمومياته ديانة ومعاملة من المامورين فللامام ان يكتب بشانه الى الولاية والاستانة ويراعا طلبه ؟؟

٥ سكة الحديد تقف فى الحجيلة لا تتجاوزها واذا ارادت الحكومة تمديد سكة الى قصبة تعز من الحديده فبعد اربع سنين ؟

٦ اجرا معاملة الذميين من الموسويين فى اليمن على حسب ما اشترطه حضرة سيدنا عمر رضى الله عنه على اهل الذمة من غيرهم وعلى موافقة الشريعة وحسبما يوافق المذهب الحنفى والمذهب الزيدى مطابقة لمراد الله سبحانه

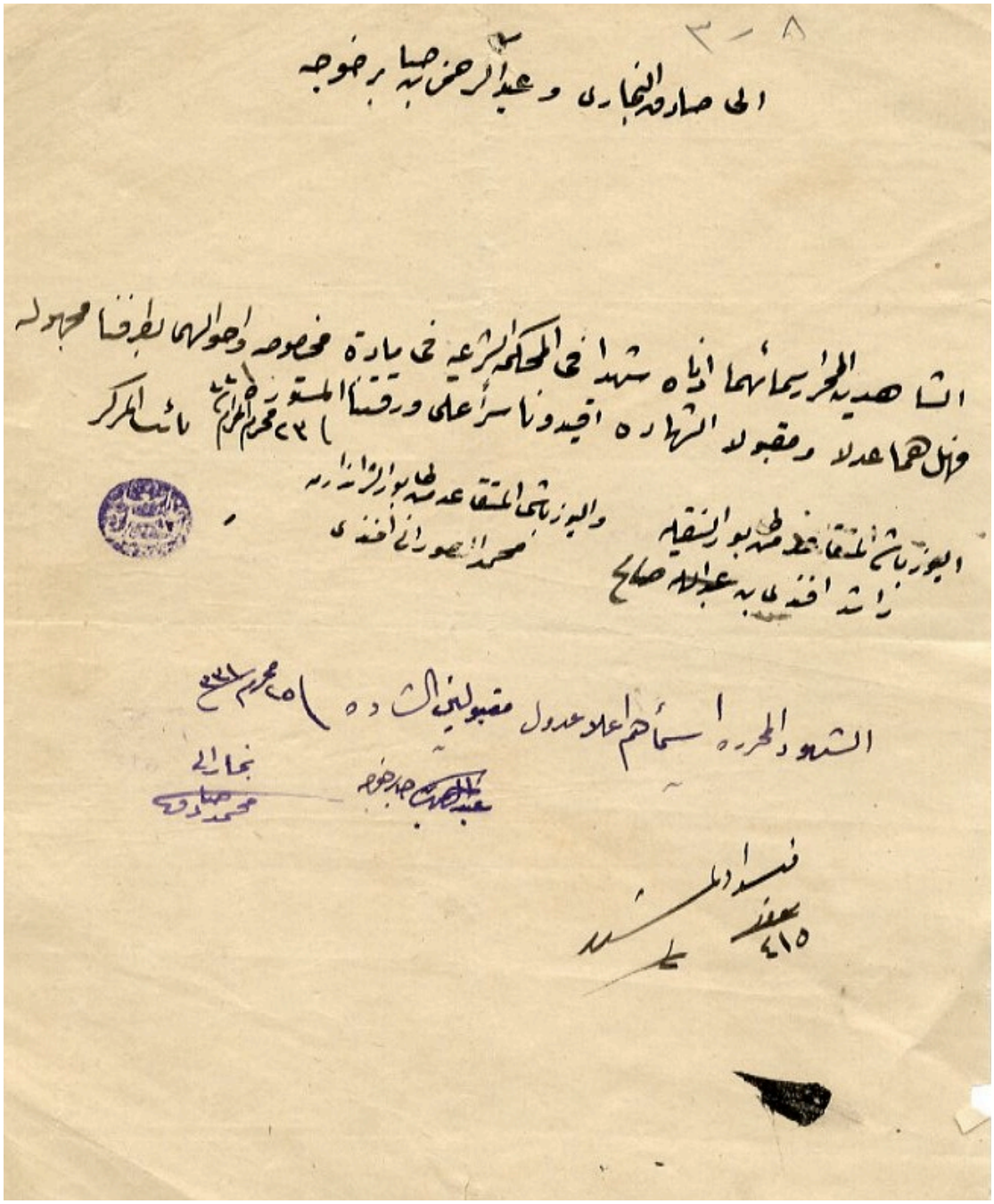
حرر فى سابع وعشرين شهر شوال سنه تسع وعشرين وثلاثمايه والف سنه عربيه وفى سابع تشرين الاول سنه ١٣٢٧

وذلك بمحروس دعان

الامام المتوكل على الله
الداعي الى الله القايم بامر الله
يحيى بن محمد بن يحيى حميد الدين عفى الله عنهم

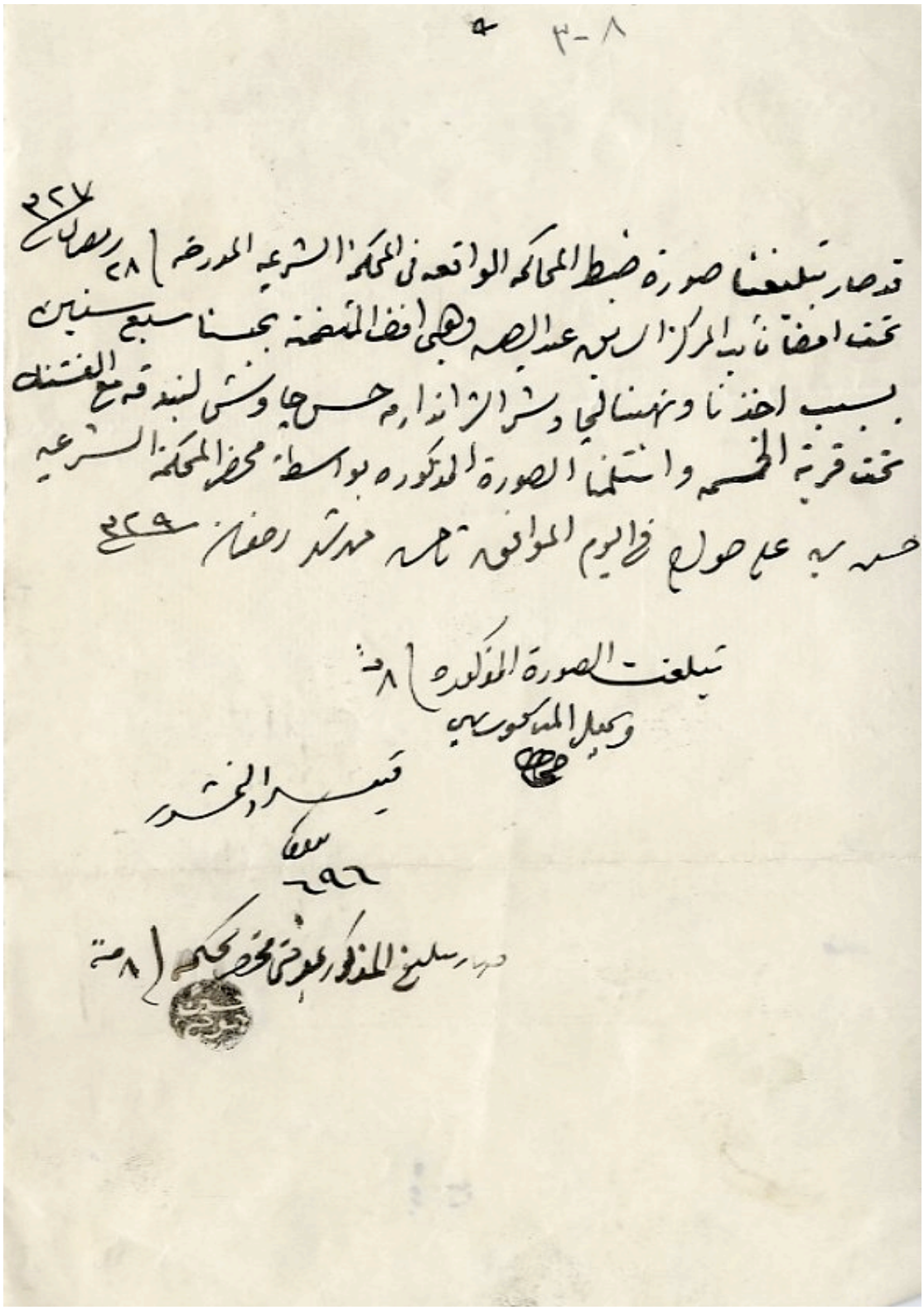
Appendix G:

YNDC. 3-8, 1

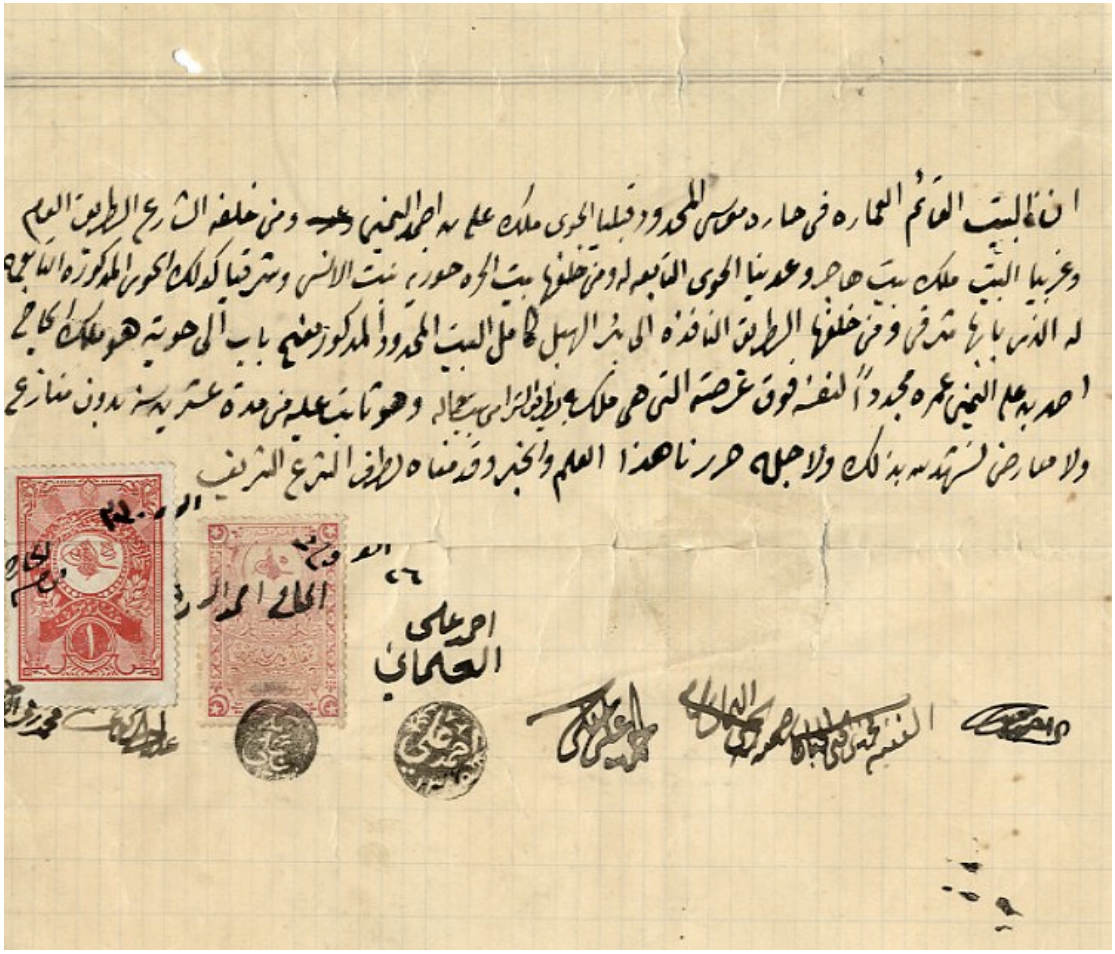


The court judge made an inquiry to check the reliability and impartiality of two men who were going to testify in courts to assure the validity of their testimony. The central naib approves their testimony. 25 Muharrem 1331/4 January 1913

YNDC. 3-8, 2

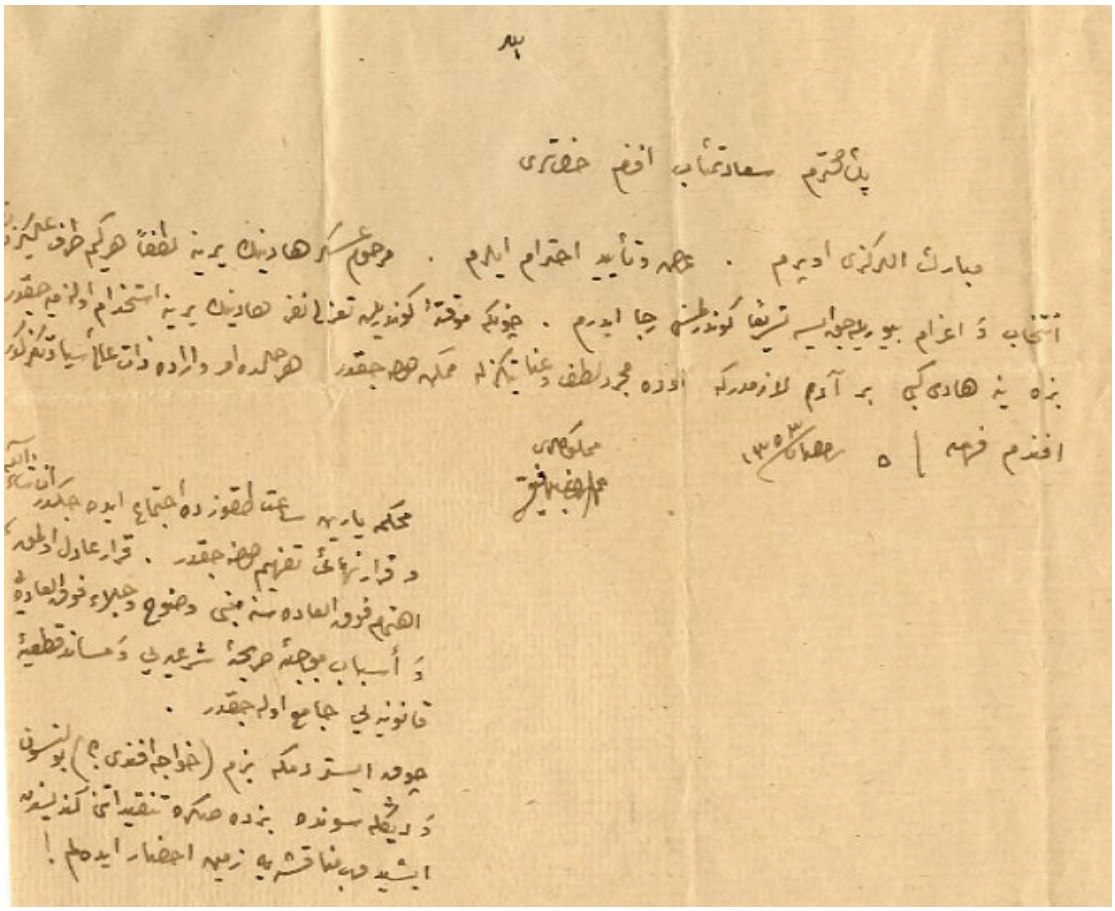


YNDC. 3-8, 3



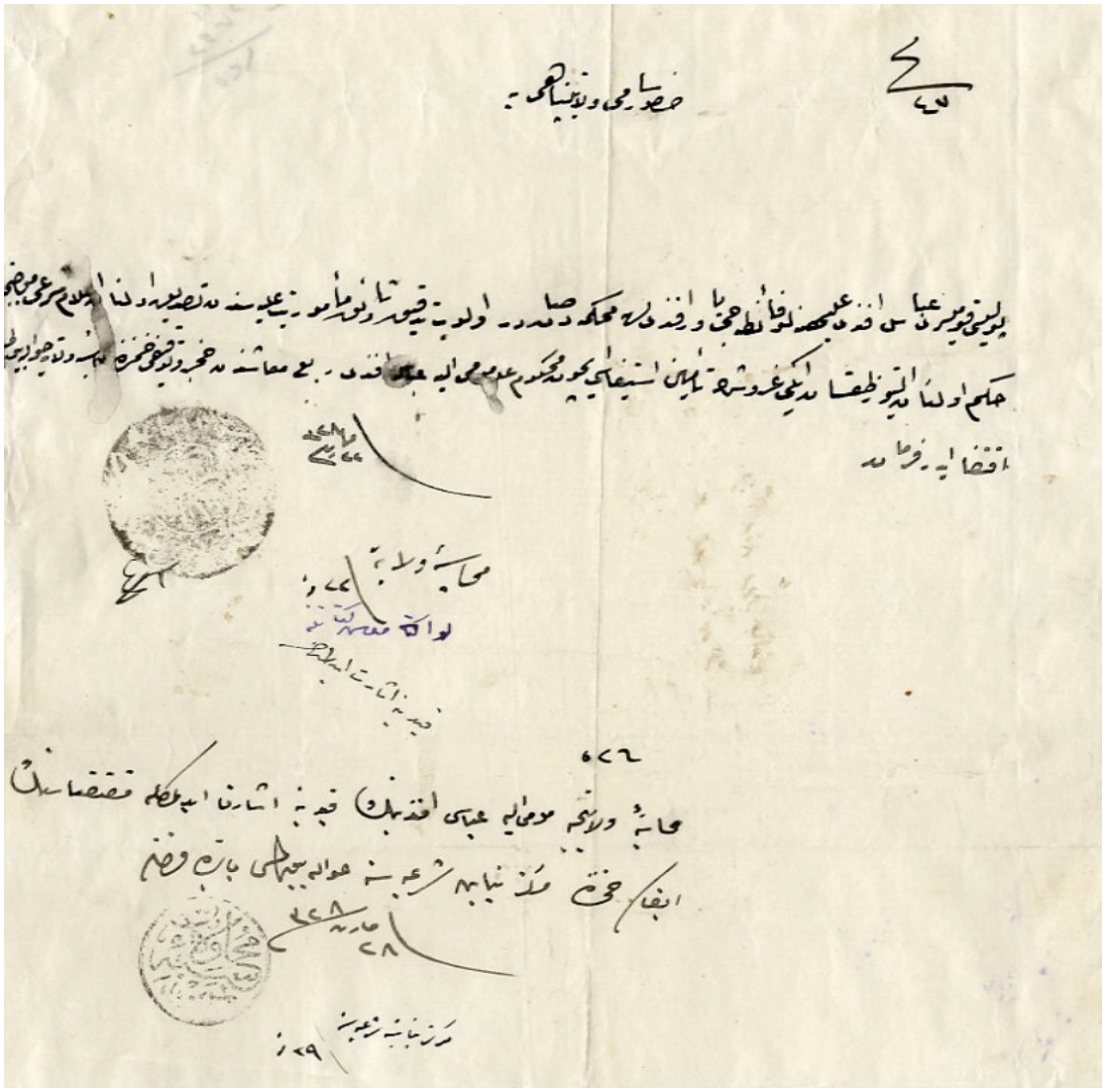
A property certificate (*mülk ilmuhaberi*) taken from a şer‘iyye court in Yemen having an Ottoman stamp.

YNDC. 3-8, 4



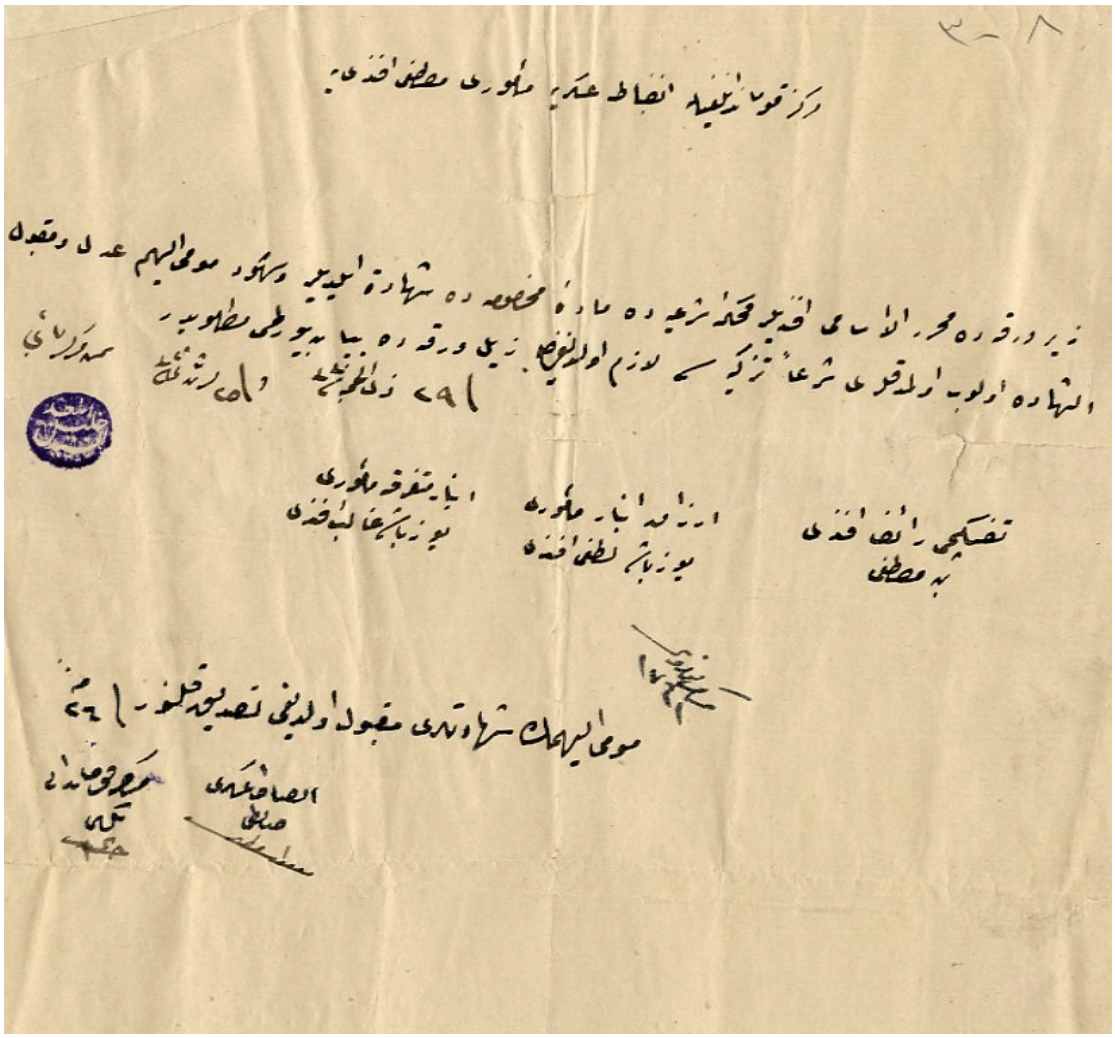
A document written in Ottoman Turkish even after the Ottomans drew back from the region dates back to 1935.

YNDC. 3-8, 5



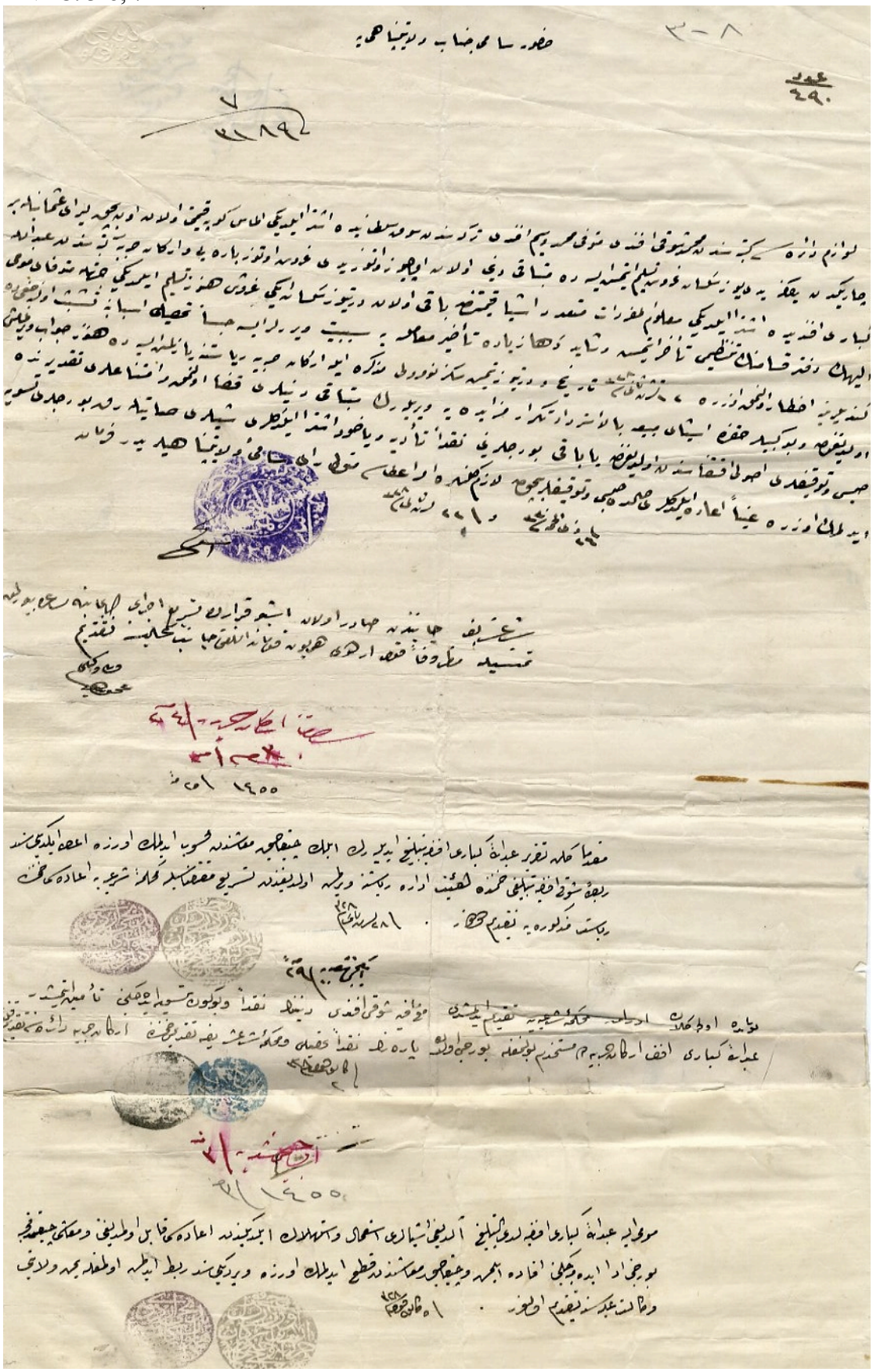
A şer'iyye court decision about confiscating the salary of a police officer. 28 March 1328

YNDC. 3-8, 6

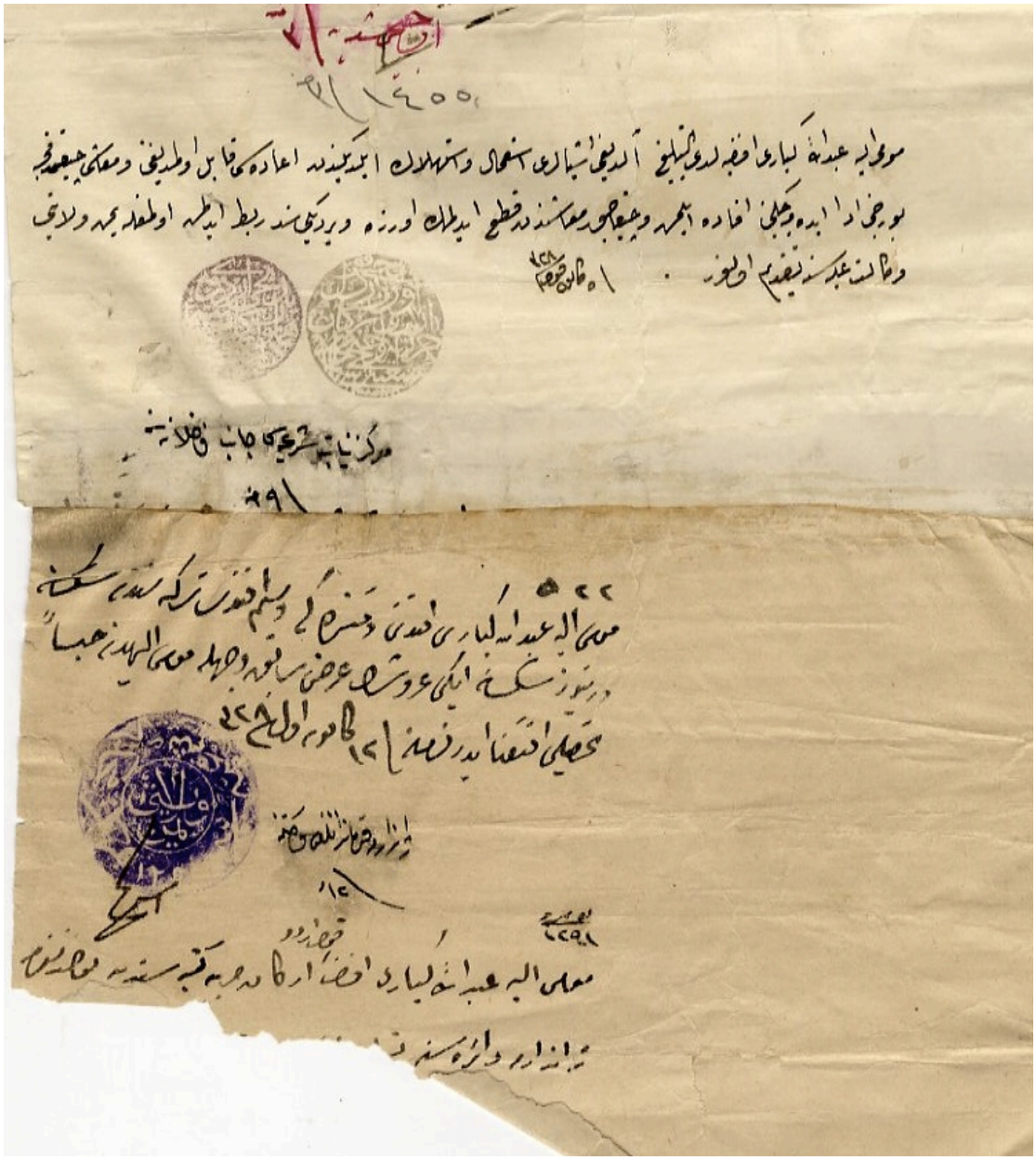


A certificate of approval for the reliability and impartiality of three men working at San‘a Central Commandery and approval of the central naib es-Seyyid Es‘ad Halil.
25 teşrin-i sani 1320/8 Aralık 1904

YNDC. 3-8, 7

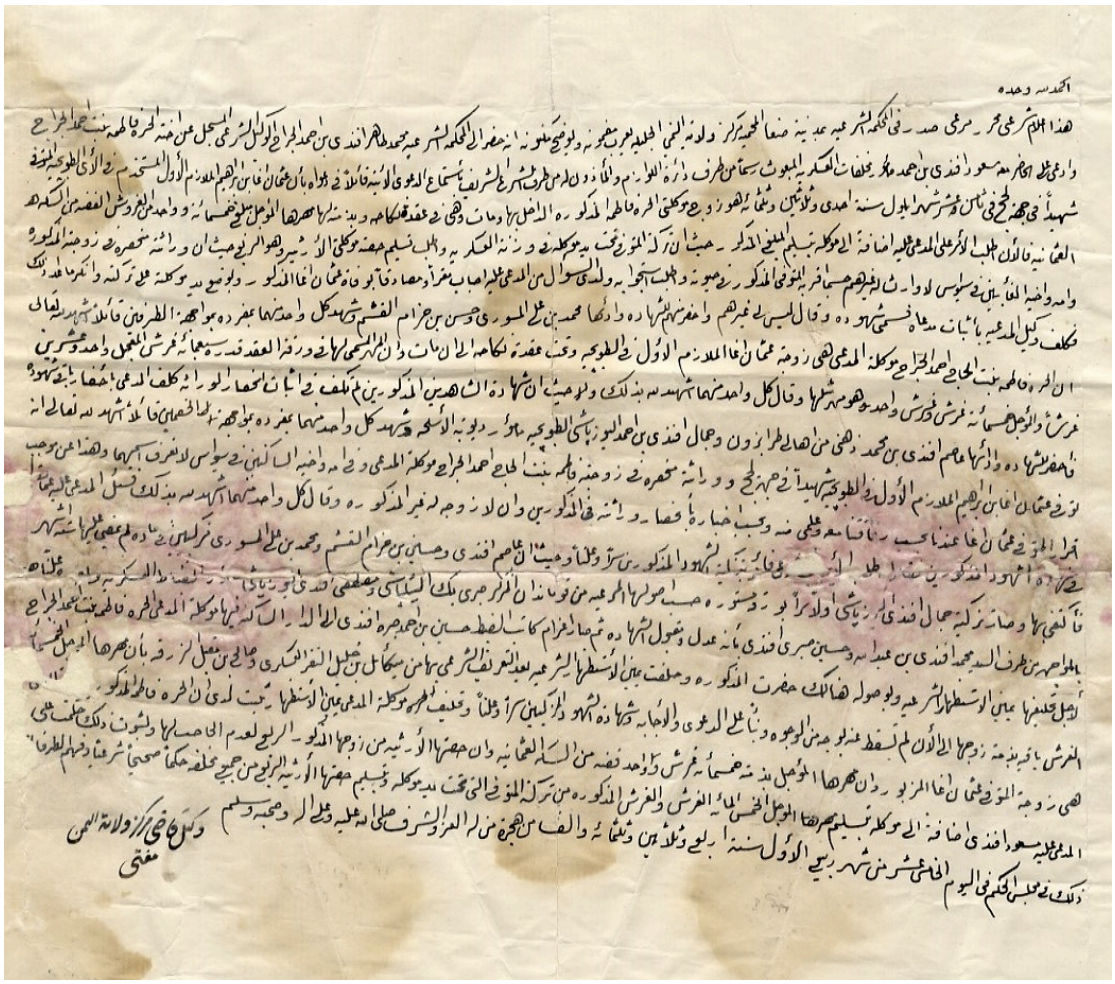


YNDC. 3-8, 8



A court decision to cut a salary of a military official who discharged a debt. 5 kânun-ı evvel 1328/18 Aralık 1912

YNDC. 3-8, 9



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İ.DH. 66275. 9 Kânun-ı sâni 1296/21 January 1881.

İ.DH. 790/64194. 23 Ağustos 1295/ 4 September 1879.

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YEE. 143/29. 1318 (1900).

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YNDC. 3-8, 1; 2; 3; 4; 5; 6; 7; 8; 9

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