SOCIO-CULTURAL LIFE IN SIVAS ACCORDING TO KADI REGISTERS (1879-1882)

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Approval of the Graduate School of Social Sciences

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This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts.

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ABSTRACT

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This thesis investigates the socio-cultural life in Sivas according to Kadı Registers between 1879 and 1882 and aims to shed light on the function of kadı as a judge and a social arbitrator whose role must be taken into account to ascertain the true character of the daily life in the given period. Kadı as a regional representative of the central authority in regard to administrative issues was viewed both as a registration office and a negotiation space to reach acceptable compromises for the litigant and the defendant. In this study, Sivas court register number 52 is to be used as a primary source along with older court records that are studied by other scholars. The register that consists of different types of documents such as *ilam, ferman, tereke, vakf* and *derkenar* is to be regarded in context with the characteristics of society and chief problems arose during the given period. Furthermore, the consistency of records in itself is also to be questioned to clarify the extent to which the trials are set on an equal basis. The records that uphold a long tradition embraced by the state are also crucial to disclose the gradual transformation of society in terms of social and cultural aspects. The kadı registers as concise forms of trials demonstrate the critical issues even the legal procedure was not exposed explicitly. In this respect, present study analyses the daily life in context with kadı registers.

Keywords: Cultural Life, Social Life, Ottoman Empire, Sivas, Kadı Register.

ÖZ

KADI DEFTERLERİNE GÖRE SİVAS'TA SOSYO-KÜLTÜREL HAYAT
(1879-1882)

Alıcı, Abdulvahap
Yüksek Lisans, Tarih Bölümü
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Bu tez kadı defterlerini baz alarak 1879-1882 yıllarında Sivas sosyo-kültürel hayatını incelemekte ve dönemin günlük hayatının gerçek manada anlaşılabilmesi için kesinlikle göz önünde bulundurulması gereken ve hem hakim hem de arabulucu rolleri olan kadının fonksiyonlarını ortaya koymaktadır. İdari konularda merkezi otoritenin yerel temsilcisi konumundaki kadılık makamı hem bir tescil birimi hem de davalı ve davacının uzlaşma sağlayabileceği bir arabuluculuk merci olarak görülmüştür. Bu çalışma 52 numaralı kadı defterini birincil kaynak olarak almakla birlikte daha önce diğer araştırmacılar tarafından çalışılmış olan defterleri de kullanacaktır. İlam, ferman, tereke, vakf ve derkenar gibi değişik türde belgeleri ihtiva eden defter, toplumun özellikleri ve çağdaş dönemdeki önemli problemleri bağlamında incelenecektir. Bununla birlikte, kayıtların kendi içerisindeki tutarlılığı yargılamanın ne ölçüde eşit olduğunu ortaya çıkarmak için göz önüne alınacaktır. Devlet tarafından uzun süredir benimsenmiş bir geleneği sürdüren kayıtlar, sosyal ve kültürel çerçevede toplumdaki aşamalı değişimi görmek açısından da oldukça önemlidir. Kadı defterleri, her ne kadar yargı sürecinin tamamını içermeyen özet belgeler niteliğinde olsalar da kritik sorunlar hakkında oldukları muhakkaktır. Bu bağlamda bu çalışma kadı defterleri perspektifinden günlük hayatı analiz edecektir.

Anahtar Kelimeler: Kültürel Hayat, Sosyal Hayat, Osmanlı İmparatorluğu, Sivas, Kadı Defteri

To My Family

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LIST OF ABBREVIATIONS

SŞS	Sivas Şeriyye Sicili
ICL	Islamic Criminal Law
OCL	Ottoman Criminal Law
BOA	Prime Ministry Ottoman Archives
TTK	Turkish Historical Society
TDVİA	Türk Diyanet Vakfı İslam Ansiklopedisi
YKY	Yapı Kredi Yayınları

CHAPTER I

INTRODUCTION

The objective of this study is to present the daily life of Sivas between 1879 and 1882 in context with the kadı register number 52 of the city. Kadı registers are short forms of court procedures written by katibs. Each entry starts with the tenure of a kadı. If a kadı was appointed to somewhere else, the registers were to be handed to the new kadı.[1] Kadı was in charge of settling the problems in compliance with the *örf* and *sharia*. The type and execution of the penalty were handled by *asesbaşı*. In this respect, few examples of a criminal sentence were found in the court registers.[2] Kadı declared in a document that a verdict must be executed as "*katli caiz olub"* but never disclosed the penalty.[3] Kadı registers as a summary of due process never quotes the sources of the given sentences. Even the judicial terms (*fikh*) are not mentioned.[4]

Ze'evi claims that kadı registers are the most invaluable source of Ottoman history from the 16th century to 20th century. For example, the status of woman, which previously comes with pejorative connotations, ascertained via kadı registers proving that women did not hold such an inferior position as it was presumed to be.[5] According to Ze'evi, there are three ways to derive historical information from kadı

[1] Suraiya Faroqhi, *Approaching Ottoman History: An Introduction to Sources,* Cambridge University Press, New York:1999, p.57

[2] Rudolph Peters, *Crime and Punishment in Islamic Law Theory and Practice from Sixteenth to Twenty-first Century,* Cambridge University Press, New York:2005, p. 75

[3] SŞS 52 p. 25

[4] Ronald C. Jennings, Kadi, Court, and Legal Procedure in 17th C. Ottoman Kayseri: The Kadi and the Legal System, Brill, Studia Islamica, No: 48 (1978), p. 133

[5] Dror Ze'evi, The Use of Ottoman Shari'a Court Records as a Source of Middle Eastern Social Hİstory: A Reappraisal, Islamic Law and Society, Vol. 5, No. 1 (1998), p. 35-36

registers which are *quantitative history*, *narrative history* and *microhistory*.[6] Quantitative method can be used to determine the inclinations and the stance of society towards administrative structures. Its chief pitfall is that the registers donot include entire society and people could misdirect the kadı to reach wanted resolutions. As Ze'evi clarifies through an example, a claimant who claimed to be married against her will could declare her age below the puberty line to halt the marriage procedure.[7] Narrative history refers the writing of events in the given time while microhistory meant the explanation of event at micro scale.[8]

[6] Dror Ze'evi, The Use…, *ibid*, p. 38

[7] Dror Ze'evi, The Use…, *ibid*, p. 42

[8] Dror Ze'evi, The Use…, *ibid*, p. 45

CHAPTER II

KADI REGISTERS AS A SOURCE OF OTTOMAN SOCIAL HISTORY

Kadı registers are immense sources of history to unearthen the true nature of society. Kadı registers of Sivas eyalet are being studied since the early 1990's. Though most of the studies related to Sivas kadı registers are describtive in scope rather than analytical, they provide an invaluable source for the comparative study of the society's gradual change. Demirel's works such as *Osmanlı Vakıf- Şehir İlişkisine Bir Örnek: Sivas Şehir Hayatında Vakıfların Rolü*[9], *Osmanlı Dönemi Sivas Şehri: Makaleler*[10] are of the first examples of studies based on kadı registers. Other studies in which kadı registers are extensively used are M.A. dissertations. These are as follows: 13 numaralı Sivas Şehri Şer'iyye Sicilinin Transkripsiyonlu Metni ve Değerlendirmesi by Özge ÖZTÜRK, 17 numaralı Sivas Şer'iye Sicili'nin transkripsiyonu I250-1251/1835-1836 by Mehmet Ali KARAMANOĞLU, Sivas'ın iki yılı (1821-1822 yılları 12 numaralı şer'iyye sicil defterine göre) by Tuğba YALÇIN, 14 numaralı Sivas Şer'iye Sicili (H.1241-1242/ M.1826-1827) özet ve değerlendirme by Nuray ER, 10 numaralı Sivas Şer'iyye sicili by Cemalettin ÇAKIR, 3 Numaralı Sivas Şer'iyye Sicili'nin (H.1202-1203 /M.1787-1788) Transkripsiyon ve Değerlendirilmesi by Şeyma ARIKAN, Sivas'ın İki Yılı (6 Numaralı Sivas Şer'iyye Sicil Defteri H.1214-1215/ M.1799-1800) Transkripsiyon ve Değerlendirme by Zafer ÖZDEMİR, 9 Numaralı Şer'iyye Siciline Göre Sivas by Fatih ŞAHİNGÖZ, 16 Numaralı Şer'iyye Siciline Göre Sivas by Mustafa APAYDIN, 20 Numaralı Şer'iyye Sicilinin Transkripsiyonu by Ömer BAŞOL, 27 Numaralı Sivas Şer'iyye Sicili (H.1267–1268 / M.1851–1852) Değerlendirme -

[9] Ömer Demirel, *Osmanlı Vakıf- Şehir İlişkisine Bir Örnek: Sivas Şehir Hayatında Vakıfların Rolü*, TTK, Ankara:2000

[10] Ömer Demirel, *Osmanlı Dönemi Sivas Şehri: Makaleler*, Sivas Valiliği Tarih ve Kültür Araştırmaları, Sivas:2006

Transkripsiyon by Mustafa ESER, Sivas Şehri 50 Numaralı Şer'iyye Sicilinde Bulunan Belgelerin Özet ve Değerlendirmesi by Zehra AKBULUT, 60 numaralı Sivas Şeriyye Sicili (H. 1312-1314/ M. 1895-1897) Transkripsiyonu ve Değerlendirilmesi by Ülkü KAYA, and Şer'iyye Sicillerine Göre Sivas'ta Sosyokültürel Hayat (1900-1909 yılları arasında Sivas) by Erdoğan POLAT. The given studies are describtive and mere transcribtion of the texts with a concise preface except the two of them. The studies of Fatih ŞAHİNGÖZ and Erdoğan POLAT are of analytical character and list the obtained data in compliance with the salient features of the society.

The kadı register number 52 of Sivas is comprised of 156 pages and each page has four cases on average. Though, the pages were numbered by the katib, the line is distorted. There are 648 cases in the registers. Of them, only 51 cases have at least one non-Muslim party. Of 51 cases, three are hüccets and the rest of the documents are mainly estate sales and terekes. When the documents such as vakıfs and fermans numbering around 165 are excluded, the percentage of cases with at least one non-Muslim reaches 14.03 %.

Ottoman Law can be divided into two parts as of pre-modern and modern period. Pre-modern period refers the era before 1839 and modern period encompasses the time span after 1839. Ottoman Empire initiated three Penal Codes in 1840 (*Ceza Kanunnamesi*), 1850, and 1858 respectively. Before this initiation, Ottoman Law was an amalgamation of sharia and customary law.[11] As stated in the court records, *"hilaf-ı şera ve teamül-i kadim"* was used to reach a just decision.[12] Zımmis were obliged to respond allegations against them produced by Muslims until the Tanzimat period.[13] The customary law was rather intended to assist to sharia in areas related to

[11] Tobias Heinzelmann, *The Ruler's Monologue: The Rhetoric of the Ottoman Penal Code of 1858*, Die Welt Des Islams 54 (2014) 292-321 p. 295

[12] SŞS 52 p. 11, SŞS 52 p. 96

[13] Ronald C. Jennings, *Zımmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri,* Brill, Journal of Social and Economical History of the Orient, Vol. 21, No. 3 (Oct., 1978), p.252

non-private matters due to reason that sharia was mostly focused on private law. The given *kanunnames* broke the unquestionable superiority of sharia and pioneered an era of the secular mindset. Equality of all people before law and foundation of a new unit to execute the judgments of law were of such features.[14] With this new code, if not proved to be guilty, one was assumed to be innocent. Punishments were to be imposed in compliance with the pre-set articles. Besides, torture and confiscations (*müsadere*) were abolished.[15] That the customary law was incorporated into Islamic law unless it was contrary to sharia provided the gradual transformation of law with respect to changes in the daily life.[16]

OPC of 1858 was based on *Code Penal* of France and divided the spheres of secular law and sharia. Furthermore, sharia was submerged and put enforcement of *tazir* crimes by the state to protect the well-being of the overall nation. On one hand, tazir as a crime not defined by sharia as a standardized code to be applied was specified; on the other hand, Sharia was secluded out of jurisprudence.[17] If an alleged person was not proved to be guilty regarding *had* crimes, tazir was implemented at the discretion of state officials.[18] Wilson, in his article written in 1907, states that contemporary Ottoman Law can be split into two parts. One of them is the positive law followed on the local level, and the other one is the law that was initiated to please the European demands.[19] Even Ottoman legislators aimed to establish a unitary code system by promoting the secular law; capitulatory agreement precluded

[14] Bernard Lewis, *The Emergence of Modern Turkey*, Oxford University Press, London: 1968, p. 109

[15] Rudolph Peters, *Crime and Punishment in Islamic Law Theory and Practice from Sixteenth to Twenty-first Century*, Cambridge University Press, New York:2005, p. 127

[16] Boğaç A. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, Brill, Leiden: 2003, p. 204

[17] Tobias Heinzelmann, *ibid*, p. 312

[18] Rudolph Peters, *Crime and Punishment in Islamic Law Theory and Practice from Sixteenth to Twenty-first Century*, Cambridge University Press, New York:2005, p. 16

[19] Roland K. Wilson, *Modern Ottoman Law,* Journal of the Society of Comparative Legislation, Vol. 8, No. 1 (1907), p. 41

the end of the binary system on legal issues.[20] Kadı registers, as a primary archival source, put enormous light for a better understanding of state's position towards its people. Kadı registers were called "defter"[21] as they were mentioned "*tarih-i defterden*". Sivas kadı register number 52 presents cases in which members of different millets were involved. Armenians are the leading millet followed by a case of a Catholic millet member. In the registers, millets were described as "*tebaa-ı devlet-i aliyyenin Ermeni milletinden or tebaa-ı devlet-i aliyyenin Katolik milletinden."*[22] Besides, ethnic demonyms were used to specify a person who was associated with a particular region as seen in the following instance: "*Rişvan aşiretinden."*

The Law of 1864 set the provision that two Muslims and two non-Muslims would be chosen from each province and represent their community along with local bureaucrats.[23] In the long term, Christians after being not satisfied with these reforms continued to seek the assistance of European Powers to gain independence. *Mecelle* which was initiated between 1868 and 1876 by Cevdet Paşa also aimed at appeasing European demands and put an end to independence movements against the state. Nadolski claims that though claimed to be a civil code, Mecelle did not have the characteristics of a civil code such as codifying the rules on family, marriage, and inheritance.[24] Ottoman civil law known as Mecelle was constituted between 1869 and 1876 by a committee of high bureaucrats. The codification of Islamic law on a secular basis with certain denominations crashed the unquestionable superiority of

[20] Dora Glidewell Nadolski, *Ottoman and Secular Civil Law*, International Journal of Middle East Studies, Vol. 8, No. 4 (Oct., 1977), p.525

[21] SŞS 52 p. 24

[22] SŞS 52 p. 156

[23] Şükrü Hanioğlu, *A Brief History of Late Ottoman Empire,*Princeton university Press, New Jersey:2008, p. 76

[24] Dora Glidewell Nadolski, *ibid*, 524

sharia.[25] *Divan-ı Ahkam-ı Adliye* and *Şura-yı Devlet* were founded to function as appealing institutions.[26] Before Divan-ı Hümayun was the Supreme Court to follow the appealing process of contested cases.[27] Petitioning to the Porte as the principal institution of appeal was highly used by non-Muslims as a last resort of innocence.[28] On the other hand, kadı (*ehl-i şer*) remained to be the other chief authority partly over private cases.[29] The codification of sharia limited the power of ulema over secular issues and enhanced the position of state.[30] Mecelle differed from its counterparts with its secular and European principles and stranded the flexibility of kadı in order to solve a case by applying both sharia and customary law.[31]

The initiations taken by the central authority made a tremendous impact on the daily life of the ordinary people. Sublime Porte enacted Nizamname of Rum in 1862, Nizamname of Armenian Patriarchate in 1863 and Nizamname towards Jewish people in 1865 respectively. The given regulations had given the right to participate in the legislative process in the regions.[32] Non-Muslims were granted to be appointed bureaucratic post and selected to the regional council as Muslims with the proclamation of *Vilayet Nizamnamesi*.[33] The influence of these regulations in Sivas is not comprehensible through kadı registers. This proves that the reflection of law in the public remained at a minimum.

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[25] Molly Greene, *Goodbye to the Despot: Feldman on Islamic Law in the Ottoman Empire*, Law&Inquiry, V. 35. 1, p. 221-222

[26] Bernard Lewis, *Emergence of Modern Turkey*, Oxford University Press, London: 1968, p. 121

[27] Maurits H. Van Den Boogert, *The Capitulations and the Ottoman Legal System*, Brill, Leiden:2005, p. 47

[28] Ronald C. Jennings, Zımmis (Non-Muslims) in Early… *ibid*, p. 265

[29] SŞS 52 p. 46

[30] Molly Greene, Goodbye… *ibid*, p. 235

[31] Avi Rubin, Legal Borrowing…, *ibid*, p. 283

[32] Bilal Eryılmaz, *Osmanlı Devleti'nde Millet Yönetimi*, Ağaç Yayıncılık, İstanbul: 1992, p. 113

[33] Bilal Eryılmaz, *ibid*, p. 87

On one hand, these reforms were viewed as the instances of foreign penetration; on the contrary, these changes were born out of mere necessities that were unavoidable to keep society intact. Though kadıs stopped registering the administrative issues after the establishment of nizamiye courts, the use of Ottoman court records as a source of social history sheds light on the place of women under Ottoman rule and supports the idea that women were an active part of life and were in full control of her property and energetic in social and economic life.[34] In the registers, there is nothing extraordinary except the foundation of British Council in Sivas. The central authority sent a directive to kadı stating that utmost help and service must be presented to coming Council.[35] Besides being invaluable sources of social history, kadı registers seem to lack a consistent set of laws to prompt particular results in the system, when taken at face value.[36] Moreover, the entries are not written in order and the meantime, there could be some losses in actual information.[37] Ottoman state never coerced people to follow *Hanafi* law. On the other hand, if a city had more than one kadı adhered to different mezheps, Hanefi kadı were assumed to be the head of other kadıs.[38] It is not possible to determine to what extent people applied to a sharia court to deal with problems. However, given the diversity of cases, a cohesive conclusion over the structure of society is reasonably likely. For instance, the dependency of adolescence was over after being reached to puberty according to data taken from registers.[39] Furthermore, people applied to kadı court not only to sue each other but also to take kadı's advice over an issue.[40] The chief shortcoming of

[34] Dror Ze'evi, *The use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal*, Brill, Islamic Law and Society, Vol. 5, No. 1 (1989), p.36 pp. 35-56

[35] SŞS 52 p. 63

[36] Dror Ze'evi, *ibid*, p. 38

[37] Boğaç A. Ergene, Local…, *ibid*, p. 129

[38] Leslie Pierce, *Morality Tales Law and Gender in the Ottoman Court of Aintab*, University of California Press, London:2003, p. 100

[39] Dror Ze'evi, *ibid*, p. 42

[40] Boğaç A. Ergene, Local…, *ibid*, p. 48

studying kadı registers as a source of history is that the entire due process was not demonstrated in the registers and the given data was limited within the borders of sharia. Even if kadı registers enables the researcher to obtain a vast amount of knowledge over the details of daily life, the multi-dimensionality of court procedure obliges the researcher to pay much attention to details.[41] Lastly, geographical proximity to kadı court raised the possibility of one's to apply to the court. Therefore, it can be concluded that kadı registers does not reflect the overall realities of a given period.[42] In this respect, though kadı registers do not reflect the daily life in a full frame, an outline with consistent information in itself can be drawn.

Ottoman Criminal Law was based on bringing the alleged person into the court and examining the crime scene to find out the criminal. The governor, kadı or subaşı did not attempt to put a halt to crime; they were in charge to bring criminals in line with the law.[43] Since this result based surrogation process did not surrogate the reasons or clarify the motives of the crime, an overall frame of daily life only could be drawn through analyzing the events. There are less than ten criminal cases in the kadı register demonstrating the scantiness of crime. Migrants took an active part in almost of the cases. If a person was shot, the crime scene was examined to illuminate the process.[44]

The last initiation taken by the Ottoman State was the approval of the Constitution that was aimed at appeasing the European demands and guaranteeing the equality of all citizens.[45] The introduction of Nizamiye Courts restricted the kadı's authority, however; the context of the case remained to be the main sign whether it was to be dealt with in the sharia court or nizamiye court.[46] "*İltizam, tasarruf-ı emlâk, icar ve isticar, ikraz, istikraz, kefalet, bey' ve şirâ, rehin, emânet, deâvi-yi mütenevvia*" were

[41] Dror Ze'evi, *ibid*, p. 48

[42] Boğaç A. Ergene, Local…, *ibid*, p. 70

[43] Leslie Pierce, *ibid*, p. 74

[44] SŞS 52 p. 123

[45] Erik Jan Zurcher, *Turkey: A Modern History*, I.B. Tauris, London:2004, p. 74

[46] Tobias Heinzelmann, *ibid*, p. 299

such cases to be solved at Nizamiye Courts. The cases came to Nizamiye Courts consistently increased since 1879 and the courts were put in charge of every type of issues set by mecelle alongside with criminal cases.[47] Miller states that after the modernization period religious law and secular law were highly intertwined and without any of them, neither would be complete.[48]

The modern period of Ottoman justice in terms of cases is divided into three period starting with the period between 1840 and 1850 during which a period of reasoning over sentences was launched regarding the philosophical viewpoints rather than religious rules and Sultan's will. Both the religious and the secular law were applied and neither of them was regarded more reasonable than the other and high authorities such as *şeyhülislam* kept its status.[49] During the Tanzimat period, the percentage of cases in which the Islamic law was applied lowest compared to other options such as imperial legal code and a mix of both. Siyaseten punishment was also in use. Religious law was always in pursuit of protecting its domination on criminal cases and took a position against secular law to protect its power.[50]

The second period spans from 1851 to 1859 in which the procedure to carrying cases to the court remained same with that of the prior period. On the other hand, the position of the local councils strengthened.[51] The nizami courts refer to councils which were constituted by the local officials who were appointed by the state and not tied to the religious law. Besides, the secular law gained ground on administrative measures while it kept a harmonious coexistence with the religious law. If a criminal case was to be tried, first of all, it was to be brought to arbitration court, if not solved;

[47] Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası,* Arı Sanat, İstanbul: 2004, p. 201

[48] Ruth A. Miller, *Apostates and Bandits: Religious and Secular Interaction in the Administration of Late Ottoman Law*, Brill, Studia Islamica, No. 97 (2003), p. 156

[49] Ruth A. Miller, *Apostates and Bandits: Religious and Secular Interaction in the Administration of Late Ottoman Law*, Brill, Studia Islamica, No. 97 (2003), p. 156

[50] Ruth A. Miller, Apostates…, *ibid*, p. 160-161

[51] Ruth A. Miller, Apostates…, *ibid*, p. 164

diyet or kısas must have been determined in the given court and later must be delivered to *nizami* court. The punishment of people by local governors at random was strictly forbidden and hard labor or imprisonment was preferred to beating.[52]

The third period was between 1859 and 1876 starting with the promulgation of Islahat, an adjusted version of Tanzimat. The proof, legitimization and procedure of the cases appeared to be a combination of sharia and nizami laws. The state never tried to discourage sharia but attempted to incorporate into modern view of the justice. This stance, in the long term, gave birth to a genuine method of trialing cases. The cases were investigated through nizami methods while trials were held in compliance with religious principles.[53] More than half of the judges appointed to nizami courts were the former members of the Ottoman ulema.[54] The last period, through the introduction of a Constitution, witnessed much more change from previous regulations in terms of its court procedure. The claimant could apply to sharia court or nizami court at first. A court of first instance was authorized to decide whether the case must be handled at the sharia court or nizamiye court. Police and the officials were accredited to take the case to the court without the consent of the victim. The foundation of nizami courts in 1877 further strengthened these courts. During this period, the separation of nizami and sharia courts was initiated.[55]

[52] Ruth A. Miller, Apostates…, *ibid*, p. 166-167

[53] Ruth A. Miller, Apostates…, *ibid*, p. 169-170

[54] Ruth A. Miller, Apostates…, *ibid*, p. 175

[55] Ruth A. Miller, Apostates…, *ibid*, p. 171

2.1.Documents set by the Kadı

Kadı was entitled to prepare and approve documents that were binding for the applicants. These documents are ilams, hüccets, terekes, fermans and maruzats.

2.1.1. Ilam

It is the most frequent document arranged by kadı. Essential characteristics of ilams as follows;

1- It must be stamped and signed by kadı

2- The name, address, father's name and hometown of litigant must be specified.

3- The litigant's claims must be written along with the response, rejection or acceptance of the defendant.

4- The rationale of the judgment was to give alongside with the proof if there is any.

5- The last part of ilam is written with a certain writing pattern which includes particular words such as *ilam olundu, hükmolundu, tenbih olundu, kaza olundu*.[56]

The document starts with a standard phrase *"maruz daileridir ki"* and explains the problem after stating that *"işbu bais'ül ilam".*[57] An example of an ilam is given below.

"*Zikr-i ati hususun mahallinde ketb ve tahrir ve keşfiçün canib-i şera-ı enverde irsal olunan naibimiz esseyyid Hafız Mehmed Efendi medine-i Sivas mahallatından Ece mahallesinde vaki setahcı oğlu Mehmed'in sakin olduğu menziline varub intintak katibi Nuri Efendi ve asakir-i zabtiyenin zurnal amiri Mehmed efendi ve meclisimiz*

[56] Ahmed Akgündüz, *Şer'iye Mahkemeleri ve Şer'iye Sicilleri,* Türkler, C. 10, Yeni Türkiye Yayınları, Ankara, s. 63-64

[57] SŞS 52 p. 29

azasından Vasıl efendi ve ceride-i şerada mezbut olan müslimiyyin hazır olduğu halde"[58] Though hüccet and ilam are different documents, they were used by people interchangeably to prove the claims. [59] İlams were used to detect the claims of a litigant and reached a solution in the end. Exploration of the location was a key method to clarify the case, and it was preferred and practiced by kadı. (*zikr-i ati hususun mahallinde ketb ve muayenesi için*).[60] *Keşf* was conducted to verify the ingenuity of the case.[61] İlam registers did contain judgments contrary to hüccets.

2.1.2. Hüccet

It is a document approved by kadı at the court whose salient feature is the absence of judgment. The paper displays that parties come to an agreement and be presented an agreement certificate by kadı. *Hüccets* are set for a variety of issues and can be seen notary like documents. In the register studied in this thesis, the word hüccet was never used to describe an agreement. On the other hand, the term *derkenar* was used to define the bilateral agreements. For example, a probable guardian was approved through a derkenar and the real estates of the child are put in the responsibility of the custodian. [62] Moreover, the documents were highly useful when transferring of property through sale in return for a particular sum. The amount was stated in the derkenar, and an invoice was presented to the proprietor. (*bedel-i malum ve makbuz mukabilinde ferağ ettik de*)[63] Besides being registered in the kadı registers, the document was handed to the litigant. If one of the parties claimed the opposing view about the subjective issue, the holder of the paper could approve the deal. If any of the parties refused to obey the directives given by hüccet, the other party could

[58] SŞS 52 p. 44

[59] SŞS 52 p. 27

[60] SŞS 52 p. 140

[61] SŞS 52 p. 32

[62] SŞS 52 p. 43

[63] SŞS 52 p. 48

present the sample of hüccet and could halt the due process.[64] Hüccets were sometimes used to take legal action against corrupted governors as in the case of Defterdar Ahmed Paşa of Egypt.[65] Derkenar were a later version of hüccet proving the agreements (*ahz ve kabz etmişdir deyu*).[66]

Derkenars were set on issues such as real-estate sale, rent, alimony, assigning of a deputy, inheritance, proving of puberty, exploration. However, most of the derkenars were prepared for real-estate sale and assigning of a deputy.[67] The owner of the real estate could appoint a deputy to deal with the due process. (*nasb ve tain eyledikte*).[68] If the proprietor was lost, one of his relatives was entitled to claim the inheritance. For example, after Mehmet went missing, his mother and son-in-law were granted to own the properties of Mehmet.[69] The payment of alimony was in installments, and a surety was to be provided to guarantee the process and be approved by kadı.[70]

2.1.3. Tereke

Tereke means the properties of a deceased person inherited by the heirs. If tereke was inherited from the father, the term, *sulbi,* is used to refer to male inheritor and *sulbiye* for a female heir. If tereke belongs to the mother, the male heir is called *sadri* and the female, *sadriye*.[71] In the registers, different terms were used to define the Muslims and the non-Muslims. For instance, the term "*fevt olan"* was used to describe the

[64] Abdurrahman Atçıl, *Procedure in the Ottoman Court and Duties of Kadıs,* Institute of Economics and Social Sciences of Bilkent University, Unpublished MA Thesis, Ankara:2002, p. 51

[65] James E. Baldwin, *The Deposition of Defterdar Ahmed Pasha and the Rule of Law in Seventeenth-Century Egypt*, Osmanlı Araştırmaları, XLVI (2015), p. 132

[66] SŞS 52 p. 20

[67] SŞS 52 p. 52

[68] SŞS 52 p. 155

[69] SŞS 52 p. 123

[70] SŞS 52 p. 97

[71] SŞS 52 p. 24

Christians while *"fevt eden"* was used for the Muslims.The use of *fevt* for a non-Muslim proves that disparity between Muslims and non-Muslims was at the minimum range.[72] Moreover, if soldiers were deceased on duty or martyred, this was asserted in the registers.[73]

According to Islamic Law, inheritance of a deceased person must be transferred to a spouse or closest relatives. If the deceased person has children below puberty, the children must be under the auspices of the custodian.[74] The use of expressions such as "*nakl-i hayat idub"* displays that the use of religious notions by the officials was prevalent.[75] The cases for inheritance were held even after twenty years after the death.[76] If one of the parties to inherit the estates of the deceased was male, the inheritor was described as *"er karındaşı"* and if woman it was *"kız karındaşı"*.[77]

If no inheritor was detected by the authorities for an estate, a claimant could appear and attempt to prove authenticity of his claims. İmams were the most salient witnesses to prove a claim of inheritance.[78] An official was chosen to control the authenticity of the claims, and this official was the secretary of the court. (*mahkeme katibi*).[79] It was a common sight that after the death of a person his liabilities were rejected by the debtors, and the inheritor proved this through witnesses or a *hüccet.*[80] Besides, two men of good reputation were to be held as witnesses to conduct a transaction of a house between parties.[81] Though, there were terekes as small as five

[72] SŞS 52 p. 23

[73] SŞS 52 p. 123

[74] SŞS 52 p. 28

[75] SŞS 52 p. 22

[76] SŞS 52 p. 21

[77] SŞS 52 p. 76

[78] SŞS 52 p. 107

[79] SŞS 52 p. 14

[80] SŞS 52 p. 80

[81] Suraiya Faroqui, *Men of Modest Substance*, Cambridge University Press, Cambridge: 2002, p. 10

hundred kuruş in total, the most priced tereke belonged to Becnahzade İbrahim Ağa with *63733* kuruş at the total.[82] Hocazade Hasan Sadık efendi came second with 22303 kuruş.[83] The terekes demonstrates that income ratio among citizens were quite unequal.

2.1.4. Maruz

Maruz is a document in which kadı, state officials or ordinary people complained about a problem and applied to higher authorities for the solution of the problem. Unlike ilam and hüccet, it does not contain any judgment or approval. The term, maruz, means to apply or to the petition. After appeal had been responded by the authorities, the response was registered by kadı. In the register 52 of Sivas, there are some examples of maruz. In one instance, the local authority, kadı, asked a question over the fate of a murderer. The question part was not written on the register, but the response is recorded.[84] Moreover, the document is two dimensional, and the other dimension is set by the Sultan, and the paper is called "ferman." Contrary to maruz, ferman was written to deliver a decree to any sub-authorities. After ferman was delivered, it is expected to be taken seriously, and the requests be met. For instance, England wanted to establish a consulate in Sivas and demanded help from the Sultan. Sultan sent a ferman to kadıs to secure the support from the provincial officials. The ferman is registered by kadı. Ferman starts with a title in the middle, "*ferman-ı alişan*".After the issue was explained in detail, ferman clarifies that the holder of a berat and two pieces of the decree (*bir kıta berat-ı alişanım ile iki kıta vekalet-i emr-i şerifim tasdir kılınmış olmağla*) must be honored in all of the settlements and be helped in finding a decent place during his stay in Sivas.

[82] SŞS 52 p. 118

[83] SŞS 52 p. 67

[84] SŞS 52 p. 46

2.1.5. Vakıf

Vakıf is a piece of land or property that was donated by the owners to promote the welfare of society. Vakıfs differed in terms of its purpose and type of donation. Moreover, in Islamic Law, the life of a vakıf was set for one year. However, the rule was changed in practice for the lifetime of the donator.[85] In the eyalets, an official called endowments accountant (*evkaf muhasebecisi*) was in charge of dealing with financial issues of the endowments.[86] If the endowment accountant was absent, he was deputized by the head secretary of endowments. (*Evkaf başkatibi*)[87]

Vakıfs were former private lands which were endowed to compensate the expenses of a charity founded by the owner. Besides, families were able to design the land as an inheritable property for their grandsons.[88] Though the endowed lands located in various cities differing from the hometown of the landowner, it was possible for the landlord to keep the lands tied to his legacy. For example, a resident of Sivas had a bakery and a paint store as vakıf.[89] Vakıf holder was paid a certain amount of money in return for their work. The sum was called *vazife,* and the amount of the money ranged according to the size of the pertaining vakıf. The sum was to paid *tevliyet* holder of the vakıf.[90] One could be assigned to the vakıf as imam or servant of which he was entitled to hold the *tevliyet*.[91] The official and the amounts paid for them is ascertained at the beginning of the registers on vakıf.[92]Another aspect about vakıfs is the establishment of *para vakıfs*. These institutions were defined as feasible by Ebu

[85] Haim Gerber, *State, Society, and Law in Islam,* State University of New York Press, Albany:1994, p.108

[86] SŞS 52 p. 40

[87] SŞS 52 p. 78

[88] Leslie Pierce, *ibid*, p. 235-236

[89] SŞS 52 p. 147

[90] SŞS 52 p. 151

[91] SŞS 52 p. 15

[92] SŞS 52 p. 139

Suud and aimed at lending money at a given interest rate. The earned money was to be distributed as *sadaka*.[93] Vakıfs were put under the inspection of Evkaf Nezareti in 1836.[94]

Kadı registers consist of a great deal of data on the functioning of vakıfs. If a mütevelli (manager) of a vakıf was missing, kadı was entitled to determine the new manager.[95] Besides, vakıfs whose berat holder was missing or in doubt; kadı could adjust a hüccet or check the old document to find the real owner. Moreover, a hüccet holder could claim ownership or prove his claims.[96] Kadı used the population registers to track the line of heirs for a particular vakıf. The kadı was in charge of keeping family lineages and intervene in the case of need such as missing mütevelli or two claimants for a piece of land.[97] In the registers, it is seen that there was more than one endowment accountant to handle with the problems properly.[98] Moreover, endowments institutions were warned by the central authority to follow the rules set by Bab-ı Ali Başvekâleti.[99]

General insecurity over property encouraged people to endow their land to ensure a *de facto* inheritance right.[100] The status of the vakıfs was set through berats which are documents approved by Sultan.[101]Another method to invest money was *mudarabe* which consists of putting money on merchandise or enterprise to multiply the benefits.[102] Berats states the aims and principles of the vakıf and the inheritors of the

[93] İlber Ortaylı, Türk İdare…, *ibid,* p. 298

[94] İlber Ortaylı, Türk İdare…, *ibid,* p. 289

[95] SŞS 52 p. 24

[96] SŞS 52 p. 55

[97] SŞS 52 p. 102

[98] SŞS 52 p. 111

[99] SŞS 52 p. 74

[100] Bernard Lewis, The Emergence…, *ibid,* p. 93

[101] SŞS 52 p. 49

[102] Halil İnalcık, *Osmanlı İmparatorluğu Klasik Çağ (1300-1600)*, YKY, İstanbul: 2015, p. 168

lands. This practice was explained in the registers as "*evladiyet ve meşrutiyet üzere ba-berat-ı şerif-i alişan.*[103] The later status of the vakıf was determined by endowments pool (*evkaf sandığı*), and if the need arose for restoration, the expenses were compensated by the endowments pool. The upkeep of the lands and properties was controlled in compliance with the orders of the General Directory of Vakfs.[104] The funding of expenses was approved and inspected by kadı.[105]

Vakıfs are the only independent institutions throughout the Ottoman rule.[106] On the other hand, vakıf holders must have paid the land tax while the farmers were entitled to pay *öşr* or rent for tilting the land.[107] According to kadı register number 16, the percentage of vakıfs regarding their adherence to sexes ranged at 12 vakfs registered for males as of 54, 5% and ten vakfs to females as of 45, 5%.[108] The detection of vakıf owners in the kadı register is uncomplicated thanks to kadı's precise definition of the mütevellis with great detail. For example, a vakıf holder from the neighborhood of Sarı şeyh was recorded in the registers as residing in the households numbered second and third. [109]

Given the broad scope of registers, it can be concluded that the founders of a vakıf were in search to invest the land in a profitable way and transfer it to his presuccessors. The heirs could be specified in the berat, and the later functioning of the vakıf was set in accordance with these rules. Vakıf lands defined as "rent-

[103] SŞS 52 p. 27

[104] SŞS 52 p. 83

[105] SŞS 52 p. 3

[106] Ömer Demirel, *Sivas Şehir Hayatında Vakıfların Rolü*, TTK, Ankara:2000, p. 65

[107] Baber Johansen, *The Islamic Law on Land Tax and Rent The Peasant's Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods*,Croom Helm, New York:1988, 103

[108] Mustafa Apaydın, *16. Şeriyye Siciline Göre Sivas,* Gazi Osman Paşa University Institute of Social Sciences, Unpublished MA Thesis, Tokat:2010, p. 41

[109] SŞS 52 p. 30

yielding land with a special status" otherwise they were confiscated.[110] Other properties that were endowed for the public good needed restoration for a while and the recovery process were explained in detail by kadı. *Neccar ustası* (carpenter), *taşçı ustası* (stonemason), *bend ustası* (mason), *amele* (laborer), *kireyiç* ve *kereste* (cluster and wood), *kiremid* (tile), *hızar ustası* (whipsaw master), *çırak* (apprentice), *dıvar için taş* (stone for the wall) were the terms registered for a repairment of a vakıf property. In the end, kadı stated that an aggregate sum of three thousand and three hundred kuruş was spent for the work.[111]

The person who was put in charge of managing the vakıf was called *mütevelli,* and the same term is still in use. The assignment was named *velayet*, and assignment to post was called *tevliyet*. The assignment of mütevelli was at the disposal of endower, and if there was no prospective nominee, kadı could decide over who would be appointed as mütevelli. The appointment of children as mütevelli was extensively wide. Mütevelli was expected to be fair and be aware of the vakıf's mechanism. The salary paid to mütevellis ranged in terms of the size and income of the vakıf. Besides, mütevellies were entitled to be paid a tithe, vazife-i tevliyet" by the authorities in return for their service. The vakıfs in the registers were aimed at sustaining the endownment and then distributing the income to workers. The sum that would be paid to mütevelli and his co-workers is clarified at the beginning of the berat.[112] Furthermore, the vakıf properties were valued according to their degree of being old and registered in the same way. The vakıf property that was built more than three generations ago was called "*evkaf-ı kadim".*[113]

There were around 180 mütevellis in the entire city of Sivas. Mütevellis were paid salaries in return for their services.[114] The salary of mütevellis ranged from two

[110] Baber Johansen, *ibid*, p.108

[111] SŞS 52 p. 111

[112] Fatih Şahingöz, *9 Numaralı Şeriye Siciline Göre Sivas*, Gazi Osman Paşa University Institute of Social Sciences, Unpublished MA Thesis, Tokat:2010, p. 100

[113] SŞS 52 p. 78

[114] Ömer Demirel, *ibid*, p. 67

piasters (akçe) to thirty piasters. In one instance, it is viewed that the keeper of a shrine (*zaviyedar*) was paid a salary of two piasters for his services.[115] Another example includes a *tevliyet* holder who was paid six piasters.[116] In this respect, it can be concluded that tevliyet holders were paid much more than another vakıf employee even though their rank is same. Moreover, in the registers, the present owner of the vakıf was classified according to their past. If they held the vakıf for more than three centuries, they were addressed as "*evlad-ı evlad-ı evlad"* after their claims were proved to be true by a *berat*. (*ba-berat-ı şerif-i alişan*).[117]

Vakfs in the kadı register number 9 were listed as follows: "Vakıf of Ahi Emir zaviyesi, Vakıf of Kanlı Ahmedoğlu, Vakıf of Bağdad bint-i Mehmed Ağa, Vakıf of Kenisa (Kilise), Vakıf of Ebubekir han paşa, Vakıf of Paşahanı, Vakıf of Es-Seyyid Nureddin, Vakıf of Şerife bint-i Abdullah Hatun, Vakıf of Hacı Arduç, Vakıf of Şifâiye Medresesi, Vakıf of İsmihan bint-i Abdullah Hatun.[118] What is more, a vakıf of *dar'ül aceze* as *dar'ül aceze zaviyesi* was present in Sivas[119]

2.2. An Overview of Ottoman Empire in the 19th Century

The Ottoman Empire, as an Islamic-oriented entity, applied Islamic Law over its realm while allowing its non-Muslim subjects to live in accordance with the orders of their respective communal religion. Even though there are some critiques over the name and content of this system; the so-called *millet* system was the principal element in the shaping of the Ottoman subjects' daily life. The *millet* system which was arranged in compliance with the religious lines kept the non-Muslims relatively content with the ruling stratum. Though most of the issues regarding the non-Muslims such as marriage, divorce, and inheritance were to be dealt at their communal courts, the cases concerned on crimes and transfer of property had to be

[115] SŞS 52 p. 141

[116] SŞS 52 p. 143

[117] SŞS 52 p. 56

[118] Fatih Şahingöz, *ibid*, p. 96

[119] SŞS 52 p. 104

tackled at the kadı court. The concept of millet system in the Ottoman Empire roots back to the emergence of Islam. The Islamic state which was constituted in accordance with the "*ummah*" concept permitted the non-Muslims to pray according to their religion without any limitation coming from the state authority.[120]

Charles Issawi states that with the advent of industrialization and international trade in the 18th century, non-Muslim Ottoman subjects were able to interact with foreigners and position themselves as intermediaries between Muslims and European merchants. However, this role has deterred the Muslims from accepting European models because non-Muslims used them.[121] Also, the Muslim guilds positioned themselves to stand against manufactured goods of European origin.[122] Nevertheless, the relations never ceased, and a constant contact was always present. This connection enabled them to learn European thoughts on social, political and economic themes of daily life. Trade and accumulation of capital in the hands of particular millets paved the way for the nationalist sentiments.[123] In the following time, by sending their children to European capitals such as Paris and London in order to receive modern and proper education, the non-Muslim Ottoman subjects learned the core values of European civilization. Even though modern ideas had great influence upon Ottoman subjects, unrest was originated from economic discontent. The first uprising against Ottoman rule occurred in the Balkan domain of the Empire. The Serbians and Greeks were the first subjects which demanded more rights with the assistance of Russia and Britain respectively. Unlike the Greek Revolt, Serbian

[120] Cevdet Küçük, *Osmanlı İmparatorluğu'nda "Millet Sistemi" ve Tanzimat in Tanzimat Değişim Sürecinde Osmanlı İmparatorluğu*, Türkiye İş Bankası Kültür Yayınları, İstanbul:2011, p. 543

[121] Charles Issawi, Christians and Jews in Ottoman Empire, Holmes&Meier Publishing, London:1982, p. 261

[122] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London: 2009, p. 20, Şevket Pamuk, *Türkiye'nin 200 Yıllık İktisadi Tarihi*, Türkiye İş Bankası Kültür Yayınları, İstanbul:2014, p. 139

[123] Kemal H Karpat, "*The Transformation of the Ottoman State*, 1789-1908", International Journal of Middle East Studies 3, No. 3 (1972), p. 248

uprising was never encouraged by political motives but, Greeks asked for political rights, in particular, laypeople of the merchant class. However, contrary to lay people, Greek Patriarchate (İstanbul), which dominated a large section of Orthodox subjects were reluctant to assist the foundation of a nation-state which would restrain its political power.[124] For the Greek Patriarchate, the more the political power remained, the higher the economic gains increased.

The Ottoman modernization, in essence, started with the Sultan Selim III, who initiated reforms in the military. His failure is attributed to lack of support by *ulema* and janissaries. Notably, *ayans* the local notables played a significant role in this failure. Following Sultan, Mahmud II, after the abolishment of Janissary corps, put some radical measures to break the strength of notables and centralize the state. The abandonment of tax-farming and reformation of *loncas* were such kind of deeds. The new economic steps had to be taken. The expansion of demand on the European side further obliged Ottoman merchants to adapt to new conjuncture.[125] The 19th century was the age of peripheralization and being a colonial subject of the Europeans for the Ottoman Empire.[126]

The rivalry between Russia and Britain over the lands of Ottoman Empire directed the route of the 19th century. European Concert of 1815 compelled Ottoman Empire to shift its foreign policy significantly in order to survive. Britain aimed at generating a bulwark against Russian expansion to the south which would endanger the interests of the Crown. The first and foremost solution to the Ottoman problem was to modernize the country, initially by introducing modern methods of administration. This would stop Russia to demand more rights for Orthodox Christians and Russia would not step in the domestic politics of the Empire. Speacialization in Administration was in demand and bureaucracy was an important institution for the

[124] Donald Quataert, *The Ottoman Empire 1700-1912,* Cambridge University Press, New York:2005, p. 189

[125] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London:2009, p. 363

[126] Çağlar Keyder, *Toplumsal Tarih Çalışmaları*, İletişim, İstanbul:2009, p. 220

Ottoman state. Administrative bureaus that were specialized in certain issues such as finance, agriculture, commerce, education, roads, vakıfs and policing were established.[127] Additionally, they were an auxiliary part of Ottoman Provincial Councils, which were founded to enhance the administrative efficiency.[128] All *nizamiye* courts were put under the authority of Divan-ı Ahkam-ı Adliye.[129] Nizamiye courts were fully systemized in 1879.[130] Nizamiye courts were not systematic until the 1879 and did not function properly.[131]

2.2.1. The Legal Status of Ottoman Subjects

Islam divides the world into two spheres called *Dar'ul Islam* and *Dar'ul Harb*. According to this rule, the territories outside of Muslim rule was designed as lands into which Islamic law was to be extended. On the other hand, if conquered by Muslims, the people lived on these lands would be able to accept the protection of Muslim rule and in turn, must pay an annual per capita tax called *cizye.* Sharia Law and *Ottoman Kanunnames* articulate emphasizing of given roles by religion, and inequality defined by sharia must be maintained.[132] Donald Quataert claims that non-Muslims became successful in trade due to reason that *cizye* must have been paid in cash which could be earned only through trade.[133] The non-Muslims were granted

[127] Martha Mundy and Richard Saumarez Smith, *ibid*, p. 50

[128] Carter V. Findley, *Osmanlı İmparatorluğunda Bürokratik Reform: Babıali 1789-1922*, Tarih Vakfı Yurt Yayınları, İstanbul: 2014, p. 206

[129] Niyazi Berkes, *Türkiye'de Çağdaşlaşma,* YKY, İstanbul: 2015, p. 224

[130] Ekrem Buğra Ekinci, *ibid*, p. 201

[131] Avi Rubin, *Legal borrowing and its impact on Ottoman legal culture in the late nineteenth century*, Cambridge University Press, Continuity and Change 22 (2), 2007, p. 282

[132] Niyazi Berkes, *Türkiye'de Çağdaşlaşma*, YKY, İstanbul:2015, p.175

[133] Donald Quataert, *The Ottoman Empire 1700-1912*, Cambridge University Press, New York:2005, p. 132

privileges to live under the protection of Islamic rule named *dhimmi*. *Al-dhimma* status has guaranteed the freedom of pray, property and life for non-Muslims and *dhimmis* have paid a tribute in return for this protection.[134] Even though Islamic Law had a very significant role in Ottoman state structure; it was not the only source of jurisprudence while the customary law was also prevalent in practice. Kanunnames proclaimed by the Sultan were secular in character and *tazir* were regarded to be the prime penalty rather than *hadd* (punishment) which was more severe than the former during the pre-modern period.[135] The meaning of tazir which was used to refer "to rebuke" or "to reprimand" changed in time as beating by the stick is in doubt.[136]

The people, in the Ottoman Empire, were split into two types. First was the *askerriyye* meant the rulers, and the other was the *reaya* meant the ruled mainly. *Reaya* was comprised of two groups, Muslims, and non-Muslims. Non-Muslims lived under *dhimmi* status and were restricted to act within the prospect of certain rules. The Muslims in a particular neighborhood could have the fomenters of evil in the region be deported, if the accused persons were known for their evil actions.[137] For some periods, non-Muslims were forbidden to ring bells and display crosses in the public. Moreover, they had to wear given colors of attire and ride only donkeys. These trait frames were imposed on them by Muslim rulers and put them into an inferior position politically and economically. Though, this was the case, the non-

[134] Benjamin Braude and Bernard Lewis, *Christians and Jews in Ottoman Empire*, Holmes&Meier Publishing, London:1982, p. 19

[135] Dora Glidewell Nadolski, *Ottoman and Secular Civil Law*, International Journal of Middle East Studies, Vol. 8, No. 4 (Oct., 1977), p. 520 p.517-543

[136] Dror Ze'evi, *The use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal,* Brill, Islamic Law and Society, Vol. 5, No. 1 (1989), p. 52

[137] Kemal Çiçek, *Living Together: Muslim-Christian Relations in Eighteenth-Century Cyprus as Reflected by the Sharia Court Records*, I.C.M.R., Vol. 4, No. 1, June 1993, p. 55

Muslims became enriched with the escalation of international trade and demanded more equality. [138]

2.2.2. Social Life Before the Proclamation of the Edict of Tanzimat

The Muslims and non-Muslims had their quarters in different parts of the city. By the 19th century, diversity was limited to the major cities of Istanbul and Salonica. Muslims were in a superior position compared to non-Muslims. Since only they were appointed to governmental posts and *dhimmis* were deprived of these rights, Muslims preferred to engage in trade less. Muslims were engaged in agriculture and domestic trade. International trade was in the hands of *dhimmis* who obtained a more advantageous position through *berats* which exempted them from taxes and Ottoman Penal Code of 1858. As a matter of the fact that *berats* were mere documents that privilege the holder. Sultan Selim III introduced the concept of *Avrupa tüccarı* in order to counter the rights of those who were relatively prone to benefit economically. The given concept was ended with the incorporation of European commercial law into Ottoman system during the 1860s.[139]

Dhimmis were far superior to Muslims in the economic sphere. Muslims, who were reluctant to contact with foreigners, distanced themselves from learning other languages. The Greeks and Armenians mainly preferred learning foreign languages to share the benefits of international trade. Europeans significantly had taken advantage of the status of *dhimmis* economically who were forbidden to take political posts. The non-Muslim subjects of the Sultan, who have obtained *berats* were exempted from import and export taxes and did not pay any tribute to its protector state. Their compulsory conscription was also removed, and they gained a significant economic advantage. Furthermore, they were not bound by political

[138] Donald Quataert, *Consumption Studies and the History of the Ottoman Empire 1550-1922 An Introduction*, State University of New York Press, New York:2000, p. 37

[139] Bruce Masters, The Political…, *ibid*, p. 301-303

crimes or fallacies they committed.[140] Before *berats*, non-Muslims (*müstemin*) those who were not the subjects of Sultan had to obtain an *ahidname* to conduct formal relations with the Ottoman authorities.[141] On the other hand, Çadırcı argues that *müstemin* tradesmen were of foreign origin while *beratlı tüccar* were the subjects of Sultan.[142] The trade was such a significant issue in terms of its scope that the first court which was constituted outside şeyhülislam's discretion was the Commercial Courts founded in 1860.[143] This proves that the decline in the power of sharia was on the rise.

The Armenians, which lived side by side with the Muslims since the 11th century, were well adapted to their environment and were in good relations with their neighbors. Especially, in the Central and Southeastern Anatolia, the Armenians lived together with the Turks and embraced similar dress codes and traditions with Muslims.[144] [145] Ottoman Armenians were not accustomed to using weapons due to the prohibition of carrying guns by non-Muslims.[146] [147] In the most of the Central and Eastern Anatolia, Turks, Armenians and Greeks wore the same dresses especially the women.[148]

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[140] Gülnihal Bozkurt, *Gayrimüslim Osmanlı Vatandaşlarının Hukuki Durumu*, TTK, Ankara:1996, p.140

[141] Maurits H. Van Den Boogert, *The Capitulations and the Ottoman Legal System*, Brill, Leiden:2005, p. 24,

[142] Musa Çadırcı, *Tanzimat Dönemi'nde Anadolu Kentlerinin Sosyal ve Ekonomik Yapısı,* TTK, Ankara: 2013, p. 7

[143] Niyazi Berkes, *ibid*, p. 222

[144] Fred Burnaby, *On Horseback through Asia Minor*, Gilbert &Livington Printers, London:1877, p. 148

[145] G. H Hepworth, *Through Armenia on Horseback*, Isbister and Company Ltd, London:1898, p. 325

[146] G. H Hepworth, *ibid*, p. 331

[147] Henry Barkley, *A Ride through Asia Minor and Armenia*, John Murray, London:1891, p.132

[148] J. H Skeene, *Anadol: The Last Home of the Faithful*, Richard Bentley, London:1858, p. 214

Jewish social, political and economic relations within and without their own community was a peculiar case to which particular attention must be paid. Jews had no communal hierarchy at the spiritual level, and all given titles were valid at the administrative level.[149] Besides, Jews were more conservative in communicating with foreigners so, when other subjects rose in the economic sphere, Jewish political and economic power declined. However, in times of war, Jews were for Ottoman state and displayed their obedience by donating money.[150] However, European Jews wandered in Ottoman Empire reported that Ottoman Jews lived in such miserable conditions compared to European Jews and Christians.[151]

2.2.3. Reforms Before the Proclaimation of the Edict of Tanzimat

Before the proclamation of Tanzimat, the line between ruler and ruled was so strict that it precluded the pervasion of pro-reformist ideas within the society. Officials never attempted to detect the needs and interests of subjects due to absolute hierarchy known as *had*. The Meşveret Councils were established to break this strict hierarchy and to include all parts of society into reformation period during the reign of Selim III. In the last years of Mahmud II's reign, some legislative powers of the Sultan were transferred to sub-organs such as *Meclis-i Hass-ı Vükela, Darü-ş Şurayı Bab-i Ali,* and *Meclis-i Vala-yı Ahkam-ı Adliye.* [152] *Meclis-i Valay-ı Ahkam-ı Adliye* consisted of judges from both nizami ranks and sharia circles proving the devoid of separation. Before the foundation of nizamiye courts in 1864, there was a sharia

[149] Benjamin Braude and Bernard Lewis, *Christians and Jews in Ottoman Empire*, Holmes&Meier Publishing, Londaon:1982, p. 104

[150] Philips Cohen J., *Becoming Ottomans: Sephardi Jews and Imperial Citizenship in the Modern Era*, Oxford University Press, Oxford:2014, p. 20

[151] Bernard Lewis, *The Jews of Islam*, Princeton University Press, Princeton:1984, p. 164

[152] Stanford J Shaw , *"The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement before 1876"*, International Journal of Middle East Studies, (1970), p. 52-54

judge as a president and other officials as local representatives.[153] The latter aimed at "improving the transport, provisioning of credit and just repartitioning of taxation.[154]

Sultan Mahmud attempted to remove the visual differences between his subjects by proclaiming an attire law for them. Civil servants irrespective of their religion would wear the same attire all over the empire. Headgear was one of the ways to differentiate the member of different faiths. Sultan Mahmud introduced *fez* to eradicate the visual differences.[155] Moreover, Mahmud II presented new communication means to stimulate the modernization. Postal system (1834) was an instance of such means.[156] In addition, the Sultan ordered the publication of the newspapers in order to inform both the Turks and foreigners about reforms. The first of those was *Le Moniteur Ottoman* (1831) which was later named *Takvim-i Vakayi*.[157] Mahmud II has conducted a census to determine the human sources of the Empire and set the agenda in compliance with the results.[158] Bliss defines the Mahmud II as the most authoritarian ruler after Mehmed II.[159]

Sultan Mahmud's era was much more successful regarding the range and depth of reforms. Janissary Corps was dissolved, and ministries were founded in order to strengthen the central state during the reign of Mahmud II. The attempts to break the power of the untaxable foundations, *vakfs*, were made. For instance, the foundation

[153] Ruth A. Miller, Apostates…,*ibid*, p. 172-173

[154] Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria*, I.B. Tauris, London: 2007, p. 42

[155] Donald Quataert, *"Clothing Laws, State, and Society in the Ottoman Empire, 1720-1829"*, International Journal of Middle East Studies 29, No. 3 (1997), p. 413

[156] Kemal Karpat, *ibid*, p. 261

[157] Ali Budak , "*The French Revolution's Gift to the Ottomans: The Newspaper, The Emergence of Turkish Media*", International Journal of Humanities and Social Science, Vol. 2 No. 19, Special Issue – October 2012, p. 164

[158] Bilal Eryılmaz, *Osmanlı Devletinde Müslüman Tebaanın Yönetimi,* Risale, İstanbul:1996, p. 85

[159] Edwin Bliss, *Turkey and the Armenian Atrocities*, 1896, p. 234

of the ministry of *Evkaf* broke the power of notables and enhanced the central authority.

Russo-Turkish War of 1828 was a breaking point for *ulema* to change its position against *bid'at*. The war was somewhat persuasive to assure the assistance of ulema in order to topple the Janissary corps which was defunct at the time. Muslims started to view Christians as infidels who rage war on Muslim lands as clearly be seen on the occasions of Napoleon's invasion of Egypt and backing for the Greeks during Greek War of Independence.[160] On the other hand, Jews who were not allied with any of the foreign states remained to be viewed as loyal as in the past. Besides external threats, there was religious unrest in the Empire. Canning reports that "a continual and often a sanguinary antagonism of creeds, of races, of districts and authorities on the frontier, and frequent wars of little glory and much loss of the neighboring powers, had formed of the late condition of the Porte's dominions."[161]

The reforms aimed at strengthening the central authority in order to eradicate the political and religious unrest. The new stance of *ulema* towards reforms eased and accelerated the reforms.[162] *Vakfs* were turned out to be an illegal way of capital accumulation whose assets could not be questioned.[163] Foundation of *Evkaf* ministry weakened the unwanted power cliques. The aim of the centralization was to put an end to the threat of *ayans* on Porte. Even though, Mahmud II was able to displace *ayans*, the sub-groups which enabled *ayans* to sprout all over the empire remained untouched.[164] Salzmann, while dubbed the *malikane* system as privatization and *ayans* as islands of loyalty, has defined Ottoman modernization as a successful

[160] Bruce Masters, *Christians and the Jews in the Ottoman Arab World*, Cambridge University Press, Cambridge:2001, p. 133

[161] Edwin Bliss, *Turkey and the Armenian Atrocities*, 1896, p. 211

[162] Seçil Akgün, *Emergence of Tanzimat in the Ottoman Empire*, OTAM Dergisi, Vol 2(1991), p. 5

[163] Şevket Pamuk, *Türkiye'nin 200 Yıllık İktisadi Tarihi,* Türkiye İş Bankası Kültür Yayınları, İstanbul:2012, p.90

[164] Kemal Karpat, *ibid*, p. 254-256

transition from *ancien regime* to a centralized state. Hourani claims that politics of Porte and notables were different from each other.[165] Moreover, *malikane* system aimed at keeping the taxes as optimal as possible by leasing the lands to highest auctioneers to obtain the highest revenues.[166] Additionally, malikane system attempted to generate a mutual relationship between the tax-farming person and the farmers.[167] High notables and *ayans* were in favor of status quo which enabled them to keep personal privileges. However, after the abolishment of *ayan* system, Ottoman state has applied Europeans to compensate its war expenses which lacked a modern taxation system.[168] Another major economic reform was the abolition of *narhs* and *gediks* which enabled *loncas* to live politically undisturbed while their position declined economically.[169] *Gedik* system strengthened after the fall of Ottoman economy in the 1750s as a means to protect the artisans against economic fluctuations.[170] Besides, the provision of fundamental institutions of health, education and welfare by state, before provided by the state, promoted the central power further.[171] On the other hand, these reforms not only weakened the notables but also rendered the Sublime Porte more vulnerable to demands and threats of European Powers, in particular, Britain and Russia.

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[165] Albert Hourani, "*Ottoman Reform and the Politics of Notables*," in William R. Polk and Richard L. Chambers, eds. Beginnings of Modernization in the Middle East: The Nineteenth Century (Chicago: University of Chicago Press, 1968), p.47

[166] Leslie Pierce, *ibid*, p. 240

[167] Martha Mundy and Richard Saumarez Smith, *ibid*, p. 21

[168] Ariel Salzman, "*An Ancient Regime Revisted: Privatization and Political Economy in the 18th century Ottoman Empire."* Politics and Society 21 (1993), p.409

[169] Şevket Pamuk, *ibid*, p. 93

[170] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London:2009, p. 18

[171] Donald Quataert, *The Ottoman Empire 1700-1922*, p. 95

The reforms had some side effects on the social level. The dissolution of the Janissary corps was a total disaster for the Jewish community of the Empire, which had close trade links with the corps. On the other hand, after the proclamation of Tanzimat, Jewish bankers have gained a superior status in the Empire. Apart from that, with an Imperial Ferman decreed in 1835, the Jews of the Empire had been empowered formally with the generation of *hahambaşı* post with an official rank.[172]

Sultan Mahmud attempted to generate *de facto* Ottoman citizenship and has stated that Muslims must be recognizable in the mosque, Christians in church and Jews in synagogue implying that differences related to religion would not be considered as the basis of segregation between Ottoman subjects.[173] Sultan Mahmud attempted to blur the visible differences amongst Ottoman subjects. On the other hand, intercommunal relations of Ottoman subjects remained similar to that of the previous ages which were full of scorn and hatred. Quataert argues that the abolition of *loncas* and Janissary corps strove to eliminate local intermediaries and strengthen the central authority.[174] However, religious and social dynamics within the society remained intact.

Mahmud II and Sultan Abdulmecid were the leading contributors to modernization cause in theory. The Edict of 1839 and Reform Edict of 1859 were means in itself to shift the mentality, and the end was to survive without losing territory. Christians, protected by European powers, were not more than mere means for the respective protectors to reach their aims. Jews, apart from Christians, by all means, remained loyal to Ottoman state and satisfied with the reforms due to reason that they had no European sponsor to assert their clause.

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[172] Dimitros Stamatopoulos, *From Millets to Minorities in the 19th century Ottoman Empire: An Ambiguous Moodernization, Citizenship in Historical Perspective*, Vol.2006, p. 257

[173] Philips Cohen J., *Becoming Ottomans: Sephardi Jews and Imperial Citizenship in the Modern Era*, Oxford University Press, Oxford:2014, p. 8

[174] Donald Quataert, *The Ottoman Empire 1700-1922*, p. 64

To put all in a nutshell, the centralization of the Ottoman Empire was crucial for the survival of the empire, and a means to counterbalance the pressures of Great Powers. Hence, Ottoman Empire was to be portrayed as the sick man of Europe in the second half of the 19th century, and its balance policy was in continuity. However, using diplomatic measures as leverage was not visible by the Congress of Vienna in1815.[175] The Edict of Tanzimat and the reformation Edict of 1856 were such diplomatic moves targeted to maintain Ottoman integrity.

2.2.4. The Edict of Tanzimat

Ottoman Empire having a multinational character was in search of regulations which would enable the state to keep all subjects in order and on equal ground. Before Tanzimat era, Mahmud II has attempted to overthrow the old cliques with a view to form a more egalitarian society. Furthermore, the abolition of *janissary* of corps and regulation of *vakfs* were such kind of deeds that aimed at reshaping the whole society. However, there was still unrest in the country and non-Muslims especially Orthodox were open to the agitation of Russia whose true goal was the partition of the empire. Britain was allied with the Empire in order to defend its interests, and the only reliable way to keep Russia at bay was to please subjects with more reforms.

The Edict of 1839 was the first of its kind and pioneered a new understanding of social, economic and political measures. The Edict of Tanzimat (*ferman),* which read by Mustafa Reşid Paşa in 1839 at Gulhane Park, was the first step in the formation of Ottoman citizenship. Abdulmecid, retaining the absolute authority descended from his father found enough power to proclaim such a constitutional decree of Tanzimat.[176] The *ferman* declared that state would guarantee the security of its subjects' life, honor and liberty regardless of religion. Every person would be considered equal before law and people would be levied according to their income on a rational basis. Males would be obliged to perform four years of military service,

[175] Nuri Yurdusev, *Ottoman Diplomacy: Conventional or Unconventional*, Palgrave Macmillan, 2003, p. 26

[176] Adolphus Slade, *Turkey and the Crimean War*, Smith, Elder & Co, London:1867, p. 24

and *müsadere* (confiscation) would be abolished. The abolition of *müsadere* was intended to improve the private property.[177] In fact, before the proclamation of Tanzimat, *nizamiye* corps which is similar to *Nizam-ı Cedid* system was founded in 1843. Redif forces were comprised of temporary soldiers who were disbanded after seven years of service.[178] These were standing armies maintained through regular conscription.[179]

The *şeyhülislam* did not approve the Edict of Tanzimat due to its secular basis.[180] However, the first sign of decline in şeyhülislam's power was the exclusion from administrative and planning committee. This was a breakthrough that challenged the supreme authority of sharia.[181] In the prevailing time, the structure of Greek Patriarchate has been changed substantially. Patriarchate's sole authority in temporal and spiritual matters has been dissolved. Patriarchate was to be responsible only for religious affairs and deprived of economic, political and social powers. New reforms were introduced over the administrative problems of the state structure. *Nizamiye* courts were established next to ordinary *qadi* courts (şeriyye), and a duality in law was created. *Vilayet Nizamnamesi* in 1864 was a cornerstone in shaping the administrative structure of the Ottoman Empire which led the way for further reforms in jurisprudence such as the foundation of Nizamiye courts that were highly similar to the British system.[182] New units at administrative level were established. *Vilayet*, *sancak*, *kaza* and *kariye* institutions were created in context with the new paradigm of the state as administrative units. Muhtars were defined as state officials who were delegated to deal with documents at the local level. İmam, as a local

[177] Şevket Pamuk, *ibid*, p. 90

[178] Musa Çadırcı, *Tanzimat Dönemi'nde Anadolu Kentlerinin Sosyal ve Ekonomik Yapısı,* TTK, Ankara: 2013, p.316

[179] Musa Çadırcı, *ibid*, p. 61

[180] Dora Glidewell Nadolski, *ibid*, p. 522

[181] Niyazi Berkes, *Türkiye'de Çağdaşlaşma*, YKY, İstanbul:2015, p.174

[182] Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası*, Arı Sanat, İstanbul: 2004, p. 172

representative of central authority with executive powers at his discretion, was the link between the ruling stratum and the ruled.After the institution of *muhtarlık* was introduced, imams were chosen to hold the muhtarlık, however, the former higher status of muhtar was in decline.[183] İmam was a member of local community council at the same time.[184] İmam was appointed through an imperial decree.[185] Besides, non-Muslims also were chosen as members of local community board as stated in the register as follows: "*İhtiyar meclisi azalarından Budak oğlu Artin veled Orhan."* [186]

Canning paid utmost attention to provisions about usage of power which limits the arbitrary use of power both by officials and by the Sultan. Indeed, one of the principal aims of the *Tanzimat* was to end the arbitrary use of authority by agents of the state which incited Christians to rebel.[187] To Karpat, *Tanzimat* was just successful at enriching the minorities and encouraging them to demand more freedom.[188] Furthermore, Canning argued that the development of the Empire rested more on Christians than Turks, so reforms targeted them.[189] The *Tanzimat* had many citations to God which prove its non-secular character.[190]All in all, *Tanzimat* has changed the conventional idea of the circle of justice; instead put the *"just ruler"* into the center of political legitimacy.[191] Sultan would not be the leading figure anymore in deciding the future of state and regular people would be active in this process even though it was at a minimal level. The Sultan still held the authority to make the last decisive

[183] SŞS 52 p. 29

[184] SŞS 52 p. 122

[185] SŞS 52 p. 148

[186] SŞS 52 p. 150

[187] Canon Sell, *The Ottoman Turks*, The Christian Literature Society for India, Madras:1915, p. 95

[188] Kemal Karpat, *ibid*, p. 259

[189] Edwin Bliss, *ibid*, p. 235

[190] Seçil Akgün, *ibid*, p. 13

[191] Başak Tuğ, , "*Gendered Subjects in Ottoman Constitutional Agreements*, ca. 1740-1860", European Journal of Turkish Studies (Hi)stories of Honor in Ottoman Societies, Vol.18 (2014), p. 9

fiat. Tanzimat was cosmopolitan in scope by accepting all subjects equal before the law regardless of creed.[192]

Tanzimat ended the absolute power of clergy in its respective community and put the *layman* in a firm position which was in favor of separation from Ottoman Empire. Besides, Muslims were not content with the Tanzimat, which diluted their granted rights and diminished their status as equal to that of Christians.[193] Universal conscription and new tax regulations which blurred the line between Muslims and *dhimmis* were the primary alienating elements during Tanzimat era.[194] [195] For the Jews of the Empire, Tanzimat period was a liberating process both economically and politically, and *hahambasi* stated that they would display their pleasure by full obedience. On the other hand, to an ordinary Jew, new regulations meant the dilution of the religious sentiments in society through the imposition of secular values.[196]

2.2.5. Ottoman Reform Edict of 1856

The Edict of Tanzimat was prepared in line with the *"mevadd-ı esasiyye"* which is sharia. On the other other hand, the Edict of Islahat was based on rather secular lines and had no citation to sharia. The Islahat proposed to abolish harac and cizye, non-Muslims were to be accepted to all circles of army and administration, and they would be allowed to repair old churches and build new ones without any special permission. Moreover, non-Muslims would be able to send representatives to Vilayet Councils, Meclis-i Ahkam-ı Adliye and their respective religious boards alongside

[192] Bilal Eryılmaz, *Osmanlı Devletinde Gayrimüslim Tebaanın Yönetimi*, Risale Baskı, İstanbul:1996, p. 101

[193] Selim Deringil, *Conversion and Apostasy in the Late Ottoman Empire*, Cambridge University Press, Cambridge:2012, p. 37

[194] Bruce Masters, *Christians and the Jews in the Ottoman Arab World*, Cambridge University Press, Cambridge:2001, p. 131

[195] Philips Cohen J., *ibid*, p. 11

[196] Philips Cohen J., *ibid*, p. 13

with the clerics.[197] This edict which was declared by Sultan Abdulmecid in 1856 was a result of both the State's reformation agenda and of the pressure of Britain and France in return for their alliance during the Crimean War.[198] Abdulmecid was not the sole authority during his rule but had the absolute power. Apart from absolute power, Abdulmecid had abled assistants around him whose assistance played a significant role in overcoming the external pressure.[199] The Crimean War was happened to be extremely costly for France and Britain. The sacrifices of France and Britain to maintain Ottoman integrity would be rewarded with the reforms which would ease the tension put on Christians by Ottoman state.[200] Sublime Porte has declared the Edict in order to appease the demands of those and to become a member of European Concert. European Powers stated that the rights claimed through Tanzimat was not met and demanded the prompt application of promised rights which led the way for the foundation of mix tribunal designed to process of both Muslims and non-Muslim within the same court.[201]

The Edict of 1856 abolished the *dhimmi* status theoretically. [202] Ottoman subjects were not to be conceived according to their respective religions thus; the penalty for apostasy was not death anymore. The equality within the Ottoman society displeased both Muslims and non-Muslims. Orthodox Patriarchate complained that the edict

[197] Cevdet Küçük, *Osmanlı İmparatorluğu'nda "Millet Sistemi" ve Tanzimat in Tanzimat Değişim Sürecinde Osmanlı İmparatorluğu*, Türkiye İş Bankası Kültür Yayınları, İstanbul:2011, p. 548-550

[198] Cohen J. Philips *Becoming Ottomans: Sephardi Jews and Imperial Citizenship in the Modern Era*, Oxford University Press, Oxford:2014, p. 9

[199] Edwin Bliss, *ibid*, p. 225

[200] William Miller, *The Ottoman Empire 1801-1913*, Cambridge University Press,Cambridge:1913, p. 298

[201] Dora Glidewell Nadolski, *ibid*, p. 522

[202] Gülnihal Bozkurt, *ibid*, p. 70

rendered Jews equal with the Christians.[203] This provision led the way with intense missionary activity in the Empire. Imposition of certain rules from Istanbul has shattered the fragile bond between local notables and the State and conflicts arose between non-Muslims and Muslims. Arabic speaking lands such as Lebanon, Damascus, Nablus, Jeddah, and Egypt were the salient examples of these conflicts.[204]

The *de facto* Ottoman citizenship provisioned the expansion of private property, and Land Code was initiated in 1858. Islamoğlu argues that Land Code of 1858 was one of the significant reforms which aimed to change power relations at the provincial level. This change prompted conflicts between title holders and laborers which paved the way for full clashes amongst these groups in the Balkans.[205] An extended survey was conducted to register all lands without an owner. Villages and faraway lands particularly studied in the land code of 1858.[206] Furthermore, the *reaya* which only had the tilling right would be able to transform the land without being obligated to cultivate.[207] On the other hand, Quataert claims that Land Code gave positive results in the Balkans but in Iraq and Syria it led to the aggregation of land in the hands of chieftains, but some clashes occurred in Vidin due to a sudden change in the established system.[208]

Another important provision in the Tanzimat era was the grant of freedom to open religious schools for respective communities. Missionary schools were a means to gain local citizens who would be able to defend the interests of their respective

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[203] Şükrü Hanioğlu, *A Brief History of Late Ottoman Empire*, Princeton university Press, New Jersey:2008, p. 75

[204] Bruce Masters, *ibid*, p. 130

[205] Huri. İslamoğlu, *"Property as a Contested Domain: A Reevaluation of the Ottoman Land Code of 1858"*, New Perspectives on Property and Land, edited by Roger Owen and Martin P. Bunton, 3-61. Cambridge MA: Harvard University Press, p. 11

[206] Martha Mundy and Richard Saumarez Smith, *ibid*, p. 51

[207] Şevket Pamuk, Türkiye'nin…, *ibid*, p. 152

[208] Quataert Donald, *ibid*, p. 39

protectors. There were 81226 students of state schools, 133100 of Armenian Patriarchate, 184568 Orthodox Patriarchate of Constantinople, 59414 of French schools and 10000 of Russian schools.12800 of British and 34317 of American Protestant.[209] On the other hand, there were only 130 students in the *rüşdiye* of Sivas.[210]

The Christians were mostly richer than Muslims, besides, gained more political rights which lowered the position of Muslims politically. The Christian subjects were attacked by Muslims for exceeding of their *hududs* assigned to them by Sharia Law. Ringing church bells, holding black slaves, riding horses, and dressing like Muslims were the primary examples of break of law by Christians.[211] Muslims mobs attacked the quarters where wealthy Christians lived. On the other hand, poor Christians remained unharmed during these attacks.[212] Furthermore, having adopted the secular French code, the strictest rules of sharia such as the punishment of adultery by death transformed into lighter crimes only punishable with three months in jail.[213] Even Arabs were not content with the new rule and got alienated to the State. As Mardin puts it, any governor who uses the modernist ways towards its subjects would be alienated from its respective community.[214] English Council Palgrave has stated that Sublime Porte suppressed its Muslim subjects in order to please its Christian subjects.[215]

[209] Bruce Masters, *ibid*, p. 151

[210] Musa Çadırcı, *ibid*, p. 286

[211] Bruce Masters, *ibid*, p. 160

[212] Bruce Masters, *ibid*, p. 167

[213] Roland K. Wilson, *ibid*, p. 49

[214] Şerif Mardin, *ibid*, p. 271

[215] Gülnihal Bozkurt, *Gayrimüslim Osmanlı Vatandaşlarının Hukuki Durumu*, TTK, Ankara:1996, p. 62

In the Ottoman Muslim public, Jews were viewed friendly and considered to be more loyal than Christians.[216] The economic rivalries between Jews and Christians appeared as social animosities such as blood libel of Christians through which they accused the Jews of kidnapping Christian children to make bread by using their blood.[217] Tough, Jews were satisfied with their given rights as usual and continued to live apart from other subjects, they launched their national movement since they got tired of Christian pressure.[218] The Jews are living in the south of Morea Peninsula, like their coreligionists, was seen as the traitor whose existence only weakened the Greek society.[219] Greek nationalism was one of the many factors which motivated the Jews to establish their modernization.[220] Jews, in general, fell victim the mutinies committed by Christians due to their alliance with the Turks.[221]

One of the Council established to offer a more egalitarian system to non-Muslims, Council of State (*Şurayı Devlet*) would consist of millet representatives who were to be chosen in compliance with the approval of local Council.[222] In the following decade, Jews were appointed to administrative positions.[223] Even though, Islahat provisioned to the inclusion of Jews in the governmental positions, the number of Jews who succeeded in remained limited due to their lack of Ottoman Turkish.

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[216] Lewis, *ibid*, p. 171

[217] Benjamin Braude and Bernard Lewis, *ibid*, p. 223

[218] Gülnihal Bozkurt, *ibid*, p. 189

[219] Steven Bowman, *The Jews in Greece*, Textures and Meaning: Thisty Years of Judaic Studies at the University of Massachusets Amherst, 2004, p. 421

[220] Fleming K.E, *Greece-A Jewish History*, Princeton University Press, New Jersey:2008, p. 59

[221] Richard Clogg (Ed.) Steven Bowman, *Minorities in Greece: Aspects of a Plural Society*, Oxford:2002, p. 421

[222] Stanford J Shaw,"*The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement before 1876"*, International Journal of Middle East Studies, (1970), p.76

[223] Howard Sachar, *Farewell: The World the Sephardim Remembered*, Vintage Books, New York:1995, p. 97

Especially, the regulation regarding the conscription of all Ottoman subjects put Jews rather in a precarious position who were hesitant to choose between their religion and their duties. They rather preferred to *bedel-i askeri* in order to be exempted from conscription.[224] The cases in the present kadı register related to inheritance of deceased or martyried soldiers prove that any of the non-Muslims had ever been drafted.[225]

2.3. An Overview of Daily Life in Sivas in the 19th Century

Sivas was comprised of seven *kazas* that each has its respective sub-organizations. Arabgir, Amasya, Bozok, Canik, Çorum, Divriği and central Sivas were of kazas in the greater Sivas *eyalet* according to kadı register number 9 dated between 1809 and 1812.[226] In the kazas, kadı was the representative of central authority.[227] The numbers of kazas are changed according to administrative regulations launched by the central authority. "Artukabad, Çepni, Eyrek, Hafik, Hüseyinabad, İlbeyli, İnallı – Ballı, Karakuş, Karahisar-ı Behramşah, Karayaka, Kazabad, Gelmugad, Nefs-i Sivas, Niksar, Sivasili, Sonisa, Şarkpare, Taşabad, Tokat, Turhal, Yıldızili, Zile" were kazas according to kadı register number 16 dated between 1831 and 1834.[228] The next record studied by Eser demonstrates that kazas and nahiyes in Sivas according to kadı register number 27 dated 1851-1852 were Artukabad, Darende, Divriği,

[224] J. Philips Cohen, *ibid*, p. 14

[225] SŞS 52 p. 109

[226] Fatih Şahingöz, *9 Numaralı Şeriye Siciline Göre Sivas,* Gazi Osman Paşa University Institute of Social Sciences, Unpublished MA Thesis, Tokat:2010, p. 66

[227] Bernard Lewis, *Emergence of Modern Turkey*, Oxford University Press, London: 1968, p.14

[228] Mustafa Apaydın, *16. Şeriyye Siciline Göre Sivas*, Gazi Osman Paşa University Institute of Social Sciences, Unpublished MA Thesis, Tokat:2010, p. 14

Eşvedi, Gedikçıbık, Gürün, Hafik, İlbeyli, İli, Kangal, Koçgiri, Mecidözi, Tonus, Turhal, Tuzaklı, Ulaş, Yıldızeli, Zile.[229]

In the register studied here, the names of all kazas were not written because naibs were in charge of settling the issues in most of the kazas. Besides, kadı was cut of administrative duties contrary to the pre-1860 period during which kazas were levied and governed by kadı. Hafik, Koçgiri, Tokad, Darende, Han-ı Cedid ma Yıldızeli, Yıldızeli, Aziziye , Divriği[230], Reşad [231] were the kazas whose dependence were higher compared to other kazas given the cases came in front of the kadı court in Sivas. Karahisar-ı şarki, and Tokad were the sancaks of Sivas in the given period of time.[232] The same form of description was used in all of the registers. Firstly, the greater eyalet was disclosed before describing the sub-administrations. By this use, the order of each unit on a hierarchical basis was expressed. The following excerpt after detailing the exact location of the case explains the stages of the due process, e.t.c."*Karahisar-ı şarki sancağı kazalarından milas kazası kurralarından".* [233] Furthermore, though registers were never intended to point out the local officials as obvious as possible, the cases give invaluable information about public servants. For instance, the name of Aziziye naib, Ahmed Raşid Efendi, was used in the register, but no detailed information was given.[234] Sivas, Aziziye (Pınarbaşı), Tokat, Koçgiri (Zara), Divriği, Darende, Gürün, Tenos (Şarkışla), Amasya, Merzifon, Zile, Mecidözü, Osmancık, Erbaa, Köprü, Karahisar-ı Şarki, Suşehri, Milas (Hamidiye, Mesudiye) were the kazas of Sivas after the administrative regulation of 1867.[235]

[229] Mustafa Eser, *27 numaralı Sivas Şer'iye Sicili*, Selçuk University Institute of Social Sciences, Unpublished MA Thesis, Konya:2009, p. 33

[230] SŞS 52 p. 8, SŞS 52 p. 16, SŞS 52 p. 20, SŞS 52 p. 22, SŞS 52 p. 30, SŞS 52 p. 31, SŞS 52 p. 71, SŞS 52 p. 115

[231] SŞS 52 p. 131

[232] SŞS 52 p.125

[233] SŞS 52 p. 125

[234] SŞS 52 p. 124

[235] Mehmet Mercan, *Sivas Vilayeti'nin Teşkili ve İdari Yapısı (1867-1920)*, Osmanlı Döneminde Sivas

Besides kazas and sancaks, nahiyes such as İlbeğlü,[236] Baharözü,[237] and, Deliklitaş[238] were settlements which were bigger than kariyes but frequently mentioned in the registers as they had *vakıf* lands. *Kariye* was the smallest of administrative structures in Sivas. Kariyes was mentioned due to the criminal cases came in front of the court and vakif lands.

2.3.1. Shop Owners

Though shop owners were registered in the defters prior to 1860, the registers were halted to keep the tracks of shops from this date on. However, the occupation of a person was stated in the present register to define the character at the beginning of the register, in the real estate sales[239] or to denote the person as a member of *şuhud'ul hal* in the end. The shop owners were named as follows:

"tâife-i bezzâz, tâife-i penbeci, tâife-i bakkal, tâife-i haffâf, tâife-i kuyumcu, tâife-i kürkçü, tâife-i börekçi, tâife-i etmekçi, tâife-i arabacı, tâife-i attar, tâife-i tuzcu, tâife-i debbâğ, tâife-i bostancı, tâife-i tütüncü, tâife-i derzi, tâife-i gazgancı, tâife-i gazzâz, tâife-i gazzâz, tâife-i temürcü hurdacı, tâife-i nalband, tâife-i muytâf, tâife-i sarrac, tâife-i sipah bazarı, tâife-i berber, tâife-i kavukçu, tâife-i göncü, tâife-i eskici, tâife-i semerci, tâife-i kılıççı, tâife-i katırcı."

Penbeci, bakkal, haffaf, tütüncü, terzi, gazgancı, kuyumcu were taxed much more than other shop owners. [240] Regarding the amount of taxes paid by each community, it can be said that garment shops(bezzaz), clothes sellers(penpeci), shoe shops(haffaf), grocery stores(bakkal), tobacco shop(tütüncü) and jewellery (kuyumcu) and tailor(derzi) were the most popular shop owners in the first half of 19th century Ottoman Sivas. Though kadi regulated taxes, there are cases in which

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Sempozyumu Bildirileri, Mayıs 2003, s. 553-555.

[236] SŞS 52 p. 22, SŞS 52 p. 44

[237] SŞS 52 p. 50

[238] SŞS 52 p. 51

[239] SŞS 52 p. 20

[240] Fatih Şahingöz, *9 Numaralı Şeriye Siciline Göre Sivas,* Gazi Osman Paşa University Institute of Social Sciences, Unpublished MA Thesis, Tokat:2010, p. 53-55

governors tried to over-tax the shop-owners. The governor of Sivas, Mehmet Paşa, was warned by Selim III not to collect excessive taxes and later appointed to Tokat.[241]

2.3.2. Rural Life

Though urban life can be considered a decent one, life in the countryside was not a lucrative one. People supported their life by small-sized agriculture and farming in the countryside. Rural people kept animal stocks such as sheep, goat, and cow and planted wheat, millet, and barley.The inheritance registers consist of a great deal of real state such as barn and hayloft. Moreover, the *terekes* of village people had utensils related to agriculture such as a pickaxe, plow, and ax. Shovel and sickle were widely used. Kitchenware was as simple as possible. Pan, bowl and plate were consistently written in terekes of rural people. Besides, every tereke had a tin plate and a holder proving that their diet depended on the pastry.[242]

2.4.The Role of Kadı in the Ottoman State Structure

The Islamic jurisprudence defines three methods to overcome the disagreements. The first of them is a compromise or the so-called *sulh*. Another method is *tahkim*, and the last one is adjudication or *kaza*. Kaza refers to due process headed by judge, kadı.[243] Singer described the kadı as an arbiter between askeri class, *sipahis*, and the ordinary people, *reaya*.[244] Islamic Criminal Law, unlike its counterparts in the West,

[241] Musa Çadırcı, *ibid*, p. 19

[242] Zehra Akbulut, *Sivas Şehri 50 Numaralı Şeriy'ye Sicil Defterinde Bulunan Özet ve Değerlendirilmesi*, Cumhuriyet University Institute of Social Sciences, Unpublished MA Thesis, Sivas: 2014, p. 67-68

[243] Metin M. Çoşgel, Boğaç. A. Ergene, *The Selection Bias in Ottoman Court Records: Settlement and Trial in Eighteenth Century Kastamonu*, October, 2012, p. 4-5

[244] Amy Singer, *Palestinian Peasants and Ottoman Officials: Rural Administration around Sixteenth-Century Jerusalem*, Cambridge University Press, Cambridge: 1994, p. 127

was designed to keep the position of each subject in line with the pre-determined limits that define and assign individual values to similar cases. The judicial decisions in Western jurisprudence are taken without paying any attention to likely results of the case over the public. However, kadı had to consider the public and even had to take a public view of a case into account to be considered as a more precise figure in the society. The general contentment of a case was a huge contributor to kadı's capability to reach just decisions in compliance with the social expectations and boosted the discretion of the kadı at his will.[245] Of the alleged people, only those who had certain conditions were to be sentenced. One had to have *kudret*, the ability to commit an act, have *ilm*, the knowledge of understanding whether the act was a crime or not and lastly, *kasd* acting on purpose.[246]

Applicants must have had specific qualifications to become a kadi. Blindness, deafness, and dumbness of a person were the chief obstacles to become a kadi. Furthermore, certain physical and moral characteristics such as being virtuous and honorable must have been met in order to be approved to be appointed as a kadı.[247] Public morals were under the responsibility of the kadı as in instance of the 17th century of Kayseri so kadı must have fit the given characteristics.[248] Applicants to be appointed kadı were to be graduated from medrese with a diploma. After the graduation, a hierarchical ladder was to be climbed.[249] Naibs were the deputies of kadıs that were appointed by the latter to conduct trials in faraway districts in which kadıs were authorized.[250] The post of katip played the role of modern time secretary in the Ottoman bureaucratic system. *Katip* was able to witness the entire

[245] Haim Gerber, *State, Society, and Law in Islam*, State University of New York Press, Albany:1994, p. 11

[246] Rudolph Peters, *ibid*, p. 20

[247] Abdurrahman Atçıl, *Procedure in the Ottoman Court and Duties of Kadıs(Unpublished MA Thesis), Institute of Economics and Social Sciences of Bilkent University*, Ankara:2002, p. 26-27

[248] Ronald C. Jennings, Kadi… p. 156

[249] İlber Ortaylı, *Türkiye Teşkilat ve İdare Tarihi*, Cedit Neşriyat, Ankara:2008, p. 128

[250] İlber Ortaylı, *ibid*, p. 236

correspondence in a particular region, and the post was credited due its intermediary role. The tenure of office for a katib was mostly for quite a long time and katib is not retired if not compulsory. After having been retired, katip in practice delegated the post to his son.[251] Kassam was used to refer assistant of a judge who dealt with inheritance sharing.[252] The book kept by kassam is called "*defter-i kassam.*"[253] Another civil servant was *mübaşir* who was assigned to bring the criminal in front of the court. [254] The trials were conducted in a building which was kept just for the use of jurisprudence (*Hükümet konağında vaki mahkeme-i istinafa mahsus odada makud meclis-i şerimizde*).[255]

The post of kadıship was a precondition to rise in economic and political terms. If a person was appointed as kadı, it was more likely that his posterity would be a part of the same intellectual circle.[256] Interpreters were also present at kadı court when the need arose primarily in the regions where most of the people were non-Muslims and could not speak Turkish.[257] Kadı had a great responsibility in dealing with the matters related to central authority. Repairing of bridges, roads, and fountains was of kadı's duty alongside funding the soldiers and feeding the army. Besides, kadı was in charge of collecting the taxes properly.[258]

The authority of kadı was relatively enlarged when Ebu Suud was a *seyh'ül Islam*. Ebu Suud took an active part to have the müftü be put in charge of approving an act

[251] E Afyoncu, R. Ahıskalı, *Kâtip (Osmanlı Dönemi)*, *TDVİA*, C. 25, Ankara:2002, p. 53-54

[252] Haim Gerber, *ibid*, p. 45

[253] SŞS 52 p. 89

[254] SŞC 52 p. 22

[255] SŞS 52 p. 102

[256] Baki Tezcan, *The Ottoman Mevali as 'Lords of the Law,* Journal of Islamic Studies, 20:3 (2009), p. 395 pp. 383-407

[257] Kemal Çiçek, *Interpreters of the Court in the Ottoman Empire as seen from the Sharia Court Records of Cyprus,* Brill, Islamic Law and Society, Vol. 9, No. 1 (2002), p. 1, pp. 1-15

[258] İlber Ortaylı, *Osmanlı Toplumunda Aile*, Pan Yayıncılık, İstanbul: 2001, p. 72

committed by the state authority. Moreover, the limitation of kadı's authority to permit a new thing to be accepted was dissolved by Ebu Suud, and change was halted in practice. Temporal problems were declared not to be modified in respect to the customary law.[259] Besides Calder states that müftü was at the core of legal change in the Ottoman Jurisprudence.[260] Kadı records consist of many examples that such examples of non-sharia implementations were prevalent.[261] Kadı was responsible for private law matters such as family law, inheritance law, injuries, notary, and vakıf endowments.[262] In fact, Berkes states that sharia was a private law leaving room for Sultan delegating the application of *tazir* in the hands of Sultan with absolute authority.[263] The practice of banishment of a guilty person from a particular region descends back to the early Islamic period and is an instance of strong tribal links during that time.[264] Gerber argues that kanun cannot be merely defined as the "reenactment of the sharia by state fiat" on the other hand kanuns involves new jurisprudence and concepts of problem-solving. Fines, though not included in Sharia Law, are a common way to punish fallacies.[265] Even fetvas issued by leading scholars defined the use of fees as a pertinent *bid'at*.[266] Ebu Suud, the leading şeyhü'l islam of the 16th century, asserted the power of kadı and religious law while taking a position against kanun and *ehl-i örf* which was described by him

[259] Dora Glidewell Nadolski, *ibid*, p. 521

[260] Norman Calder, *ibid*, p. 20

[261] Haim Gerber, *The Muslim Law of Partnerships in the Ottoman Courts*, Brill, Studia Islamica, No. 53 (1981), p. 111,

[262] Haim Gerber, *ibid*, p. 61

[263] Niyazi Berkes, *ibid*, p. 215

[264] Haim Gerber, *ibid*, p. 62

[265] Haim Gerber, *ibid*, p. 62

[266] Metin M. Coşgel, Boğaç Ergene, Haggay Etkes, Thomas J. Miceli, *Crime and Punishment in Ottoman Times: Corruption and Fines*, Journal of Interdisciplinary History, XLIII:3 (Winter, 2013), p. 355 p. 353-376

as the perpetrators of torture which was strictly forbidden in Islam. [267] Besides, kadı being appointed by the Sultan through a *berat* was tied directly to the latter eliminating secondary power cliques in the provinces.[268]

According to Ottoman sources, the term kanun may refer four concepts in jurisprudence.

1- Sharia law which defines the rules to be implemented without doubt

2- The declarations of Sultans over legal matters

3- The collection of such rulings in a book called kanunname

4- The implementation and notion of regulations as a seamless entity. For instance kanun as a regulative body alongside other administrative institutions.[269]

The widely used term, *örf*, refers to local customs that are approved by kanun and was allowed to uphold the old rules and regulations on a regional level. However, it is possible to come across such usage of *töre* referring to provisions of Sultan as in the case of *örf-i padişahi*. From a wider point of view, it can be concluded that *töre* used to denote customary law excluding sharia.[270]

Though kadı was the ultimate executioner of state authority naibs were appointed to provinces where kadı was not able to conduct a proper mechanism of operation.[271] The limits of naib's power were determined by kadı, and they were tied to kadı.[272] Kadı was assigned to keep track of registers that was a crucial part of the bureaucracy. In the register number 52, most of the cases were related to inheritance

[267] Haim Gerber, *ibid*, p. 64

[268] İlber Ortaylı, ibid, p. 264

[269] Uriel Heyd, *ibid*, p. 167

[270] Uriel Heyd, *ibid*, p. 168-169

[271] İlber Ortaylı, *ibid*, p. 272

[272] Abdurrahman Atçıl, *ibid*, p. 28

litigation along with ilams, derkenars and decrees.[273] Furthermore, kadı was the corresponding servant of central authority in the provincial level. An imperial decree over the return of Imperial medals was delivered to kadı of Sivas, Hayreddin, in order to be handled (Osmani ve mecidi nişanlarının hazine-i celileye iadesi).[274] Kadı was rotated in one year on average with a view to prevent the formation of local cliques that aimed at using the power of kadı as a means for economic gains.[275]

Kanunnames are collections of kanuns which are in fact a concise version of fermans and other provisions of Sultans giving an explanation over particular cases in private law and public law.[276] They were used as an auxiliary of Ottoman law alongside fetwa and örf. Though Ebu Suud declared through a fetva that there can be no *kanun* superior to sharia but in practice particularly in public law kanun addressed the measures that were not considered to be a specific part of sharia in scope.[277]

If public interests were at stake, sultan was capable of punishing those who jeopardize the state with substantial penalties though sharia does not offer any penalty for the given case or light penalties. This practice, the co-called *siyaseten* punishment, was at sultan's discretion, and only the sultan could order the execution of suspected persons. Furthermore, only sultan could pardon those who were sentenced to death.[278] *Siyaseten* punishment used to denote administrative punishment.[279] While state officials were able to exert both *tazir* and *siyaseten* over people kadı was only able to use tazir and hadd as a measure to deter.[280] If a punishment was to be applied, the acceptance or rejection of allegations had to be

[273] SŞS 52 p. 8, SŞS 52 p. 11, SŞS 52 p. 13

[274] SŞS 52 p. 47

[275] Metin M. Coşgel et al, *ibid*, p. 366

[276] Uriel Heyd, *ibid*, p. 171

[277] Uriel Heyd, *ibid*, p. 180

[278] Uriel Heyd, *ibid*, p. 192

[279] Leslie Pierce, *ibid*, p. 313

[280] Rudolph Peters, *ibid*, p. 68

concluded. There were many cases in which criminals accepted or rejected the allegations.[281]

In the 17th and 18th centuries, the post of kadılık was given to high ulema as *arpalık* culminated with the formation of an inefficient institution.[282] Though, kadı are considered to be the executioner of sharia rule, the continuation of public order, defense and protection of people were also at the discretion of kadı.[283] Kadıs were paid fixed salaries, and their chief income source was fees that were taken after a court procedure. The fees were legalized through an assumption that they were given by consent.[284] After the tereke was shared, a fine, *el haracat*, was exposed inheritors by kadı.[285] Besides a discount was proposed after entire fee and taxes were collected. (*resm-i mezkurun iskontosu*)[286]

Ergenç claims that kadıs were appointed to their ranks considering the income from their district in where they are in charge of. [287] Kadı was authorized to take a particular sum after the procedure, at 2% on average.[288] Kadıs tried to process as many trials as possible in order to earn as much as possible. Even some of the kadıs started to wander around to find illegal issues to be solved. At the end, Sultan was bound to order kadıs not to journey out of their authorized territory.[289] Furthermore, fines were not such an effective deterrent between 16th and 18th centuries due to

[281] SŞS 52 p. 145

[282] Musa Çadırcı, *ibid*, p. 86

[283] Uriel Heyd, *ibid*, p. 209

[284] Uriel Heyd, *ibid*, p. 213

[285] SŞS 52 p. 21

[286] SŞS 52 p. 36

[287] Özer Ergenç, *Osmanlı Klasik Dönemi Kent Tarihçiliğine Katkı, XVI. Yüzyılda Ankara ve Konya*, Ankara Enstitüsü Vakfı, Ankara: 1995, p. 82

[288] İlber Ortaylı, *Hukuk ve İdare Adamı Olarak Osmanlı Devletinde Kadı*, Turhan Kitabevi, Ankara: 1994, p. 67

[289] Uriel Heyd, *ibid*, p. 214

inflation.[290] Kadıs were ordered to act in compliance with the sharia, if sharia was not enough to specify an absolute crime, örf was embedded into procedure and kadı was put out of the legal process and ehl-i örf appointed to retain the state authority. The submission of a case to *ehl-i örf* was an informal way to solve litigation. [291] Though the position of kadı in the askeri class changed in time, they always had been well-respected people by the state authority as it is demonstrated by a *hatt-ı humayun* stating that they were entitled to wear *telli imame* and *ferace* as of a müderris.[292]

Fıkıh (fiqh) means the understanding of Islamic law.[293] It is an auxiliary branch of Islamic jurisprudence assisting the practitioners and scholar. Müftü detects new rules by combining the sources of Islamic law such as *Quran, Sunnah, icma* and *kıyas*. Though in theory, fetwa is superior to kadı's decision, the kadı was the ultimate decision maker and must decide whether the fetwa was authentic or not. Furthermore, the kadı was the key figure in determining whether the pertaining fetva matched with the present case or it is not applicable.[294] Müftü was the theoretician of sharia while the kadı was the executioner.[295] The competency of a respective müftü was evaluated in terms his depthness as former a fakih.[296] Müftü had the authority to expand the corpus of sharia by defining new rules for issues not addressed by sharia. The given position of müftü led the way for the interchangeable use of terms *müftü* and *mücteh*id.[297] In complicated matters related to Islamic law, mufti could apply the previous decisions or fetvas taken by leading scholars in the field or kadıs. Mufti decides which order must be taken or preferred. Kadı also decides which fetva must

[290] Metin M. Coşgel et al, *ibid*, p. 369

[291] Uriel Heyd, *ibid*, p. 218

[292] İlber Ortaylı, *ibid*, p. 273

[293] A. O Omotosho, *Origin and Growth of Usul al-Fiqh*, Journal of Arabic and Religious studies December, 1989, Pp. 70- 78. p. 4

[294] Haim Gerber, *ibid*, p. 80

[295] Halil İnalcık, , *Osmanlı İmparatorluğu Klasik Çağ (1300-1600)*, YKY, İstanbul: 2015, p. 178

[296] Norman Calder, *ibid*, p. 123

[297] Guy Burak, *ibid*, p. 25

be applied whose similarity with the case in suspect.[298] Zımmis obtained fetvas in order to prove their stance both against Muslims and their co-religionists. Muftis were able to compose fetvas regardless of religious orientation.[299]

Ottoman muftis maintained keeping the fundamentals of regulating a fetva since it is regarded to be upheld by the kadı on the executive level.[300] Kadı was vested in upholding the conventional Ottoman administrative structure as a member of askeri class.[301] Convention or *teamül* (adet-i mustamirre) was superior in deciding to what extent the defendant is guilty. If the accused person is defined *sai bil'fesad, infamous,* it was more likely to sentence the accused to a heavy punishment.[302] The defendant during a due process was never questioned over their motivations and the previous events that ended up with the crime.[303] The given concept of judgment was to be approved by a mufti through a fetva. Fetva was used as a means to provide essentials to punish a person if the defendants are found guilty but were likely to get a lighter punishment. The allegations must be of a habitual type, and the pertaining person must be described as a "spreader of evil" (fomenter of corruption) in the world.[304] Kadı was inactive in revealing the real story behind the claims of both parties.[305]

[298] Haim Gerber, *ibid*, p. 90

[299] Ronald C. Jennings, Zımmis (Non-Muslims) in Early…, *ibid,* p. 261

[300] Uriel Heyd, *Some Aspects of Ottoman Fetva*, Bulletin of School of Oriental and African Studies, XXXII (1969), p. 37-43

[301] İlber Ortaylı, *ibid*, p. 262

[302] Boğaç A. Ergene, Local…, *ibid,* p. 161, Haim Gerber, *ibid*, p. 98

[303] Dror Ze'evi, The Use…, ibid, p. 48

[304] Uriel Heyd, *ibid*,p. 195

[305] Rudolph Peters, *Crime and Punishment in Islamic Law Theory and Practice from Sixteenth to Twenty-first Century*, Cambridge University Press, New York:2005, p. 9

A proper fetva was comprised of two parts which are *mesele* and *cevap* respectively.[306] Fetvas were practical solutions to the problems of daily life differing from fıkh in the sense that the basis was not related to the theory.[307] Besides, fetvas were issued to solve the problems of guild members.[308] Moreover, the fetvas was backed by *tevatür*, common knowledge, so as to take a better position during the case.[309] The public approach towards a case in trial was decisive on the likely decisions of kadı.

The litigant must have provide evidence if otherwise; the defendant was to be viewed as an innocent person.[310] On the other hand, the claimant could demand a surrogation over the reputation of the defendant and attempt to take an advantage over the respondent even if not able to provide any consistent proof.[311] In this respect, it can be argued that Ottoman jurisprudence did not attach importance to one of the fundamental principles of law, "presumption of innocence." However, the presence of *keşf* (exploration) contradicts with the past practices articulating peculiarities of each case from each other. *İstintak* or surrogation was in general held in the exact place where the case happened to be.[312] Katibs was employed to conduct an exploration.[313]

The discernible practice in Islamic Law was of discovering a corpse whose murderer is unknown in a neighborhood. The neighborhood where the corpse found was

[306] Norman Calder, *ibid*, p. 116

[307] Colin İmber, *Why You Should Poison Your Husband: A Note on Liability in Hanafi law in the Ottoman Period*, Brill, Islamic Law and Society, Vol. 1, No. 2 (1994), p.207

[308] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London: 2009, p. xx

[309] Boğaç A. Ergene, Local…, *ibid*, p. 139

[310] Haim Gerber, *ibid*, p. 30

[311] Boğaç A. Ergene, Local…, *ibid*, p. 154

[312] SŞS 52 p. 43

[313] SŞS 52 p. 109

entitled to pay a blood money. The case was an instance of how the public was held responsible for the body, and a collective punishment was implemented. The given practice provided an incentive for the locals to keep wicked people far away from their mahalle.[314] Blood money to be pardoned for the homicide or intentional wounding paid by the suspected person was half of the sum if the victim was a woman.[315] If massive crimes are at stake, only those who seen the crime were to be witnesses.[316] If an assault crime was in hand, the wounds of the victim must have been specified in detail. [317] Gerber by quoting from Geertz states that normative witnessing was the most important characteristic of Ottoman Law, and it entailed an immense priority to witnessing as a type of evidence.[318] A case about a mill in Sivas had fifty-three witnesses at all.[319] In most of the cases, witnesses played a significant role in the solution of problems. When the litigant had witnesses, the case was more likely to be ended in favor the litigant. Besides, oaths, *ikrar* and *itiraf* were other methods to end a case.[320] Moreover, non-Muslims could take oaths to refute the allegations against them lacking proof.[321]

Though sharia meant right path according to Islamic law and was considered to be the ultimate order, the peculiarities of the case were taken into account such as the reputation of the defendant.[322] Reputation was assessed in terms of religious commitment and similar moral characteristics with society.[323] A case from the investigated register states that if a mare was missing and one claim to own it, the

[314] Haim Gerber, *ibid*, p. 34

[315] Leslie Pierce, *ibid*, p. 147

[316] Rudolph Peters, *ibid*, p. 13

[317] SŞS 52 p. 95

[318] Haim Gerber, *ibid*, p. 37-38

[319] SŞS 52 p. 68

[320] Boğaç A. Ergene, Local…, *ibid*, p. 64-65

[321] Ronald C. Jennings, Zımmis (Non-Muslims) in Early… *ibid*, p. 260

[322] Leslie Pierce, *ibid*, p. 113-114

[323] Leslie Pierce, *ibid*, p. 178

claimant must prove that the mare belongs to him by witnesses.[324] On the other hand, all witnesses were not valued at the same level. People with high reputation or religious duty were regarded more trustworthy than other ordinary people. All of the cases in which Imam or hafız was brought as witnesses of litigants ended in favor the claimant.[325] If a case was held on the property located in an another district in which the trial is set, a witness from that community must be present at the court.[326]

Witnesses must be chosen among people known for their virtuosity. If defendant found guilty and demanded the interrogation of witnesses over their reputation in the region and proved right, the case was to be reset, and the case was most likely to result in favor of the defendant.[327] Islamic Law did not define any punishment for false evidence alongside the severe beating for false witnessing.[328] Muslims was present as witnesses in a case of non-Muslim.[329] On the other hand, the cases within which the litigant and the defendant were non-Muslims had non-Muslim witnesses entirely.[330]

The verdict or sentence could be dismissed if a fetwa contrary to the decision was presented to kadı. The party that obtained a valid fetwa always won the case.[331] State intervention in any case during or after the trial was not a common practice.[332]

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[324] SŞS 52 p. 125

[325] SŞS 52 p. 79, SŞS 52 p. 91, SŞS 52 p. 94, SŞS 52 p. 99

[326] SŞS 52 p. 71

[327] Abdurrahman Atçıl, *Procedure in the Ottoman Court and Duties of Kadıs*(Unpublished MA Thesis), Institute of Economics and Social Sciences of Bilkent University, Ankara:2002, p. 76

[328] Joseph Schaht, *The Origins of Muhammadan Jurisprudence*, Oxford at the Clarendon Press, Oxford: 1950, p. 187

[329] SŞS 52 p. 20

[330] SŞS 52 p. 48

[331] Haim Gerber, *ibid*, p. 40

[332] Haim Gerber, *ibid*, p. 41

Moreover, kadı demanded help from central authority over the solution of a case via telegraph proving that kadı was familiar with the technological developments.[333]

The swearing to prove respective claims was a peculiar instance in Ottoman Law. The defendant was allowed to swear, if insisted that allegations are made up. Otherwise, the defendant was to be proved guilty. Ottoman judiciary system without any means to disclose the actual reasons for a case was able to exert power over the people by exposing religiosity and fear.[334] The presence of witnesses to prove or to reject the allegations created a psychological pressure on the defendant. Since it was a relatively small community, the rejection of a guild which was known to the public would put the liar in an inferior position among people.[335] The types of weapons used to commit any unlawful acts were considered as criteria to evaluate to what extent the committer aimed to do so.[336] Ottoman Law in practice was a mix of religious law and customary law that aimed at reaching the optimal judgments as much as possible as the local contentment with the decision also must have been taken into consideration.[337] The detailed explanation of an assault case by a rock proves that what happened exactly was crucial for a better understanding of the case.[338]

Heyd claims that swearing on God to prove the trustworthiness of a witness was not standard practice.[339] If the given case was a deep-rooted and complicated issue, swearing was more preferable.[340]An Oath, according to a fetva, could not have been

[333] SŞS 52 p. 46

[334] Haim Gerber, *ibid*, p. 49-50

[335] SŞS 52 p. 148

[336] Haim Gerber, *ibid*, p. 52

[337] Haim Gerber, *ibid*, p. 55

[338] SŞS 52 p. 123

[339] Uriel Heyd, Studies in.., *ibid*, p. 59

[340] James Grehan, *The Mysterious Power of Words: Language, Law, and Culture in Ottoman Damascus (17th – 18th Centuries)*, Journal of Social History, Summer 2004, p. 1004

a decisive element of the ultimate judgment of a kadı.(*hükm*)[341] Though swearing on God seems to be highly befitting to be misused, in practice, it is possible to come across many cases in which defendant rejected to swear and bound to accept his guilt.[342] At this point, it must be considered that total population was not large enough to preclude familiarity among neighborhood and if a person known for his untrustworthiness would be exposed public humiliation in case his swearing was heard by. Public reputation of a defendant was taken into account. If a person was known to be of well mannered, it was taken for granted that punishment would likely to be lighter even if found guilty. If petty crimes such as forgery were not described in law, it was to mufti to enact a new fetva in compliance with the public order.[343]

Şuhudul hal played a crucial role in detecting the reputation of the defendant in any given province.[344] Şuhudul hal was defined by Ergene as formal officials of a court.[345] On the other hand, Taş claims that şuhudul hal was not a pre-arranged jury-type system, and they were merely ordinary people who were present at that moment for their respective trials.[346] According to Çadırcı, şuhudul hal was comprised of leading people in a particular province.[347] In the present register, there are instances in which court assistants such as *muhzır* and *muhzırbaşı* were written as şuhudul hal.[348] Though each official was written solely in each cases there are cases in which

[341] Abdurrahman Atçıl, *ibid*, p. 63

[342] James Grehan, *ibid*, p. 991; Abdurrahman Atçıl, *ibid*, p. 65

[343] Haim Gerber, *ibid*, p. 99

[344] SŞC 52, p. 19

[345] Boğaç Ergene, *Local Court, Provencial Society and Justice in the Ottoman Empire*, Brill-Leiden, Boston:2003, p. 236

[346] Hülya Taş, *Osmanlı Kadı Mahkemesindeki "Şuhudü'l- Hal Nasıl Değerlendirilebilir?*, Bilig, Kış/2008, sayı 44, p. 38

[347] Musa Çadırcı, *ibid*, p. 90

[348] SŞS 52 p. 156

muhzırbaşı and muhzır were participated in the şuhudul hal at the same time.[349] The change in the names presented as şuhudul hal from mahalle to mahalle proves that kadı preferred to bring different şuhudul hal who had familiarity with the people subjected to the present case.[350] The sentence that was written at the end of every verdict "*ve gayr-i hüm min'el hazirun*" demonstrates that the people present at the time of the case were allowed to watch the case and be held as witnesses to the case.[351] "Independent discretion and reasoning to derive new rules" changed from mezhep to mezhep.[352] Ottoman kadı was autonomous in legal matters, and only central administration was able to surrogate the kadı.[353] Schacht argued that the *gates of ijtihad* have closed since the 10th century, but it is proved that even a single kadı in a small neighborhood was capable of devising new judgments according to the needs of that particular society. Given the flexibility of kadı in practicing the Islamic Law, it must be taken into account that the rural customs seemed as complementary to ICL.[354] The term was defined as "independent reasoning" by Calder from whom we can derive the notion that *ictihad* never ceased to exist and was at the individual disposal of a sharia scholar.[355] On the other hand, with the adaptation of *Mecelle* by the Ottoman jurisprudence around the 1870s entirely, the kadı was confined to judge within the limits of the given codes constraining the flexibility of kadı. The articles of mecelle rather than the decision of a kadı which was evaluated in accordance with the sharia were the chief rule for the judgment due to the fact that articles were

[349] SŞS 52 p. 67

[350] SŞS 52 p. 33

[351] SŞS 52 p. 9

[352] Guy Burak, *The Second Formation of Islamic Law The Hanafi School in the Early Modern Ottoman Empire*, Cambride University Press, New York:2015, p. 7

[353] İlber Ortaylı, *Türkiye Teşkilat ve İdare Tarihi*, Cedit Neşriyat, Ankara:2008, p. 236

[354] Haim Gerber, *ibid*, p. 17

[355] Norman Calder, *Islamic Jurisprudence in the Classical Era*, Cambridge University Press, New York:2010, p. 3

promoted by state authority. [356] From a Weberian point of view, kadı was an explicit instance of Ottoman bureaucracy which implements the objective and equal values over the people. Kadıship was a critical post to ascertain the structure of Ottoman Law and compare with its Western counterparts to what extent it can be considered as a rational, predictable and dependable law. [357] Kadı as a member of Ottoman *ilmiye* was able to change its branch within the structure and be appointed as a müderrris.[358]

The status of kadı inflicted a huge blow with the foundation of local councils. Between 1840 and 1850 non-Muslims were being represented in the local councils as an instance of deliberative government policy stated in the Edict of Tanzimat.[359]

The so-called dualist system of Ottoman jurisprudence was firstly initiated in 1847 with the inception of trade courts. Though, the system was described as the beginning of the dualism by the European scholars, the transition does not fit the given denominations as exact as it is regarded to be. At this point, European way of defining the world in the contemporary time must be taken into account for a better understanding of the current standpoint. The given timeperiod witnessed the emergence of duality in the European mindset with the introduction of dichotomy between secular and religious through Darwinist ideas.[360] Three types of tribunals were forged with the introduction of vilayet laws between 1864 and 1871 as of sharia, nizami and trade courts respectively.[361] Cevdet Paşa, as one of the leading intellectuals of the legislation process in the Ottoman Empire, stated that the need for a new corpus arose after the escalation of trade with the Europeans exponentially.

[356] Avi Rubin, Legal borrowing, *ibid*, p. 297-298

[357] Haim Gerber, *ibid*, p. 20-26

[358] İlber Ortaylı, *ibid*, p. 238

[359] Avi Rubin, *Ottoman Nizamiye Courts,* Palgrave Macmillan, New York:2011, p. 25

[360] Avi Rubin, Ottoman…, *ibid*, p. 26

[361] Avi Rubin, Ottoman…, *ibid*, p. 28

Mecelle which was a masterpiece of Cevdet Paşa includes chapters about "sales, debts, ownership, lawsuits, evidence and judicial procedure".[362]

The salient feature of Mecelle was its application all over the Empire as an impartial institution. The constitution of 1876 also never abolished the frame embraced through Mecelle as follows:

Criminal charges were the only means to have the judges fired, courts must have been open to public except the ones specified through law; the authority of courts provisioned that the cases could not be ignored encompassing the cases whose parties were state and the individuals; total independent was granted to the courts. Any intervention to decisions was forbidden and courts were viewed as the only legitimate bodies. The judges were banned to have "nonjudicial bureaus" and the appoint system was designed for the public prosecutors.[363]

Ottoman court procedure was divided into three parts *bidayet, istinaf* and *mahkeme-i temyiz* according their importance in due process. The judges in the nizamiye courts were also graduates of medreses like kadı but after the establishment of Nizamiye Law School in 1878 their members were recruited from the university.[364] A nizami court was founded in Sivas at the same time with that of Salonica in 1869.[365]

British Council in Sivas gives two instances related to the pitfalls of Nizami procedure. In the first instance, a suspect was put in jail without the application of any citizens. Second instance is about the dominance of local governor in 1881 over the jurisprudence since their payments were under the authority of the former. Therefore, the authority of governor on the judges was unquestionable. Though some shortages were unavoidable, a previous report of Council dated to 1879 states that reforms are much more easily accepted than it was expected to be.[366]

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[362] Avi Rubin, Ottoman…, *ibid,* p. 30

[363] Avi Rubin, Ottoman…, *ibid,* p. 31

[364] Avi Rubin, Ottoman…, *ibid,* p. 32-33

[365] Ruth A. Miller, Apostates…, *ibid,* p. 176

[366] Avi Rubin, Ottoman…, *ibid,* p. 40-50

Rubin claims that Ottoman judicial system never had contrasting viewpoints as claimed by putting the case sharia and nizami courts. It was up to litigants to prefer a sharia or nizami court for a case to be handled.[367]

In 1888, a woman from the province of Koçgiri at Sivas applied to the local kadı court to sue two persons who occupied the vakıf lands, even though the woman had documents proving her claims. Kadı after having processed the trial decided in favor of the woman. After four years the defendants applied to nizami court to have the case retried. However, their request was rejected due to the reason that vakıf trials were under the authority of sharia courts.[368]

The introduction of public prosecutor was a big breaking point in the OCL due to the fact that Islamic Law never defined an office for a prosecutor but assigned all the responsibility of finding and bringing the defendant before court.[369]

Public prosecutors could intervene in the cases given below:

1- The legal aspects over civic harmony, the governing of the state, the whole society, civic utilities and the needy.

2- Break of regulations adjusting the judge's authorities.

3- The legal aspects over the incapacity of juristic examples.

4- The circumstances of juridical concern over persons under custody, subordinates, and outsiders.[370]

In the 1880s, the office of public prosecutor was committed to keep the judicial system intact and was able to question the lower ranks. The prosecutors had a word in selecting the future naibs.[371] After 1879, sharia courts also started to apply the

[367] Avi Rubin, Ottoman..., *ibid,* p. 55-60

[368] Avi Rubin, Ottoman..., *ibid,* p. 65

[369] Avi Rubin, Ottoman…, *ibid,* p. 133-34

[370] Avi Rubin, Ottoman…, *ibid,* p. 139

[371] Avi Rubin, Ottoman…, *ibid,* p. 144

codes of Mecelle. While the judges were in charge of adjudicating the law, prosecutors were to assure the rule of law.[372] While the Ministry of Justice recruited prosecutors from its schools, the Meşihat which was the prime board of sharia never engaged in prosecution. There were cases in which people without proper education were assigned to the post. No standard education was defined to be given the rank of prosecutor.[373]

[372] Avi Rubin, Ottoman…, *ibid,* p. 146

[373] Avi Rubin, Ottoman…, *ibid,* p. 148-150

CHAPTER III

THE FUNCTION OF KADI

3.1.The Function of Kadı and the Due Process

The cases could not be processed if they were not brought before kadı. Unlike kadı courts, *ehl-i örf* were capable of bringing those who were accused of perpetrating a crime.[374] If a person witnessed a crime, it was to him bringing the perpetrator to the court. In this respect, the public was viewed as a *de facto* police force in cooperation with the state authority.[375] During a court procedure, firstly litigant was asked to express his clause then the defendant was to respond. Most of the accused were trustworthy during the meeting because their public respect was at risk of being diluted if their lies were to become apparent. Every reasonable person was entitled to demand his legal rights even if kadı denied doing so.[376] If the guilt was admitted by the defendant, kadı would reach a judgment otherwise if *inkar* (rejection) of the guilt was the case, the defendant was asked to prove his claims.At this point, two witnesses for a trial between Muslims was enough.[377] If the litigant was not able to present ample proofs to court, kadı was to declare that evidence did not meet the requirements and started a process for the defendant to question his reputation in the given mahalle.[378] On the other hand, kadıs were restricted in processing trials such as of their relatives and fellow countrymen. The pertaining cases were regarded to be sensitive in terms of its effect on local people and preferred to be transferred to

[374] Uriel Heyd, *ibid*, p. 241-242

[375] Uriel Heyd, *ibid*, p. 237

[376] Abdurrahman Atçıl, *ibid*, p. 50

[377] Uriel Heyd, *ibid*,p. 244-245

[378] Uriel Heyd, *ibid*,p. 250

another kadı.[379] If a verdict is finalized, the punishment was executed by *subaşı* or *asesbaşı*.[380] Jennings claims that subaşı were able to start a trial against an alleged person.[381] The executioner of sentences, subaşı, left no registers about which punishments imposed for which crimes.[382]

The cases must not have been older than ten years for issues on land and fifteen years in other cases.[383] The prescription is called as *mürur-u zaman* in the documents.[384] Besides, *hıyar-ı büluğ* means the puberty of adolescence. If a girl reached this age, she was able to dissolve decisions taken by her guardians.[385] Moreover, if a trustee rejected his duties, the position of the trustee was determined by witnesses.[386] The closest relatives such as uncle and other male relatives in the lack of parents were granted to be the guardian of a child.[387] Kadı was the legal guardian of children without parents and widows.[388]

If a defender was assigned to keep the property of a child, he was entitled to govern the assets of the children. [389] Before reaching puberty, the lands of children could be used, and a "fair rent" must be paid to the state.[390] If no guardian was determined, the

[379] Abdurrahman Atçıl, *ibid*, p. 43

[380] Metin M. Coşgel and et. al, *ibid*, p. 360

[381] Ronald C. Jennings, Kadi…, p. 165

[382] Rudolph Peters, *ibid*, p. 97

[383] Abdurrahman Atçıl, *ibid*, p. 51

[384] Ekrem Buğra Ekinci, *ibid*, p. 89

[385] İsmail Doğan, *Tanzimat Sonrası Sosyo-kültürel Değişmeler ve Türk Ailesi* in Sosyo-Kültürel Değişme Sürecinde Türk Ailesi, TC Başbakanlık Araştırma Kurumu, Ankara: 1992, p. 130

[386] SŞS 52 p. 146

[387] SŞS 52 p. 82

[388] Maurits H. Van Den Boogert, *ibid*, p. 43

[389] SŞS 52 p. 21

[390] Baber Johansen, *ibid*, p. 109

head of orphanage board was set to be the guardian until a regular one was found.[391] The protection and payments for the orphans and pension of the retired people were initiated since the early 19th century.[392] Orphans were put under the responsibility of guardians. Guardian had to take an oath before the head of orphanage board. (Eytam müdürü)[393] When the properties of orphans were registered by kadı, the head of orphanage board must be present before kadı.[394] Guardian was only assigned until the child reached puberty. (*kızının vakt-i rüşdü ve sedadına değin*)[395]

As Ergene proved, the sharia rules were abused by people and many loopholes were found. The lack of complete inspection process was detrimental to the solution of a case properly.[396] Torture was an informal way to have the accused confessed and was used, in general, by *ehl-i örf*. Apart from ehl-i örf, Heyd claims that many kadıs must have been given a room to ehl-i örf to get the case cleared.[397] Kadı concludes the trial by clarifying the verdict. Kadı courts which handled with private law matters functioned as a registry office and in general, compromise, the so-called *sulh*, was seen to be a preferable way to solve problems.[398] Kadı had the secular and religious authority at his disposal and every person had the rights of life, liberty and the pursuit of the happiness. Fetvas as a decisive instrument in the court process were evaluated within the limits of the case at hand. Though it is considered that until

[391] SŞS 52 p. 17

[392] Nadir Özbek, *Osmanlı İmparatorluğu'nda 'Sosyal Yardım' Uygulamaları in Tanzimat Değişim Sürecinde Osmanlı İmparatorluğu*, Türkiye İş Bankası Kültür Yayınları, İstanbul:2011, p. 581

[393] SŞS 52 p. 68

[394] SŞS 52 p. 66

[395] SŞS 52 p. 8

[396] Boğaç A. Ergene, Local…, *ibid,* p.112

[397] Uriel Heyd, *ibid,* p. 253

[398] Uriel Heyd, *ibid,* p. 254

proven guilty, everybody is innocent, respectable and trustworthy people were more respected when taken at face value.[399]

Sulh was not a part of the legal procedure and initiated by the common friends of litigant and defendant.[400] Apart from that, Peirce described the sulh as a mediation process within the community through arbitration.[401] One of the parties gave up its demands to reach a compromise with the other party.[402] A woman who sued her husband required 300 guruş to compromise via city accountant.[403] Besides, most of the women requested *nafaka (alimony)* and *kisve baha* (money to be used for buying clothes).[404] After having been divorved through tatlik, women demanded her mihr and alimony. (*tatlik itmeğle mihr-i muaccel ve mihr-i müeccel ve nafaka-ı adet*)[405] Nafaka was compensated by *beytü'l mal* (state treasury) with the approval of the head of the institution as in the present register, Mehmed Efendi.[406] If a man was failed to provide *nafaka,* he could be jailed until he would be able to do so.[407] Nearly all of the women were in favor of demanding their mihr-i müeccel and mihr-i muaccele after getting divorced.[408]

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[399] Ronald C. Jennings, Kadi…, *ibid,* p. 142

[400] Ronald C. Jennings, *Kadi, Court and Legal Procedure in 17th Century Ottoman Kayseri,* İsis Yayınları, İstanbul:1999, p. 148, Boğaç A. Ergene, Local…, ibid, p. 180

[401] Leslie Peirce, *Morality Tales Law and Gender in the Ottoman Court of Aintab*, University of California Press, London:2003, p. 120

[402] SŞS 52 p. 61, SŞS 52 p. 65

[403] SŞS 52 p. 139

[404] SŞS 52 p. 155

[405] SŞS 52 p. 3

[406] SŞS 52 p. 130

[407] Judith E. Tucker, *Muftis and Matrimony, Islamic Law and Gender in Ottoman Syria and Palestine,* Brill, Islamic Law and Society 1. 3, p. 269

[408] SŞS 52 p. 83

Besides, the use of Arabic expression, *"as -sulh sayyid al-ahkam",* meaning that compromise is better proves that sulh was promoted by the rulers.[409] The settlement of problems through *sulh* was taken prior to judgment. If sulh was in sight, kadı was bound to judge under the auspices of sharia.[410] If a compromise was reached, parties had to fulfill their promises. (*bade'l kabul bedel-i sulh olan meblağ-ı mezkur 500 guruş*)[411] Properties or goods become the subjects of a compromise to be delivered later.[412]

According to sharia, judgment of a kadı was absolute, and the appeal was not probable. On the other hand, if a litigant or a defendant was able to obtain a proper fetva for the case to be retried, it was at kadı's discretion to decide the case to be reinvestigated. Moreover, Sultan had the authority to absolve capital punishment.[413] "Deterrence, retribution and keeping the criminal away from public" were chief incentives of Islamic law in punishing the offenders.[414] Additionally, whether a ferman issued by the Sultan could suspect the validity of a judgment taken by a kadı is uncertain due to the fact that sharia is the most important principle in dealing with the jurisprudence even above the Sultan.[415] Furthermore, if the litigant confessed over the unauthenticity of his claims, the case must be retried.[416] Besides, in the event of misjudgment, corruption or bribery, kadı was not to be punished by *siyaseten*.[417] There were many cases that a corrupted kadı was sued by the locals.[418] Unlike kadıs who were members of *ilmiye,* naibs were the graduates of provincial

[409] Boğaç A. Ergene, Why Did.., *ibid,* p. 231

[410] Metin M. Çoşgel, Boğaç. A. Ergene, The Selection…, *ibid,* p. 6

[411] SŞS 52 p. 21

[412] SŞS 52 p. 125

[413] Uriel Heyd, *ibid,*p. 257-258

[414] Rudolph Peters, *ibid,* p. 30

[415] Abdurrahman Atçıl, *ibid,* 75

[416] Abdurrahman Atçıl, *ibid,* 77

[417] İlber Ortaylı, ibid, p. 262

[418] Boğaç A. Ergene, Local…, *ibid,* p. 102-103

medreses and were more likely to be punished in case of a detected incompetency.[419] Defendant must be presented by himself or his deputies. If the litigant or the defendant were not present at the due process, the judgment of kadı would be null and void.[420] If a woman was represented by a deputy, the woman was called "*müvekkile".*[421]Additionally, if the litigant was a woman, they preferred to be represented via deputies more usual than other cases.[422] The litigant was called "*müddea-ı asl"* and the representative was called "*vekil".*[423] The witnesses (at least two) must be present for the formalization of delegation process utterly *vekillik* (proxy). Vekil was in charge of presenting the client rather than advocating him or her.[424]

3.2.Punishment by Kadı

Local people were able to complain about kadı to higher authorities due to wrongdoings of kadı as in the case of kadı in Bursa revealed by Gerber.[425] However, if kadı and *ehl-i örf* were in cooperation, it was not possible to complain about kadı and other officials to Sultan since people needed *ilam* to present Sultan which was prepared by kadı.[426] Illegal taxes and illegal behavior such bribery, misuse of postmortem lands, overcharge of fees were the chief accusations against kadı.[427] Illegal fees such as *hediye* (gift) and *bahşiş* (tip) were included in the tax distribution

[419] Abdurrahman Atçıl, *ibid*, p. 31

[420] Abdurrahman Atçıl, *ibid*, p. 53

[421] SŞS 52 p. 20

[422] SŞS 52 p. 26

[423] SŞS 52 p. 29

[424] Ronald C. Jennings, *The Office of Vekil(Wakil) in the 17th century Ottoman Sharia Courts*, Brill, Studia Islamica, No. 42 (1975), p. 147-148

[425] Haim Gerber, *ibid*, p. 158

[426] Musa Çadırcı, *ibid*, p. 25

[427] Haim Gerber, *ibid*, p.159-160

registers set by kadı.[428] However, what penalties executed for each crime remains unknown due to the reason that no registers remained since.[429] On the other hand, kadıship was an ultimate solution point for the ordinary people that were oppressed by the high officials as they complained about a senior official who extorted illegal taxes from people in Sivas.[430] The top officials were able to use their administrative power to hamper complaints against them and even punish the litigants without due process. A villager from Sivas was taken into custody under the authority of a *mütesellim* who was accused by the latter and was tortured by *siyaseten*. Kadı, after having learned about the case, must have taken a decision in favor of the peasant.[431] If a crime was evident and a confession was needed, state officials were entitled to torture the accused.[432] Ehl-i örf was authorized to execute penalties such as capital punishment and heavy penalties. They were not allowed to run sentences without the permission of kadı. Once the judgment was ascertained, even kadı was not able to halt the process.[433] The cases not conducted before a kadı were regarded as invalid and void. Governors were not able to found their own courts to resolve conflicts based on a siyaset basis.[434] However, there were cases that people preferred to take their case in front of a governor rather than a kadı.[435] The predictability of cases and full discretion of kadı are two notions contradicting with each other. However, a man of modest substances with knowledge about sharia could win the case proving that predictability was essential to gain an advantage. There were in fact, "concrete

[428] Musa Çadırcı, *ibid*, p. 82

[429] Leslie Pierce, *ibid*, p. 331

[430] Haim Gerber, *ibid*, p. 164

[431] Haim Gerber, *ibid*, p. 170

[432] Rudolph Peters, *ibid*, p. 77

[433] Leslie Pierce, *ibid*, p. 327

[434] Haim Gerber, *ibid*, p. 173

[435] Boğaç A. Ergene, Local…, *ibid*, p. 174

boundaries, pre-established procedures of litigation, and well-known evidentiary standards" in the Ottoman Law.[436]

3.3.Types of Punishment

Ottoman Criminal Code was applied all over the empire, and no local codes were invented. OCC that registered to sicil defters was followed by the executioners of the law. [437] However, few regional kanunnames proposed penalties for the crimes that were not concerned with the Ottoman code such as local practice on the pasturing of livestock or hunting of wild animals.[438] Fines were the leading punishment methods of the Ottoman Empire in the classical period. Fines were imposed according to the social status of the guilty.[439] On the other hand, excessive use of fines was a prevalent phenomenon in Ottoman cities such as Ayntap.[440] "Theft, banditry, illicit intercourse, accusation of illicit intercourse without proof, drinking alcohol and apostasy" were of crimes with a fixed punishment.[441] Public pressure was another way to deter the criminals. The law and the public authorities could have prohibited the entrance of people with bad reputation into their neighbourhood as stated below:

…Furthermore, disreputable men shall be banned from coming to places where women and boys go [to] fetch water or wash clothes…[442]

Kanuns were more precise compared to sharia and filled the gaps of Islamic law.[443] Though having been transformed significantly in the second half of the 19th century, sharia courts maintained two characteristics, "open door policy and sensitivity to

[436] Boğaç A. Ergene, Local…, *ibid*, p. 114-115

[437] Uriel Heyd, *Studies in Old Ottoman Criminal Law*, Clarendon Press, Oxford:1973, p. 38

[438] Uriel Heyd, *ibid*, p. 42

[439] Uriel Heyd, *ibid*,p. 95

[440] Metin M. Coşgel et al, *ibid*, p. 362

[441] Rudolph Peters, *ibid*, p. 53

[442] Uriel Heyd, *ibid*, p.126

[443] Rudolph Peters, *ibid*, p. 74

social justice."[444] On the other hand, state officials had the supreme immunity from sharia law. Müderris, mütevelli, nazir, şeyh, hatib and imam were never chastised but were condemned by kadı not to do so.[445] Ordinary people with a bad past were marked as prone to crime, and if a crime was discovered by, they were the first to be accused. Besides, authorities labeled some of the people as troublemakers and stated disturbers of peace must be punished severely.[446]

During Mustafa II, it is declared that only the penalties of Allah and those of prophet are the primary codes that must be considered higher than *kanun*. Judgments not supported by Sharia would be null and illegal. Kanuns are auxiliaries of sharia and must be supported by sharia.However, when powerful sultans are in power, kanun was the ultimate source of jurisprudence and especially after the 17th century, the role of kanun waned considerably, and sharia turned out to be the only source of law in the Ottoman Empire.[447] Powerful rulers were able to exert its hegemony all of the state strata but if a weak Sultan was in power sharia was viewed the only source and state bureaucracy used the sharia as a means to assert its objectives. Contrary to common belief, Ottoman kadı was endeavored to tackle the issues by reaching compromises (sulh) that would please both of the parties.[448]

Kadıs after the 16th century preferred not to implement the customary law which was regarded as contrary to sharia and limited their authority. Moreover, officials did not perform kanuns which prohibit levying heavy taxes on ordinary people. Furthermore, tax fees remained same with that of the 16th century even though the value of money decreased due to inflation. The fixed rates well below the contemporary figures

[444] Avi Rubin, Legal Borrowing…, *ibid*, p. 295

[445] Uriel Heyd, *ibid*,p. 129

[446] Uriel Heyd, *ibid*,p. 130

[447] Uriel Heyd, *ibid*, p. 154-155

[448] Elyse Semerdjian, *Off the Straight Path: Illicit Sex, Law. And Community in Ottoman Aleppo*, Syracuse University Press, Syracuse:2008, p. 137

compelled state officials to take bribes to have a decent life.[449] Ergene also repeats the same claims and states that court fees remained at the same level as long as two centuries.[450] In the long run, this led the way for the other types of punishment.[451]

Muhtesib was the chief official to keep the economic life of the city in harmony and iltizam system used to define an applicant as muhtesib.[452] Apart from that, artisans, though be put under the authority of kadı, in general, were encouraged to solve problems by compromise. Additionally, muhtesib was authorized to punish those who broke the code by fines or tazir.[453] Moreover, mihr-i müeccel can be considered as a deterrent for the husband not to divorce the wife easily. As a kind of punishment or deterrence, mihr-i muaccel was lower than mihr-i müeccel which was to be paid in case of a divorce.[454] The muftis as the upholders of Islamic tradition never have taken a stance against the women's chance of choosing a proper future husband. To them, the harmony within society could be maintained through protecting the tranquility in the core of the society. [455]

Communal expectations and perception of justice were taken into consideration by kadı to please the society as much as possible.[456] People must have demanded due process if a case was to be held. (*taleb ve marifetleriyle*)[457] After the due process, a

[449] Uriel Heyd, *ibid*, p. 156

[450] Boğaç A. Ergene, Local…, *ibid*, p. 78

[451] Metin M. Coşgel, Boğaç Ergene, Haggay Etkes, Thomas J. Miceli, *Crime and Punishment in Ottoman Times: Corruption and Fines*, Journal of Interdisciplinary History, XLIII:3 (Winter, 2013), p. 354

[452] İlber Ortaylı, Türk İdare…, *ibid*, p. 298-300

[453] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London:2009, p. 36-37

[454] SŞS 52 p. 29

[455] Judith E. Tucker, Muftis…, p. 278

[456] Boğaç A. Ergene, *Why Did..*, p. 237

[457] SŞS 52 p. 22

punishment was determined. The sentences such as siyaseten executions, fines, *teşhir*, incarceration, banishment, *kürek*, were the principal types of penalties.[458] The fines were mostly abolished with the acceptance of modern Penal Codes such as of 1840 and 1850.[459] The role of *Bab-ı Meşihat* in dealing with jurisprudence was strengthened with the transfer of powers related to religious and temporal matters which formerly held by sadrazam.[460] Besides, a relative of a murderer could ask the litigant that if the case be pardoned by paying a sum of money determined by the law. The so-called, *diyet*, was used by kadı to conclude trials.[461] The litigant demanded the application of law by saying that "m*ucib-i şerainin mezbur hacı mehmed üzerine icrası muradımdur deyu dava ettük de"* to sue a criminal who were likely to have killed a person.[462]

Ottoman Empire used tazir to refer physical punishment.[463] The relatives of a victim were considered to be decisive in the process since not the words of God, but the words of man were taken more trustworthy. Furthermore, the blood money was not paid by the culprit but by his relatives.[464] The chief punishments were *teşhir* and *kürek* for moral crimes. Teşhir meant public nudity.[465] Kürek was the limitation of freedom by placing an inmate into a warship to be used as a labor source.[466] If the criminal proved that the judgment of kadı had mistaken, the former was to demand his compensation. Besides, a kadı was not held responsible for the decisions during

[458] Uriel Heyd, *ibid*,p. 259, 271, 274, 299, 301, 304

[459] Metin M. Coşgel et al, *ibid*, p. 369

[460] Carter V. Findley, *Osmanlı İmparatorluğunda Bürokratik Reform Babıali 1789-1922*, Tarih Vakfı Yurt Yayınları, İstanbul: 2014, p. 164

[461] Uriel Heyd, *ibid*,p. 308

[462] SŞS 52 p. 25

[463] Uriel Heyd, *ibid*,p. 271

[464] Rudolph Peters, *ibid*, p. 39, 49

[465] Uriel Heyd, *ibid*,p. 299

[466] Uriel Heyd, *ibid*,p. 304

his tenure.[467] Even after the incorporation of French Penal Code into Ottoman legislation kadıs as a member of Muslim ulema were exempted from being exposed to the public before the execution of a penalty.[468] Though it is presumed that with the end of the classical period in Islam, the civil law stopped to function properly, in real life it is clear that law was in a constant change hand in hand with social needs.[469] The concept of *ulu'l emr* was asserted after the lapse of sharia to motivate the society and have the people in harmony with the new rule.[470] One of most significant points in the registers is that almost all of the cases were concluded in favor of the litigant. This proves that litigant was aware of the likely results of a trial. İmam was always among witnesses if one of the parties was from his neighbourhood. This was mainly due to the reason that imam knew the people and their reputation in the mahalle.

[467] Abdurrahman Atçıl, *ibid*, p. 81

[468] Roland K. Wilson, *ibid*, p. 49

[469] Haim Gerber, *The Muslim Law of Partnerships in the Ottoman Courts*, Brill, Studia Islamica, No. 53 (1981), p. 119, pp. 109-119

[470] Tobias Heinzelmann, *ibid*, p. 313

CHAPTER IV

SOCIAL LIFE IN SIVAS

Braude states that *millet* system in the Ottoman Empire was a relatively new phenomenon which was firstly used in the 19th century.[471] Whether the term, millet, had any ethnic connotations or not is a controversial issue. In the registers as in the example of "*tebaa-ı ermeniyan*" the word *tebaa* was used to denote non-Muslim subjects. [472] The city of Sivas was comprised of two millets. One of them is the Muslims, and the other is Armenian millet. Besides, there is a case related to a person from "*Katolik millet*" Estefan. [473] Muslims as the rulers and non-Muslims as the ruled were given as examples of millets in the kadı records before the modern period of Tanzimat. Non-Muslims were defined as "*halik nasraniye veled*" asserting their religion on the foreground.[474] When the discourse of the registers is analyzed, it is viewed that no scornful language towards non-Muslims was used.[475]

The 19th century was the period which was described by Farouqi as a "painful adjustment to world economy".[476] The change in the social structure of the society was immense. Migrants such as Çerkes, Kars were settled in Sivas. Pierce states that a centrally promoted type of community was discernible in Ayntab that had many shared characteristics with that of Sivas.[477] Though the provinces which were close

[471] Benjamin Braude, *ibid*, p. 19

[472] SŞC 52 p. 20

[473] SŞS 52 p. 83

[474] SŞC 52 p. 46

[475] SŞC 52 p. 20

[476] Suraiya Farouqi, Artisans…, *ibid*, p. 186

[477] Leslie Pierce, *Morality Tales Law and Gender in the Ottoman Court of Aintab*, University of California Press, London:2003, p. 6

to the capital were governed much more in line with sharia and kanun; faraway regions were ruled in compliance with the customary law, *tore*.[478]

Religion was the primary element of the daily life. In this respect, the power of kadı court was supreme. However, it is impossible to detect any patterns of behavior towards the courts if there is any. Another handicap is that whether the terms used by kadı to define the contemporary issues changed its meaning in time or remained same.[479] Kadı had the absolute authority to enforce his verdicts, and his decisions were above the customary law.[480] On the other hand, small-sized provinces with strong tribal links used *örf* to solve the problems.

Another primary element in the daily life of the people was the division of land according to Islamic law with some inspiration from the practices of older civilizations. Ottoman Empire divided the land into three parts as follows; private land (*mülk*), religious endowments (*vakfs*) and state land (*miri*).[481] Miri land was cultivated by the villagers, but no hereditary rights were granted. Only the right to farm the land was at villager's disposal.[482] The state held the ownership of the land called, *rakaba*.[483] In 1847, with an imperial ferman, miri lands were regarded to be inheritable by landowners or in this case, tillers.[484]As Jennings demonstrated that women were not barred from public life and owned properties and made a transaction over them. On the other hand, women were not allowed to hold certain

[478] Leslie Pierce, *ibid*, p. 11

[479] Dror Ze'evi, *ibid*, p. 52

[480] İlber Ortaylı, Hukuk ve …, *ibid*, p. 62

[481] Leslie Pierce, *ibid*, p.235

[482] Halil İnalcık and Donald Quatert, *An Economic and Social History of the Ottoman Empire*, Cambridge University Press, Cambridge:1994, p. 106

[483] Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria*, I.B. Tauris, London: 2007, p. 17

[484] Martha Mundy and Richard Saumarez Smith,*ibid*, p. 46

occupations; these are entailing artisanship and merchandise.[485] Artisans were under the strict scrutiny of guilds so as to standardize the production and the entrance of a woman to this specialized circle was difficult.[486] The law of inheritance was the leading cause in the assertion of women over the sale of the property but there are instances that kanun was applied informally. The kanun exposed that if a father was deceased, the land was transmitted to sons directly. If the father had no sons, wife or daughters of the deceased had to pay *tapu tax* to inherit the land.[487] The heirs of a woman were defined as *sadri-kebir* for an elder male and *sadr-i sagir* for the younger male.[488] All members of a family were entitled to claim a fair share of the inheritance according to sharia law. The practitioners of the sharia law, kadı, never differentiated between Muslim and non-Muslim parties and solved the cases according to the law.[489]

Tapu Nizamnamesi enacted in 1859 abolished *tapu tax* imposed on the woman and stated that anyone who held a tapu would be able to rent his land.[490] Land Code of 1858 broke the bond with the old terms and set new standards to define the land. The land was divided into five parts as *memluke, emiriyye, mevkufe, metruke* and *mevat*. Though much authority devolved to local authorities, it is stated that new actions must be taken in respect to the old law. The land was to be rented, loaned, and partitioned in the case of inheritors was higher more than one. The old practices were transformed into new codes that regulated the daily life in line with the sharia. For example, an extensive practice among people in Sivas was the sale of land which was

[485] R.C. Jennings, *Women in Early 17th century Ottoman Judicial Records: The Shari'a Court of Anatolian Kayseri*, Journal of the Economic and Social History of the Orient, 18(1975), p. 108

[486] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London:2009, p. 13

[487] Haim Gerber, *Social and Economic Position of Women in an Ottoman City*, Bursa, International Journal of Middle Eastern Studies, Vol.12, No. 3 (Nov., 1980) p. 235, pp. 231-244

[488] SŞS 52 p. 21

[489] SŞS 52 p. 57

[490] Martha Mundy and Richard Saumarez Smith, *ibid*, p. 44

owned by a woman who inherited the land from her recently deceased elder. Male inheritors devised a method to stop the partition of lands into small-sized fields. The sale or *ferağ* of the land to these male successors in return for a particular sum was one of the most spectacular examples of customary law that was turned out to be embedded in formal law. The sale was a type of mortgage through which the contract holder sold the estate in return for cash to be paid in full. If failed the debtor was able to sell the land and pay the debts.[491] The woman in the *ferağ* document stated that she was no more affiliated with the pertaining land and would not claim any rights over the property.[492] Though, the sale was enforced by töre, the documents emphasized the assignment of the male inheritors as the keeper of the property.[493] Another significant aspect was the representation of the female claimants by her male deputies in all of the cases in which Muslims constituted the each parties. On the other hand, Armenian women never assigned a deputy and preferred to participate during the process and be present at the court.[494]

People were frequently borrowed from each other proving that the degree of trust in the public was relatively high. The debts of a deceased person were validated through witnesses.[495] When *tereke* was divided, debts were substracted and aggregate total was divided between heirs. Moreover, in the registers, the inheritances of deceased army personal were recorded as well. All of the military personnel terekes belong to Muslims since non-Muslims paid a tax, *bedel-i askeri*, in order to be exempted from military service.[496] Furthermore, a high frequency of soldiers was on duty in the fourth army located in Erzurum.[497]

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[491] Martha Mundy and Richard Saumarez Smith, *ibid*, p. 45

[492] SŞS 52 p. 27

[493] SŞS 52 p. 147

[494] SŞS 52 p. 149

[495] Suraiya Faroqui, Men of…, *ibid*, p.172

[496] Yelda Demirağ, *Osmanlı İmparatorluğu'nda Yaşayan Azınlıkların Sosyal ve Ekonomik Durumları*, OTAM(Ankara Üniversitesi Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi), V. 13, (2002), p. 29

The legitimacy of sultan's rule was based on the protection of subjects against abuse and corruption. Sultan enacted kanunnames and adaletnames to preclude the imposition of excessive taxes and misrule.[498] Ottoman way of justice was rapid and straightforward.[499] Schaht argues that Ottoman justice was one of the most efficient systems since the time of Abbasids.[500] When the cosmopolitan structure of the city was concerned, the content towards the other millets within the society is visible. Since the penalties were executed by *ehl-i örf* witht respect to determined crime proportionately, people were wary of breaking the law. On the other hand, no registers of punishment was found to clarify the punishment process due to the lack of records.[501] Women who inherited large portions of land from their deceased relatives were unlikely to hold the estate within their hands. They preferred to transform the lands as *vakfs* which were endowed to sustain a public service.[502]

Ottoman Empire was an agrarian and bureaucratic empire, and the society was formed in accordance with the policies of state authority.[503] The religion was also one of the most influential components of an ordinary man's daily life. With the foundation of nizamiye courts, it is aimed that discrimination against Christians in the Ottoman Empire would be halted.[504]

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[497] SŞS 52 p. 48

[498] Metin M. Coşgel, Boğaç Ergene, Haggay Etkes, Thomas J. Miceli, *Crime and Punishment in Ottoman Times: Corruption and Fines*, Journal of Interdisciplinary History, XLIII:3 (Winter, 2013), p. 363

[499] Amira Sonbol, *ibid*, p. 245

[500] Leslie Pierce, *ibid*, p. 122

[501] Leslie Pierce, *ibid*, p. 118

[502] Leslie Pierce, *ibid*, p. 225

[503] Şevket Pamuk, *The Evolution of Financial Institutions in the Ottoman Empire, 1600-1914*, Cambridge University Press, Financial History Review 11.1 (2004), p. 8

[504] Gülnihal Bozkurt, *ibid*, p. 19

4.1.Mahalle

Ottoman *mahalle* was the core of daily life. Each neighborhood had its own characteristics such as religion, social-culture differences, and language. Kadı was in charge of executing the sharia law in compliance with the local customs in the neighborhood. Ottoman Empire adhered to Hanafi mezhep of Sunni Islam, and each kadı was competent at just one mezhep. While conducting a case, kadı followed sharia along with regional *örf*.[505] İmam was the representative of kadı in a neighborhood and was appointed through a *berat of Sultan*.Imam was in charge of issues related to security, population records, and the cleanness of mahalle. Priests and *kocabaşıs* had the authority of an imam in non-Muslim mahalles. [506] After the abolition of Janissaries, there emerged a problem of security in the mahalles. The solution to keep the tracks of birth-death in a mahalle and assure the safety of people was the foundation of muhtarliks. The date of introduction is not exactly known but the beginning of the 1830s thought to be so. Muhtars were to be chosen among people known for their trustworthiness and honesty.[507] İmam was vested to distribute taxes proportionately among the residents and collect later. After the foundation of *muhtarlık* in each mahalle, the position of imam diluted, though a *de facto* authority was maintained.[508] The most prominent examples of close relations within the mahalles were the trials in which one of the parties was from the mahalle. The neighbours could be witnesses or be included in the *şuhud'ul hal.*[509] In this respect, it can be concluded that mahalle system and social pressure on those who were alleged prompted the creation of a relatively serene social life.

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[505] Amira Sonbol, *ibid*, p. 234

[506] İlber Ortaylı, Türk İdare Tarihi, *ibid*, p. 286, Musa Çadırcı, *ibid*, p. 40

[507] Kemal Çiçek, *Kıbrıs'ta Muhtarlık Teşkilatı'nın Kuruluşu*, XII. Türk Tarih Kongresi(Presented Paper), p. 269-270

[508] İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahalli İdareleri (1840-1880)*, TTK, Ankara: 2000, p. 107-108

[509] SŞS 52 p. 41

The *muhtarlık* system outside of capital was begun to be established between 1833 and 1836.[510] The residents of a *mahalle* were useful in determining the outcome of a trial since the reputation of the defendant was taken into account to reach a just decision by kadı.[511] In a case of a sexual crime, elites were heavily punished compared to ordinary people.[512] Public exposure or humiliation was a popular way to punish those who committed adultery in Ayntab, the city that hosts a similar society with that of Sivas.[513] Furthermore, if a case were taken to court by a group of people, it was more likely to win the case.[514] The force of mahalle as a collective entity had an immense amount of coercive capacity to persuade the ruling strata. Later, municipal institutions were founded to deal with the local problems, and the first municipal institution was established in İstanbul in 1868.[515]

According to Lapidus, residents of a mahalle never constituted a monolithic faction against state authority.[516] Each mahalle was comprised of people from diverse social backgrounds and adherents of different religions. Titles were used to denote the social status. A man with a medrese education is called *efendi*.[517] If the deceased was a member of guilds, his name was announced with connotations to his past. [518] The titles such as *seyyid, şerif, hafız,* and *elhac* were of religious origin and widely written in the registers as witnesses since their reputation in the society was well regarded.[519] Another title, *ağa,* was used for people with a large amount land owned

[510] Musa Çadırcı, *ibid*, p. 38

[511] Amira Sonbol, *ibid*, p. 233

[512] Leslie Pierce, *ibid*, p. 164

[513] Leslie Pierce, *ibid*, p. 206

[514] Boğaç A. Ergene, Local…, *ibid*, p.72

[515] Musa Çadırcı, *ibid*, p. 274

[516] Suraiya Faroqui, Men of…, *ibid*, p. 37

[517] Suraiya Faroqui, Men of…, *ibid*, p. 49

[518] SŞS 52 p. 116

[519] SŞS 52 p. 27, SŞS 52 p. 43, SŞS 52 p. 70

by. [520] In Sivas, the people with higher status in economic terms had an inner circle within their respective community that they used to deal with economic problems. These people, the so-called ağas, preferred to loan to each other.[521] Though most of the names were of religious origin, the name "*Turan"* was in use on a large scale in Sivas.[522] The names of Muslims and non-Muslims were of religious origin, and few names without religious connotations was used. The name, Tuti was the most widely used woman name which did not managed to survive until modern times.[523]

In the neighborhoods, vakf services such as hamams; hans and çeşme (fountains) were well spread across the city. The residents donated a particular land to be used as an income source in order to keep the free services available for the public.[524] Tekeli claims that in terms of regulations and statues, the overall architecture policy of Ottoman Empire was based on replacing the old with the new.[525]

One of the trickiest issues of neighbors was to differentiate the animals from each other, in particular, sheep and livestock. People cut the particular part of an animal as a marker. One instance in the registers mentions about a donkey with a half-cut ear. [526] Another register mentions about a sheep with a branded side and a white stain in the foot.[527]

Kadı register number 9 specifies 58 neighborhoods in central Sivas. These are "Abdülkerim, Gökçebostan, Kale-i atik, Sarı Şeyh, Ağcabölge, Gök Hüsam,

[520] SŞS 52 p. 49

[521] Zafer Karademir, *Sivas Ağa Sınıfının Sosyo-Ekonomik Durumuna Dair Bir İnceleme (1780-1831),* Hacettepe Üniversitesi Türkiyat Araştırmaları Dergisi, 2011 Bahar (14), p. 193

[522] SŞS 52 p. 33

[523] SŞS 52 p. 103

[524] Fatih Şahingöz, *ibid,* p. 93

[525] İlhan Tekeli, *Bir Modernleşme Projesi Olarak Türkiye'de Kent Planlaması in Türkiye'de Modernleşme ve Ulusal Kimlik,* Tarih Vakfı Yurt Yayınları, İstanbul:1998, p. 163

[526] SŞS 52 p. 127

[527] SŞS 52 p. 5

Kaleardı, Sofu Himmet, Akdeğirmen, Gökmedrese, Keçibula, Şah Hüseyin, Ali Baba, Hacı Hüseyin, Kenisa, Şems Ferraş, Bâb-ı Kayseriye, Hacı Mahmud, Kılağuz, Şeyh Çoban, Bahtiyar Bostanı, Hacı Mehmed, Kırcuk, Temürcülerardı, Baldırbazarı, Hacı Veli, Köhne Civan, Tokmak, Bazar, Hacı Zahid, Kösedere-i Müslim, Üryân-ı Müslim, Billûr, Hamamardı, Kösedere-i Zimmi, Üryan-ı Zimmi, Cami-i Kebir müslümanı, Hamurkesen, Küçük Bengiler, Veled Bey, Cami-i Kebir Zimmaleri, Hoca Ali Çavuş, Küçük Minare, Yahya Bey, Çavuşbaşı, Hoca Hüsam, Oğlançavuş, Zaviye Ali Baba, Ece, Hoca İmam, Osman Paşa, Zilkâr, Ferhad Bostanı, İmaret, Örtülüpınar, Ganem, Kabalı, Paşabey."[528] Bazar neighborhood was the richest as the taxes paid by its residents was considered.[529]

According to Demirel, the population poll which was the first of its kind, conducted in 1831 indicates the non-Muslim population in the city. The survey demonstrated that the population of non-Muslims in the city was around nine thousand whose a great deal was comprised of Armenians. When mahalles were assessed in terms of non-Muslim population, the numbers were as follows: Neighborhood of Hoca with58 household, Neighborhood of Cami-i Kebir with 72 household, Neighborhood of Bazar with 178 household, Neighborhood of Köhnecivan with 49 household, Neighborhood of Sarı Şeyh with 42 household, Neighborhood of Üryan-ı Müslim with 64 household, Neighborhood of Üryan-ı Zımmi with 119 household, Neighborhood of Köse dere-i zımmi with 97 household, Neighborhood of Ak değirmen with 105 household, Neighborhood of Kilise with 143 household, Neighborhood of Ağça bölge with 80 household, Neighborhood of Ece with 129 household, Neighborhood of Küçük minare with 23 household, Neighborhood of Temurcular ardı with 110 household, Neighborhood of Bab-ı kayseriye with 79 household.[530]

[528] Fatih Şahingöz, *ibid,* p. 87

[529] Fatih Şahingöz, *ibid,* p. 88

[530] Ömer Demirel, *Sosyo Ekonomik Açıdan Osmanlı Dönemi Sivas Ermenileri in Osmanlı Dönemi Sivas Şehri: Makaleler,* Ankara: 2006, p. 182-195.

When the information given above was assessed, it is clear that non-Muslims were living in most of the neighborhoods. Besides, the present register mentions about mahalles in the center of Sivas which were not referred to in the former entries such as Besmi Bey Mahallesi[531], Hacı Mehmed Mahallesi[532], İmaret Mahallesi[533], Hoca İmam Mahallesi[534], Kale-i cedid Mahallesi[535], Şah hüseyin Mahallesi[536], Keçi yolu Mahallesi[537], Baş beğ Mahallesi[538] , Ağcabölük Mahallesi[539] and Bezirci Tarlası Mahallesi.[540] These neighborhoods prove that the city of Sivas expanded within time, and new mahalles appeared. Moreover, the use of the term, *nakl-i hane,* in the registers demonstrates that migration was a factor that changed the internal structure of city in terms of populations and society.[541]

Mahalle was comprised of homes, *mescid* (small-sized mosque) and *kahvehane* (café). İmam was responsible for keeping the mahalle in order and checking the irregularities. If someone wanted to move a certain neighborhood, imam, and another person were to guarantee the trustworthiness of the applicant. Furthermore, imam must have collected the taxes levied on the residents of the mahalle.[542] Non-Muslims

[531] SŞS 52 p. 104

[532] SŞS 52 p. 108, SŞS 52 p. 87

[533] SŞS 52 p. 62

[534] SŞS 52 p. 31

[535] SŞS 52 p. 43

[536] SŞS 52 p. 47

[537] SŞS 52 p. 98

[538] SŞS 52 p. 38

[539] SŞS 52 p. 110

[540] SŞS 52 p. 20

[541] SŞS 52 p. 107

[542] İlber Ortaylı, Türk İdare…, *ibid,* p. 305-306

were to wear certain clothes assigned by the state within the border of a particular mahalle.[543]

4.2.Family

The family is the reflection of society at the micro-level, and each family has its way of communication.[544] The Ottoman society which consisted of people belonged to the diverse spectrums of religious and social orientations could not have a one standard type of family.[545]

The connection is born out of intra-familial relations which were constituted by extra-familial elements such as society, law and culture. The religion was the primary factor in shaping the daily life of an Ottoman family. Ottoman society, as a pre-modern communal system, was based on large families that had to maintain its livelihood by semi-agrarian production. The large family was comprised of three generation that resides in the same dwelling which was located close to the residences of relatives.[546] According to a study conducted by Demirel, Gürbüz, and Tuş with ten thousand terekes, only 10% of men were married to more than one

[543] İlber Ortaylı, Türk İdare…, *ibid,* p. 309

[544] Emrah Başaran, Ailenin İşleyişi ya da Gerçekleştirimi in Sistematik Aile Sosyolojisi, Çizgi Yayınevi, Konya:2013, p. 146

[545] Ekrem Işın, *Tanzimat Ailesi ve Modern Adab-ı Muaşeret in Tanzimat Değişim Sürecinde Osmanlı İmparatorluğu,* Türkiye İş Bankası Kültür Yayınları, İstanbul:2011, p. 569

[546] İlber Ortaylı, *Osmanlı Toplumunda Aile*, Pan Yayıncılık, İstanbul:2002, p. 69

woman.[547] Baykara claims that women were able to shop with free will on the streets in the 19th century.[548]

Imam was the leading state official in the mahalle. The family mostly interacted with the imam. Imam was the witness to events among the residents of a particular mahalle. The name of imams in any given mahalle was included in the list of *suhud'ul hal* as a respected resident. Furthermore, imam recorded the sale of houses in the neighborhood and kept a track of population fluctuations in the community. Tax collection was also a duty of imam along with being a reliable person on the *vakf* registers. [549]

4.2.1. Marriage

Marriage was encouraged by sharia. The marriage in the Ottoman society was viewed as an agreement between the parties, and if one of the parties demanded to end the agreement, the given party had to be ready for the price. The families were large and after having married children kept living with the elders. If the grandparents passed away, children were to move away.[550] Though kadıs adamantly renounced, traditions such as "testing, abducting and bartering of brides" were preserved by the locals.[551] The person who was engaged is called *namzed* in the registers. [552] If the duration of engagement is extended, it was more likely that the marriage would be less likely. A document sent by the Ministry of Internal Affairs to

[547] Ömer Demirel, Adnan Gürbüz, Muhittin Tuş, *Osmanlılarda Ailenin Demografik Yapısı in Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, TC Başbakanlık Araştırma Kurumu, Ankara: 1992, p. 130

[548] Tuncer Baykara, *Değişme ve Medeniyet Açısından XIX. Asırda Osmanlı Yöneticilerinin Aile Yapısı in Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, TC Başbakanlık Araştırma Kurumu, Ankara: 1992, p. 167

[549] Fatih Şahingöz, *ibid*, p. 90

[550] Abraham Marcus, *The Middle East on the Eve of Modernity*, New York:1989, 195-212

[551] Judith E. Tucker, Muftis…,*ibid*, p. 294

[552] SŞS 52 p. 78

Kadı of Sivas articulates that the fiancée of those who were drafted into the army was not allowed to marry with someone else and kadı could not prove these marriages.[553] Marriages were, in general, were pre-arranged, and both sides were to obey the imposed decisions.[554] All of the agreements related to marriage were recorded to *sicils* by kadı but not entirely. The records were only written if participants of a prospective marriage were demanded to register. The purpose of the registery was to have a tangible and reliable document in dealing with the future problems in the marriage.

İmam was not able to approve and set the procedure of a marriage instantly. Applicants must have been applied to the local judge and obtain permission. After having been proved, they were eligible to be approved of marriage; imam was to conduct their marriage procedure according to Islamic law.[555] After having married and remained together until the death of her husband, the woman was entitled to become an heir of the deceased spouse. The term, "*veraset-i zevce-i menkuhe-i metrukesi"* was used to define the status of a woman by kadı.[556] Kadı recorded the marriage after having detected the certain characteristics of the applicant such as having a reasonable mind and being reached puberty. *(akile ve baliğe).*[557]

Ottoman Courts hesitated to express an absolute decision that would heavily affect a marriage. The primary objective of the court was to have the parties reached an agreement.[558] An official was assigned to keep the tracks of marriage arrangements

[553] SŞS 52 p. 108

[554] Suraiya Faroqhi, *Subjects of the Sultan: Culture and Daily Lifein the Ottoman Empire*, I.B. Tauris, New York: 2007, p. 102

[555] Ziya Kazıcı, *Osmanlı'da Toplum Yapısı*, Bilge Yayınları, İstanbul:2003, p. 193

[556] SŞS 52 p. 24

[557] SŞS 52 p. 133

[558] Boğaç A. Ergene, *Why Did Ümmü Gülsüm Go to Court? Ottoman Legal Practice between History and Antropology*, Islamic Law and Society 17 (2012), p. 223

and was called "*tezvic ve kabule müdürü."*[559] After having married, husband and wife had mutual responsibilities. Wife had to be obedient, and the husband had to provide the daily needs of the family.

Before the marriage was enacted, the amount of *mihr* had to be clarified.[560] If any of the parties rejected the marriage, the other party could prove the marriage with the register alongside claiming the *mihr-i müeccel*, alimony and a fair share of the inheritance.[561] The amount of *mihr-i muaccel* and *mihr-i müeccel* ranged between a hundred kuruş to seven hundred kuruş. However, the line was around five hundred kuruş on average.[562] In Arabic entities, mihr-i muaccel is called *muqaddam* and the mihr-i müeccel is called *mu'akhkhar*.[563] Imam was the most preferred witness in the marriages as a respectable person.[564] Gerber claims that Islamic Law of Inheritance was likely to dilute the familial bonds between the members due to the fact that heirs were to share the inheritance on a personal basis that eradicates the concept of unity.[565]

4.2.2. Divorce

The kadı registers have many instances of divorcement. Contrary to popular belief, the divorce among Muslims during Ottoman rule was prevalent and women were capable of divorcing with ease.[566] There are three types of divorce in Islamic law. The first is *talak* meaning the unilateral divorce by husband. The second one is

[559] SŞS 52 p. 2

[560] SŞS 52 p. 29

[561] SŞS 52 p. 124

[562] SŞS 52 p. 156

[563] Judith E. Tucker, Muftis…,*ibid*, p. 279

[564] SŞS 52 p. 2

[565] Haim Gerber, *The Muslim Law of Partnerships in the Ottoman Courts*, Brill, Studia Islamica, No. 53 (1981), p. 114

[566] Suraiya Faroqui, Subjects…, *ibid*, p. 103

tefrik happened due to the incompetence of the husband and demanded by the wife. Besides, impotence of the husband also could become a cause. The last type is called *muhala'a* (hul) which means that the both parties could divorce by agreement. Ebu Suud stated that woman had absolute authority to sue her husband and the latter was not allowed to hamper the due process.[567]

Islamic law attempted to preclude the divorce by imposing *mihr-i muaccel* and *mihr-i müeccel* on the males. The number, when considered the average income of the people, was high and can be viewed as a serious deterrent in case of a future divorce attempt.[568] Besides, the transportation of *çeyiz* (dowry) from bride's house to grooms' was accompanied by witnesses to guarantee that if a divorce occurred, the goods that bride had brought was to be returned in full.[569] Divorce was possible only if husband approved the divorce; wife claimed her husband was impotent or husband was not able to keep up his family.[570] The woman could give up a higher sum of *mihr-i müeccel* to a lower amount to facilitate the divorcement process.[571] Şuhud'ul hal were local people who inspected the case properly and be de facto witnesses of the verdict if the need arose in cases of divorce.[572] Şuhud'ul hal was a significant element of marriage and divorce. Witnesses could justify or refute the claims of the litigant. The woman who was divorced through *tatlik* could demand her alimony by claiming that her pregnancy as a burden.[573] The pertaining woman proved her claims via witnesses. Though divorce seems to be quite an easy performance for a man, the

[567] Leslie Pierce, *ibid*, p. 453

[568] Fatih Şahingöz, *ibid*, p. 116

[569] Leslie Pierce, *ibid*, p. 230

[570] Amira Sonbol, *Women in Shari'ah Courts: A Historical and Methodological Discussion*, Fordham International law Journal, Volume 27, Issue 1, 003, Article 9, p. 232

[571] SŞS 52 p. 26

[572] Leslie Pierce, *ibid*, p. 97

[573] SŞS 52 p. 54

obligations of the man after the divorce as a former husband of the woman put an economic pressure on the man not to do so.[574]

4.2.3. Şuhud'ul Hal

Ergene argues that naibs, katibs and şuhudul hal were chosen among local people.[575] Though decisions taken by naib were binding, an appeal could get the decision be reconsidered and even dissolved.[576] Moreover, Canbakkal argues that şuhudul hal consisted of a group of elites who established a monopoly over the court procedure.[577] Sulh was a peculiar way to solve problems. Kadı was in favor of resolving the issues through sulh as a primary method. *Ferağ* was a kind of compulsory sale that was imposed on women by her relatives. Women were obliged to sell their recently inherited properties to her brother to hamper the partition of the fields. This was a highly common practice. The sale had to be conducted in front of the land registrar and his secretary.[578] Though women were relatively well-positioned when selling her properties, the case was not the same for the woman who was mistreated by her husband. The woman who wants to sue her husband had to provide witnesses to prove the claims. The absence of witnesses disabled women to defend them properly.[579] On the other hand, it is viewed that kadı was fair in providing the mihr-i müeccel after divorce. The demand of a woman for cash was met by kadı.[580]

[574] James Grehan, *ibid*, p. 103

[575] Boğaç A. Ergene, Local Court, Provincial Society and Justice in the Ottoman Empire, Brill, Leiden: 2003, p. 25

[576] SŞS 52 p. 41

[577] Quoted in Boğaç A. Ergene, Local Court.., ibid, p. 28

[578] SŞS 52 p. 30

[579] SŞS 52 p. 60

[580] SŞS 52 p. 98

When the amount of mihr-i müeccel in the city of Sivas was evaluated, the range was 500 and 1000 kuruş on average.[581]

4.2.4. Alimony

Alimony, *nafaka*, is the money that is provided by one of the parties after a divorce was approved by kadı. If one was not able to sustain her living without financial support, she could demand alimony. The term, *nafaka*, was used to refer alimony in the registers, and the payment ranged between 90 kuruş and 300 kuruş.[582] The sum was determined in compliance with the status of the husband and the wife. A woman who divorced from a wealthy man was more likely to demand 300 guruş for the alimony.[583] Alimony was a sort of sulh in which a final deal that would please both of the parties was achieved. The process based on compromising both parties on a common point. The process of the *sulh* was not clarified. The registers state that an agreement was reached by and on what prospects it was cemented.[584] In this respect, the process of *sulh* was a by-product of intercommunal links that aimed at creating a more serene neighborhood.

4.3. Dwellings

In the registers, the word, *menzil* was used to define a dwelling or a house.[585] *Menzil* might be made of wood or rock in the cities and villages. The desert people, on the other hand, used the wool of animals.[586] The sale of houses is the most frequently viewed type of document in the registers. The sales demonstrate that coreligionists

[581] SŞS 52 p. 67, SŞS 52 p. 76

[582] SŞS 52 p. 10

[583] SŞS 52 p. 139

[584] Leslie Pierce, *ibid*, p. 120

[585] SŞS 52 p. 26

[586] Sabri Orman, *İlm-i Tedbir-i Menzil Oikonomia and İktisat in Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, TC Başbakanlık Araştırma Kurumu, Ankara: 1992, p. 287

preferred to be the neighbors of each other.[587] On the other hand, there are many instances in which adherents of different religions lived side by side.[588] Besides, the state was engaged in construction process. The intervention of state towards the daily life of citizens not only provided security but also enhanced the tax-collecting capacity of state. Moreover, the state attempted to limit the building of new compounds by imposing new restrictions such as the height of the buildings, features of the façades, the content of construction materials and intervention to land purchase and selling.[589]

Örtme was made of concrete and differed from *çardak*.[590] It was similar to entrance or saloon. Sivas house, in general, was made of stone, but concrete parts were also present.[591] The term *tahtani* was used to denote houses with one store, and *fevkani* was used for houses with two stores. Besides, the terms were used to refer the first floor and the second floor respectively as well. A register gives a detailed description of a *menzil* as follows: the house with three rooms, a winter house with a store, a stable and a woodshed. (*üç oda ve tahtani bir kış evi bir ahur ve bir odunluk*).[592] The prices of houses though were higher than other utilities; buildings for the daily use were also at more or less same price. For instance, a mill for wheat products was priced ten thousand kuruş, while a mansion was priced twenty-five thousand kuruş. (*Dakik değirmeni 10000 kuruş, bir bab konak*).[593] The sale of houses between Muslims and non-Muslims was a common sight.[594] A house could be

[587] SŞS 52 p. 63

[588] SŞS 52 p. 91

[589] Stefan Yerasimos*, Tanzimat'ın Kent Reformları Üzerine in Tanzimat Değişim Sürecinde Osmanlı İmparatorluğu*, Türkiye İş Bankası Kültür Yayınları, İstanbul:2011, p. 511

[590] Suraiya Faroqui, Men of…, *ibid*, p. 66

[591] SŞS 52, p. 22

[592] SŞS 52 p. 20

[593] SŞS 52 p. 118

[594] SŞS 52 p. 105

shared between the shareholders reaching as high as the 512 shares. Shares of each person were called *sehim.*[595]

In the 19th century, there are no parts in the house such as sofa or *tabhane*. On the other hand, in the 17th century, the houses with a sofa, *tabhane, oda* and *avlu* were popular.[596] Yerasimos states that the famous characteristics of an Islamic city such as narrow streets, holes at the entrance and dead ends were highly criticized from a modern perspective. Firstly, there is no public space in the Islamic city. Furthermore, the borders are extremely blurred and persons can extend their lands further thanks to the lack of public lands. Pieces of land in front of a private property are regarded as its "fina" in Islam and in the long run private properties were stretched into these areas.[597] In Ottoman mahalles, the line between rich and poor was blurred, and both of them lived together in the same neighborhood. However, the wealthy preferred to build his estates close to facilities such as mosque, *çeşme*, and library.[598] Muslim and non-Muslims lived next to each other and house sale remained vivid. (*bir tarikden kasap Cula veledi Bedros ve bir tarikden memişzade derviş Mehmed ağa ve bir tarikden).*[599] In the register, few street names are mentioned, and the most recurred among them is *Kayseri Street.*[600] Moreover, there was another Street in the mahalle of Oğlan Çavuş called *Yokuşbaşı caddesi*.[601]

Muslims and non-Muslims sold their houses interchangeably that paved the way for mixed mahalles in the long run.[602] The houses of Muslims and non-Muslims were

[595] SŞS 52 p. 81

[596] Suraiya Faroqui, Men of…, *ibid*, p. 109

[597] Stefan Yerasimos, *Tanzimat'ın Kent Reformları Üzerine in Tanzimat Değişim Sürecinde Osmanlı İmparatorluğu,* Türkiye İş Bankası Kültür Yayınları, İstanbul:2011, p. 516-518

[598] Suraiya Faroqui, Men of…, *ibid*, p. 119

[599] SŞS 52 p. 20

[600] SŞS 52 p. 13

[601] SŞS 52 p. 122

[602] Suraiya Faroqui, Men of…, *ibid*, p. 120

similar in terms of physical characteristics.[603] In the 17th century, members of askeri class were more likely to own the most expensive house in the neighborhood. From the 17th century onwards, non-Muslims began to get richer and owned expensive and more fashionable houses.[604] Besides, Muslim businesspeople also owned higher priced houses in the 19th century while the houses of *askeri* class were not that much priced. According to sharia law, neighbors had the capacity to block the sale of a house. Sales were common among relatives since shareholders of an individual estate wanted to purchase the other shares. [605] Mansions (*konak*) were large houses with many amenities including a hall (sofa), a stable, a hayloft (samanlık), a cellar (kiler), a small hall in front of the house (*havlu*) and a little gap (*aralık*).[606]

Settlements close to urban areas meant closeness to tax collector besides facilities of the city.[607] Though lived in a multi-cultural society, each mahalle provided the obligatory needs of its residents; religious needs were met through local mosques or churches. The church of Aya Yorgi located in the mahalle of Sarı şeyh was allowed to be repaired.[608] The permission (*emr-i alişan*) to repair had to be sent from the central authority.

4.4.Economy and Guilds

Ottoman Empire depended on tax farming since the foundation of the state. Besides, by the 16th century, agricultural taxes were collected in line with the *tımar system* based on levying people in kind after the harvest.[609] The *malikane* system used by Ottoman Empire to extract as many revenues as possible through leasing the land to

[603] SŞS 52 p. 86

[604] Suraiya Faroqui, Men of…, *ibid,* p. 148

[605] Suraiya Faroqui, Men of…, *ibid,* p. 173-174

[606] SŞS 52 p. 138

[607] Suraiya Faroqui, Men of…, *ibid,* p.205

[608] SŞS 52 p. 115

[609] Şevket Pamuk, The Evolution…, *ibid,* p. 16

a tenant for a lifetime since 1695 become obsolete after the initiation of reforms in the 1840s.[610] In 1864, it was decided that a *vergi mazbatası* was to be sent to livas, kazas, and villages that set the payments of taxes on a ten months of installments.[611] In the 19th century, Ottoman Empire turned out to be a large importer of European processed goods while exporting raw materials.[612] However, there were attempts to prevent the full submission to European goods. Manufacturers in Tokat imitated the Indian garments which were high in demand.[613] In 1876, Bab-ı Ali declared a moratorium and the latter were followed by the uprising in Serbia that deteriorated the situation furthermore. The state issued *kaimes* to compensate the expenses during the war of 1877-78. However, the value of kaime which used all across the empire fell sharply, and the use was suspended at the end of the decade.[614] The bimetallic system was abandoned in 1881, and the gold standard was accepted to evaluate the affordability of the money. The economy relied on gold and silver for significant transactions while the kuruş was used to handle daily shopping.[615] In the Balkan parts of the Empire, machine-based manufacturing began to flourish in the 1870s.[616] Silver-made money was also in usage during the 1870s in the Ottoman Empire. (*sim mecidiye para*).[617]

Each manufacturing unit had a *kethüda* as a head of its guild. Kethüda was appointed by kadı. Another official was *yiğitbaşı* whose duty was to inspect the markets and execute the penalties determined by kadı. However, the cases within the guild members were less likely to be brought in front of kadı. A group of experts called *ehl-i hibra* was in charge of checking the prices and controlling the quality of

[610] Şevket Pamuk, The Evolution…, *ibid,* p. 18

[611] Musa Çadırcı, *ibid,* p. 342

[612] Şevket Pamuk, The Evolution…, *ibid,* p. 20

[613] Suraiya Farouqi, Artisans…, *ibid,* p. 175-176

[614] Şevket Pamuk, The Evolution…, *ibid,* p. 25

[615] Şevket Pamuk, The Evolution…, *ibid,* p. 26

[616] Suraiya Farouqi, Artisans…, *ibid,* p. 187

[617] SŞS 52 p. 44

products.[618] *Gedik system* which was a kind of arranged monopoly over certain manufacturing limited the entrepreneurship and growth of larger corporations. This system was abandoned between 1864 and 1873 with the foundation of *Islah-ı Sanayi Komisyonu*, and small stores were merged to boost the private sector.[619]

Artisans in the Ottoman were organized within guilds to defend their interests. Besides, guilds played an intermediary role between masters and the state.[620] Though not absent, few examples of guild type organization were found in the registers.[621] Guilds checked the operation of shops and only complained if their interests were at risk of unfair competition by their fellow guild members. The break of law or the order of society was never considered as sources of discontent among guild members. Herber states that kethüdas were autonomous in dealing with the shop owners, and customary law was superior to state authority in business.[622] Guilds were begun to be formed in the 16th century and matured in the 18th century.[623] Guild members could not exceed the amount of arranged production and get richer via over-sales.[624] The mixed guilds by religion were to be kept in order by muhtesibs whose authority was recognized by both sides.[625]

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[618] İlber Ortaylı, Türk İdare…, *ibid*, p. 298

[619] Mehmet Seyitdanlıoğlu, Tanzimat Dönemi Osmanlı Sanayii (1839-1876), p. 55, İlber Ortaylı, Türk İdare…, ibid, p. 298

[620] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London: 2009, p. xvi

[621] Suraiya Faroqhi, Artisans of …, *ibid*, p. 35

[622] Haim Gerber, *ibid*, p. 120

[623] Suraiya Faroqhi, Artisans of …, *ibid*, p. 63

[624] Suraiya Faroqhi, *Guildsmen and Handicraft Producers in The Cambridge History of Turkey, The Later Ottoman Empire,1603-1839 Vol.4*,Cambridge University Press, Cambridge: 2006, p. 336

[625] Suraiya Faroqhi, *Artisans of Empire Crafts and Craftspeople under the Ottomans*, I.B. Tauris, London: 2009, p. 147

Gediks was transmitted to inheritors after the holder deceased.[626] If a gedik was to be activated, the document could be presented to kadı by the claimant. Kadı after examining the paper declared that the document is genuine, and the holder had the rights provided by the document.[627] Kethüdas were preferred to be chosen among Muslims even if the majority of the masters were non-Muslims.[628] If a member of guild members was deceased, his name and title were mentioned by kadı in the tereke. [629] For example, a resident of Sivas from *eşraf ahalisi* (a member of guildsmen) had a cobbler shop which was worth 3700 guuruş. (*Saraçlar çarşısında saraç dükkanı 3700 guruş*).[630]

Apart from responsibilities over the business, kadı was also in charge of public works such as public order and content. Kadı was in charge of municipal duties and was assisted by servants such as *ihtisab ağası, subaşı, naib*.[631] İhtisab ağası was the official to inspect the markets after the abolition of Yeniçeris.[632] However, after the abolition of *Yeniçeris*, which was the backers of a kadı in dealing with security of a province, in 1826; the municipal duties of a kadı were terminated, and *İhtisab Nezareti* was founded to tackle the security in cities. Furthermore, Evkaf Nezareti was established in 1836 to regulate the vakıfs while inspection authority of kadı was delegated to latter.[633] *Ihtisab kanunname*s for *muhtesips* are issued by different Sultans.[634] There was no municipial legislation to set out a systematic organization to deal with the problems of a city. Customary law was the primary source to govern

[626] Suraiya Faroqhi, Artisans of …, *ibid,* p. 119

[627] SŞS 52 p. 11

[628] Suraiya Faroqhi, Artisans of …, *ibid*, p. 19

[629] SŞS 52 p. 34

[630] SŞS 52 p. 139

[631] İlhan Yerlikaya, *Tanzimat"tan Önce Osmanlı Devletinde Belediye Hizmetler,* Osmanlı Ansiklopedisi, Yeni Türkiye Yayınları, Ankara: 1999, p. 583

[632] Musa Çadırcı, *ibid,* p. 121

[633] İlber Ortaylı, *ibid,* p. 268

[634] Uriel Heyd, *ibid,* p.230

the cities.[635] In the Nizamname of 1871, the foundation of municipal organization separate from administrative units was declared, and a city council appointed by *mutasarrıf* and approved by *Vali* was established.[636] General conscription imposed on Muslims to fill the vacuum emerged after the dissolution of the Yeniçeris.[637] Guilds disappeared gradually with the disappearance of commercial sectors they were tied to live.[638]

The concept that was valid for Ottoman society was also valid for guildsmen, the *had* system. The Islamic-legal concept of *had* defined the duties of the people in society. Everyone knew his position and what his position entailed regarding behavior. Departure from this pattern was likely to throw the existing social order into anarchy and unrest.[639] The head of guildsmen in Sivas was called *şeyh*.[640] In this respect, gedik system prescribed certain roles to people who brought a serene market environment but precluded the emergence of large businesses.

The *narh* system meant the promulgation of a specified price on the entire products manufactured within a particular province.[641] The system was abolished except in bread so as to be integrated with the liberal economy in 1865.[642] One of the reasons for the abolishment was the sharp rises in the prices during the second half of the 19th

[635] İlber Ortaylı, Türk İdare Tarihi, *ibid,* p. 289

[636] Musa çadırcı, *ibid,* p. 276

[637] Bruce Masters, *The Political Economy of Aleppo in an age of Ottoman Reform*, Journal of the Economic and Social History of the Orient 53 (2010), p. 295

[638] Suraiya Farouqi, Artisans…, *ibid,* p. 204

[639] Haim Gerber, *ibid,* p. 133

[640] Musa Çadırcı, *ibid,* p. 123

[641] Suraiya Faroqhi, Suraiya Faroqhi, Artisans of …, *ibid,* p. 38

[642] İlber Ortaylı, Türk İdare…, *ibid,* p. 302

century.[643] Trade was conducted through verbal agreements. Hence, testimony was considerably oral.[644]

The main production sector according to kadı register was quilt manufacturing. The quilts made in Sivas were called as "*sivaskari basma yüzlü yorgan."*[645] Moreover, when the goods and the type of currencies in Sivas was considered it can be said that commerce was bustling in the city. Aleppo-made[646], British-made[647], and Dagestan-made[648] clothes were found in the terekes. The kind of coins was highly varied. *Para, akçe*[649] *kaime* and *lira-ı Osmani*[650] *yirmilik aziz altını*[651] and *yüzlük mecidiye altını*[652] and *yüzlük altun*[653] were chief types of coins mentioned in the register. The shops of different millet members were next to each other.[654] There was a live relationship with the neighboring cities such as Malatya, Tokad and Kayseri .Businesspeople were moved to Sivas to adjust the commerce.[655]

It is hard to decide the type of which modernization model Ottomans have embraced whether it was, as Schwartz puts it, rationalization or, as Levy puts it,

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[643] Charles Issawi, *An Economic History of the Middle East and North Africa*, Columbia University Press, New York:1982, p. 10

[644] James Grehan, *ibid*, p. 992

[645] SŞS 52 p. 36

[646] SŞS 52 p. 115

[647] SŞS 52 p. 102

[648] SŞS 52 p. 103

[649] SŞS 52 p. 21

[650] SŞS 52 p. 133

[651] SŞS 52 p. 12

[652] SŞS 52 p. 67

[653] SŞS 52 p. 81

[654] SŞS 52 p. 77

[655] SŞS 52 p. 33

industrialization.[656] Ottoman state precluded the rise of a powerful oligarchy by protecting the guilds against capitalist merchants.[657] Though subsequent Sultans abolished this practice, it was not as effective as it was expected to be. However, this late removed practice kept the economy relatively stable but, merchants never found a chance to compete with their European rivals. The lack of entrepreneurship and low capital accumulation was detrimental to the so-called Ottoman transformation.[658] Guild system illustrates the life-cycle of Ottoman Empire by demonstrating the rise and decline of economic activities. With the increase of stiffer competition by foreign merchants, Ottoman tradesmen preferred to remain isolated and attempted to protect itself against foreigners until the middle of the 19th century.[659]

Stamatoupulos describes Ottoman modernization, the transformation from culture-based religiously shaped empire to principle-based nationally-shaped nation-state.[660] When taken with the gradual progress of reforms in order, this thesis is more reliable. However, the argument excludes the role of foreign powers in the process. As modernization theories failed to explain the most of the reasons of modernity such as war, conquest, and colonial domination, from a Foucaultian perspective, it can be viewed that the Ottoman modernization was a means for great powers to persuade the State for reforms.[661] To Wallerstein and El-haj, Tanzimat was the first formal

[656] Dean Tipps D, *Modernization Theory and the Comparative Study of the Societies: A Critical Perspective, Comparative Studies in Society and History*, Vol. 15, No. 2 (Mar. 1973), p. 203

[657] Şerif Mardin, "*Power, Civil Society and Culture in the Ottoman Empire*", Comparative Studies in Society and History, Vol. 11, No. 3 (Jun., 1969), p. 261

[658] Linda Darling, "*Osmanlı Tarihinde Dönemlendirmeye Farklı Bir Bakış*",in Osmanlı Tarihini Yeniden Yazmak, p.154

[659] Suraiya Faroqhi, Suraiya Faroqhi, Artisans of …, *ibid*, p. 126

[660] Dimitros Stamatopoulos, *ibid*, p. 253

[661] Dean C Tipps, *ibid*, p. 212

step to incorporate Ottoman Empire into the world system.[662] [663] These rather unexpected and unwanted reforms alienated the Muslims and non-Muslims from the state. Mardin claims that Ottoman modernization aimed at creating an intermediary class between *reaya* and *askeriyye*.[664] The alienation of subjects was the primary drive for the establishment of bureaucratic circles such as *Tercüme Odasi,* which led the way for the expansion of Tanzimat bureaucracy.

[662] Wallerstein, Immanuel, Hale Decdeli, Reşat Kasaba, *"The Incorporation of the Ottoman Empire into the World Economy", The Ottoman Empire and the World-Economy*, Huri İslamoglu-İnan ed., Cambridge: Cambridge University Press, 1987, p. 93

[663] Yunus Uğur, p.593

[664] Mardin Şerif, *ibid*, p. 264

CHAPTER V

CULTURAL LIFE

5.1. Muslims

The chief subsistence source in Sivas was farming and some families owning huge portions of land dominated the economic life in the city and had special status in the daily life.[665] People lived in houses with entire family. In the 16th century, houses had an entrance hall, the so-called *tabhane*, parted from other *odas*, and used for different purposes.[666] Besides, non-Muslims were not allowed to paint their houses with colors and preferred to build houses facing the main street.[667] Mattresses (m*akad şiltesi*) and cushions (minder) proves that people sat on the ground.[668] *Hatıl* (durable concrete) was used to strengthen the structure of the houses.[669] *Havlu* and *aralık* were holes preferred to keep the house separate from the public and widely prevalent among urban people.[670] Moreover, few houses in the registers had barns even though they were located in the city.[671] The real estate sales demonstrate that hayloft, barn, courtyard and a cottage were the standard properties that almost all of the urban people owned.[672] The clothes of people were similar to each other. The terekes of

[665] Zafer Karademir, *Sivas Ağa Sınıfının Sosyo-Ekonomik Durumuna Dair Bir İnceleme (1780-1831),* Hacettepe Üniversitesi Türkiyat Araştırmaları Dergisi, 2011 Bahar (14), p. 197

[666] Suraiya Faroqui, Men of…, *ibid,* p. 15

[667] Suraiya Faroqui, Men of…, *ibid,* p. 19

[668] SŞS 52 p. 66

[669] SŞS 52 p. 11

[670] SŞS 52 p. 49

[671] SŞS 52 p. 95

[672] SŞS 52 p. 71

rich people had clothes of foreign origin which were imported clothes made of imported garments. *Entari, gömlek*, and *kuşak* were the most common clothes included nearly all terekes. Armenian women wore quite similar to Muslim women. They covered their faces and entire body when they were not at home.[673] The clothes types were as follows:

"Acemkari çit hırka, Damgahane hırka, Köhne gömlek, Müstamel sarık, Alaca entari, Diyarbekir kuşağı, Köhne kuşak, Müstamel zerdeva beden kürk, Al değirmi Gezi entari, Köhne kürk, Öğnük, Altınoluk entari, Gömlek, Köhne sansar kürk, Sagir sim kemer, Atlas entari, Hatayi entari, Köhne şalvar entaresi, Sarık, Aynalı sim kemer, İçlik, Kösele, Sim kemer çift, Başlık, İlik kuşak, Kuşak, Sim kemer maa boncuk, Başörtüsü, İpekli gömlek, Kutnu entari maparka, Sim saç bağı dirhem, Beldar libade, İp şalvar, Küçük kurt kürkü, Siyah çizme, Beyaz baş bağı, İslamboli mücessem değirmi, Kürk, Şâli şalvar, Beyaz bürük, İşlemeli çevre, Meşin, Şalvar, Beyaz köhne ihram, Kavuk, Meşin başlık, Tepelikli fes, Biz (bez) entari, Kebir makreme, Miski bîz entari, Tire köhne entari, Biz (bez) gömlek, Kemer, Mücessem değirmi, Tulum deri, Biz (bez) öğnük, Kırmızı çizme, Müstamel beldar libade, Uşkur, Buruncuk değirmi, Köhne beldar entari, Müstamel beldar şalvar, Üzerlik esbabı, Bürük, Köhne çuka cübbe, Müstamel bez entâri, Yakası sîm dökmeli hare entari, Cübbe, Köhne çuka entari, Müstamel çevre, Yazlık entari, Çitari entari, Köhne çuka şalvar, Müstamel gömlek, Çocuk boğazlığı, Köhne entari yüzü, Müstamel kavuk."[674]

The prices of clothes were changed in accordance with the quality of the garment and to city from which it was imported. The further the imported city is, the higher the price become. For instance, a shirt made in Tokad (*Tokadkari*) costed 12 kuruş while a shirt made in İstanbul costed (istanbulkari) 30 guruş. During this period, Galata was famous for its garments and most preferred clothes were made of this garment. [675] A quilt made of basma garment priced for 800 kuruş. A fur made of çuka priced 1000 kuruş.[676]

Household goods were limited to local products in poor families while rich families were able to purchase imported products. *Halı* (carpet), *yorgan* (quilt), *minder*

[673] Boğos Natanyan, *Sivas 1877*, Bir Zamanlar Yayıncılık, İstanbul: 2008, p. 268

[674] Fatih Şahingöz, *ibid*, p. 107-108

[675] SŞS 52 p. 3

[676] SŞS 52 p. 117

(mattresses), *seccade* (prayer's rug), *peşkir* (towel), and *yasdık* (pillow) were the major materials used in an ordinary house. The other materials were as follows:

"Köhne yan halısı, Sagir yasdık, Beyaz yorgan, Hamam takımı, Köhne yasdık, Seccade, Biz (bez) batman, İşlemeli peşkir, Makad çiti, Şilte sagir yasdık, İşlemeli pike, Makad halısı, Şilte yasdık, Çit döşek, Kebîr dimi yasdık, Makad şiltesi, Tüylüce Çit döşek yüzü, Kebir kutnu döşek, Minder, Çit minder, Keçe, Mitil, Çit sagir minder, Kırmızı biz top, Mitil şilte yasdık, Yasdık, Çit yorgan, Köhne cecîm, Müstamel kilim, Yorgan, Dasdar, Köhne çit döşek, Müstamel köhne kilim, Yük, Dimi döşek, Köhne çul minder, Nakışlı seccade, Yüzlü yasdık, Dimi yasdık, Köhne halı, Orta halı."[677]

Moreover, raincoat (y*ağmurluk*) was one of the clothes included in the terekes.[678] Furthermore, the registers prove that semi-processed goods such as mattresses, quilt, and pillows were manufactured in Sivas. (*sivaskari yün memlü minder, döşek, yorgan, yasdık, sim kaplı şam işi felneç.*) [679] *Çul* (gunny) was widely preferred to make house materials such as mattress, pillow and quilt. (*minder, yasdık, yorgan*).[680] An interesting object found in the terekes was "*hilali saat"* a clock which was designed to determine the prayers time.[681]

Jewelry was also widely used. Especially terekes of woman had pieces of jewelry. The ornaments such as *Altun* (gold), *Kolluk*, *Sim kutu* (silver), *Altun yüzük*, *Sim küpe* (earrings made of silver), *yüzük* (ring) were the most prevalent of jewellery.[682] Moreover, a tereke of an ordinary man with a briefcase (*evrak çantası*) is a sign of dense bureaucracy. [683]

House utensils in general were locally made. Utensils made of copper were manufactured in Tokat.[684] Wood was the chief material to produce kitchen utensils.

[677] Fatih Şahingöz, *ibid*, p. 106

[678] SŞS 52 p. 38

[679] SŞS 52 p. 116

[680] SŞS 52 p. 107

[681] SŞS 52 p. 118

[682] Fatih Şahingöz, *ibid*, p. 108-109

[683] SŞS 52 p. 103

[684] Suraiya Faroqhi, Artisans…, ibid, p. 179

The materials such as spoon, bowl, cup, plate, and tray were made of wood.[685] Moreover, coffee was a popular drink in the society and terekes consisted of materials useful to make coffee. *Kahfe fincanı* (coffee cup), *kahve takımı* (coffee set) and *cezve* were the most popular pieces registered in the terekes.[686] Furthermore, the presence of sherbet cup (ş*erbet bardağı*) proves that people in Sivas preferred to on-alcoholic drinks.[687] Another instance of non-alcoholic drinks was compote (*hoşaf*) that the compote bowl was recorded in the registers. (*hoşap tası*) [688]

Wheat, grape, bulgur, millet, red pepper, salt and floor were mostly included in the terekes. Storing the grains in a sack was the most used method for the preservation. [689]

Sword and rifle were the chief weapons owned by the people. [690] People used goods made of iron in order to pillow the land. The other materials were used for agricultural purposes were as follows:

Araba, Çerik, Kazma, Körük, Saman araba, Ayak keseri, Çit temürü, Kebir masa, Makas, Terazü, Balta, Çubuk takımı, Keser, Maşa, Tırpan, Balta tebar masa, El temürü, Kıyye teymür taşı, Nalband takımı, Cedid çivi, Hatab araba, Kilit, Orak, Çeküç, Kantar, Köhne düğen, Örs.[691]

Farming was the chief source of income. Livestock such as sheep, goat, and cows were feed to sustain the life of the people. Horse feeding was extremely popular and it used for the transportation. Besides, horses were frequently stolen by the thieves.[692]

[685] Fatih Şahingöz, *ibid,* p. 110-111

[686] SŞS 52 p. 54

[687] SŞS 52 p. 66

[688] SŞS 52 p. 117

[689] Fatih Şahingöz, *ibid,* p. 111

[690] Fatih Şahingöz, *ibid,* p. 112

[691] Fatih Şahingöz, *ibid,* p. 113

[692] Fatih Şahingöz, *ibid,* p. 139-140

5.2. Non-Muslims

Muslims and non-Muslims lived side by side and were treated equal with the Muslims in juridicial terms. The sentences were same for the same crimes both for Muslims and non-Muslims. Taxation was one of the main differences within the Ottoman society. The *askerriye* class was exempted from taxes. On the other hand, non-Muslim had to pay *haraç* and *cizye*. Having paid these taxes, non-Muslims were privileged not to be conscripted. Besides, zımmis were also obliged to pay the taxes which Muslims had to pay. There were 1869 Muslim households next to 1804 non-Muslim household in 59 mahalles.[693] By the end of the 19th century, a journal published in Sivas, *Felek* presents invaluable information on the population of the city. The journal claims that there were approximately 5000 households comprised of 3000 Muslim and 2000 non-Muslim.[694] The number of children on average was not more than three.[695] The names of Muslims were chiefly inspired from Islamic figures mentioned in the Quran with Arabic origin [696] Non-Muslims names were also inspired at a similar line with that of the Muslims. Non-Muslims used the names of saints or prophets in the Bible for the children.[697] Nicknames are used to identify people and to differentiate the people that have same name. The nicknames are given in consideration with the occupation of the person or the any discernible characteristics of the body.[698] The dress code had no major differences however; non-Muslims rarely used any başlıks, though it was used extensively by Turks.[699]

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[693] Serap Bozpolat, *Tanzimat'tan Önce Sivas'ta Gayrimüslimler*, Cumhuriyet Üniversitesi, Sosyal Bilimler Enstitüsü, Basılmamış Yüksek Lisans Tezi, Sivas: 2007, p. 31

[694] Kevork Pamukciyan, *Ermeni Harfli Türkçe Metinler*, İstanbul 2002, s.44

[695] Fatih Şahingöz, *ibid*, p. 117

[696] Fatih Şahingöz, *ibid*, p. 125

[697] Fatih Şahingöz, *ibid*, p. 126

[698] Fatih Şahingöz, *ibid*, p. 128

[699] Serap Bozpolat, *ibid*, p. 65

Balmumcu (candle maker), Basmacı (manufacturer), Cezveci (coffee pot maker), Çadırcı (tent manufacturer), Çizmeci (boat manufacturer), Dülger (wood mason), Hekim (doctor), Kalaycı (tinsmith), Kılıççı (swordsmith), Kilitçi (key-maker), Kuyumcu (jeweler) were such occupations held by Armenians. These occupations had to be mastered and an informal education was necessary to uphold the system.[700] Moreover, Armenians were rich compared to other subjects. Agop Şahinyan who was elected as the deputy of Sivas in 1877 had 30 villages and three windmills.[701] When debt-liabilities (*alacak*) ratio between Muslim and non-Muslim community compared according to data compiled by Bozpolat, it is clear that most of the trade was at the hands of Armenian community.[702] On the other hand, the sale of houses appears to be made between Muslims and Armenians even if occasionally.[703] The 3% of vakıfs established by regular citizens belongs to non-Muslims. Of them, two was founded by males and just one was established by females.[704]

According to registers in 1831, the Armenian population by neighborhoods was as follows: mahalle of Bazar with 178 households, mahalle of Kinise with 143 households, mahalle of Ece with 129 households, mahalle of Üryan-ı Zimmi with 119 households , mahalle of Temürcüler Ardı with 110 households,mahalle of Akdeğirmen 105 with households, mahalle of Küçük Bengiler with 98 households, mahalle of Kösedere-i Zimmi with 97 households, mahalle of Baldır Bazarı with 96 households, mahalle of Örtülüpınar with 87 households, mahalle of Ağca Bölge with 80 households, mahalle of Bab-ı Kayseri with 79 households, mahalle of Cami-i Kebir with 72 households, mahalle of Üryan-I Müslim with 64 households, mahalle of Hoca İmam with 58 households, mahalle of Köhne Civan with 49 households,

[700] Ömer Demirel, *Sosyo-ekonomik Açıdan Osmanlı Dönemi Sivas Ermenileri* in Hoşgörü Toplumunda Ermeniler Sempozyumu V. 3, Erciyes Üniversitesi Yayınları, Kayseri: 2007, p. 498

[701] Boğos Natanyan, *Sivas 1877*, Biz Zamanlar Yayıncılık, İstanbul: 2008

[702] Serap Bozpolat, *ibid,* p. 46-48

[703] Serap Bozpolat, *ibid,* p. 54-56

[704] Ömer Demirel, Sivas Şehir…, *ibid,* p. 120

mahalle of Sarışeyh with 42 household, and mahalle of Küçük Minare with 23 households. There were 59 mahalles that inhabited by Armenians.[705]

5.3. Relations between Muslims and non-Muslims

Relations within community can be evaluated in terms of many indicators such as house sales, crimes and migrations. In the register, there are many instances of crimes. Especially, migrants were involved in criminal affairs. For example, a residence of Sivas from *muhacirun-u çerakise* (migrants of Circassian descent) wounded the other person with a big knife. After the incident, the suspect rejected the allegations however, the victim proved his claims by witnesses.[706] Another instance related to Circassians was a case of inheritance without any heir. Mustafa, a Circassian, who was a lately deceased and migrated person from *Rumeli* died without any heir and his goods were delivered to the state council.[707] In the registers, it is viewed that the tribe names of migrants were also given. (*Tokad sancağı nevahisinden Selami nahiyesi kurrasından Kadı köprüsü karyesi ahalisinden ve muhacirun-i çerakiseden ve Abuzah kabilesinden*).[708] Migrants occupied jobs that not relied on much experience. For example, a man of Circassian descent in Sivas was engaged in coffee shop business.[709]

Theft is a common sight in the registers. People applied kadı to get the goods back. A residence after having detected the exact location of his stolen livestock spoke with kadı and defined the features of his cow. The marks made to differentiate the animals were quite helpful if the livestock was stolen. After having stated that his animals had ears with a hole and imam was witness to him, the litigant was able to get his

[705] Ömer Demirel, Hoşgörü…, *ibid,* p. 496

[706] SŞS 52 p. 37

[707] SŞS 52 p. 83

[708] SŞS 52 p. 110

[709] SŞS 52 p. 71

stolen animals back in safe.[710] After a crime, robbery or homicide was committed, kadı was authorized to send an exploration to the crime scene in order to get the details of the case. The exploration usually was led by katip. Katip was accompanied with a doctor and policemen.[711]

The commercial life between Muslim and non-Muslims was vivid. The variation of coins used in city displays that foreigns merchants were active in the city or represented by local merchants. Currencies such as *Osmanlı lirası* (Ottoman lira), *İngiliz lirası* (British lira), *Fransız lirası* (French Lira) were instances of vivid commercial life in the city. [712]

Mansions had a part to be used in the winter along with a house resistant to the cold of the winter. [713] The neighbourhoods had adherents of different sects and a *Mevlevi Lodge* was built in the city to meet the demands of people over religious issues.[714] Moreover, there were people who adhered to another sect *the tarikat-ı aliye-i nakşibend.*[715] The registers mentions about a coffee house which could be identified whether it was an example of modern *kıraathane* or it was a cafe like place.[716] A residence of Sivas who was adhered to non-Muslim sect, Stefan, was wounded with a gun and later he died due to his wounds.[717] The migrants who migrated from Kars were called *Kars muhacirleri.*[718] These people migrated to Sivas after the Turkish-

[710] SŞS 52 p. 121

[711] SŞS 52 p. 41

[712] SŞS 52 p. 62

[713] SŞS 52 p. 120

[714] SŞS 52 p. 122

[715] SŞS 52 p. 137

[716] SŞS 52 p. 120

[717] SŞS 52 p. 5

[718] SŞS 52 p. 133

Russian War of 1877-78. Moreover, there were people who died in Russia while held as a prisoner.[719]

The house sales were happened to be between Muslims and non-Muslims. After the agreement was reached, the landowner approved that he was no longer entitled to claim any rights on the property.[720] It is not possible to detect whether ordinary people read books or not. However, a tereke register of a merchant who engaged in book shopping demontrates those books such as *Tazir-i nisyan, Damad, Mefkuvat, Rüsümat-ı ayn'el isbat, Dela'ili cezaret tercümesi, Kafbe şerhi, kaduri, El zulub, Cevdet tarihi, Destur* were sold.[721]

The Circassian migrants were settled in Aziziye and when naib registered them, he described the migrants in detail. For instance, there was a case of a migrant of Circassian descent from the village of Kazgancık and from the tribe of Beblibek.[722] Stone, adobe, door, concrete, and window were the chief materials of reparation of a house or any concrete building. Kadı mentioned that labourer was paid 70 kuruş for the work on the other hand a master was paid 200 kuruş per day.[723] The payment differed from city to city. A master in Tokad was paid 400 kuruş for a similar work.[724] Terekes had all kinds of valuables and *gazi altınları* was found in the terekes of rich people.[725] Kadı was informed by the victims about illegal acts such robbery or theft.[726] Kadı used the terms *tebaa* and *millet* to denote different meanings. For addition, an Armenian residence of Sivas was defined as *tebaa ve millet-i merkumeden* proving that these terms had different implications and

[719] SŞS 52 p. 111

[720] SŞS 52 p. 121

[721] SŞS 52 p. 120

[722] SŞS 52 p. 95

[723] SŞS 52 p. 115

[724] SŞS 52 p. 119

[725] SŞS 52 p. 145

[726] SŞS 52 p. 50

meanings.[727] The use of describtion *"ahali tebaa ve millet-i merkumeden"* proves that Armenians were considered as a seamless subject and nation.[728] Additionally, Natanyan states that Armenian women wore scarfs in house and outside like Muslims and the most-widely wore clothes was *entaris*.[729]

Though scornful describtions such as *napaki*(not clear), *mürd olan* (cashed in), and *laşe* (corpse) was used to define the death of non-Muslims in other Anatolian cities, kadı of Sivas never used these kind of definitions and paid utmost respect to death of their fellow Christian neighbours.[730] Moreover a merchant who deceased left a tereke consisted of goods such as *cigarette paper (sigara kağıdı*), playing cards *(iskanbil kağıdı),* writing paper *(yazı kağıdı),* comb *(şimşir tarak),* comb for beard *(sakal tarağı)*.[731]

[727] SŞS 52 p. 84

[728] SŞS 52 p. 86

[729] Boğos Natanyan, *ibid*, p. 166

[730] Serap Bozpolat, *ibid*, p. 106-107

[731] SŞS 52 p. 61

CHAPTER VI

CONCLUSION

In the register examined here, the shops and dwellings of Muslims and non-Muslims were in the same neighborhood proving the tolerance within the society, though there were some mahalles residing a certain religious community. The real estate was exchanged between Muslims and non-Muslims. The non-Muslims were seen as reliable witnesses in the cases of which both of the parties were Muslims. Before the proclaimation of Tanzimat, sharia was the prime institution in dealing with the private cases. Though, non-Muslims were allowed to carry the cases their own communal courts, the cases between a Muslim and non-Muslims were more likely to end up in favor of the Muslims due to the reason that Muslims were regarded and approved as witnesses in the cases but the non-Muslims. After the reforms, non-Muslims were raised to a more egalitarian status and the strict religious rules were abolished. The safety of life and proberty was secured and the honor was defined as an inviolable right of human existence with Tanzimat. On the other hand, the real influence of these reforms at the social scene is yet to be studied extensively. Kadı registers are not enough to determine the real effects but the gradual change in the approach of kadı and the clients can be disclosed with an extensive study.

After having studied the present register, it can be said that the criminal cases were relatively low though most of the cases did not come in front of the kadı. Only three cases with casualties are mentioned in the register. The city of Sivas was peaceful, since migration into the city was detected via the inheritance records of people who recently immigrated to city and engaged in business. The getto-like formation of mahalles was not able to survive due to vivid and transient cultural and social life which hosted all circles of people from different religions and ethnicities.

The city hosting an immense population of non-Muslims managed to create a thriving commercial life in which Muslims and non-Muslims were together engaged

with. The terekes consist of registers with considerable estates. The real estates were sold within the regardless of the religion. One of the richest men in the city Mütevellizade Bekir Ağa sold his lands to Armenian Ohan and Artin.[732] The religion was not a priority in defining a person trustworthy of not. An Armenian who claimed the certain lands proved his ownership through Muslim witnesses.[733] Even, Natanyan claims that Armenians and Turks were in a good relationship.[734]

Islamic law applied strictly all over the society. If a woman deceased, her heirs demanded her *mihr-i müeccel* from the kadı.[735] Even if a person died, his or her heirs could trust the justice to claim the inheritance of the deceased. Moreover if a *vasi* of a child sold the property of the former even if the sharia defined the sale as obligatory. After having reached the puberty, child could contest the sale. People could apply to kadı after a hare was stolen to get it back.[736] The existence of unchangeable law as of sharia assured the realiabiliy of the justice in the minds of the people, even the non-Muslim preferred to register their estates through kadı registers.

The debt of a deceased person was reckoned with utmost attention and the debtors were paid in cash or money.[737] Muslims and non-Muslims were held witnesses to same case and kadı never suspected of dismissing the non-Muslims.[738] Agop with an Armenian descent proved his claims with Muslim witnesses.[739] Furthermore, if a property owner was deceased, the case was explored with a team of inspectors after death.[740] As seen above, the instances display that Muslims and non-Muslims lived

[732]SŞS 52 p. 48

[733] SŞS 52 p. 126

[734] Boğos Natanyan, *ibid*, p. 305

[735] SŞS 52 p. 36

[736] SŞS 52 p. 123

[737] SŞS 52 p. 4

[738] SŞS 52 p. 51

[739] SŞS 52 p. 132

[740] SŞS 52 p. 31

in a relatively calm environment besides, trade and neighborhood relations within community was astounding between 1879 and 1882.

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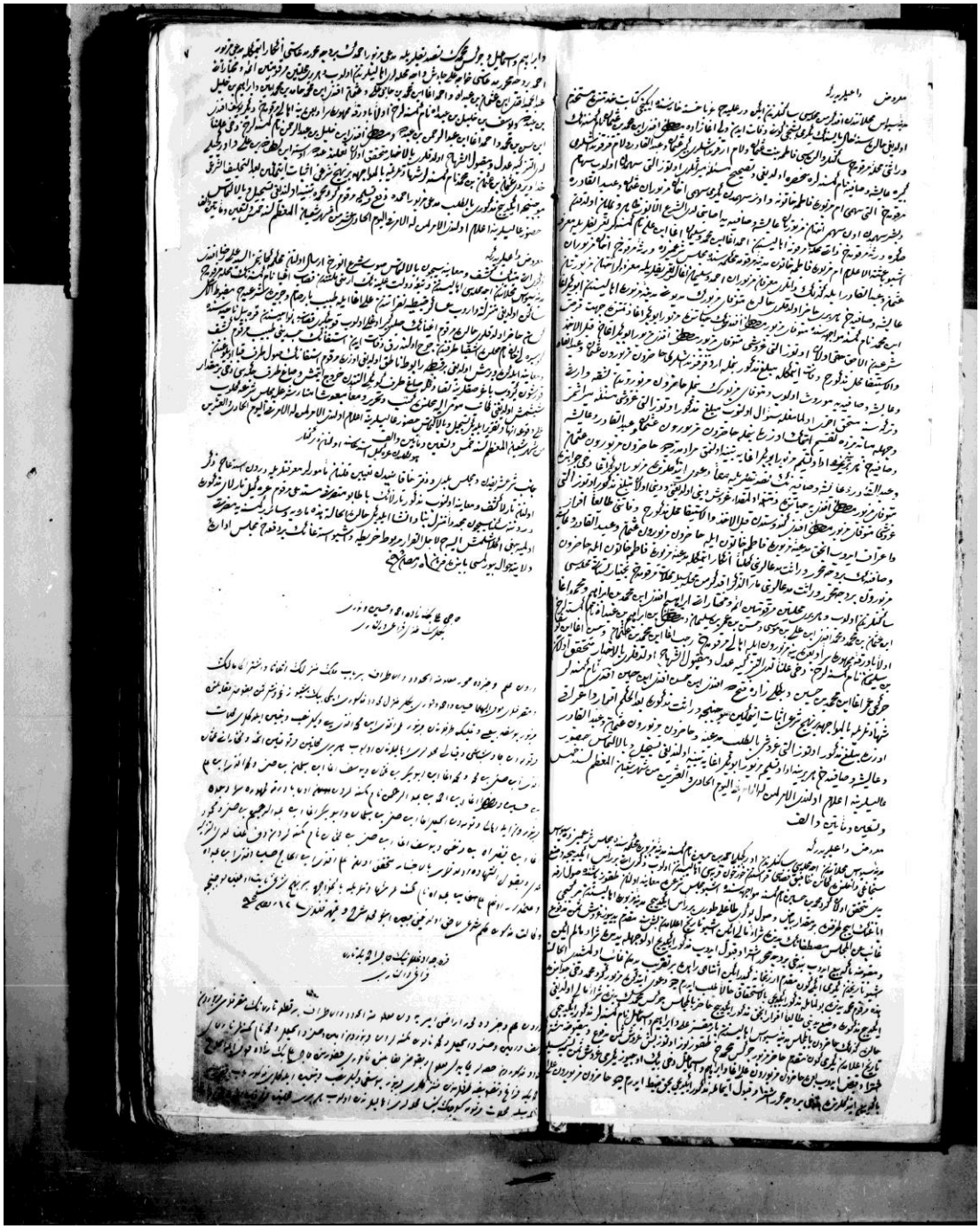
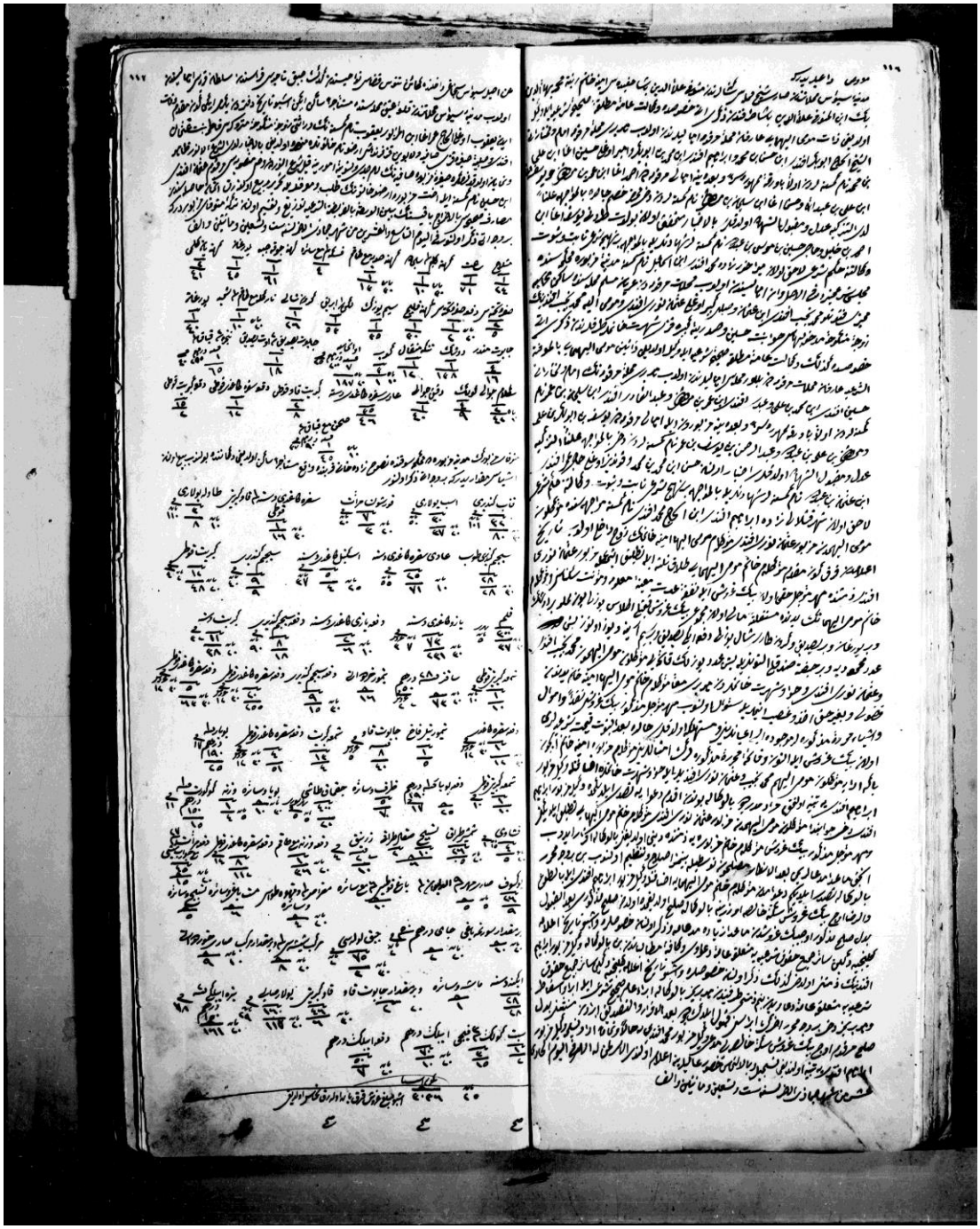
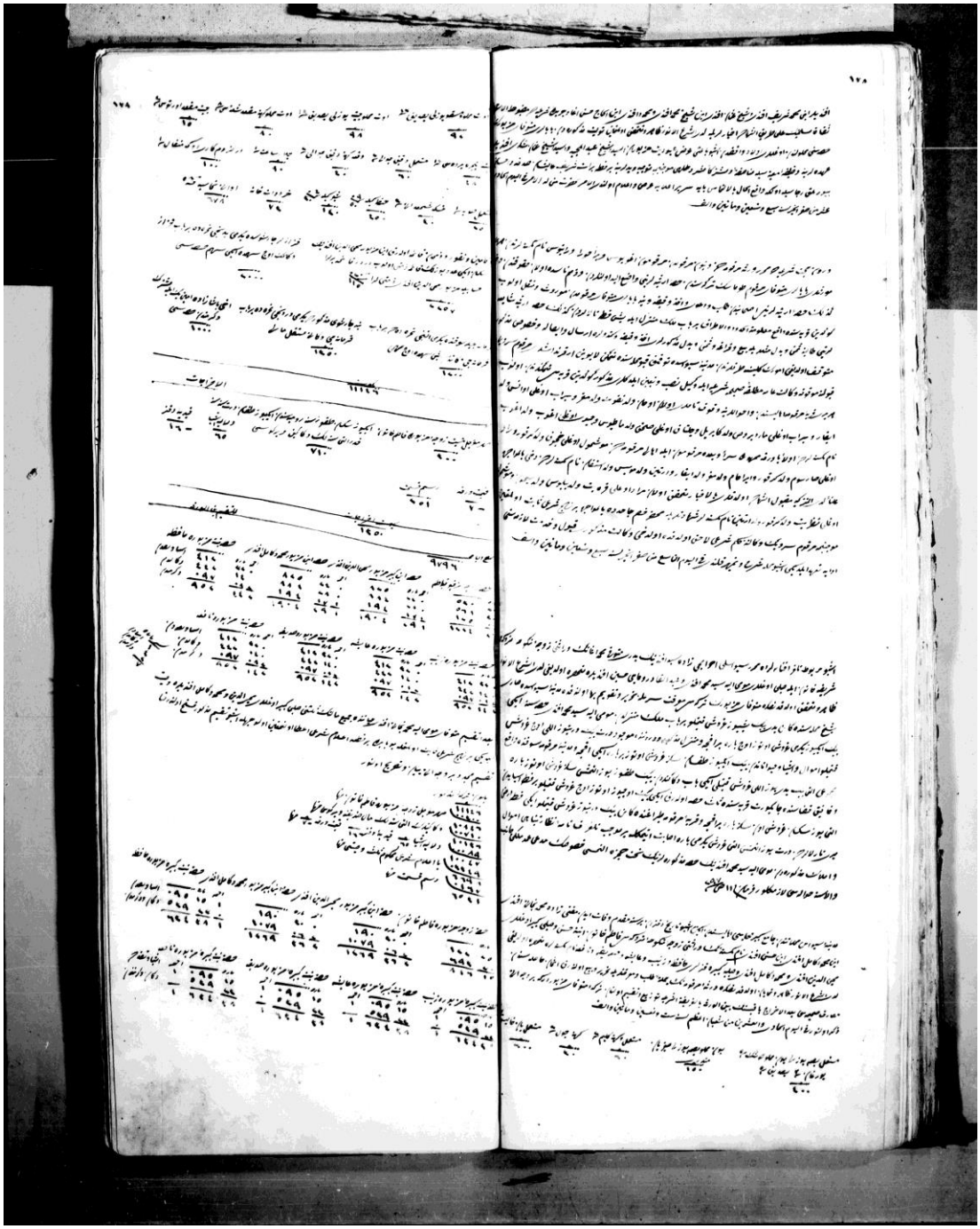
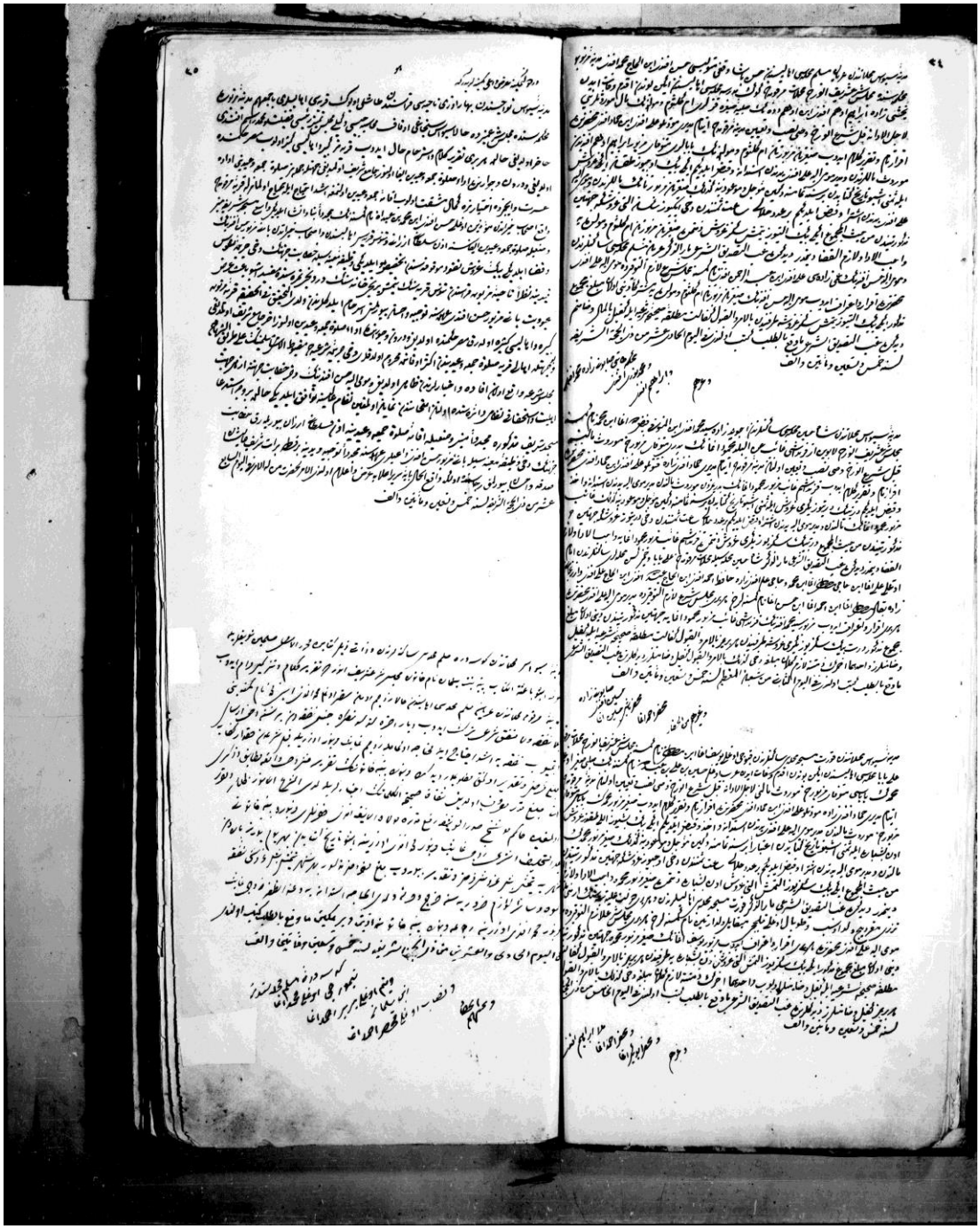
APPENDICES

A. SAMPLES FROM SİVAS ŞERİYYE SİCİLİ 52









B. TURKISH SUMMARY / TÜRKÇE ÖZET

Kadı defterleri kadıların dava konusunu ve sonucunu kaydettikleri defterlerdir. Defterler 1864 öncesine kadar ekonomik, idari ve hukuki bilgi ve düzenlemeler içerirken, yenileşme dönemi ile kadıların yetkileri sınırlandırılmış ve kadılar sadece hukuki meselelerde yetkili kılınmıştır. Merkezi idare ile iletişim sağlanması, bölgenin güvenliği, fiyatların belirlenmesi ve denetlenmesi, vakıflar gibi görevler yeniçeriliğin kalkması ile birlikte yeni oluşturulan birimlere devredilmiş, kadının görev alanı özel hukuk alanı içine giren davalar ile sınırlandırılmıştır. Miras, boşanma, evlilik gibi olaylar kadı defterine kayıt ettirilmeye devam edilmiş ve bu çalışmada incelenen 52 numaralı Sivas kadı defterinde bu tür bilgiler incelenerek sosyo-kültürel ele alınmaya çalışılmıştır. Defterde kadının çeşitli türlerde düzenlediği belgeler birebir kaydedilmiş olmuş, bu belgeler kâtipler tarafından yazıya aktarılmıştır. Defter 156 sayfa olup 648 adet kayıt muhteva etmektedir. Defterdeki kayıtlardan üçten fazla kâtip görevli olduğu anlaşılmaktadır. En çok görülen kayıt türü ilamlar ve terekelerdir. Bunu hüccet, derkenar, maruzlar ve merkezden gelen fermanlar takip etmektedir. Defterdeki kayıtlar Sivas vilayetinin bütün idari birimlerini kapsamamakta sadece kadının sorumluluğu altında olan bölgelerle ilgili kayıtlar içermektedir.

Kadıların anlaşmazlıkları çözmek için herhangi bir soruşturma sürecine girmeden, dava sürecinde şahitlerin dinlediği ve analojik bir yöntemle karara varıldığı görülmektedir. İlamlar dava konusu olayın çözümüne ilişkin kesin bir karar içerirken, hüccetler karar içermeyip sadece var olan bir durumun tespiti niteliğindeki kayıtlardır. Modern noter belgesi niteliğindeki hüccetler herhangi bir anlaşmazlık durumunda tarafların yargı makamına sunabileceği sözleşme niteliği taşıyan bağlayıcı anlaşmalardır. İncelenen defterde derkenar ve hüccet kelimelerinin eşanlamlı olarak kullanıldığı ve mülk satışı, feragat, vasi atanması gibi hallerin derkenarlar ile kayıt altına alındığı görülmektedir. Terekeler ise hem Müslüman hem de gayrimüslimlerin kaydettirmek zorunda oldukları miras mallarıdır. Bu belge hukuki bir miras paylaşımı niteliği taşısa da halkın büyük bir kısmının bu metodu benimsemediği nüfusa oranla kayıtların azlığından anlaşılmaktadır. Kadılık

makamının fiziksel uzaklığı ve mahkeme masrafları bu azlığın en büyük nedenlerindendir. Ayrıca kadıların tereke kayıtlarından haracat adı altında işlem ücreti almaları toplumun özellikle miktar olarak düşük terekelerde kadıya başvurmasını olumsuz yönde etkilemektedir.

Tereke miktarları arasındaki farklar toplumun çeşitli katmanları arasında oldukça fazla gelir farklılığı olduğunu ortaya koymaktadır. Defterde bahsedilen en yüklü tereke 63000 kuruş iken en zayıf tereke ise 500 kuruşluktur. Yine tereke kayıtlarının azlığına benzer bir durum evlenme kayıtlarında görülmektedir. 1879-1882 yıllarını kapsayan defterde sadece bir adet evlenme kaydı vardır. Mihr miktarları bakımından değerlendirildiğinde varlıklı bir aile birleşimine işaret eden evlilik kayıtlarının mihr miktarlarını kayıt altına alan bir belge niteliğinde olduğunu ortaya çıkmaktadır.

Diğer yandan kadılar vakıfların idari işlemlerini kayıt altına almaktadır. Vakıflarda tevliyet devri, mütevelli belirlenmesi, tevliyeti belirsiz vakıflara devri gibi konularda kadı başvuru mercii olarak işlev görmüştür. Tevliyet hakları beratlarla belirlenmiş olup, kadı herhangi bir belirsizlik durumuna berat sahibi kişiye tevliyet hakkını tanımıştır. Bazı vakıflar kayıtlar kadimden beri olarak tanımlanmış olup bu vakıf üç nesilden beri hayatta olduğu görülmüştür. Mütevelli vakfın idaresi ve onarımında mesul olup bu hizmetleri karşılığında *vazife-i tevliyet* adı verilen bir ücret almıştır. Ayrıca zaviyelerde binayı beklemek ve korumakla görevli olan kişilere *vazife akçesi* verilmiş olup, bu miktar vakıflar arasında çeşitlilik göstermektedir. Yine vâkıfın tamire ihtiyaç duyması durumunda bu durum kadıya iletilmiş, talebin kabul görmesi durumunda harcamalar vakıf bütçesinden karşılanmıştır.

Osmanlı Devleti bir İslam devleti olarak şeri hukuku uygulamış, sosyal ve ekonomik hayat bu doğrultuda şekillenmiştir. Şeriat, devlet hukuku ve özel hukukun şekillenmesinde birinci derecede etkili olmakla birlikte, örf ve adet hukukunun da boşluk doldurucu olarak önemli bir rol oynadığı birçok araştırmacı tarafından belirtilmektedir. Özellikle merkezden uzak bölgelerde kanunnamelerin yanı sıra yine şeri sınırlar içerisinde kalmak şartıyla bölgeye hususi uygulamalarında fiili olarak benimsendiği görülmektedir. Şeriatın büyük oranda özel hukukla ilgili hükümler getirip ceza hukukunda açık hükümler getirmemesi kadının bu konuda kesin hükümler vermesini engellemiş, bu nedenle cezaların belirlenme ve icra makamı

kadılık haricinde oluşan bir kurum şeklinde ortaya çıkmıştır. Kadı kararlarında cezanın verilmesini onaylarken bahsi geçen cezanın içeriği ve uygulama biçimi kayıtlara geçmemiştir.

Osmanlı Hukuku uluslararası ticaretin artmaya başlamasıyla zorunlu bir dönüşüm sürecine girmiştir. Özellikle ticaretin artması ve yabancı-zimmi etkileşiminin yoğunlaşması yeni düzenlemelerin yapılmasını bir zorunluluk haline getirmiştir. Özellikle Balta Limanı Anlaşması ve diğer ülkelere uygulanan kapitülasyonların öncül rol oynadığı Ticaret Kanunu ve Ticaret Mahkemeleri değişim isteğinin ticaret nedeniyle ortaya çıktığını göstermektedir. 1839 Tanzimat Fermanı ile birlikte şeri hukukun egemenliğinin kırıldığı can, mülk ve onur emniyetini sağlamaya yönelik düzenlemeler yapılması yoluna gidildiği görülmektedir. Yerel meclisler kurularak dini otoritenin yargı ve milletler üzerindeki hakimiyet alanının daraltılması süreci Islahat Fermanı ile beraber seküler nitelikte bir düzenlemeye dönüşmüştür. Bu ferman Müslüman gayrimüslim sınırlarını tamamen yok etmiş ve Müslümanların büyük tepkisine yol açmış, özellikle Suriye'de Müslüman-Hristiyan çatışmasını tetiklemiştir.

Kadının, Tanzimat öncesi dönemdeki görevlerinden birisi de loncaların denetimini yapmak, şehiriçi güvenliği sağlamak ve merkez ile yerel idareler arasındaki iletişimi organize etmektir. Yeniçeriliğin kaldırılması ve artan ticari ilişkiler bahsi geçen ilk iki görevin kadılık kurumu tarafından verimli bir şekilde yapılmasını zorlaştırmış ve bu görevleri ikame etmek üzere çeşitli birimler kurulmuştur. Mahallelerde denetimi yapmak üzere muhtarlıklar kurulurken, loncaları denetlemek ve ticari ilişkileri denetlemek için ise İhtisap Nezareti kurulmuştur. Bu dönemde idari alanda yeni bir düzenleme gidilerek, Nezaretler kurulup bakanlık organizasyonları teşkil edilmiş ve son olarak 1864 yılında vilayet sistemine geçilerek köklü bir değişim yapılmıştır. Diğer taraftan çağdaş uluslararası sistem açısından değerlendirildiğinde serbest ticaret ve maksimum kar anlayışına tezat bir kurum olarak karşımıza çıkan vakıflar 1826 yılında yapılan bir düzenleme ile Efkaf Nazırlığı'na bağlanmıştır.

İslami Hukuk sisteminin merkezinde yer alan kadılar davaları standart bir kanun (code) sistemi yerine *Kuran, sünnet, icma, kıyas*, hiyerarşisinin benimsendiği kendine has bir usul ile çözme yolunu benimsemiştir. Bu kaynaklardan bir netice

alınamaması durumunda *içtihat* metodu ile soruna bir çözüm bulunmaya çalışılmış, fetva yoluyla yeni çözüm önerileri ortaya çıkarılmıştır. Osmanlı Hukuku'nun uygulamada sorunları büyük oranda *sulh* ve *kaza* yöntemleriyle çözmeyi benimsediği görülmektedir. Kadı, kaza makamından sorumlu olan devlet görevlisi olarak hem halkla devlet arasında bir iletişim noktası hem de önemli anlaşmaların kaydettirildiği bir kayıt makamı işlevi görmüştür. Kadı, kaza işlemini İslam hukukuna göre icra ederken karar kayıtlarında kararların kaynakları belirtilmemiştir. Diğer taraftan halk kendi dâhil oldukları dava ile ilgili müftüden *fetva* alarak dava sürecinde etkili olabilmektedir. Yine burada fetvanın dava için uygulanabilirliği kadı tarafından belirlenmektedir. Bununla birlikte kadı da çözüm bulamadığı konularda merkezden yardım istemektedir. İncelenen dönemde Sivas kadısının bir konuda İstanbul'dan telgraf ile yardım istediği ve cevap aldığı tespit edilmiştir. Kadı kaza bölgesindeki en büyük adli otorite olup direk merkeze bağlıdır. Kadıların göreve aykırı davranma durumunda dahi cezalandırıldığı örnekler nadir olarak görülmektedir.

Kadı kayıtlarından elde edilen sonuçlara göre, kadının görevi herhangi bir soruşturma süreci olmadan sadece şahitler ve beyanlar yoluyla bir karara ulaşmaktır. Kadıya bu süreçte kâtip, muhzır, asesbaşı gibi mahkeme çalışanları yardımcı olmaktadır. Bununla birlikte kadı uzaktaki bölgelere kendi otoritesi altında naib tayin ederek bu bölgelerde de hukukun uygulanmasını sağlayabilirdi. Bu çalışmada incelenen kayıtlarda kadının yaralama, miras, mülk satışı gibi konularda keşif yaptırdığı görülmektedir. Eğer bir yaralama olayı meydana gelmişse bir mahkeme kâtibi, bir zabit ve bir doktor bölgeye gönderilmiş olup, incelemenin sonuçları tüm detayları ile kayıtlara aktarılmıştır. Kullanılan silah, yaranın türü, yaralamanın yeri ve kurbanın son durumu belirtilmiş, olayın nedeni şahitlerin ifadeleri yoluyla aydınlatılmaya çalışılmıştır. Şahitlik mahkeme sürecinde oldukça önem verilen bir kurum olarak kabul edilmiş, bir davada şahit sayısı 53 sayısına ulaşmıştır. Bu noktada şahitliğin birinci derecede önemli olması ve soruşturma sürecinin ikinci planda tutulması hukuk sisteminin akılcılık ve bulgulardan ziyade verilen beyanlara göre sonuca ulaştığını göstermektedir. Diğer taraftan şahitlerin yalan söylemesi ihtimali üzerinde durulmamış, yalancı şahitler tespit edilmesi durumunda ağır cezalar yerine hafif cezalar verilmesi uygun görülmüştür. Davalar kadıya tahsis edilmiş olan

konaktaki odada görülürken, cezaların nerede ve kim tarafından belirlenip uygulandığı konusunda bir bilgi yoktur. Kadı kayıtlarda *katli caiz olup* demekle, bunun metodu ve anlamı hakkında aydınlatıcı bilgi vermemektedir.

Kadı bir davayı sonuca bağlarken davaya müdahil olan tarafların toplumda ne şekilde algılandığını da hesaba katmak zorundadır. Eğer savunma tarafı daha önce yaptığı benzer kötü davranışlarla biliniyorsa kadının bu kişi aleyhine karar verme olasılığı artmaktadır. Bu kişiler *sai bi'l fesad* olarak tanımlanmış ve benzer suçları tekrarlamaları durumunda yaşadıkları muhitten uzaklaştırılmaları kesin çözüm olarak benimsenmiştir. Hukukun temel ilkelerinden masumiyet karinesi ile tezatlık içerisinde olan bu uygulama toplumsal baskı oluşturularak caydırıcılık algısının insanlarda oluşmasını sağlamaktadır. İncelenen defterdeki ilgi çekici hususlardan birisi büyük oranda imam veya hafızların davalarda şahit olarak gösterilmesidir. Bunun nedeni bu görevlilerin mahallede ortak bir kurum haline gelmesi ve merkezi otorite ile iletişimi sağlamalarıdır. İmam veya hafızların şahit olarak gösterildiği davalardan sadece bir tanesi davacının aleyhine sonuçlanmıştır. Bu dava defterde kayıtlı 648 dava içinde olumsuz sonuçlanan tek örnektir. Üç yıllık bir dönemi kapsayan bu süreç içerisinde sadece bir davanın olumsuz sonuçlanması tarafların davaların muhtemel sonuçlardan haberdar olduğu sonucunu ortaya çıkarmaktadır. Bu bakımdan hukuk kurumunun tutarlılığının halkın bu kuruma olan güvenini artırdığı muhakkaktır.

Hem Müslümanların hem de gayrimüslimlerin bir adalet mercii olarak başvurduğu kadılık birimi hukuki olarak hiçbir başvuru ayırdımı gözetmemiş ve hepsini değerlendirmiştir. Dava sürecinde gayrimüslimlerin her iki tarafında Müslüman olduğu davalara şahit olarak katıldıkları ve *şuhudul hal* içerisine kaydedildikleri görülmektedir. Her bir kaydın sonunda yeralan *şuhudul hal* listesi davanın niteliğine göre değişmektedir. Tereke, mülk satışı, yaralama gibi durumlarda şahitler dava konusunu oluşturan mahalleden seçilirken; vakıf kayıtlarında şuhudul halin genellikle mahkeme görevlilerinden oluştuğu görülmektedir. Bu listenin karar sürecinde ne kadar etkili olduğu veya İngiliz Hukuku'ndaki jüri sistemi ile benzer bir işlev görüp görmediği tartışmalıdır. Bu listedeki isimlerin olay mahallinden seçilmesi

ve kayıtlarda bunun belirtilmesi kadının olayın aydınlanması amacıyla bu yönteme başvurduğunu göstermektedir.

Kayıtlarda Müslüman ve gayrimüslim ayırdımı tereke kayıtlarında ortaya çıkmaktadır. Bu örneklerde aşağılayıcı bir dil yerine betimleyici üslup benimsemiştir. Müslümanlar için kullanılan *fevt eden* tabiri yerine gayrimüslimler için *fevt olan* tabiri kullanılmıştır. Müslümanlar gibi gayrimüslimler de fetva alarak istedikleri sonuçlara ulaşmaya çalışmış, bu süreçte müftü eşdeğer bir tutum benimsemiştir.

Kadının benimsediği ve toplum tarafından da kabul gören bir metot olarak *sulh* mahkeme-dışı bir çözüm yöntemi olarak görülmektedir. Kayıtlardaki örnekte kadı taraflara sulh yapmalarının salık verildiğini ve bunun da kayıt altına alındığını belirtmektedir. Daha sonra uzlaşamayan taraflar kadıya başvurmuş ve dava hukuk kuralları çerçevesinde sonuca bağlanmıştır. Sulhun daha çok boşanma davalarında benimsendiği görülmektedir. Evlilik akdinde mihr miktarları belirlenen çiftler, boşanma durumunda kadına verilecek mihr-i müecceli tespit edilen miktarın daha altında bir meblağa indirerek boşanma sürecini hızlandırabiliyorlardı. Bazı durumlarda kadının tüm haklarından vazgeçerek erkekten boşanma yoluna gittiği görülmektedir. Mahkemeye intikal eden boşanma davalarında kadınlar *vekil* kullanmayı tercih etmezken mülk satışı ve tereke durumlarında vekil tayinin daha sık gerçekleştiği tespit edilmiştir. Diğer taraftan gayrimüslim kadınların vekil kullanmadığı ve davalara şahsen katıldıkları belirlenmiştir. Hem Müslüman kadınlar hem de gayrimüslim kadınların hukuki işlem ve kayıt gerektiren anlaşmalarda oldukça aktif oldukları özellikle tereke ve mülk satışlarının kadılar tarafından kayıt alına alındığı belirlenmiştir. İncelenen defterdeki kayıtların % 14'ünün gayrimüslimler ile ilgili kayıtlar olması da bunu ispatlar niteliktedir.

Osmanlı kentinin temelinde mahalle vardır ve mahalledeki temel ilişkiler toplumun genel yapısını anlamak açısından oldukça önemlidir. İncelenen defterdeki mülk satışlarından mahallelerin homojen olmadığı Müslüman ve gayrimüslimlerin bir arada yaşadıkları görülmektedir. Mahallenin intizamından sorumlu kişi muhtar iken, idari bağlantı muhtar ve imam kanalıyla gerçekleşmektedir. Muhtar mahallenin güvenliği, idari bağlantının sağlanması ve mahalledeki ahengin sağlanması açısından önemli bir görev yürütmektedir. Mahalleden göç, ölüm doğum gibi durumlarda

yetkili kişidir. Mahalleye göçen bir kişinin muhtardan onay alması gerekmektedir. Ayrıca mülkünü satan sakinlerin de komşulardan onay alması beklenmektedir. Mahallede yaşanan herhangi bir hukuk-dışı olay durumunda tüm mahalleli sorumlu tutulacağı için mahalledeki nizamın korunması tüm mahallelinin sorumluluğu altındadır. Örneğin; mahallede bulunan ve faili bulunamayan bir ceset tüm mahallelinin zan altında kalmasına neden olacak ve kan parası tüm mahalleliden veya büyük bir alan olması durumunda cesedin bulunduğu yerin yakınlarında ikamet edenlerden tahsil edilecektir.

Mahallelerde dini olarak belirgin bir heterojen yapının yanında maddi olarak güçlü ve zayıf insanlarında birbirine yakın evlerde yaşadıkları görülmektedir. Bu noktada aynı mahallenin bir parçası olsa bile durumu iyi olan ailelerin cami, çeşme gibi binaların yakınlarında oturmayı tercih etmesidir. Yine bu yapılara yakın evlerin diğer evlerden daha değerli olduğu mülk satışlarının konumları değerlendirildiğinde ortaya çıkmaktadır. Mülkler Müslüman gayrimüslim ayrımı yapılmadan satılmakta, bu satışlar kayıtlara aktarılmaktadır. Bir Müslümanın evinin iki yanındaki komşusunun Ermeni olduğu gibi bunun tam tersi örneklerinde mevcut olduğu bilinmektedir.

Halk tarım ve hayvancılık ile geçimini sağlamaktadır. Tereke kayıtları ve menzil satışları evlerin genelde iki katlı olduğunu göstermektedir. Giriş katı *tahtani*, üst kat *fevkani* olarak belirtilmiştir. Evlerde *örtme, kış evi, ahır, samanlık* gibi ek yapılar barındırmaktadır. Örtme evlerin giriş kısmındaki boşluk alanı ifade edip, bu kısım evden eve farklılık göstermektedir. Evlerin yanı sıra şehrin önde gelen ailelerinin konaklarda yaşadıkları terekelerden anlaşılmaktadır. Halkın büyük bir kısmının gayrimüslim veya Müslüman fark etmeden tarım ve hayvancılıkla uğraştığı görülmekte olup; tarla, menzil satışları toprak değişiminin yaygın olduğunu göstermektedir. Yine bu noktada diğer bir hususta İslam Hukukuna göre kadına intikal eden toprakların tereke ile kayıt altına alındıktan sonra kadınların belli bir ücret mukabilinde bu haklarını sattığı görülmektedir. Bu uygulama fiili olarak pek uygun görülmeyen toprakların bölünmesini hukuki olarak engellenmesi amacı taşımaktadır.

İncelediğimiz 52 numaralı sicilde çeşitli unvanların kayıtlara geçirildiği görülmektedir. Özellikle dini nitelikli *seyyid, şerif, el hac* gibi unvanların yanı sıra

efendi gibi eğitimi ve *ağa* gibi iktisadi nitelikleri belirten unvanlar da kullanılmaktadır. Erkek isimleri ve kadın isimleri dini nitelik taşımaktadır. İslam dininin diğer önde gelen şahsiyetlerinin isimleri de oldukça yaygın olarak kullanılmaktadır. Mehmed, Mahmud, Ahmed, Ali, Ömer, Osman ve Ebubekir isimleri oldukça yaygındır. Bunun yanı sıra Sivas'a özgün olarak Turan adının da yaygın bir şekilde kullanıldığı görülmektedir. Kadınlarda Ayşe, Fatma, Hatice gibi isimleri yaygındır, ayrıca Tuti ismi de en yaygın isimlerden biri iken günümüzde bu isim aynı yaygınlıkta kullanılmamaktadır. Müslümanlar ve gayrimüslimler benzer giysiler giymiş olup bölgeye seyahat eden seyyahlar iki millet arasında görsel bir ayrım yapmanın mümkün olmadığından bahsetmişlerdir. Müslüman kadınlar, Hristiyanlardan farklı olarak *başlık* takmışlardır. Nüfusun kesin olarak tespit edilmesi mümkün olmamakla birlikte kaynaklar Sivas'ta 3000 Müslüman hane, 2000 gayrimüslim hane varlığından söz etmektedir. Şehir merkezinde tereke kayıtlarında ortalama üç çocuk olduğu kabul edilirse, şehir nüfusunun 15000 ile 2000 arasında olduğu sonucuna varılabilir.

Gerek İslam dini gerekse de toplum evliliği teşvik etmiş olup, evlilikten önce hem ailenin hem de kadının onayı alınmış, bu süreçten sonra imam, nikâhı kıyabilmiştir. Tarafların anlaşmalarından sonra nişan yapılır ve evlilik adayları *namzed* olarak adlandırılırdı. İmam nikâhı öncesinde erkek kadına *mihr-i muaccel* ve *mihr-i müeccel* vermeyi kabul eder. İslam Hukukunun kapsamı dâhilinde olan mihr uygulamasından ayrı olarak çeyiz ve başlık parası gibi yöreye özgü uygulamalarla da karşılaşılmaktadır. Mihr boşanma işleminin erkek tarafından gerçekleştirilmesini zorlaştırmakta, eğer böyle bir durum oluşursa erkeği maddi yükümlülük altına sokmaktadır. İncelenen defterde tekeşli evliliğin hâkim pratik olduğu görülmüş, sadece bir örnekte iki eşli vaka tespit edilmiştir.

İslam Hukukunda boşanma üç şekilde olmaktadır. Bunlar *tatlik, tefrik* ve *hul*dur. Tatlik erkeğin üç defa boşol demesi sonucunda gerçekleşen boşanmadır. İncelenen defterde bir adet tatlik kaydı olup, erkek bu olaydan pişmanlığını ifade etse de boşanma gerçekleşmiştir. Tefrik erkeğin yetersizliği ve kadının ihtiyaçlarını karşılayamadığı durumlarda kadının bunları belirtip boşanmak istemesiyle gerçekleşir. Diğer boşanma şekli olan hul de ise kadın ve erkek karşılıklı anlaşarak

boşanmaktadır. Bu anlaşma mihr, nafaka gibi konuları da kapsamaktadır. Diğer taraftan askerde şehit olan Müslümanların terekeleri kayıtlara geçmiş olup, tereke sahiplerinin eşlerine nafaka bağlanmasını öngören kararlar verilmiştir. Yine kocası ölen ya da kaybolan eşlere de eski hayatlarındaki maddi durumları temel alarak devlet hazinesinden nafaka verilmesinin kararlaştırıldığı tespit edilmiştir. Yetim ve öksüzler için *buluğ* çağına gelinceye kadar bir vasi tayin edilir ve bu durum şahitler huzurunda bir hüccet yoluyla kadı ardından kayıt altına alınırdı. Yetişkinliğe ulaşan vesayet altındaki çocuklar bu belge yoluyla durumunu ispatlar ve malları üzerinde hak iddia ederdi. Benzer şekilde buluğ çağına girmeden vasileri tarafından evlendirilen kız çocukları da evliliğin kendi izinleri dışında gerçekleştiğini iddia ederek boşanma yoluna gidebilirlerdi.

Sivas Müslüman ve gayrimüslimlerin ticaret hayatına dâhil olduğu, dükkân ve mal satışlarının gerçekleştiği bir şehirdir. Kentte değişik şehirlerden gelip burada iş yapan tüccarların terekelerinin varlığı burada çekici bir ticari hayat olduğunu göstermektedir. Diğer yandan Kafkaslardan gelen Çerkes ve Kars muhaciri gibi göçmenlerin şehre gelmesi ve onların yerleştirilmesi çeşitli idari sorunlara neden olmuştur. Göçmenlerin çeşitli yaralama ve hırsızlık olaylarına müdahil olmaları, yerleşim sürecinde sıkıntılar yaşandığını ve yerel halkla anlaşmazlıklar olduğunu göstermektedir. Yine bu göçmenlere ait tereke kayıtları oldukça yoksul olduklarını ortaya koymaktadır. Tereke kayıtlarında İngiliz lirası, Fransız lirası gibi para türlerinin bulunması uluslararası mal değişiminin kent merkezinde yapıldığı ortaya koymaktadır. Diğer yandan kayıtlarda kentte çeşitli tarikat üyelerinin terekeleri ile karşılaşılmaktadır. Bu tereke sahiplerinin tamamı şehir dışından gelip terekeleri mirasçısı olmadığı için devlet hazinesine aktarılmıştır.

Balmumcı, Basmacı, Cezveci, Çadırcı, Çizmeci, Dülger, Hekim, Kalaycı, Kılıççı, Kilitçi, Kuyumcu gibi birikim gerektiren mesleklerin genellikle Ermeniler tarafından yapıldığı, Müslümanların ise tarım ve hayvancılık ile meşgul olduğu görülmektedir. Diğer taraftan idari ve adli yöneticilerin Müslüman olması bu kesimin toplum üzerindeki otoritesini pekiştirmektedir. Bununla birlikte uluslararası ticaretin artması gayrimüslimlerin zenginleşmesine ve politik haklar talep etmesine neden olmuştur. *Halepkari, İngilizkari ve Dağıstankari* olarak belirtilen malların olması şehirdeki

ticari hayatın canlılığını göstermektedir. Terekeler miktar olarak 60000 kuruş ile 500 kuruş arasında değişirken, günlük hayatta kullanılacak yorgan, döşek, minder, yastık gibi eşyaların bütün terekelerde kaydedildiği görülmektedir.

1858 Arazi Kanunnamesi ve devam eden süreçte yeni idari düzenlemelerin yapılması Osmanlı toplumunda köklü değişimlere neden olmuş, toprağın kullanım hakkını satma yetkisi köylülere verilmiştir. 1864 vilayet nizamnamesi idari yapıyı değiştirmiş merkez idaresini güçlendirmiştir. 1876 yılında Kanun-ı Esasi'nin teşkil edilmesi ve devam eden süreçte Mecelle'nin tamamlanarak uygulamaya geçilmesi Osmanlı vatandaşlığı fikrini uygulamaya geçiriyor ve İslam hukukunun öngördüğü Müslüman ve gayrimüslim ayrımı tamamen ortadan kalkıyordu. Şeri mahkemelerin yanı sıra 1878 yılında nizamiye mahkemelerinin açılması yeni uluslararası düzene uyum sağlama sürecinin sonuçlarından biridir. Dinden bağımsız ve liberal fikirler çerçevesinde şekillenmiş nizamiye mahkemeleri, akılcı bir şekilde olayların incelenmesini ve bu yolla daha makul kararlara ulaşılmasını öngörüyordu. Özellikle modern savcılık makamının eşdeğeri olan; olayları inceleyen ve kamu güvenliğini tehdit eden durumların tespit edilmesi durumunda kendiliğinden harekete geçen idari birimin kurulması özel mülkiyete verilen önemin arttığını göstermektedir. Müsaderenin tamamen terkedilmesi ve vergide eşitlik anlayışının getirilmesi vatandaşlık kurumunun yerleştirilmeye çalışıldığının göstergelerindendir. Diğer taraftan 1879'da Sivas'ta nizamiye mahkemesi kurulmuştur. Bu mahkemenin işleyişi ile ilgili kaynaklarda çeşitli bilgiler yer almakla birlikte bu bilgiler genel niteliktedir.

Sonuç olarak, defterin yazıldığı dönemin politik karmaşası göz önüne alındığında Kanun-ı Esasinin ilanı, I. Meşrutiyet ve 93 Harbi gibi önemli olayların toplum üzerindeki etkisinin sosyal karmaşa bağlamında sınırlı kaldığı anlaşılmaktadır. Yoğun bir Ermeni nüfusuna sahip Sivas şehrinde mülk, dükkân ve tarla satışları göz önüne alındığında herhangi bir düşmanlık algısının olmadığı anlaşılmaktadır. Müslümanlar, Hristiyanlar ile aynı mahallede yan yana evlerde yaşamaktadır. Yine mahkemelerde Müslümanlar gayrimüslimler lehine, gayrimüslimlerde Müslümanlar lehine şahitlik yapmış beraber şirket kurmuşlardır. Bununla birlikte yaralama ve öldürme kayıtları toplumun şiddetten yoksun olmadığını göstermektedir. Bu davalarda kurbanlar gayrimüslimler olsa da, bu olayların toprak ve hırsızlık gibi

nedenler meydana geldiği tespit edilmiştir. Kadının keşif heyetinde yer alması zorunlu olan doktorun Ermeni olması da yine gayrimüslimlerin bürokrasi içinde yer aldıklarının ve toplumda olumlu bir algıya sahip olduklarının göstergesidir. Tereke kayıtları gayrimüslimlerin ortalama olarak Müslümanlardan daha zengin olduklarını ortaya koymaktadır. Bu çalışmada incelenen 52 numaralı şeriyye sicili sosyal hayatın üç yıllık bir dönem bazında anlaşılabilmesi açısından önemli olmakla birlikte, çok hızlı bir değişimin gerçekleştiği 19. yüzyılda Sivas'ta ne gibi idari, ekonomik ve sosyo-kültürel değişiklikler olduğunu anlamak için yeterli değildir.

C. TEZ FOTOKOPİSİ İZİN FORMU

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