

DEDE CÖNGİ'S RİSÂLETÜ'S-SİYÂSETİ'Ş-ŞER'İYYE: A CONTEXT
ANALYSIS THROUGH ITS TRANSLATIONS IN THE SIXTEENTH AND
THE NINETEENTH CENTURIES

A Master Thesis

by

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Graduate School of Economics and Social Sciences

Of

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ABSTRACT:

DEDE CÖNGİ'S RİSÂLETÜ'S-SİYÂSETİ'Ş-ŞER'İYYE: A CONTEXT ANALYSIS THROUGH ITS TRANSLATIONS IN THE SIXTEENTH AND THE NINETEENTH CENTURIES

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This thesis intends to analyze the manuscript of the 16th Century scholar, müderris Kemalüddin İbrahim bin Yahşi, Dede Cöngi Efendi's Risaletü's-Siyasetü'ş-Şer'iyye; which is also known as "Siyasetnâme". The main purpose of such text which reflects Ottoman State's perception of administration in classical age was discussed. Moreover, Şeyhülislam Meşrebzâde Arif Efendi's motivation of re-translating and interpreting this text despite the presence of several translations from Arabic to Ottoman Turkish is reviewed. First of all, the political context and academic discussions in which this text emerged is observed. Prior to a comparison between the original text and translations, the manuscript was analyzed in the own historical context. The text's aspect of *siyâsa* is observed considering its affiliation to the discussion of *örf* and *Shari'a*. Lastly, the reasons for the emergence of an interpretation of the text by the highest level ulema member, Şeyhülislam, in the 19th Century were argued in addition to a discussion on how this text was utilized in the context of legal reforms in Ottoman Empire.

Keywords: Dede Cöngi, örf, urf, Sharia, Meşrebzâde, siyâset, siyâset-i şer'iyye

ÖZET:

DEDE CÖNGİ’NİN RİSALETÜ’S-SİYASETİ’Ş-ŞER’İYYE’Sİ VE TERCÜMELERİ ÜZERİNDEN 16. YY VE 19.YY BAĞLAMINDA ANALİZİ

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Bu tez, 16. yy âlimlerinden Kemalüddin İbrahim bin Yahşi, daha çok bilinen ismiyle Dede Cöngi Efendi’nin, “Siyasetname” olarak da anılan, dili Arapça olan Risaletü’s-Siyasetü’ş-Şeriyye’yi incelemektedir. Yazıldığı yüzyılda hangi amaca hizmet ettiği ve mevcut çevirilerine rağmen, klasik dönem Osmanlı Devleti yönetim anlayışını yansıtan bu eserin Arapça’dan Osmanlıca’ya 19.yy’da Şeyhülislam Meşrebzade Arif Efendi tarafından tekrar çevrilmesinin sebeplerini araştırmaktadır. Bilinen üç çevirisi olan bu eserin, öncelikle yazıldığı yüzyılda içeriği itibariyle hangi siyasi ortamda ortaya çıktığı ve hangi akademik tartışma ortamında doğduğu tartışılmış, daha sonra, metnin çevirileri ve orijinalini içeren bir karşılaştırma yapılmıştır. Metnin, siyasetin meydana getirilmesinde örf ve Şeriat etkileşimi tartışmasına nasıl yaklaştığı araştırılmış, daha sonra 19. yy’da Meşrebzâde tarafından yapılan yorumlu çevirisine dayanarak, dönemin hukuki reformları çerçevesinde nasıl araçsallaştırıldığı tartışılmıştır.

Anahtar sözcükler: Dede Cöngi, örf, şeriat, Meşrebzâde, siyâset, siyâset-i şer’iyye

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CHAPTER I

INTRODUCTION

When scholarship discusses the role of Islamic law in the Ottoman context two basic ideological trends become predominant.. The first aspect regards Islamic law as a timeless framework for any Muslim State which would determine the basic principles of legislation and jurisdiction. This aspect considers Ottoman law as a pure practice of Islamic law, the rulers as great soldiers of Islam against *Darü'l-Harb*, establish an imaginary hierarchical structure of crimes and punishments. In this framework the superiority of Muslims is uncontested.. This perception more or less establishes the frame of theological studies or feeds primitive nationalistic motives. On the other hand, the second trend discusses the Ottoman society in terms of its loan aspects from previous empires. In this exegesis Byzantine and Turco-Mongol traditions played a very important role. In terms of Islamic/Ottoman law though, this discourse views the ottoman legal system as something alien to its Islamic heritage. It is as odds with the Islamic past, the Ottomans considered to be part of their culture. Recent developments in research tend to overcome this dichotomy between the two

main analytical models. This conception of the Ottoman administration explores historical contexts in which the new ideologies are established, new ideas employ many elements such as the Shari'a, örf, economy, provincial structures, newly promulgated laws for trade, the State's perception for sexual interaction, cultural interaction. Not only legalization change the character of society, also aspects for this legalization and political motivations for or against them, transform the society, classes and markets. In a complex structure such as this, clarifying the pure structure of political organization and understanding the reasoning behind it, is based upon the ideas deducted from primary sources such as manuscripts, specifically the ones that follow the tradition of *Nizamü'l-Mülk* which emphasizes the basic interaction between legacy and legitimacy through the amount of the influence of the old Islamic legal tradition over the politics of the Ottoman Sultans.

Perceptions for the interaction of Islamic and Ottoman law are various. The discussion of Sharia's amount of influence on Ottoman Law is controversial, thus, the discussions on the ideological perspective of Ottomans in terms of administrating and financing are based upon this question of the organization of society with a complex interpretation of Islamic law. At this point the question of the domination of "örf" emerges due to the academic and politic conflicts surrounding it among Ulema and administrators. Therefore, for a profound comprehension of this correlation, assessment through various primary sources written by those scholars is necessary. Considering the tradition of *Siyâsetnâme* in the context of Ottoman Empire, the Dede Cöngi's (d.1567) *Siyâsetnâme*; "Risâlatü's-Siyasetü's-Şer'iyye" which this study

concentrated on, deserves our attention. Exploring the reasoning and argumentation of the Risale would us useful insight to the historical and political context of the sixteenth century ottoman society similar to Lütfi Pasha's *Asafnâme* who was an example for contemporaries of Dede Cöngi's. The significance of Dede Cöngi's Risâle could be revealed with a simple comparison with *Asafnâme*. In a general sense, *Asafnâme* is considered as a script of political counseling, addressing Ruler's viziers, their relationship with Sultan along with depicting ideal politics on treasury.¹ However, Dede Cöngi's Risâla has a different approach Utilizing references to works of Islamic scholars an apparent effort is made to consolidate the Sultan's law to the Shari'a through its emphasis to Siyâsa Shari'a. Thus Dede Cöngi legitimizes sultanic authority, through the Shari'a law. The Risala also upgrades the position of judges in the Hanefi dogma and allows the extensive discretionary power of the ruler on punishment. Therefore, Dede Cöngi's Risâla aimed to emphasize the hierarchic interaction of the ideology and authority in Ottoman State (in which Sultan is appointed to practice siyâsa âdile (just siyâsa) with the Reaya, through super structural elements such as Shari'a law and punishments.. This effort is even more interesting if we consider the fact that Dede Cöngi became a scholar, a müderris, a müfti later in life, -in the age of sixty he qualified as a müderris. His biography is not known in detail, however, his attempt for establishing an ideal

¹ For further information see Ahmet Uğur, *Osmanlı Siyasetnameleri*, Milli Eğitim Bakanlığı Yayınları, 2001; Ahmet Altay, *Klasik Dönem Osmanlı Siyasetname Geleneğine Genel Bir Bakış*, Turkish Studies, International Periodical for Language, Literature and History of Turkish or Turcic, Vol 6/3 Summer:2001, pp. 1795-1809, Turkey

system for jurisdiction and his perception of örf implies his affiliation with the ideology promoted by Ebussuud and his circle. His emphasis on Sultan's authority balanced with Shari'a law, his interest on penal law, and the development of Hanefi jurisprudence on administrative ordinances reflect Dede Cöngi's sense of structure of state and social organization.

The interesting fact about this manuscript is that it was recognized as applicable to subsequent centuries' conjunctures. There are three known translations of this Risâla. Although the date of publications are not clear, it is clear from the context of the Risâla that it was part of the political atmosphere of Süleyman's era.

The Original Risâla was written by Dede Cöngi in Arabic. The Risâla has three well known translations-interpretations in Ottoman Turkish. The text was firstly translated by Seyyid Sebzî Mehmed Efendi (d.1680). Sebzî Mehmed was a scholar, who was born in Bursa, a müderris worked in famous medreses such as Bursa Ali Paşa Medresesi (1652), Müfdi Ahmed Paşa Medresesi, Beyazid Paşa and Ishak Paşa Medreseleri, lastly, in Hazret-i Emir Medresesi.²

Sebzî Mehmed's version of the text is short and written in a plain language. As he noted in the introduction of his version of the Risâla, he translated this Risâla after his friends encouraged him. (Sebzî Mehmed 2-27) His translation, is probably

²² He was a poet too, had a diwan, died of a peach seed. (Süreyya, 1996-5: 1484) Ahmet Akgündüz, Kanuni Sultan Süleyman Devri Kanunnameleri, Part 1: Merkezi ve Umumi Kanunnameler, Dede Cöngi Efendi'nin Siyaset-i Şer'îye isimli Eserinin Tercümesi (Siyasetname), İstanbul, Ocak 1992, p. 122-212

connected to his very own affiliation to *Kadızedeli movement* at his time.³ Sebzi's affiliation with the Kadızedeli movement makes the choice of this Risale to translate an interesting issue. We have to note however that Sebzi kept to the text closely and refrain from commenting or enriching it.

In addition to this, according to our research, this version of the text does not include interpretations, very close to the original version in terms of meaning. Sebzi Mehmed Efendi's version we used here in our comparison of texts, takes place in Manuscript Collection of National Library in Ankara, with the archive number of 06 Mil Yz A 9124 with 26 pages, with Talik handwriting.⁴

Second translation belongs to Ismail Mufid b. Ali el-Attar, (d.1802) translated this text, at the from Arabic in one Mukaddime (Introduction) and three chapters, "*Terceme-i Siyasetü's-Şer'ıye*", Istanbul Büyükşehir Belediyesi, Atatürk Kitaplığı, the manuscript collection of Osman Ergin kept with the archive number of 879/11. Even though his language is more ornamented than the first translation, his text is more loyal to the original, a direct translation of it.⁵

³ See (Terzioğlu,1999) However, a different aspect for understanding of the time of Kadızedelis could consist a broader discussion on their approach on science. Him translating this Risâla, might seem like this attempt brings about a contra argument for Risâla's open perspective, necessitates a different approach to the Risâla itself. See (El-Rouayheb, 2008)

⁴ Manuscript Collection of National Library in Ankara, with the archive number of 06 Mil Yz A 9124, Varak 2-27.

⁵ (Akgündüz, 1992:123); Osmanlı Müellifleri I, 243, Istanbul Uni. TY. 1298, Vrk 1/b-2/a

The last version which is use due to its context and the significance of its interpretetor's in 19th Century history, belongs to Şeyhülislam Meşrebzâde Mehmed Ârif Efendi (d.1858). Ârif Efendi was a scholar, müderris, and he differed from the other translators as he was a Şeyhülislam and due to his personal contribution to reformation process. He was appointed as müderris in 1816, Şeyhülislam deputy and Muhallefat Kassamlığı in 1820, Galata Kadiliği in 1835, Mekke pâyesi in 1836, Fetva Eminliği in 1843 (he translated Dede Cöngi's Risâla around this time), became a member of Meclis-i Vâlâ-yı Ahkâm-ı Adliyye in 1845, and finally appointed as Ottoman Şeyhülislam in 1854. (Akgündüz, 1992:124)

Compared to Sebzî Mehmed's, Mehmed Ârif Efendi's text is longer, more detailed and annotated Arif uses the expression "*Mütercim-i Fakir der ki*" to introduce his own argumentation. He also expanded Dede Cöngi's references, specifically the Hanefî ones. Ârif Efendi stressed the Sharia influence on the parts he his translation.

Meşrebzâde Mehmed Ârif's transcription published in is organized in 126 articles and seven chapters; Arif Efendi added a Mukaddime and a Hatime on bribery that will be discussed separately. The Faslun Fi't-Ta'zir" which Şeyhulislam Ârif Efendi did not translate. (Akgündüz, 1992: 127-173)

He did not translate the last chapter, unlike Mehmed Sebzî and Ismail Mufid Efendi. First chapter's coverage is on the legitimacy of "siyasa" which was based on various evidences as Holy Qur'an and Sunna. Second "chapter" handles the situation of the borders of authority of judges and governors. Third chapter indicates the

representation of the implication of authority by judges and governors. Fourth chapter is on imputation and just “siyasa”. Last chapter, which Ârif Efendi did not translate, is on ta’zir issue.

Most significant studies on Dede Cöngi and his works are Ahmet Akgündüz’s Dede Cöngi Article in Encyclopedia of Islam (Türkiye Diyanet Vakfı) and transcriptions of Meşrebzâde Ârif Efendi’s translation of Risaletü’s Siyâseti’ş-Şer’iyye in his collection of Ottoman Kanunname’s (Akgündüz, 1991;1992), which was extensively used in our study. In addition to this, in the same volume of Süleyman’s Kanunnâmes, Dede Cöngi’s “*Risala fi’l-Beyti’-l-Mâl ve Masarafiha*”⁶ was also summarized by Ahmet Akgündüz which is beneficial in terms of understanding Dede Cöngi’s ideas on property and financing.

A recent Master thesis titled “Osmanlı Siyâsetnâme Geleneği İçinde Dede Cöngi’nin Yeri ve Eserin Tahlili” by Abdullah Sabit Tuna provided the translation of the text from Arabic (also used an Arabic manuscript) to modern Turkish and analyzed the text within the tradition of Siyâsetnâmes.(Tuna, 2011) Prior to our study, Tuna presented a clear translation of the manuscript, the life of Dede Cöngi Efendi, and presented a discussion on siyasa shari’a, analyzing the use of “siyasa” as a basic principle of public authority through Islamic law. Using a different methodology than our study, Tuna determined the basic evidence in the Risala and how they were utilized in the text. The perception of Tuna’s work and our study

⁶ The transcribed summary is published in Ahmet Akgündüz’s Osmanlı Kanunnameleri : Kanuni Devri, Vol. I, pp. 213-254; Süleymaniye Kütüphanesi, Esad Efendi, No:3560, Vrk.1/b.

differs at this point. Firstly, our study aims to settle the discussions in Risala into its own historical context in the 16th century, expore the basic intellectual discussions of that era, and discuss Dede Cöngi's stand in the intellectual discourse of the century. These issues were only mentioned in passing in Tuna's study. In addition, Tuna did not compare the original with its later ottoman translations. What we endeavor to do in this thesis was to understand the reasons a reformist âlim in the post-Tanzimat era like Meşrebzâde chose this text to translate and expand. In fact, starting from the original Risala and its translations, we endeavored to question the reasons the text was appealing in different historical contexts. Apart from the focus, there is another point of departure in our analysis from Tuna treatment of Dede Cöngi's Risala. Tuna in his analysis of the role of administrators and kadis tends to argue that the text favor the first over the second. A careful read though of Dede Efendi's argumentation and his strenuous use of hanefi sources prove Dede Cöngi was actually defending kadi's position through his school's jurisprudence. Empowering the kadi, Dede Efendi not only endorses the efforts of Ebussuud along the same lines but also manages to curve imbalances discretionary punishment and örf with Shari'a. Thus, the legitimization of central power would be re-produced through örf. Moreover, these predictions are meaningful considering the political atmosphere where Sultan was trying to establish an absolute authority and highest kadi of the Empire was behind him. Also for the 19th Century's circumstances, a Risala purposing a legitimacy level with Shari'a is translated-interpreted, when discourse for reforms was grounded on Shari'a.

In Uriel Heyd's detailed, extensive study on Old Ottoman Criminal Law there is an analysis on the concept of *siyâsâ shari'a*. Heyd discusses within this framework Dede Cöngi's Risala, and the impact Ibn-i Teymiyye had in it. Enver Behnan Şapolyo in his *Mezhepler ve Tarikatlar Tarihi* (History of Sects and Orders) (Şapolyo, 1964) analyzed some of Dede Cöngi's attributions to the organization of Ahî. Furthermore biographical material is encountered in *Evliyâ Çelebi* (Çelebi, 1996:103-104), *Katip Çelebi* (K. Çelebi, 1980) and *Nev'izade Atai's* narratives. (Nev'izde/Mecdi, 1989:119-120) Derin Terzioğlu (Terzioğlu, 1999; 2007), in her assesment for the translations of Ibn-i Teymiyye's *Siyâsetü's-Şer'iyye* she mentioned Dede Cöngi's *Siyâsetnâme* and discussed presumable possibilities for the context in which it was written, due to what circumstances necessitated.

Apart from analyzing Dede Cöngi's *Siyâsetnâme* within its historical framework, it is a paramount importance to look into the translation of the text in the 17th and 19th centuries.. A careful comparison of the four texts has led to very interesting conclusions about the nature of translation of earlier texts in ottoman intellectual history. More often than not the translators though their intervention to the text has revealed their own ideological and societal needs. With regard to the last translation in particular done by Meşrebzâde Ârif, who was a Şeyhülislam, and very much involved to the reforms of the second half of the 19th century, his re-interpretation of the text provide us with useful insight about intellectual discourse at his time. Our study endeavors to fill in this task in order to apprehend the

legitimization of new orders which the Sultans and how/why Ulemâ as a clique contributed to it.

One of the major reasons of the existence of original Risala and this new translation is the parallel difficulties of fitting in renovations, to traditional contexts, in order to legitimize contemporary regulations. However, all those terms refer to different meanings in those two different contexts, which will be observed in this study.

The second chapter on “The sixteenth century and the notion of absolute authority” explores the reasons why Dede Cöngi needed to write such a text. In order to conceive the theoretical basis of the argument, which Dede Cöngi discussed in his Risala, it is essential to look through the discussion of the Sharia vs. Örf. Dede Cöngi was supporting to empower the status of örf, at the same time, he implied the necessity of the accordance between Shari’a and Ottoman örf laws. By courtesy of the necessity to legitimize new attributions to the notions of order for Süleyman the Magnificent appointed Ebussuud as Şeyhülislam to put his örf laws on the way of Sharia, through his work. Obviously, Dede Cöngi took place in this process with his Risala and positioned himself inside the major intellectual controversies of the period between Ebussuud and his political/religious “companions”. The need for this Risala was also apparent in the efforts to transform the kadi’s office. All those issues consider the renovations were to put to change. The common problematic issues of Ottoman Empire in 16th Century and the 19th Century is that the re-organization of the office of *kadi*, by all means; salaries, system for appointment, education etc. was

due to a change in perceptions of jurisdiction in both ages; the 16th Century. In the second chapter, Dede Cöngi's biography is provided. Subsequently, an assessment on *siyasa shari'a* is made and the text was analyzed through the original in Arabic. The different parts of it are compared to the translations to give a sense of what the translators needed to clarify and add.

In the third chapter of the thesis, the re-interpretation of Meşrebzâde is discussed based on the historical background of the 19th century. Meşrebzâde's interpretation of the Risala is considered in this chapter in order to understand the affiliation of new legislation activities (such as promulgating new-modern laws, establishing modern courts and councils) vis-à-vis Dede Cöngi's approach on the Shari'a, and his effort to alleviate conflict between örf regulations and religious law. By örf in 19th century context, new kanunnames and legal texts were intended to be referred to. Specifically when the issue of provincial transformation is considered as a matter of discussion, the formation of new-modern councils and courts preserving traditional Shari'a structures such as Shari'a courts become essential. The regulations on jurisdiction of the judges demonstrated a parallel aspect to Dede Cöngi's ideas.

CHAPTER II

THE SIXTEENTH CENTURY AND THE NOTION OF ABSOLUTE AUTHORITY

2.1 The Discussion of the Shari'a vs. örf and the Sultanic Jurisdiction

In order to understand the ideological dynamics of 16th Century which Dede Cöngi was personally and professionally a part of; it is essential to bring about the change in supra-structures of the authority in Ottoman Empire. Legal changes are observable, especially in terms of an ideological renovation in 16th Century. Interestingly, our original manuscript and different translations-interpretations of it coincides with times of change. The original is written in 16th Century under the reign of Süleyman the Lawgiver, a sultan who is illustrated nothing more than Messiah, acclaimed a new political paradigm based upon Sultan-Caliph through his character and the whole systematic of his reign emerged from it. Not as simple as it seems, however the necessity of a centralized structure in order to preserve sustainability throughout the emergence of the emperorship was established around

the ideology of the absolute leadership of Kanunî. Consequently, in the historical context of Dede Cöngi's Siyasetnâme; it is essential to discuss basics of the Ottomans understanding of Islamic law and how they practice it, along with how they legitimized their ideology thorough this basis.

Halil İnalcık in his "Introduction to Ottoman Law", highlighted that "Ottoman state, established a legal order exceeding Shari'a Law" (İnalcık,1993:319) This expression of "exceeding" is (and was) controversial and for some historians, especially by Islamic scholars might be considered unacceptable. However, especially at 16th century when the boundaries reached an enormous extent, the idea of governing in Ottoman Empire was needed to be structured thoroughly. This "transcendence" was depicting not only the legal structure or jurisdiction in 16th century, but also power relations of the dynasty and the notion of authority during the Ottoman's "Golden Age". The controversies of the age, derived from this "transcendence", in various areas, one of the major reasons for this administrative chaos was expanding boundaries. The more success was gained from conquests, the more the tribal customs were abandoned. Those traditions had been a matter of discussion on the argumentation and historiography to legal structure of the Ottoman Empire which was based upon the discussion of "Shari'a vs/along with/and Örf" which is necessary to mention, since this conflict established the basis of Dede Cöngi's argumentation, and the reasons for him writing this text.

A whole jurisdictional structure is based upon a basic separation of laws of God and the laws of man (*huquq Allah* and *huquq al'-ibad*) was followed by the state.

Protecting both, state is the practitioner of laws of God. “The difference between these two sets of laws is that the laws of God, which principally cover five types of serious crimes⁷, are considered particularly severe, and hence are assigned to be executed by the government, the idea being that the state is excluded from dealing with the rest of law.” (Gerber 1999:45) Those five crimes are essentially the basics of both Örf and Shari’a, in principle. Consequently, metaphysically Shari’a is the law of God, its exact boundaries are not to be known.(Imber, 2004:37)

The conflict at this point is on the influence of Shari’a on Örf. Süleyman the Lawgiver and his ulema how he instrumentalized Örf laws through *Kanun*, ever to be anachronically described as “secular “ (Heyd, 1973) These laws deriving from the tribal experience created ideological sphere where the possessor of the power has the ability to legitimize himself, and still represent the loyalty for fundamental Shari’a. Halil İnalcık indicates the origins of Örf outreaches all the way to legal traditions adopted by Turcic and Mongol tribes in Middle Asia, which survived through cultures, “Türe” or “Yasa”⁸.(İnalcık, 1993:323)

⁷ Slandering (*kazf*), adultery (*zina*), theft (*sirka*), shirb-i hamr (consuming wine/alcohol) and kutta-i tariq (robbery on the road).

⁸ Confronting both perspectives on Shari’a influence on Örf (Shari’a against Örf or Örf deducted from Shari’a) Umit Hassan indicates that “Örf, is the order of swords and is *töre* and *yasa*” (Hassan, 2001:166) referring to Ottoman’s tribal roots, quoting from İnalcık (1993).

“Tursun Bey: mücerred tavr-ı akl üzere nizam-ı alem-i zahir için, mesela tavrı Cengiz Han gibi olursa, sebebine izafe ideler, siyâset-i sultani ve yasağ-ı padişah derler ki urefamızca ana örf derler” (Hassan, 2001:171)

Tursun Bey depicted the perspective very well, referring to transference of inheritance from history and make use of it for the establishing of ‘new’ order. (Hassan 2001:172) According to Hassan the equation of ulu’l-emr to hüküm and ruler is an oversimplified description of conservative Islam, this equation led to admitting state through politics can easily be considered Islamic and the kanun of state can be based upon Shari’a. (Hassan, 2001:173-174) Hassan points out that this approach makes the idea itself a “contradiction”, however, dynasties ruling Muslim including Umayyad, tried to legitimize the dynasty incorporate it in Islamic terms by the effort of Ulema, the main aim was to index land to an “appointed” private property and interpreting dynastical efforts on the land-agriculture into the same aspect, and protecting it through law. (Hassan, 2001:174)

Moreover, Hassan (Hassan 2001:174) criticized Akgündüz’s insisting effort on “proving that Kanun is entirely based upon Shari’a” and asked a very “implicit” question: “How on earth can Turcic and Mongoli traditions be “definitely inside the boundaries of Shari’a? Were they referring to Shari’a even before Islam?” (On Islamic platform, “kanun” had been established through the progress of state, land regime and the taxation relations. (Umit Hassan, 2001:177) At this point, İnalcık rightfully acclaimed that Fatih’s Kanunname were issued in order to strengthen the state authority and were based on old Turcic-Mongol legal traditions, more than an

Islamic base. İnalçık's sources pointed out as evidence Seljuk, Melikshah and Ilkhanid kanunnames. His "Teşkilat Kanunnamesi" concluded the Örf regulations on state organization thoroughly. All nominations, relations of state employees with Sultan, promotions were determined by Sultan's will not by Shari'a (İnalçık, 1998:329).

Makrizi on the other hand mentions that one of the Muslim Khans of State of Golden Horde; Berke (Baraka) due to his authority on Egypt and Syria, provided a dominancy of *yasa* on the areas of state sovereignty according to İnalçık (1998). In this period, in Near East, the competition between *yasa* and *Shari'a* was transformed into one between ulema and beys. Even on the assassination of Ulug Bey, Ulema who support Shari'a were supposedly involved. (İnalçık, 1998: 323)

Moreover, the function of Ulemâ is significant, not only for the legitimization of the central absolute power, but also their effort to eliminate problems between örf and Shari'a to create a workable legal framework for society. Since the Ulemâ in Ottoman Empire is considered a "class" in for their role in the development of jurisprudence could be emphasized as a class behavior.

The best example would be, Süleyman the Lawgiver's Şeyhülislam Ebussuud's efforts on organizing land tenure: "... Ebussuud, following Şeyhülislam Ibn Kemal and other Ottoman Şeyhülsilams before him, attempts to interpret the nature of state ownership of the land and peasants' possession rights in terms of the notions of Islamic jurisprudence (İnalçık, 1998: 156) Law related to öşr and its payment comes

into mind. And İnalçık underlined; “this tithe land was granted to the Muslims as their private property. It is legally their freehold property, to dispose of as they wish the same manner as the rest of their properties.” The tax is a reflection of restrictions in Islam towards subjecting Muslims to “haraç” consequently only the tithe imposed (İnalçık, 1998:157).⁹

Despite the importance given to the omnipotence of Sultan alone, the system set up by him could not be operational without the active support of the Ulema. “Ironically as the Ottomans became weaker after sixteenth century, their role as the bulwark of Islam did not diminish.” (Gerber, 1999:50) Quite to the contrary, it was the Ottoman state alone that saved Islam in the Middle East from being overrun by an aggressively expanding Europe after sixteenth century.” (Zilfi, 1983:318–364)

2.2 The Ruler as Imam: Süleyman the Magnificent and Ebussuud’s Contribution to the Representation of Power in the Sixteenth Century

"God will choose a shepherd to protect the flock and the path-this path is Shari’a-this flock will choose, should be determined by this shepherd." (Yosmaoğlu, 1997:512)

⁹ Mawardi was referring to *maslahat* (public interest) in the framework of just-administration through *hıfz el-kavanin*, “Including fiscal regulations, the term *kanun* is transformed into a term refer to the meaning of Sultan’s “*hükm-ü vaz*” (Hassan, 1998:177; İnalçık, 1978: 558-559) due to another document İnalçık interpreted.” Ebussuud’s emphasis on the *haracî* character of *mirî* land, reconciling the Ottoman and Islamic traditions. Some of the early authorities held that the religious status of the landholder determined the nature of land possession. Abu Hanifa remained *haracî* even if acquired later by a Muslim. In general, Ottoman jurists followed this opinion; but some jurists held the status of the land was ultimately decided by the Imam or Caliph.” And continued with Ottoman definition of *miri*, which were the lands belong to all Muslims or to the Imam.(İnalçık, 1998:159)

The metaphor of “shepherd” when depicting the relation between Süleyman and Reaya is up to the point as since Shari’a is a law which has an intensive interference in social life praised the absolute hierarchy. Süleyman was given the epithet “Lawgiver” because of his agent’s efforts, the ulema to create workable administrative ordinances within the sphere in the Shari’a.

Along with formation myths and ancient traditions due to the Turcic roots, one of element that legitimizes Ottoman hegemony was definitely Ebussuuds efforts; he developed the theory that the Sultan Süleyman was nothing less than the universal caliph ¹⁰of Islam. “It is also not irrelevant to note in passing that Süleyman the Magnificent saw himself not only as the caliph but even as a messiah, *mahdi*, a very rare self-portrayal Muslim ruler.” (Gerber, 1999:53)

The superiority of Süleyman’s rulership and its instrument of it “Örf”; was being praised as part of Sultan’s legitimization. Süleyman’s material and insisting approach to acceptance of his sovereignty through Western European artist is a simple however a symbolic example. It is conceived that in order to convince his European rivals, Pope and Habsburgs he benefited from non-Islamic dynastical elements such as his famous depiction with his gorgeous diamond headgear as a non-Islamic royal symbol "Promoting the ideal of magnificence as an indispensable attribute of sovereignty, Ibrahim encouraged the sultan to indulge himself in jewels by presenting him with expensive presents. For example, in 1525, his gifts to Süleyman

¹⁰ Cornell Fleisher’s work (1990:165) has illustrated the world of Kanuni as Messiah, how he was seen as the owner of the victory of Islam, which already has arrived.

from Cairo included a gold cup inlaid with enormous diamonds emeralds, rubies and pearls worth 200,000 ducats. (Necipoğlu, 1989:405-406) Süleyman I. was naturally symbolizing himself, as a ruler who had been as great as he was, it was due to his great rivalry with Holy Roman Emperors Charles V of Habsburg and his brother Ferdinand I; Charles' son Philip II of Spain, and such, described his greatness among them and any success was another contribution to his Messiah character.

An example for understanding representation of Sultan's presence and how Shari'a's principles were implemented at a personal level are the references to Süleyman in fatwas. "...Fatwas that mention Sultan indirectly and in passing references may reflect more deep seated perceptions by the general population. In such Fatwas the Sultan is depicted neither as a full-fledged caliph, nor as an ordinary Islamic amir, but as something in between, he was a ruler, usually under the Iranian term *padişah* but he was ruler of all the Muslims, or of all of Islam (a normative self-perception, of course, rather than a fact). Thus, in one fatwa the sultan is titled *padişah-ı islam*, ruler of islam, an alternative was *padişah-ı âlempenah* the ruler who is refuge of the world, yet another alternative being *padişah-ı ehl-i Islam*, ruler of the people of Islam." (Gerber, 1999:53-54) At the age of Süleyman I, his father Selim I.'s rivalry with Safavids for becoming the only ruler of *darü'l-Islam* led to a rivalry over legitimization that presented the Ottomans or the only force against Safavid heresy. This heresy discourse, continued with the rivalry with Sunni Mamluks in 1516 for their alliance with Safavids; the adoption of Islam and the Islamic legal and literary traditions allowed the Sultan to sanctify his role as war-leader. (Imber, 2005:100)

Şeyhülislam's role is also essential since classical function of his office was to make important nominations of kadi, mufti and officials of the mosques. (Gerber 1999:60) He was appointed to this role, in the name of Sultan. The custom of jurists in the pre Ottoman Middle East to abstain from government service became obsolete with the rise of the Ottomans and from then on the ulama in general and among them the muftis were salaried functionaries. Thus, despite the bureaucratic shift under the Ottomans, Islamic law remained jurists' law until the reforms of the nineteenth century. (Gerber: 199:61) Independent scholars such as Birgivi, Hamid al-Imadi and Ibn-i Abidin were not truly independent either. Their criticism derived from their strong sect relations. Consequently, if any, the independence of ulema was partially due to their position, their affiliation to politically powerful and effective social networks.

Ebussuud composed an inscription for Süleyman, "Master of all lands and the shadow of God over all nations, Sultan over all the Sultans in the lands of Arabs and Persians. (Black 2001:205) This holy description referred to many attributions for Süleyman, however, the most significant one for this period was the religious leadership attribution: "the Caliph of the whole world". "I am Süleyman in whose name the hutbe is read in Mecca and Medina"(Inscription 1538; İnalçık; 1973:41, Black, 2001:206) Although, Mawardi never accepted this conception of "halife" since "halef" meant "successor" and Allah could never have a successor, Ebussuud gave the title Sultan he mentioned "Caliph of God must ..." ; he "invented" a

succession system where caliphate was a title could be transmitted from father to son. (Imber, 2004:116-117)

Ebusuud's most significant contribution to this process was to systematize the process of issuing fatwas. The task of receiving and drawing up the questions fell to his clerks, with this division of labor the volume of fatwas increased. (Imber, 2004:20) His aim, was to issue fatwas in a style that was easily accessible to the public at large. (Imber, 2004:15) His contribution to state organization and method are for Islamic jurisprudence established Sultan authority. Thus, the age of Ebu's-Suud was a golden age in terms of progress in balancing Örf with Shari'a, and subsequently elevating the difference between ehl-i örf and Shari'a kadis.

On the contrary, Peters (2005:72) indicate that Ottoman Sultans until the 19th century "delimited the kadis jurisdiction though improving a structure for the Hanafi body of Shari'a law that offered more legal security." Peters (2005:72) benefited from one of Sultan's decrees, issued subsequent to a case of *qasama* brought about the discussion on the opposition between the ideas of Abu Hanifa and Muhammad al-Shaybani (on liability of the inhabitants); which was a decree directing kadis to follow it, it was regarded as the best for public service. However, our through Dede Cöngi's Risala which was supporting the Örf, (Heyd, 1973:231-237) whilst reinforcing empowering kadi's administrative authority indicates that the discourse of Sultan forcing kadis to implicate Sharia, in fact, an effort for legitimizing Örf through binding kadis even more to the central authority.

Obviously, the administration of Ottomans had problems with the Hanefi tradition for example the Ottoman society is divided between taxpayers and not, asker and reaya, whereas the classical Hanefi divisions is between Muslims and non-Muslims.

One of the basics of Sultan's demonstration of the influence of state on masses (which was collected in his character), through Friday prayers brings about the question of who is directing these prayers. "In Ottoman cities, the imams and hatips of Friday mosques were nominated by state." (Imber, 2004: 91) Here, comes about the question of representation. Ebussuud directly addressed Sultan in this fatwa;

"In this city, the mosque has no community, because of this, there are no prayers being practiced under this roof. May the villages around come together and do their Friday prayers in this mosque? Is this legally possible?"

Answer: Some authorities said that, this is possible since the Sultan permit them." (Imber, 2004: 92)

There were four venues which are considered under the authority of dynasty: Friday prayer, taxes, contraband of war, constant penalties. (Imber, 2004: 90-105) Those areas were where Sultan used and demonstrated his authority over his people, to masses with Friday prayers and to individuals through taxes or penalties.¹¹

¹¹ In order to understand Ebussuud's approach on the power and authority of Sultan over legislation was expressed in his the mukaddeme of his tefsir of Qur'an in 1547, "The publisher of Sultanic kanuns". (Okur, 2005:38)

Ibn-i Kemal had mentioned “The number of punishment that Sultan promulgated is more than that of the Qur’an.” (Okur, 2005:37) This is an approach, also presented by Dede Cöngi. The amount of Sultan’s influence was materialized through his authority and interference (in person or through a mediator) over the legal process. Ta’zir is a significant example for the demonstration of Sultan’s direct effect on reaya, gave the judges a “political” area for their relative independence although they were accountable to the Sultan.

Considering the fact that Sultan had the responsibility to execute the decree in all regions inhabited quarter and the kadis administrated justice on his behalf, “authority to direct the kadis how to apply the law both Shari’a and Kanun was theoretically reserved to the Sultan. (Heyd, 1973: 187; Black, 2001:207) Suleyman’s legitimization process and the efforts to harmonize the Shari’a with the Kanun was not only Ebussuud’s achievement. Examining the Risala of Dede Efendi it is apparent that there was an intellectual milieu supportive of the Sultan’s prerogatives.

2.3 Major Intellectual Controversies of the Period: Ebussuud vs. Imam Birgivi, Ebussuud vs. Çivizâde Efendi

When considered the Ulema’s conflicts of the period, Ebussuud was standing in the center of two major debates. On one hand Ebussuud and Çivizâde’s political controversy; on the other hand, Imam Birgivi and Ebussuud’s cash waqf debate can be determined. Whilst both controversies reflect conflicts for political positions,

however in another level of their they stemmed from different perceptions for the interaction between Shari'a and Örf. Furthermore Dede Cöngi's aspect in these argumentations, as it is conceived from his Risalatü's-Siyaseti'-ş-Şer'iyye and his other Risala which he dedicated to Şehzade Mustafa, Risala fi'l-Beyti'l-Mal ve Masarâfihâ (which was one with his perception of possession of State and dynasty, also his approach for Finance), was being on the side of absolute authority of Sultan Süleyman. For this reason, it is beneficial to bring about the theoretical (thus political) debates which Ebusuud was involved.¹²

At the beginning of 16th Century, the sect of Razi, which was an école inherited from Fahrüddin Razi in 15th century. Well known representative for this école was Molla Fenari (Şemsüddin Mehmed) who was the ideological ancestor of Molla Yegan (Yeğen), Hızır Beg, Sinan Paşa and Molla Lutfi in 15th century; and of Ibn Kemal, Ebusuud Efendi in 16th century (Ocak ,1989: 31) The Razi école in 16th century, with its successors, established the main state body, legitimate ideal of rulership and settled power relation between sultan and reaya through agricultural and in a broader perspective, through the regulations on economic relations. According to Prof. Ocak, the Razi école established the administration and judiciary through the effort of its followers class members for the İlmiyye at its time. (Ocak, 1989:31)

¹² The references for this structural and denominational reflection in Madeline Zilfi's extensive studies which is depicted as elitist-conservative movements, in Zilfi's works, the flows of Ulema is also described as social class behavior. (Zilfi, 2008; 1983)

The movement of Birgivî Mehmed Efendi (d.1573), at the beginning of 16th century, who was a representative of Ibn-i Taymiyya's method and sense of politics, (Ocak, 1989: 31) came to challenge the Razi ecôle Birgivî in general, was known for his fundamentalism and complaints about the Ottoman administration and he became political influence on Kadızadeli movement. Inspired by Ibn-i Taymiyya, he accused the Ulema of his time of doing "bi'dat" and innovations recede to customs and traditions. (Ocak, 1989:32)

According to Katib Celebi, Birgivî (Birgili) Efendi was the son of the muderris Pir Ali, became a student for Karamanli Şeyh Abdurrahman, then he taught at a medrese (Çelebi, 1980,103-104) He was discovered by Ataullah Efendi who was the teacher of Selim II (Zilfi, 2008:146). Having this humble life style, he was intensely involved with a heavy critique of Sufism and his works "*Risale-i Birgili Mehmed*" and "*Tarikat-ı Muhammediyye*" established the base of Ottoman conservatism.

Addressing the point when the conflict between Birgili and Ebusuud started; Birgili wrote *Seyf-i Sarım*, in order to note that payment in advance to grand prayers is a sin, and money waqfs are not permitted. Subsequently, Ebusuud confronted Birgili's opinion, and their conflict rose up, just as Mir Sadrüddin Şirazi and Celaledin Devvani. At last, Ebusuud gave his fatwa on the contrary. (Çelebi, 1980:105) In addition to this, according to Katib Çelebi, Birgivî was a great alim, very qualified about Shari'a, "He was also involved with "aklî ilimler" natural sciences, as other sheikhs were saying. However, his unfamiliarity for other philosophical sciences caused him not to read history to know about "Örf ve adet" (customs and traditions)

of people.” (Çelebi, 1980:105) Also, he was conservative about the Shari’a, he spoke ill of sufis in his “*Tarikat-ı Muhammediyye*” not considering Örf at all according to Katip Çelebi “ This Risala is for money Waqfs’ cancellation... Ebussuud wrote risales but made mistakes. He is eligible to believe. His ideas are against “usul” and “furu’ “, contradicts “ma’kul” and “menkul” in Seyf-i Sarım. (Çelebi, 1980: 105-106)

New interpretations for land regime were the matter of conflict in the first place. Birgili presented his ideas as a critique of Ebussuud’s renovations on land regime and as a his new approach was not representing Hanafi school at all. Ebussuud, established a new approach to land regime, which was based on the idea of representation of state by individuals on the use of land, which was to be a base for the future’s naib institution. (Mundy & Smith 2007:15-20) The distinction was based upon different approaches for the property of the land. For both Ibn Kemal and Ebussuud, agricultural land belonged to the imam and the treasury. (Mundy& Smith, 2007:15)

The risala Birgivi mentioned here, is “*Risale fi vakfi’l-menkul ve’l-nukud*” which Ebussuud legitimized the presence of cash waqfs, by referring to Ibn-i Şihab ez-Zühri.(Önder, 2006:54) Apparently, both scholars had the perspective of legitimizing their ideas through Shari’a, however, Birgivi criticized Ebussuud that he betrayed Shari’a and by doing mistakes, he manipulated people and the legal structure. (K.Çelebi, 1980: 106) Ebussuud, in order to legitimize his ideas on cash waqfs, by nature, had to refer to fundamental scholars of Hanafi doctrine, thus, Hanafi doctrine

intensively legitimize the political doctrine that established the framework of rulership and jurisdiction of Ottoman Empire.

Referred to Abu Hanifa and al-Shafi'i who stood against establishing waqf of movables, however Abu Hanifa's students supported it. So he referred to *Zufar and al-Zuhri* which was quoted by al Bukhari and after the justification of the cash waqfs, he announced this institution as "irrevocable" and legitimate. (Mandaville: 1979:299) As a matter of fact, as Mandaville also indicated (1979:300) Ebussuud's approach towards cash waqf was considering the cash as moveable which was allowed to be presented to common usage and does not violate the basic principal of perpetuity.

Many Hanafi sources note that it is possible and permissible to establish a foundation, a waqf through real estate, however, they suggest just the opposite for movables and according to Imam Birgivi, from the description of waqf, it is easily conceived that waqf is an institution entirely about real estate. In addition to this, money, as a value, is not sustainable as real estate. (Önder, 2006:63) Moreover, he criticized quotes and stories from Zuhri (with Buhari's quotation) as wrongly conceived. In fact, in his "*Risale li ibtali vakfe'n-nukud*" Birgivi accused Ebussuud of fabricating the presence of money waqf although lack of any implication towards waqf in general in these stories, "If they would imply waqf here, they would not suggest the purchasing of it". (Önder, 2006:64)

Besides Birgivi's critique on the institution of cash waqf, his rejection was more practical than theoretical on ethics (Ocak, 1989:36). Presumably, basic case that

Birgivî used against through the issue of money foundations to discuss the influence and of Örf. “*Ulemanın hususi örfe itibar edişi, külli örfle sabit olana ilhak edilmesi dolayısıyladır... Örfe binaen dahi, ilhak yoluyla para vakfı caiz olmaz.*” (Önder, 2006:67) Consequently, Birgivî pointed out that customs have to be “general” for them to be valid, if they are local or very specific, otherwise “*kıyas*” could not be abandoned.¹³ (Önder, 2006:66)

Ebussuud’s other rivalry was with Çivizâde Muhiyyiddin Efendi, who was “*kadiasker*” of Anatolia and the Şeyhülislam before Ebussuud. Their conflict was obviously more political but it also included cash waqf issues. The controversy of cash waqfs did not do harm to Birgivî who was not part of administration. On the other hand, Çivizâde was discharged from his well-deserved position of Jugdeship of Anatolia.¹⁴

Interestingly, similar to Birgivî, Çivizâde also had a strict view about sufis. He was heavily criticize Mevlana Celaled-din-i Rûmî, Muhiyyiddin İbnül Arabî, with his complaints on cash waqfs confronted Ebussuud. (İpşirli, 1993:348) Ebussuud as

¹³ Önder (2006:66) here, indicated a very significant point on the history of Money foundations in Ottoman Empire, that the application of Money waqfs started at the time of Mehmed II, renovated by Selim I. And finally, under the reign of Süleyman the Lawgiver, this institution was spread. Although, according to the author, there was a lack of necessity, a necessity such as being on the edge of death and having have to eat pork. Because of the fact that there was no possibility that fatal results could occur due to the absense of this practice. (Önder, 2006:75)

¹⁴ Having been the kadi of Egypt between 1527-28, Çivizâde not only earned a good position after years of effort for “*ilm*” in Sahn-ı Semân, was also appreciated by the people of Egypt by ordering the reparation of many madreses and mosques. He was appreciated by many scholars of his time, became Şeyhülislam in 1539 and he was discharged with 200 *akce* pension.(İpşirli, 1993:348)

Rumeli Kadiasker brought Çivizâde 's opinions to Divan-ı Hümayun and had rejected them. Soon after Çivizâde was discharged; became Kadiasker of Rumeli after Ebussuud displaced him and became Şeyhülislam. Instead, at this position too, he criticized Kemalpaşazade, as a result of which he was discharged again (İpşirli; 1993:348). On the other hand, Birgivî, at most, became a Müderris, kept himself in an academic sphere more than a politic-hierarchic one.

Çivizâde also disagreed Ebussuud with twenty-eight pages justification of cash waqf. He found Ebussuud's references includes *Zufar*, not reliable (Mandaville, 1979: 298-300) Rightfully, Mandaville in his study on cash waqf conflict underlined that in order to make himself dominant, he departed from the mainstream Hanafi jurisprudence, forging a new course. (Mandaville, 1979:301)

At this point, the approach of Bali, in his direct letter to Sultan, was essential, indicating the people's confusion on cash waqf, *"I know it would be a great sin to prevent this practice... Shall we act according to the report of Zufar, make the akçe waqf, revitalize the mosque? Or shall we act according to Great Imam (Abu Hanifa) and forbid the waqf, thereby closing the mosque and preventing the prayer? ...God's legislation has no purpose than to ease the way of His servants through the exigencies of the times. Some rules of Shari'a are overturned by changes through time, either from being out of necessity or to ease difficulties."* (Mandaville, 1979:303) Very essential what Bali Efendi wrote to Sultan, not only for any research about waqf structure in Ottoman Empire, also for redefining the relation between *kanun* and Shari'a law in the sense of "Shari'a can accommodate to

changes”(furthermore, it can be exceeded by changes). Certainly, Bali Efendi’s (d.1573) political attitude here is also significant. Nihat Azamat Bali Efendi was a poet, his nickname was “Sarhoş” and he was a member of Ramazaniyye of the Halveti sect. (Azamat, 1992: 20)

Fundamentally, the Islamic approach that Ibn-i Kemal represented was formerly confronted by two very different sects; Melâmi sects from *tekkes* that had a *tasavvuf* influence and Birgivî ecole, from *Medrese*, that had a “purist” character. (Ocak, 1989:34) Thus, his political attitude as a Bayramî must be considered as evidence for the conception of Ottoman state and law for the sects which were presenting smooth relations with state and order. For instance Mevlevî’s were always (since the Seljuks) involved with the ruling power. However the Bayrami order was a very special example, this sect with a Safevid influence, after Hacı Bayram Veli’s death two different approaches came with; the one in accordance with *Ehl-i Sunna* they established good relations with political power through Ak Şemseddin, on the other hand alienated with the leadership of Emîr Sikkîni (Dede Omar). (Ocak,1998:252) An interesting footnote here is that “coincidentally”, once upon a time Imam Birgivî was also a member of Bayramî order. (Yüksel, 1992:192)

“Sarhoş” Bâli Efendi in his letter, numerously indicated that the invalidation of cash waqfs was a result of requirements of the time in accordance to his questioner towards two muftis and justified himself following admissibility saying “*Because it better suited the conditions of our people...and in this sensible and perfectly legal fashion its permissibility returns to the School of Abu Hanifa. It turns to all four*

schools of legal opinion; it returns all the various rules of all religions.”
(Mandaville, 1979:303) His approach, reflects the internalization of this renovation through both mentioning the “conditions of people” for legitimization of a communal sense and “Abu Hanifa’s opinions” for the justification of this new institution.

Thus, very significant point is being revealed with this letter and our knowledge of Sufi influence in Anatolia; the confrontation against “Sufis” from Çivizâde and Birgivî which is generalized as “fundamentalism against Sufis”, “orthodoxy approach vs. heterodoxy” etc., and their successor of Kadızadeli movement in 17th Century (which was heavily influenced by Imam Birgivî and Ibn-i Taymiyya) was so much more than “conservatism”. As it can be conceived from this letter and Birgivî’s well-known participation (for a while) to Bayrami sect, the problematic did not derive from “being a member of” “any” Sufi *tarika*. The question was, which Sufi order they participated and this order’s perception of central power. Obviously, numerous Sultans were members of sects; even The Lawgiver “Messiah”, was inspired by Ibrahim Gülşenî (Ocak, 1988:315) The conflict was not between the idea of tasavvuf and state “religion/sect”, this rivalry was between state and those who support or against Örf applications/renovations or not. And the critique was about how those sects socially and economically promote and organize their own sense of tasavvuf, in a framework which is in accordance with the state order. To criticize rulership by using the argument of “the violating Shari’a” was seen above in Birgivî’s critique against Ebussuud’s resistance on promulgating cash waqfs although his

evidences were weak, was more of a political struggle on Birgivi's behalf to limit the boundaries of Örf. (Ocak, 1998:135)

2.4 The Restructuring of the Kadi's Office in the Sixteenth Century; Problems and Solutions

Legal structure is based upon two basic elements; on one hand Shari'a (fiqh and other sources) and kanun (the theory and its fruit), on the other hand, kadis and naibs (the applicators for law practice). These elements may also be considered as the sources of legitimization of Sultan's perception of authority and legacy of his throne. Therefore, any change in the legal structure of Ottoman jurisdiction system, must have been stimulating the necessity of change in the structure of practicing of it. Dede Cöngi's contribution to our understanding of this period's structural change was his effort for discussing the conflict between Hanafiyya and Shafiyya on the scopes of kadi and vali, in order to determine possessor of the administrative authority. However, this issue had various reflections on the areas of from resolving the problems on the appointment of kadis to educational reforms.

Zilfi (2008) in her studies on Ulama (of 17th and 18th centuries) and the transformation of this piety, pointed out that this "group" formed an aristocratic strata. ¹⁵Rightfully, ulama was a determined structure and established institution by

¹⁵ Faroghi, also looked through the patronage relations which constructed a network for ulema and effected their affiliation with administration. See (Faroghi, 1973)

nature producing stratas within. In addition to this, the complexity of the structure in further centuries was based upon the controversies that has been told above which were again, derived from the discussion on the relation between Shari'a and Örf.

At this point, a very significant question is that if the context of the word "Ulama" referred to an academic meaning as in Islamic scholarship, or concluded the members of the Ilmiyye structure too, kadis and naibs etc. In the Ottoman context, it referred to people who studied in medreses and "acquired a portion of religious learning but had then secured appointment as mosque functionaries, teachers, jurisconsults, or judges".(Chambers, 1988: 33)

Richard Repp believed in a conception of evolution of a learned hierarchy in Ottoman Empire through centuries, as a structure become more and more complex over time. (Repp, 1972:17) "While hoja remained essentially outside of the hierarchy, the Mufti was gradually drawn into it during the sixteenth century and by the end of the century, he had clearly become the highest office in the learned profession."(Repp, 1972:23) It was a matter of discussion at the time of Ebussuud that not enough attention was paid to the registration of *mülazıms*. Thus, when Muhiyyiddin Çivizâde was the kazasker of Anatolia, a group of students complained about him that he prevented them from enrollments for appointment to office. Subsequently Ebussuud established rules such as, the obligation for kazaskers to keep separate register for the enrollment of *mülazıms*. (Repp , 1972:25) On the other

hand Ebussuud fixed the interval of the investiture of students as mülazıms called nöbet, that took place once in seven years (Repp, 1972:25)

The disorder in the organization of İlmiyye, from which during Süleyman I's reign suffered, was to be remedied through two methods: Firstly, the educational policies, secondly, regulating the profession in terms of salaries and scope.

At the age of Süleyman, "Süleymaniye Medresesi" were established (1557). *Sahn-ı Seman Medreseleri* were teaching *tefsir, fiqh, kelam*, Islamic law, Arab Literature. Süleymaniye was established due to the need for an educational complex for Medicine and Mathematics. (Uzunçarşılı, 1988:33) Uzunçarşılı indicate the need for re-establishing the ilmiyye structure in 16th century was due to the recessing in administrative and military organization.(Uzunçarşılı, 2006:241) Danishmends who were becoming employees without being improperly educated through bribery and corruption. Their ignorance influenced the students bad and they rebelled in the second half of 16th century. Due to the situation of rebelling students, müderrises and kadıs, some decrees were issued. First decree was given in 1577 by Murat III than in 1579; complaining about students (softa) "*Bundan akdem softa taifesi kendu hallerinde ve tahsil ve iştigallerinde olmamak, cemiyetler idünüb ok, yay ve sair alat-ı harb ile köyler ve kasabalar basıp Müslümanların kiminin taze oğullarını cebren gelüb, alıb, gidib fi'il-i şen'i eyleyüb, umumen ehl-i fesad olanların haklarından gelinmek için ümera ve kuzata ahkam-ı şerife gönderilmişti*" (Uzunçarşılı, 1988: 242)

Some of the fermans which were issued in order to re-order the ilmiyye group “*Min bad müderrisler danışmend emrinde tamam taharri edüb müstehak ve müstaid olanları danışmend edinüb cahil olanları emrime muhalif danışmend edinmekten begâyet ictinâd ve ihtirâz oluna ve bu emr-i lâzımü’l-inkiyâdımı min-bad mukarrer tutub ve bu hükm-i hümayunumu hıfz eyliseyin ki sen ce senden sonar gelen kazaskerim daima mazmûn-ı hümayûn ile amel edüb asla ve kat’a hilâfına cevaz gösterilmeye. Tahrîren fi evâil-i şehri-i Ramazan, sene 1006 Mehmed III* (Uzunçarşılı, 1988:214-215)

The significance of new medreses was that the presence of two “kulliyes” resulted with reconstruction of the Ilmiyye Structure. As being a muderris in Sahn-ı Seman was considered as the highest academic degree for a ilmiye member, then he would be appointed to Istanbul, Bursa or Edirne as kadı, kadıasker. (Yakupoğlu, 2006:105-106) After the establishment of second medrese where “higher” education was given, some of the scholars from *Sahn* were appointed to this medrese. Although the level of education was quasi the same, the scholars of Süleymaniye medresesi were to be considered as first degree muderrises. The highest degree became “Darü’l-Hadis müderrisi” who was the şeyhü’l-müderrisin (Yakupoğlu, 2006: 106) Until Ebussuud became the Şeyhülislam, there was a lack of method about rising to this position, the position had been given to ones who served as kazasker or any position of high kadi or müderris which were considered as mevleviyet. Subsequent to Ebussuud Efendi, it was automatically given to Kadıasker of Rumeli. (Yakupoğlu, 2006:236-237)

The bureaucratic reforms on *mülâzemet* based on the regulations of Ebussuud, during the reign of Süleyman I. influenced the number of appointed kadis from newly graduated medrese students. (İnalcık, 1988:260; Cihan, 2004:45) Thus, the regulations which Ebussuud implemented resulted to a decrease in kadis term of office¹⁶. Their promotions were also regulated, although they could only be promoted to the position of sancak beyi and beylerbeyi in Fatih Kanunnamesi; in 1570, a kadi with 300 akçe salary per day, could be promoted to defterdarlık. (İnalcık, 1975:171; Fleischer 1986:202, Cihan, 2004:46)

In terms of authority, kadis were representing the Sultan, along with their duty of implementation of Shari'a and Örf, until the end of 16th century they were providing services in the area of finances in terms of managing the process of iltizam, determining the guarantors and controlling the installments of mültezims, they were appointed as controllers for mukaatas.(Cihan 2004:47) In addition to this, they had authority over waqfs and their management. (Cihan 2004:48) Local courts had to refer to the Porte all the cases of the military class, state interest and public security. (İnalcık, 1991:3) Obviously, kadis were empowered as agents of central authority, in order to balance the relations between State, ehl-i örf , local power elites and waqf people. However, this equilibrium was damaged by the regulation of naibs

¹⁶ For Mevleviyet kadis one year, for small kadiships two years. (Cihan, 2004:45) Ottoman system was based upon a sense of preventing local administrators establish close relations with local communities. (Beyazıt, Clearly, the basis of the employment system rotation, which derived from the idea of protecting the local communities from the over influence of local government agents. Thus, central authority would be preserved. The regulation of "müddet-i örfiye" was gradually diminished from three years to eighteen months from 16th century to 18th century. (Cihan, 2004:46 ; Beyazıt, 2010:51)

appointment through the method of *Iltizam*. Moreover, *kadis* and *ehl-i örf*'s administrative responsibilities could coincide, thus, governors were strictly forbidden to interfere to court activities, in a *fatwa*, Ebussuud equated such governors as infidels. (İnalcık, 1991: 3) In advance, if a governor-general caught *kadi* in an illegal action, he could put an end to his activities; notify Sultan immediately, since *kadis* could only be tried on the imperial *diwan*. (İnalcık, 1991:3)

CHAPTER III

DEDE CÖNGİ AND THE DISCOURSE ON SIYÂSA SHARİ'A

3.1 Dede Cöngi; his life and his Risaletü's Siyâsetü's-Şer'iyye

3.1.1 Dede Cöngi: A Biography

Kemalüddin İbrahim bin Yahşi (Bahşi?) bin İbrahim, known as Kara Dede¹⁷, Dede Khalifa; with an unknown birth date, died in 1567, was from Amasya (Sonusa). (Süreyya, 1996:882) As a “fakih” and an expert on Arabic language, because of the fact that he collected his writings in “Cönk” and his famous work (haşiye) on Taftazani's şerh on Zencani¹⁸ was known as “Dede Cöngü”(Akgündüz, 1991: 76-77). He worked as a “debbağ” (leather maker) then he became an expert on Hanefi doctrine, “*tefsir*” and Arabic literature. He worked in; Bursa Beyazıt Paşa Medresesi, Tire Kara Kadı Medresesi, Merzifon Sultaniyesi, Halep Hüsrev Paşa Medresesi before becoming Müftü for Kefe in, 1558. Dede Cöngi was retired in 1565 and died in Bursa in two years' time. (Akgündüz, 1991:76-77) Dede Cöngi's known works are: “*es Siyâsetü's-Şer'iyye*”; “*Risale fi emvâli beyti'l-mâl ve aksâmihâ ve*

¹⁷ Dede Cöngi is mentioned in Sicill-i Osmani as “Kemaleddin Efendi (Kara Dede)” (Süreyya, 1996:882)

¹⁸ “El İzzi fi't- Taşrif” (Taftazani)

ahkâmiha ve masârafihâ” (dedicated to son of Süleyman the Lawgiver, Şehzade Mustafa), “*Haşiye ‘alâ Şerhi’l- ‘İzzî fî’t-Tasrîf li’t-Teftâzân*”î , *Haşiye alâ Hâşiyeti’l- Hayâli al Şerhi’l-Akâ’id*, “*Risaleti’l Vaz*”, “*Lüccetü’l-fevâ’id*”, “*Hâşiye alâ Şerhi’l Câmi*”, “*Haşiye alâ Şerhi’l-İsagucî li’l- Kâtî*”, “*Haşiye alâ Şerhi Kutbi’d-dîn ale’ş-Şemsiyye*” and *Risale fî’l-benc ve’l-haşiş ve tahrîmihâ*”.(Akgündüz, 1991:76)

His contemporary Evliya Çelebi in his Seyahatname, mentioned his name several times, including his biography: “*el Mevla Kemâleddin eş-şehir Bakara Dede; evvel altmış sene kâr-ı debbağlıkda ifnâ-yı vücud edüp kendüyi girdman edüp tekmîl-i fûnun etmişdi. Amma ulûm-ı secde-i ferâmuş etmişdi. Hidayet-i Hak idüüb Amasiyye müftîsi Hâtib Kâsımzade’den kara heceden başlayıp bir senede Kelâm-ı İzzeti itmam edüp yedi senede dahi niçe tekmîl-i fûnun edüp Bursa Muradiyye Medresesi ihsân olundu. Niçe sene mu’ammer oluğ niçe menâsıb-ı âlilere mutasarrıf olup niçe mücelled kütüb-i mu’tebereler te’lifatları vardır. Hatta “Dede Cöngi” nâm kitab anların te’lifidir. Âlem-i fânîden Bursa’da vedâ Edüp Emîr Sultan civarında medfûndur. Mevtine tarih:Gülşen-i cennat ana me’vâ ola. Sene 975.*” (Evliya Çelebi, 1996:35) As told by Evliya Çelebi, Kara Dede worked as a debbağ for 60 years after that, he dedicated his life to science of Quran and fiqh. He became an instructor in Bursa Muradiyye Medresesi after seven years of work. He wrote many books, one of them was “*Kitab-ı Dede Cöngi*”¹⁹.

¹⁹ This book is probably “Dede Cöngü” which Evliya Çelebi mentioned again in his Seyahatname, in the list of books which Khan of Bitlis owned. (Çelebi, 1996b: 153)

One of the biographies of Dede Cöngi was written by Nev'izade Atai²⁰; he mentioned him “Mevâli-i Kemale'd-din el Şehîr bi Karadede”, he inscribed him the title of “Ebnâ-i tarîkin ustad-ı fezâil-i kestiri”; Ata'i mentioned that he dedicated himself to the way of ilm, when he understood he had interest and talent in ilm, he started participating the lessons of “Hatib Kâsımoğlu Amasya Müftüsü”.²¹ Dede Cöngi's teacher, “Molla Muhiyyiddin Mehmed Ibn Hatib Kasım” (Mentioned as Amasiyye müftîsi Hâtib Kâsımzade) according to Taşköprüzâde, was educated by his father, died in 1533, (Taşköprüzade, 398) also gave lessons to Şehzade Ahmed.

A significant detail about Dede Cöngi's life is related to his epitlet “Dede” was a member of “Ulema”, also a part of Ottoman esnaf as a leather maker for years, and a part of Ahi organization. His years working as a “debbağ” and his honorable membership of Ahi organization, and urban life²² influenced his scholarship of Islamic law and as a result of this is his contribution to Ottoman finances with his *Risale fi emvâli beyti'l-mâl ve masarafiha*. Apparently, the text of *Risaletü's*

²⁰ Nev'izade Atai, Şakaik-i Nu'maniye ve Zeyilleri; Hadaiku'l-Hakaik fi Tekmileti's-Şakaik (p. 119-120) ; (Akgündüz, 1991:76-77)

²¹ Evliyâ Çelebi also pointed out as “*Amasiyye müftîsi Hâtib Kâsımzade*”. Kâsımzade's father; “Hatib Kâsım” (Molla Kâsım bin Yakub d.1490) who was educated by Ahmet Kırımı, and when Sultan Bayezid became “vâli” in Amasya, Hatib Kâsım became his teacher. After Sultan Bayezid succeeded to the throne, his son, Şehzâde Ahmed was also educated by him. In Sicill-i Osmanî, Mehmed Süreyyâ claimed that he was a “muhib” (interested in, liked) for Sufis. (Süreyyâ, p.872)

²² Şapolyo mentioned his name, Karadede when indicating the principles of Ahi organization, as an example for the ones that belonged to Ahi organization then became scholars. He referred to his “Cöng”; “A fruit is named fruit either on the mountain or in the city. But taste is not the same. Cost is not the same.”an expression reflecting the significance of affiliation and participation to a major profession community as Ahis (Şapolyo,1964:244)

Siyâseti’ş-Şer’iyye meant to legitimize central authority, justified Sultan’s “earthly and heavenly” character as Ruler and Caliph, which will be mentioned below.

3.1.2 Dede Cöngi’s Original Risaletü’s Siyâsetü’ş-Şer’iyye

The original text of Dede Cöngi’s (d.1567) Risaletü’s Siyâseti’ş-Şer’iyye also known as “Siyâsetnâme” was written in Arabic during Süleyman I’s reign, many original copies, for example; manuscripts by Suzimustafa b. Hasan (1703)²³, Mustafa b. Süleyman (1658)²⁴ The Arabic version used in this study, is kept in Collection of Afyon Gedik Ahmet Paşa II Halk Kütüphanesi in National Library in Ankara with the archive number of 03 Gedik 18069/6. (Varak between 81-91/a)²⁵

The Risala generally discussed the legitimization of siyâset-i şer’iyye an issue of debate in the period, it was organized into five chapters with a specific chapter at the end, on ta’zir punishment. The first chapter is preserved for the description of siyâset and legitimization of it, the second chapter is depicting the ideal methods of kadi on ahkâm-ı siyâsiyye, the third chapter (the backbone of this determined the boundaries of scopes of kadi and vâli, the fourth chapter is on how “accusation” (töhmət) was instrumentalized for siyâset and lastly, the fifth chapter consist of notes on methods and decision processes on ta’zir punishment.

²³ Arc. No: 50 Ür 73/7; Milli Kütüphane, Ankara, Tahsin Ağa İlçe Halk Kütüphanesi, Nevşehir

²⁴ Arc. No: 21 Hk 104/b, Diyarbakır II Halk Kütüphanesi.

²⁵ Collection of Afyon Gedik Ahmet Paşa II Halk Kütüphanesi in National Library in Ankara with the archive number of 03 Gedik 18069/6

Dede Cöngi's Risala consists of five chapters. First chapter depicted the legitimization of Siyâsa Shari'a, Second chapter is determining boundaries of kadis and valis. Third chapter is on the application of ahkâm-ı şer'iyye by kadis or/and valis. Fourth chapter is on "accusation" and just siyâsa. Last chapter "Faslü't-Ta'zir" requires some significant notes on discretionary punishment.

It is essential to note that, our study is not an exact translation of any version mentioned, from any language. Dede Cöngi's original Arabic version is used all together with all translations in presence; each version is used for verification when lack of understanding. The reason Ismail Müfid Efendi's version is less referred to, is as aforementioned, along with lack of any interpretation, his text is almost a direct translation from Arabic. Even though, it is extensively used for verification with other texts and the Arabic version. In our study, Dede Cöngi's original text in Arabic, Ahmet Akgündüz's transcription of Ârif Efendi's version (thus his division of articles were used), Sebzî Mehmed Efendi's translation in Ottoman Turkish and again, rarely referred Ismail Müfid Efendi's Ottoman Turkish version are used.

3.2 The Concept of Siyâset-i Şer'iyye in Dede Cöngi's Risala

"Siyâsa" incorporates a variety of meaning. Basically, in our context, the term siyâsa relates to of administrative actions and the Shari'a's relation to them, therefore, we have concentrated on "Siyasât-i Şeri'iyye" as it is referred in our Risala and its translations.

Scholars such as Dede Cöngi, refers to this Shari'a, vis-à-vis the central authority's. Dede Cöngi Efendi is fully supportive of the combination of the ruler, Sultan and the Caliph that that was attempted around Süleyman's personality. As we saw in the previous chapter the Ilmiyye was transformed . Subsequently a discussion on the boundaries of authority of ehl-I örf and judges Dede Cöngi did not present an original idea for the re-organization of Ilmiyye. He discussed it through the concept of just siyasa (siyâset-i âdile). In doing so, he utilizes great authorities of Islamic jurisprudence.

The doctrine of "Siyâset-i Şer'iyye" was crystalized by the Hanbeli scholars Ibn-i Taymiyya (d.1350) and his student Ibn-i Kayyım al-Cawziyya (d.1328)(Vogel, 1997: 695). The conflict of praticalizing kanun in terms of judge's use is spesifically explained in Ibn-i Taymiyya's study. If the Shari'a is fully observed, siyâsa of rulers (*imam, sultan, amîr or wâli*) will not conflict with fiqh as according to scholars (*fukaha*). f the conflict between them appears, it is either because the fiqh is not very well understood, neglected the sources of Shari'a, or for attaining public good, simply because the rulers disregard the divine will and act unjustly towards society (*siyâsa zâlima*). Since rulers who follow the basic principles of law to the general situation, they would lead mankind to a good life here on earth and hereafter (Vogel, 1997: 695). Therefore, considering Taymiyya's aspect for örf or kanun, the ulema's monopoly of knowledge gains significance. It offers Ulema a greater Shari'a efficacy at the cost of their being implicated further in affairs of the state.(Vogel, 1997: 695)

Terzioğlu indicated a significant fact about Ibn Taymiyya, Mawardi and Abu Hamid that they did not refer to the matter of Caliphate at all. (Terzioğlu, 2007:248) Therefore, they diverted the discussion to the matter of implication of Shari'a directly. What matters in their eyes was the course of the rulers and if they adjust their policies with the Shari'a or not. (Terzioğlu, 2007:248) The 11th century beys and their character brought the siyâsa and fiqh into a conflict. (Vogel, 1997:, 695) Apparently this competition and central authority's perspective for (by nature) empowering siyâsa caused a separation in between the group of *alims* (ulema) who have an affiliation with State politically, and scholars who are more conservative and independent. Accountability at this point, depicted a frame which concluded politically motivated conflict between circle of pragmatist ulema around State policies and less dependent scholars from a periphery of waqfs (with a political focus, by their nature), kadis, naibs and low grade medrese scholars.²⁶ On the contrary, al Mawardi's classical statement in 11th century *al Ahkâm al Sultâniyye* (who Dede Cöngi referred to in order to support the claims of Hanafi doctrine) attributes to a systematic separation of powers of military-administrative powers and kadis. Al Mawardi considered "...learned kadi powers under the Shari'a could not transgress particular fiqh laws and procedures in their adjudications."²⁷ (Vogel, 1997:, 695)

²⁶ See the chapter on Dede Cöngi's 16th Century; the controversies of the period.

²⁷ See "Faslü'-s-Sâni" of Dede Cöngi's Risala.

Dede Cöngi, in the 16th Century in order to justify Hanafi discourse for the duties of valis and kadis, used al-Mawardi's contra arguments, and accepted to Ibn Taymiyya's perspective. The Hanafi discourse on the issue developed on a highly influenced Hanbali (More spesifically Taymiyya and Ibn Cawziyya) as of Taymiyya attempted to restore a form of Islamic legitimacy in political circumstances. (Vogel 1997:695) Therefore; refering to Ibn-i Taymiyya's perception which allows the ruler's discreation over penalties that are not described by law Shari'a was essential in order to justify the argument siyâsa. (Black, 2001:157) In addition to this, religion required State power; "*Religion without Sultan (power), Holy War (jihad), and wealth, is a bad sultan, wealth and conflict (harb) without religion.*" (Loust, 1939:143-51; Rosenthal, 1958:54; Black 2001:155)

The Ottoman's conquests in the Arab lands increased their interest in intellectual activities. They had to legitimize their administration to the members of Şafii, Maliki, Hanbali Schools; thus Yılmaz (2005:63-65, 73-76, 125-134) indicated that Dede Cöngi (who attributred to various sects in Orthodox Islam) was influenced by this need.(Terzioğlu, 2007:249)

Dealing with the effort of Ebussuud demonstrating the agreement or bringing kanun into line²⁸ who said "there can be no decree of Sultan ordering something that is illegal according to the Shari'a" According to Black "Dede Cöngi reaffirmed the siyâsa in the traditional sense of the Ruler's power to supplement the Shari'a in the

²⁸ See Chapter II: 16th Century.

public interest, without referring to Ottoman kanun directly.(Black, 2007:213) It is conceived that there is a slight difference between Dede Cöngi's and Ibn Taymiyya's perspective towards siyâsa. Religious law is backed up by the ruler's penalties. (Black, 2007:213) For Dede Cöngi Efendi the Shari'a includes the Sultan's penalties whereas Ibn Taymiyya envisaged public order derived exclusively from Shari'a principles.

Looking through the effort for legitimizing siyâsa considering Shari'a, historically, it is conceived that the most significant question about the utilization of text such as Dede Cöngi's Siyâsetname is that which systematic of relations with State it refers to and which task it was instrumentalized for. The text had three main targets to emphasize; firstly, the legitimization of siyâsa; secondly, how kadi's make use of it (in situations which they can) when providing *ahkâm-ı siyâsiyye*; thirdly, the boundaries of kadi and vali on *ahkâm-ı siyâsiyye*, lastly, how they provide their authority through ta'zir and react to the situations of *accusation* will be reviewed through the original text and the translations.

3.3 An Analysis for Siyasetname:

3.3.1 First Chapter: On the Legitimacy of *Siyâset*:

First chapter of Dede Cöngi's original Risaletü's Siyâseti'ş-Şer'iyye consists description of the term "siyâset-i şer'iyye" and the evidence of it: "Siyâset, (referring to Mu'inü'l- Hükâm by Trablusi the Hanefi scholar's famous distinction) is of two

kinds; siyâset-zâlîme and siyâset-i âdile.” (Dede Cöngi, Varak 81-a) This basic distinction emphasized the main of the Risala, since it generally is declared as a Siyâsetnâme, due to the fact that it determined the boundaries of “siyâset” by reference to Qur’an and sunna, Khalifa’s and the scholars such as Imam Pezdevi, Imam Serahsi, Imam Shafii (Even the scholars such as Imam Shafii from other sects of Islam) legitimized the conditions of death penalty, that are to be considered as very specific. Thus, Dede Cöngi in this chapter depicted the basic instances necessitated death penalty referring to Islamic scholars and determined those circumstances of death penalty:

-One that burns the other (will be burned)

-Livata (homosexual intercourse)

-Zalims, fesads, avines. (Cruels, mischiefs and enemies)

-Zâni (One who does zinâ)

-Ones return from their witnessing for “kisas”

Although, all were referred from primary sources (not an original approach from Dede Cöngi) of Islam and the scholars to be mentioned below, the circumstances for death penalty here is very strict. For instance, for the crime of zinâ in the Islamic penal law literature, the punishment is usually ta’zir. However, here a very significant and specific situation is necessitating “One who does zinâ with his own mahrem, should be killed”.

In addition to this, as aforementioned by Black, to Risala's first chapter has another concentration on public order. Usage of the term *Masâlih-i Mursala* which is depicting "public interest", "public good", is visible in the first chapter where Dede Cöngi's understanding of legitimacy of siyâsetü's-ser'iyye is depicted. Heyd (1973:199) that for the sake of maintaining public order and ensuring the welfare of the society the Muslim leader is given discretion in order to deal with criminals that does not demonstrate an opposition to Shari'a. Therefore, *Masâlih-i Mursala* is also instrumentalized as an evidence for providing the administrator a sphere of act, for the sake of goodness of the society.

The terms and honorifics for the Sultan in the original, in Arabic text of Dede Cöngi and in the translation Meşrebzâde Mehmed Ârif Efendi used for the great ruler; where Dede Cöngi used the term "Administrator of the Muslims", "Imamü'l-Müslimîn" and used "Sultan" occasionally, Ârif Efendi translated the term as Sultan instead of Imam. This interesting fact indicates how the conception of "caliph" and "ruler" changed from 16th century to 19th century; although both were the centuries of the use of Caliphate raised.

At the very beginning of our Risala²⁹; starting with descriptions of Siyâsa, referring to Mu'inü'l-Hükkâm of Trablusi, which was "The siyâset is of two kinds: siyâset-i

²⁹ This comparison is between aforementioned versions of the Risala. Apart from being a translation, benefiting from all versions, where needed, in order to highlight some important details worth examining, different expressions used in different versions are discussed. More significantly, Ârif Efendi's own contributions to the text are emphasized, in order to understand and confirm the need for Dede Cöngi's Siyasetname in 19th Century, and which gaps it is filling.

zâlîme and siyâset-i âdile” which is a description reflecting the general idea of conception of siyâset in Dede Cöngi’s perception. (Dede Cöngi; Varak: 81-a)

The story that some of the Caliph Ali’s followers accepted him holy as prophet and he ordered execution for them. (Dede Cöngi; Varak: 81-a) When Ali was asked about this execution, he explained, this was about exemplifying the issue itself, even for Imamü’l-Müslimin, disciplining himself with punishment of siyâsa is valid. The 19th and 20th articles³⁰ consist Ârif Efendi’s interpretations, on punishment of burning.³¹ Referring to Imam Mohammad’s “Siyer-i Kebir”, “At the time of Muaviye, when the ships were out to the sea, confront the enemies, they might burn the enemy, however the situation is different when they are captives, it’s strictly forbidden to burn them. (Akgündüz, 1992:132-133)

The principle of “من حرق حرقناه”³², emphasized an example for death penalty. “Valueless people who practice magic, talented with this major, there’s no other way to punish them than burning.”³³ (Akgündüz, 1992:133)

Further on, there are references in order to legitimize the execution of the punishment of *livata* (sexual interaction between men), the references are books of

³⁰ Akgündüz gave the transcription of Ârif Efendi’s translation in articles; we follow his way in order to separate Ârif Efendi’s interpretations.

³¹ His own opinions will appear in his version of the text, starting with “Mütercim-i fakir der ki,…”

³² “We’ll burn the one who burns us”.

³³ At this point, Ârif Efendi refers as one of the basic principles of Mecelle in order to indicate the change of circumstances: “الضرورات تبيح المحظورات” which referred to the meaning: “Necessities make the restrictions possible to practice.”

“fiqh”, “*Şerh ’ul-Vikâye*” and “*Hidâye*” Imam Pezdevi’s *Cami ’üş-Şüruh, Beyan ’ür-Rivaye* and Imam Mohammad’s “*Kitab-ı Ziyadat*”. (Akgündüz, 1992:134) Giving these references, the author is stressing the fact that the punishment for Livata, (is considered as a matter of siyâset) might be *ta’zir*, *katl*, *darb* or *habs*. As Imam Mohammad pointed out the person who holds the crime could be punished by penalty or until he was disciplined and the borders of this punishment determined by the Sultan.³⁴ (Akgündüz, 1992: 134) “Livata, requires *ta’zir*, and the Imam determines the extent of it.”³⁵ (Dede Cöngi,81-b)

Although the text considers a greater chapter for the scopes of vülat and hükkâm, an essential early reference for a framework, is mentioned:

Vulat (governors) and *hukkâm* (judges) are given the power of using *ahkâm-ı siyâset* (the decisions of siyâset punishments). There was more space to the ones who are capable of implementing decisions. *Vulat* and *hukkâm* in *ahkâm-ı siyâsiyye* is not against Shari’a. The reference here is again to *Zahiratü’l-Malikiyye* through *Mu’inü’l-Hükkâm* of Imam Iraki. The evidences are given in six sub-articles (Akgündüz, 1992:134).

³⁴ In the original text of Dede Cöngi and in translation of Sebzî Mehmed, instead of the word “re’ye’l- imam”- “الامام”, in Ârif Efendi’s version, “re’y-i Sultani” is used. Actually, Ârif Efendi, added this part of punishment of *ta’zir* depending on re’y Sultani, then goes on as the original risala continues with re’y-i Imamü’l-Müslimin (depending on opinion of the imam of muslims). Thus Ârif Efendi equates those two terms, attributes to the ancient Islamic political leader with the character of Sultan’s modern character in 19th Century, as the guarantee for the rights of all, from all religions in remaining Ottoman lands.

³⁵ Quoted from “*Kitab-ı Ziyadat*” of Imam Muhammed.

“Vech-i Evvel” under this context, 27th article; “ehl-i fesad”(the mischiefs), caused debates and disagreements on *ahkâm-ı siyasiye*, the decisions, generally should not exceed şer’i şerif (Shari’a): “*Bi-şart-ı ân ki, ihtilâf-ı ahkâm-ı siyâsiyye, bi’l-külliye şer’i şerîfden hâric olmaya*” (Akgündüz, 1992:134) Cruelty is absolutely prohibited, here the reference is hadis-i şerif, the word of the prophet Mohammad, “ لا ضرر لا ضرار”, that leaving aside “kavânin-i siyâsiyye” (regulations of siyâset), causes harm. (Akgündüz, 1992:135) Furthermore, in 28th article, Ârif Efendi interpreted this issue, by referring to Imam Malik Muvatta and Ibn Omar, pointing out the fact that “One should not harm his brother through punishment”. (Akgündüz 1992:135)

The 29th article consists of the second sub-article “Vech-i sânî” which considers a very essential term for Islamic Law and would supposedly be important in the transition process of the 19th century in terms of “preserving” the borders of the Islamic law but at the same time, sort of adapting it to a new law of the modernized order. This is the concept of “Masâlih-i mürsele” which might be corresponded anachronically to “public welfare” in modern law. The term itself, refers to situations that Shari’a cannot predict, or provide any approach or practice to; such as restriction or permission. In order to conceive this evindence, it is significant to look through how “sahabe” Mohammad’s companion responded in such circumstances, specifically the issue of “khilafa”, the election of the caliphs after Abu Bakr Assedk. As the Shari’a does not favor any solution or any method, the issues pertain to “*masâlih-i mürsele*”, can only be discussed by referance to the religious authorities’ opinion.

Waqfs, are depicted as an issue within the boundaries of masâlih-i mürsele which is and are evidence for progress in issue of public interest. Furthermore, Ârif Efendi continues by referring to the Şeyhülislams of the time of Dede Cöngi, Ebu Suud and Çivizade Muhiyyiddin Mehmed Efendi³⁶'s works and ancient fikh and works Tatarhaniye, Bezzâziye, Zeyla'î; "If the masjid, the place where the muslims pray, is too narrow, and a necessity of construction and expansion is brought about, from the ones who owned any place which had harem and mescid right next to it, will be taken with the value of it, if the owners would not accept it, these estates will be taken by force."(Akgündüz, 1992: 136)

At the beginning of "Vech-i Sâlis" in the 31th article, Sebzî Mehmed's version demonstrated a difference between the original text and the Ârif Efendi's version. It pertains to the need to have only one vali and one kadi per vilayat , this is found only in Sebzi's version.³⁷ He points out that in order to prevent the hostility on witnessing, besides what the existing rules specify, increasing the number of witnesses and making the agreement of freedom, and contract for witnessing became obligatory. ³⁸From this point on, in both translations, different examples are given.

³⁶ These two important şeyhülislams were practicing a theoretical conflict on many issues, specifically on money waqfs. Çivizade's work "Risale fi vakfi'd derahim ve'd-denanir" is a detailed response to Ebu Suud's 18 articles, which were depicted in order to justify the money waqfs which will be mentioned below. For an analysis on Çivizade's work, (Aydın, 2006)

³⁷ "Üçüncü vech şeri' mazhar vali ve kadı nasb olındıktan ziyade, şehadeti teşdid eylediğini beyan eder ki; bir vilayete bir vali ve bir kadı kafidir..." (Sebzî Mehmed; Varak 6-b)

³⁸ "Ana bir davaya iki zina davası olursa, dört (şahid) lazım geldiği gibi ki şehadette adavet tevehhüm olduğu için teşdid olunub, ... ve hürriyet şart kılındı." (bi sonraki cümle Sebzî Mehmed, Varak; Akgündüz, 1992:137; Dede Cöngi, Varak 6-b)

Sebzî gave an example where a woman's witnessing for her child, one witness is enough. (Sebzî Mehmed, 6-b)

At the end of this part, "*K'el-meyl fi'l-mekhale* (كالميل فى المكحلة)", "such as the aim of the kohl (on the eye)", and four witnesses in a case with a claim of zinâ is extremely necessary. (Dede Cöngi; 81-b) Ârif Efendi's requires the witnessing of the character of the witnesses, an example of more systematized procedural law. (Akgündüz, 1992:137)

Next paragraph on Risala and translations correspond with each other, indicates that even one made an allegation towards his wife on adultery and was not punished with "*kazf*" unless he was not contradicted by a witness, his swear is considered adequate.

Another example of change in procedure is apparent on the issue of witnessing of *kazf*³⁹ cases. Although, Dede Efendi accepted the oath of the accused without the need of witnesses, both Sebzî Mehmed and Ârif Efendi insist on the necessity of witnesses given the gravity of the accusation. (Akgündüz, 1992:137; Sebzî Mehmed, 6-b)

At this point, Ârif Efendi here adds another interpretation, and expands Dede Efendi's original Risala on "*Fi'd-Delâle alâ Meşrûiyyeti's-Siyâset*" (Akgündüz, 1992:137)

³⁹ One who practices *Kazf*, accusation of adultery, is to be punished along with physical torture, with a non-pecuniary way of rejection of witnessing in any legal case, loss of reliability, (Aktan, 2012: 148-149)

The 34th article (1992:138), exists only in Ârif Efendi's version, consists of six sub-articles, all references from the Qur'an, are discussion the fundamental conditions of "kisas"⁴⁰ and the position of witnessing in it. As Akgündüz points out (1992:138), those six verses of Kur'an are; Bakara 179, Maide, 38, 45, 90 En-Nur, 2 and 4. Verse of Bakara says (Akgündüz, 1992:138);

و لكم فى القصاص حياة يا اولى الالباب لعليكم تتقون و كتبنا عليهم فيها مائة جلدة و لا تأخذكم بهما...

This verse refers to the fact that there is social benefit in kisas: It is clearly observed that, Ârif Efendi was trying to refer to the very fundamental and source of Shari'a the Qur'an and also to the concept "masâlih-i mürsele". Ârif Efendi's effort was obviously about establishin argumentation through Qur'anic references.

The part above, along with the Qur'anic references, does not exist either in original text, or Sebzî Mehmed's version. Necessarily, *zina* (adultery) "chapters" in criminal code might have been taking an important space because of the fact that certain amount of *kanunname*'s brought about this issue. And "kisas"⁴¹ is brought from the sphere of tribal life into that of the religious political community (umma), which

⁴¹ The interpretations on kisas indicate that Muhammed (according to Qur'an and Sira) did not allow blood shed, but he permitted kisas as a personal vengeance.(Scacht , 1986:178) "To you, who are believers the kisas is prescribed for the slain, the freeman for the freeman, the slave fort he slave and the woman fort he woman; but if anyone is pardoned anything by his broather, he shall be dealt with equitably... and pay him compensation as best as he can. This is an indulgence and mercy from your Lord. But he who commits a transgression after this shall be severely punished. In kisas you have life, you of understanding..." .(Scacht , 1986:177)

finds an echo in the law,...” (Scacht, 1992:178) Obviously the main thema of the verse itself, is based upon the concept of the sustainability of social connections and social proofing responsibility as the idea is given frankly in the verse itself; Bakara 179; “...you have the public living in kisas” which means the believers that trust upon the benefit of kisas, they will be rewarded. (Akgündüz, 1992:138)

Furthermore, the reason Ârif Efendi summarizes these verses, is to tie up with the argument issue of zina, hamr and ta’zir, which to be held in next chapter. Second sub-article, he analyzes the verses of Maide, highlighting the term “hadd-i zina” which is the punishment for adultery and reflects the necessity of auto“control” in public sphere. On the other hand, Ârif Efendi’s election of Qur’anic references, summarized, “protection of the body”⁴² (*sinif-i evvel*), “protection of human blood”⁴³ (*sinif-i sani*) on punishment of zina, “protection against accusation” (*sinif-i salis*)⁴⁴ “protection of properties” hadd-i sirka (punishment of robbery) (*sinif-i rabi*), “(*sinif-i khamis*) (Akgündüz, 1992:138) reflects his time’s agenda, and by the basic principles of *Gülhâne-i Hatt-ı Hümayûn*.

It is clear, therefore, with Qur’anic references; Ârif Efendi made an introduction to his main purpose of translating this risala, which he expresses through his “agenda”. For instance, in second sub-article, about the punishment for zina (adultery) he

⁴² Qur’an, Bakara,; Maide, 45, (Akgündüz, 1992:179)

⁴³ Qur’an, verse of Nur, 2, (Akgündüz, 1992:179)

⁴⁴ Qur’an, verse of Nur, 4, (Akgündüz, 1992:179)

indicates that, the crime of zina requires the punishment of “tazir”. However, if the religious leader prefers to discipline the criminal with exile, it would be approved by high fiqh practitioners.” (Akgündüz, 1992: 138) It is clear that he illustrated and graded these specific verses in order to balance the original references of Dede Efendi empowering *örf* with his attempt of reinforce the central power. For instance, accusation (*töhma* or *isnad*) without 4 witnesses should be punished by (according to Nur verse) by beating with stick for 80 times. (sınıf-ı sâlis) And Ârif Efendi highlighted that Sultan’s opinion is needed this punishment of ta’zir. (Akgündüz, 1992:138)

Shortly, related to the restriction of (alcohol, gambling, buying and selling of hamr (wine), the verse is continued by Ârif Efendi’s contribution of highlighting the fact that for those who are to be punished because of violating this prohibition, the permission was given from God to Sultan, to give the orders and issue decrees against it.(Akgündüz, 1992:138) As a result, Ârif Efendi implies that, “*ahkâm-ı siyâsiyye*” was built upon Shari’a law.

From 35th article on as Akgündüz point out (1992:139), main body of the text is being revealed. “Expressing their sects, some from ulema, said if we ever triumph over a tribe, we will appoint the ones with less mischief for testimony.” Explaining the exquisite method of administration continues with “Obedience is considerable and mandatory even when appointing judge, (*taqlid-i kaza*) and delegation of powers (*tefviz-i velayet*). Sultans are obliged to fill in the positions and employ the ones obey the orders, when there is no more justice, thus, they would leave the possessed to the

preowners, in order to prevent lawlessness.” This article less detailed, takes place in Sebzî Efendi’s translation; “...*Şehadet veyahut kaza yahut velayet için, fücürda ekal ve fesadda aslah olanı ikamet olunur.*” (Sebzî Mehmed: Varak 7-a)

In general perspective, the text is leaning on the concept of empowering the central power and the power of Sultan. Indeed, at his point, Dede Cöngi, in order to express the complaints about the corruptive judges, refers to Imam Iraki and his book of *Zahirat’ül Malikiyye*, “The proposals of Shari’a decisions, which requires several conditions and tied to power and authority of sultan, do not have suspicions, if the judges and the governors of our time would have understood the previous century, they would not have been trusted, and would have reached the position of neither governing nor judiciary. Ones that have the prosperity of tribe, are the vile and villains of previous century,...” (Akgündüz 1992:139) Referring at this point, to the word of Khalifa Omar (bin Abdulaziz):

ستحدث للناس اقصية بقدر ما احدثوا من الفجور

Sebzî Mehmed explains it as “For people many issues take place as much as they create from their mischief.” (Sebzî Mehmed: Varak 7-a) Ârif Efendi, Mütercim-i Fakîr interpreted as: “For people there are decision equal to the amount of rebel comes from people’s mischief” (Akgündüz, 1992:139) specifically for this reason, the text implies, “change is essential”. Today’s context and needs are different, some issues, attitudes and positions which had been considered as fundamental or had a positive meaning, might be derived to a complete different context and conceived

very negatively and with the conditions of the “new day” they might have appeared in a very different framework, accordingly there given the possibility of extending *ahkâm-ı siyâsiyye*. As Dede Cöngi (according to Sebzî Mehmed’s version) continues with, in fifth sub- article which is specifically points out this issue ; “Siyâset-i Şeriyye is taken from Shari’a laws thus, they should never be out of Shari’a...” (Sebzî Mehmed; Varak 8-a) Ârif Efendi refined the issue, “This extension in *ahkâm-ı siyâsiyye* approved by the trust in Shari’a decisions.” (Akgündüz, 1992:139)

At this point, Dede Cöngi, in his original risala, presented the examples for this issue, exquisitely apolitical, only Ârif Efendi used the term “*Umumî’l-belva*” to indicate the situations which are “impossible to avoid” in Islam and uses the examples of dirtiness by pregnancy or the dirt on street derived from natural weather conditions. (Akgündüz, 1992: 139) As a matter of fact, the indication of conveniences provided by authorities on daily basis, are given in order to point out the idea of passing through the difficult times by the facilities and allowances, therefore, “breaks” from Shari’a. Presumably, Dede Cöngi built the structure of the Risala, depicting the great narrative above the practical facts for change, in order to legitimize the massive changes in process. Referring to Imam Shafi:

ما ضاق الشيء الا اتسع

“The thing that did not give concern was permitted”(Sebzî Mehmed; Varak: 8/b)
This kind of permissions and expansions, “*Kezalik, mefâsıdın def’i üzerimize güç*

olsa, vüs'at verilir.”; which emphasizes the reason of expansion of the permissions to prevent debauchery makers.

The sixth “vech”, sub-article, Dede Cöngi passed on with refining the necessity of new implementations, considering new conditions, which refers to the main function of the text itself. Thus, 37th article is built upon marriage between siblings permitted at the time of Adam and Eve, because of the fact that number of human beings was limited. However, tribe of Ben’i Israil restricted it, also sid the grease of camel on Saturday (اكل شحوم ايل) considered it as *haram*, and issued death penalty for it. (Sebzî Mehmed, Varak 8-b) “... Also, the laws which determine the borders of *usul* (the pattern of rules) and *kavaid* (the regulations) or not more or less than *şer’i şerif shareef* are not considered as *bid’at* (heresy).” (Akgündüz, 1992:140)

Obviously, until this article, the author refrained from sectionalize the text itself. This section should be presented as an introduction in the structure of the *Risala*. The 39th article derives from a reference to Ibn-i Kemâl’s şerh to the Islamic law text “*Vikaye*”, which was given in “*Şerh-i Islah*”; Abu Bakr Amash said that if the defendant asserts a rejection for the claim of robbery, in this case, significantly *Imamu’l-Muslimin* had to make the decision according to general opinion (ekber re’y). Because in those cases which preserve impossibility of knowing the truth, and one is under suspicion of robbery and if the idea of him having stolen material is legitimate, “the sultan” himself has the initiative to punish him.⁴⁵ (Akgündüz, 1992: 140-141)

⁴⁵ Ârif Efendi, in this passage, as given above, used the title of “Imam” and then, at the end of this article, uses the attribution for the religious leader “Sultan” (Akgündüz, 1992:142) “emphasizing” the

Continuing on the accusation with a reference to Ahmad Buhari, from his book of “Fetavây-i Hülâsâ”; Dede Cöngi indicates that if, one that is accused was seen being friends with thieves, sitting around with sinners even though he does not drink wine, even though he is in denial of his robbery, Imamü’l-Muslimin should punish him and the sheikhs should execute his orders. (Akgündüz, 1992: 141) Along with further instance on “ikrah” (threatening), the story of Isâm bin Yusuf fakih, when he participated to Hayyan bin Ebi Hubla’s company, a man was brought to their presence who was accused of robbery. After they realized he was in denial of this accusation, Ebi Hubla put him to *falaka* (bastinado). The Imam confessed the crime, after 10 strokes and showed the stolen goods. Isâm was surprised, and said:

سبحان الله ما رأيت ظلما اشبه بلعدل منه (Akgündüz, 1992:141)

“Subhanallah! I have never seen cruelty that seems like justice as this.” (Sebzî Mehmed, Varak 9-a) From this point on, Dede Cöngi is discussing whether “ikrah” is a legitimate method during investigation. He referred to *Mecmâ’ül-Fetavâ* and *Bezzâziye*, which specifically has a chapter on the issue of ikrah, and they considered as “helal” unless his flesh and his bones fall (Akgündüz, 1992:141) Although, Ârif Efendi at this point, in his interpretation indicated that forcing the thief to confess is found in some fetvas of “mute’ehhirin” in the context of

quote, in order to clarify the fact that who decides what; Sebzî Mehmed, in his own translation, used the title of “Imam” (Sebzî Mehmed, Varak 9-a) for both expressions; however, in original text, Dede Cöngi only used the title “Imam” one time, only for his quote from Abu Bakr Amash:

...الفقيه أب بكر بن عمش أنّ المدّع عايه السرقة ١٦ انكر فالامام ان يعمل فيه باكبر راي فان غلب على ظنه انه سارق و مال المسروق عنده عاقبو في سرق...

indemnifying the goods. However “kat’ı yed”, hand cutting in order to force one to confess is not a healthy option unanimously considered. (Akgündüz, 1992: 141) In consideration of the fact that the power of Sultan and his laws lies beneath Ottoman system of justice, the method of sustaining his legitimacy and power was to provide justice at every level of society, with every sub-structural instrument was used.

Ârif Efendi interprets; “Punishments of *ta’zir*, *habs* (imprisoning) and *tekdir* (scolding) are (siyâseten) approved by sultan for the ones who try to demolish the order, and resort to the fitne and fesad (mischief, sedition)” (Akgündüz 1992:141) However, he adds “These cases should cautiously be investigated in terms of attitude of witnesses, reviewing and observing decisions about the situation, high or low probability of accusation, thus, there be no cruel (siyâsa). If one’s situation is not clear and he was accuseed, he has to be investigated very well, and has to be put into prison for few days only....”(Akgündüz 1992:142)

Determining conditions of *habs*, *tekdir* and *ta’zir* penalties, continued to draw the boundaries of örf in following articles: In order to support his claim, Dede Cöngi quotes from *Cevâhirü’l-Fetavâ*’s “*Bâb-ı Cinâyât*” (chapter for murder) Punishment should be executed on the one who habituated practicing crime of robbery and brought to the Sultan (merciful), Imam Nasihi was asked about the legitimacy of killing bees and dogs (Ârif Efendi mentions only “*zenbur*”, bees, on the other hand the original text says-“*zenbur ve haşerat-ı mu’ziye k’el-kelb*”) in a metaphorical way and responded that, prosecution of this kind of mischiefmakers is legitimate and mandatory. (Sebzî Mehmed,Varak 10/a)

The 43th article as asserts that, “one who murders the innocent by suffocating him, allowed be killed “ because of his “habit” as mentioned several times on *Bâb-ı Sirka* (chapter on robbery) of *Hidâye* and *Sirrâciyye* and *Muzmerât*. If the burglar cannot be restraint from robbery, and repeats the crime for the third and fourth times, in order to dismiss (*şer* and *zarar*) costs, he has to be (siyâseten) prosecuted by the just Sultan’s will.⁴⁶

Once again, Ârif Efendi, translating Dede Cöngi’s quote from “*Hizanet’ül-Müftiyyin*”’s last chapter; using “Sultan” instead of “Imam” which takes place in the original text and the Sebzî Efendi’s version; “When Sultan of all muslims, the merciful, may order one to be hanged, who was known by him (who is an executor, a hangman) or he confessed caught with goods that he has sacked.”⁴⁷

In the 46th article (Akgündüz, 1992:143), as Akgündüz named it, Dede Cöngi examining the method of ulema giving *fetva*’s against the ones who were named “a’vine” (enemies) in the original text, as Ârif Efendi explained the term; “*A’vinenin, yani emvâl-i ibâdî gasb ve gârete mütecasir olan kutta’ı müslimînin...*”; as the one who dares to seizure property of muslims, the brigands. “Imam Sayyed Abu Şüca, those who gave *fetva* according to those brigands’ blasphemy, and announced that one who take those who murder them would acquire merit in God’s sight. However,

⁴⁶ At this point, Ârif Efendi repeatedly used the expression of “Sultan” instead of “Imam” as it is in the original text:

(Dede Cöngi, Varak 83-b) فان سرق ثالثا و رابعا فلامام ان يقتله سياست .

⁴⁷ Sebzî Efendi’s version “...he will order him bein beheaded or being hanged.” (Sebzî Mehmed, 10-a)

Hanefi scholars on mentioned matter, our Sheikhs, although reapplied the permissions to the murderers of the “a’vine”, brigands, about giving fetva’s with blasphemy, they have done the opposite, did not give any fetvas, referring to verse of Maide 33;

...انّما جزاؤا الذين يحاربون الله و رسوله و يسعون في... (Akgündüz, 1992:143)

“Mütercim-i fakir” Ârif Efendi on this issue, “As a matter of fact, permission for the prosecution of the brigands, does not indicate that they reverted to the status of kafir”. Since these brigands will be punished in hereafter, as seen in verse Maide 34: Arif Efendi then used as a reference from Seyyed Şüca’s who compares the act of brigandage comes from a *dzimmi* that does not dissolve his the contract of *dzimma*, to that of a muslim to conclude that conclude that Muslim brigands do not become unbelievers.⁴⁸

In many Kanunname’s, as it is comprehensively illustrated in Uriel Heyd’s work on “Ottoman Criminal Law” (Heyd: 1973) which established the main body of Örf laws,

⁴⁸ Consequently, Ârif Efendi in his interpretation here, considering the fact that some clergy, obviously used the instrument of naming those actions as blasphemy, and give fetva through them. Although they don’t even know their actions were blasphemy or not. “*When the act of brigandage comes from a dzimmi the act is not against the contract of dzimma, when the same ac comes from a muslim, this would not demolish his belief*” (Akgündüz, 1992:143), essentially, he mentioned both muslims and non-muslims implying non of these actions, which were not clearly stated as “kufi” as it was in a hadis, would not abolish any status, neither the *dzimmi*’s contract nor muslim’s belief. “What if they escape and hide, how would they be punished?” Ata in Hamza was asked, according to Fetava-yı Ata bin Hamza in *Mecmâ’-u Fetavâ* and *Bâbu’s Siyer* chapter of *Bezzâziye*. He rejected, “Their escape is a situation not to pay attention, and thus, they escape because it is necessity. If they could go back to interregnum, they would go back to the crimes and immoralities which they were punished from.” (Akgündüz 143) Then he continues with Imam Şüca with his response, in a nutshell, prosecuting these people is permitted and the prosecutor would acquire merit in God’s sight.

the issue of “adultery (*zina*)” had taken a substituted space in this codified work of criminal laws. Zina as a crime, should not only be considered as an inferior crime, the presence of *zina* in Shari’a law and the implementation and reflection of it in Örf law, is a topic of debate among many Risala’s. Article 51, 52, 53 are on this issue. Therefore, here given by Dede Cöngi:

(Dede Cöngi, ... و في حدود شروح الزاهدى عنه الفردوسى من وقع على ذات رحم محرم منه حلّ له قتله ... Varak 84/b)

Meaning, “on the limits of “Şerhs of Zahidi”, quoted from Firdevsi, whoever attains to which he owns (his mahrem), will dissolve with his death”. More detailed than Sebzî Efendi (and Ismail Müfid), Ârif Efendi also attributed these expressions to the crime of Zina. Ârif Efendi translated this sentence as “If one does adultery with those forbidden to him, he will be sentenced to death”. In the version we use in our study, the scribe mentioned the consequences of the crime of zina between someone’s “mahrem” and a stranger.⁴⁹

Aforementioned masâlih-i mürsele as an evidence is essential for our study, for the same reasons in discussion of any process of reviewing legal advisory texts in their contexts, also when they are reconciled in different historical contexts. Referring to

⁴⁹ Then went back to Ibn-i Temcid’s quote which considered this issue, which is given below. On the oather hand, Ârif Efendi and Ismail Müfid Efendi boath mention Ibn-i Temcid issue before “Şerh-i Serahsi” which basically is “... *Bir kimsenin mahremi ahir kimse ile zina ederken görse, zaniyi katl eylesini caiz görmüşler keزالik bir kimse bir muhsen kimseyi zina ederken görüp mukaddem feragat ve terk...*” (If one sees the oather doing adultery, he is permitted to kill the adulterer,...”. Furthermore, in the version we have, unknown scribe apparently forgot to mention the word “katl (قتل)” (Sebzî Mehmed, Varak 11-b)

Nihaye and Mi'rac'üd- Diraye, the author considers the issue of “public interest”. “In order to prevent the public costs, preferred to harm the individual” (*Zarar-ı ʿammi defʿ için zarar-ı hassa tahammül olunur*) (Sebzî Mehmed, Varak 12-b); At this very point, completing his narrative, referred to “*ma yuhdesu fi'tarik*”(Akgündüz, 1992:145) (things happened on the way, implying to innovations after Qur'an), through this instance:

The infidels imprisoned the Muslims or the children of Muslims, in order to compensate the damages to the Muslim society, permitted to throw arrows. The aim of this permission has no intention to harm any of Muslims or Muslim children. (Sebzî Mehmed, Varak 12-a) This point is essential; “ Such as when embezzling part of the property of orphan (eytam), (on âkile marazı/maraz-ı ekkâle, اكله مرض) caused an occupation of fear and death results with cutting that part of the body itself, also written in *Gâyetü'l-Beyân* and *Hidâye* and the chapter of “*Ma yuhdesü Fi't-tarik*”, choosing to harm the individual is preferable, in order to avoid damaging the society. (Sebzî Mehmed, 12-a)

Considering masâlih-i mürsele and this passage in its own pre-modern context is a reference directly to the interest of the society, the “reaya” against their members, empowering social connections and inter-community ties. However when Ârif Efendi interpreting it at this point, in this conjuncture he could be considered as equal to “public interest” Thus, in the next paragraph, Ârif Efendi, added; two issues the contract of custody and avoiding the costs with cutting a part of the body, based upon this principle of

من ابتلى ببلتين يختار اهنهما

(Akgündüz 1992:146)⁵⁰

3.3.2 Second/Third Chapters: Kadı's and Ahkâm-ı Şeriyye, Boundaries of Kadı and Ehl-i Örf, Practice of Ahkâm-ı Siyâsiyye For Judges

As categorized by Dede Cöngi, and so in Ârif Efendi's version, not by Sebzî Mehmed; this second chapter discuss the issues of political decisions and permission for "te'ati and tenavül". The main focus of the Risala the duties and the responsibilities of legal personell and the boundaries of authorities of the administrative and judiciary structures.

The definition of the scopes of kadi vis-à-vis vali-i cerâyim in Islamic law, is controversial due to historical contexts and implementation. As we mentioned in the context analysis of the issues of Siyâsetnâme 16th Century, the education and the appointment processes of kadıs and naibs were highly complicated. However, the

⁵⁰ As Akgündüz highlighted, this principle is from Mecelle (Akgündüz 1992:146). Articles of Mecelle between 26-27 are depicting this context: (Berki, 1985:21):

Article no:26 , "Zarar-ı âmmı def" için zarar-ı hâss ihtiyar olunur. Tabib-i cahili men' etmek, bu asıldan teferru' eder."

Article no: 27 "Zarar-ı eşed, zarar-ı ehaf ile izâle olunur.

Article no: 28 "İki fesad teâruz ettikde, ehaff-i irtikâb ile a'zamnın çaresine bakılır."

Article no: 29 "Ehven-i şerreyn ihtiyar olunur."

Ârif Efendi explained the principle; "Whoever falls into this contradiction, whichever the better, has to be chosen (...) Thus, may God protect, one who caught this disease of eating, diagnosed by talented muslim doctors, ill features must be cut. (Akgündüz, 1992:146)

boundaries were expanding and along with the conquest of Arab lands for instance as diverse as Egypt, along with the administration of non-Muslims, ruling Muslims from different sects must have been another issue, when kadis were considered, the problems of appointment due to the low salaries and the ineffectiveness of traditional education caused the lack of appropriate judges.

Ebusuud's (from 1545 to 1574) most essential contribution in this context, was to reformulate the appointment of kadis, "...bound to follow the Sultan's directives in applying Shari'a. He instructed kadis to follow several opinions of Hanafi authorities and withdrawing certain matters from their competence." (Schacht: 1982:90) In 1550, Ebussuud to secure the uniformity of judgements (Schacht 1982: 90) in an effort to standardize the agents of center in periphery.

Most of the regulations mentioned enhance the administrative duties of ehl-i örf. Thus Vali's jurisdiction in criminal law is considered more enhanced and his decisions were more efficacious than that of kadis. (Heyd, 1973:201) Dede Cöngi strict critique on the approach of Mawardi on the issue depicts his affiliation to judgeship based on the claim that public law of the Muslim state should be centered on the Shari'a. (Heyd, 1973:201) In addition Dede Efendi refer to Ibn al-Kayyim (who Dede Cöngi also referred to like the military authorities, kadis may apply siyâsa regulations, claimed that this application depends on the usage and practice (al örf wa'l istihlah) in a certain place in a given time. (Heyd, 1973:201)

The second part of this start with a statement about siyasa sharia; “*Çünkü siyâset-i şerriyyenin, turuk-ı şerriyyeden olduğu delil ile sabit oldu.*” *Siyâset-i şerriyye* is of part of Shari’a, according to Ibn Kayyim, Sebzi Efendi continues on the matter of Sharia; “Kadılar için siyâset-i şerriyye’yi eylemek var mıdır ki, sirkat ve sair accusationlerden biri ile, huzur-ı kadıya getirdiklerinde darb ve siyâset-i saire siyâset eylemek kadıya caiz olur mu?” . (Sebzi Mehmed12/a) Shortly questioning the boundaries of kadı (the judge’s) jurisdiction, and how eligible is for kadı to punish anyone with siyâsa, the crimes such as burglary. Sebzi following the argument as noted from Ibn Kayyim, who said that“depends on the time and place and the “Örf”(Örfe göre) and the “*Zahirat*”⁵¹ ve Ahkâm-ı Sultaniyye’de kadının siyâset-i şerriyyede alaka ve medhali yoktur” (Kadı would not interfere siyâset-i şerriyye) (Sebzi Mehmed,12/b) However, neither Dede Cöngi nor Ârif Efendi mentioned the word “Örf” directly. ⁵²(Sebzi 12/b)

Dede Cöngi in his Risala gave ten points standardize the scope of governors and local judges. Moreover, Dede Cöngi dedicated two chapters for this issue, faslû’s-sâni and faslû’s-sâlis, therefore initially issuing those specific points. Subsequently, Dede Cöngi rejected those opinions. To conclude that the Hanefi emphasized that kadıs had the authority to implement process of siyâsa regulations.

⁵¹ Mawardi, *Zahirat-ı Malikiyye* .

⁵² Furthermore, Sebzi Mehmed, directly passed through Dede Cöngi’s assessment and comparison of the scope of kadı (judge) and vali (governor).

Referring to Hanefî texts, Ârif Efendi continues the argument saying that “*Teati* and *te’amül* (*exchanging ideas and customs*) that required by “*ahkâm-ı siyasiye*” are permitted to the kadı. Although, Imam-ı Iraki as a Maliki Imam and from and Imam Mawardi; in their works *Zâhiratü’l-Malikiyye* and *Ahkâm-ı Sultaniyye*, indicate that, kadı cannot judge according to *ahkâm-ı siyasiyye*. Strictly forbidden the kadis to even talk about *emr-i siyasiyye*”. (Akgündüz, 1992: 147) Thus, Sebzî Efendi points out that, Dede Cöngi attended to benefit from the ideas of his friends from other Islamic sects⁵³ and cristalized them into 10 main points:

Vech-i Evvel: لوالى المظالم فى القوة و الهييت ما ليس لهم (Dede Cöngi 84/b)

“The power and the “grandeur” that Vali has, they (the kadis) don’t” (Dede Cöngi Varak 84/b) (Referring probably to the Vali’s higher position in beuraucracy.)

“ The demonstration of supremacy and power bestowed to the Vali (governor), it is strictly forbidden to Shari’a judges.” (Akgündüz, 1992: 147/Sebzî Mehmed 12/b) (Note: In the sense of Shafî and Mâlikî imams; vali, is the representative of the state, thus, of the Sultan, the supremacy of his position derives from him being the reflection of central authority. On the other hand, kadı is supposed to be guardian of justice. As a matter of fact, the aim here is demonstrate not only his power and authority as a state employee, but also being fundamental feature of the administrative structure, where the power of Sultan being carried to the society.)

Vech-i Sani:

افسح مجالا واسع مقالا

There is a great opportunity to extend the power and capability of *Vali-i Mezâlim*, thus, the Vali 's authority allows him use the words (kelam) derive from his will. (Akgündüz, 1992: 147; Sebzî Mehmed 12/b) This is prohibited for kudat (judges).

Vech-i Salis:

يتعمل في الارباب و كشفا لاشياء بالاماراتلادالة و شواهد الاحوال ال.... هما يؤدى الى ظهور الحق خلافهم

With regard to the evidence and witnesses, the governors have the authority to intimidate the one who is allegedly a criminal in order to reveal the truth (hak). This again is not permitted to judges. (Akgündüz, 1992: 147/ Sebzî Mehmed 12/b)

Note: This, strictly determine the boundaries provided for kadı, to handle the legal process. However vali, as an agent of the Sultan could have extensive power.

Vech-i Rabi:

(ان يقابل) من ظهر ظلم ما لتأ ديب بخلافهم

Just the knowledge of one's cruelty is allow the vali to initiate the process of sentencing, this to exceeds kadı's jurisdiction. Akgündüz, 1992: 147/Sebzî 12/b)

Vech-i Hamis:

يتأنى في تردد الخصوم عند البس في الكشف بخلافهم اذا سلهم احد خصمين فصل الحكم لايؤخر

If the vali has a suspicion on the case of conflicted parties, in order to reveal the truth, he practices the ability of delaying the process. However if one of the parties request a decision, the judges are not able to delay. Akgündüz, 1992: 147/Sebzi 12/b)

Vech-i Sadis:

لو ردد الخصوم اذا عصلوا الى واسطة الامناء ليفصلوا بينهم صلحا عن تراض و ليس لقضاة الا برضاء الخصمين

If the parties attempt to lie, their rejections are meaningless. (Akgündüz, 1992: 147)
The Vali was assigned to make peace between the parties with the condition of the presence of their will, are also are able to assign or prevent the “credible witnesses” (ümena) to interfere as moderators. However unless the parties seek sulh, Kadı can’t appoint anyone to moderate.⁵⁴

Vech-i Sabi:

ان ؟؟؟؟؟ عن ملازمة الخصمين اذا ... امارات التجاد و تازى في الزام الكفالة فتما بشرع فيها التكفيل لينقياد الخصوم الى الناصف و يتركوا التجاد بخلافهم

If one of the two parties’ denial of the other one’s right is obvious; one of the two, clear his debt to the other, then he would refrain from denial and end the dispute. If

⁵⁴ Note: Sebzi Efendi did not mention prevention of ümena directly, he wrote “one man” or “by the hand of any man”, if parties demand, they might appoint one oather to moderate. However kadi is not allowed to do it. (Sebzi Mehmed, 12/b)

the contract between is eligible for a guarantor, vali would give the permission to do this, but kadi cannot. (Akgündüz, 1992: 148, Sebzî 12/b)

Vech-i Sâmin:

(This article is missing in the manuscript we used)

Vali-i cerâyim, would approve the testimony of the witnesses in this mentioned issue. (Sebzî differentiates the text by saying that “he would listen to the witnesses who were mentioned”) Arif Efendi added that kadis are assigned to make decisions,

Vech-i Tasi:

له ان بخلاف الشهود اذا ارتاب فيهم بخلاف القضاة

If the vali has doubt on the testimonies, he can contest an oath the witnesses, however the kadis, are not allowed to use this method. (*tahlif-i şuhud*)

Vech-i Âşir:

ان له ان يبتداء بالشهد ب...

When the decision of kadi was presented to the vali, he has the authority to call for the witnesses and examine them. On the other hand, unless the plaintiff shows any interest, the Kadis cannot listen to or accept witnesses and they would not make any decision with this kind of testimony except condition that the plaintiff requests a hearing. (Akgündüz 1992:148) Sebzî Mehmed quotes as; any person comes to vali and say that he has this case with these people and the witnesses are those etc. vali is

appointed to call those people and ask them about the case, kadi cannot, unless the plaintiff demands. (Sebzî Mehmed 13/a)

From this article on, (60th) the reputation of the opinions specifically indicated the differences between the responsibilities “kadi” and “vali” with regard to jurisdiction.

“Unlike mentioned explanations, in the Hanefi law, kadis could exercise administrative orders... kadi should always protect him and work for goodness.” (Akgündüz, 1992: 148) ⁵⁵

At this point, unlike Ârif Efendi, Sebzî Efendi does not mention “orders” directly, “*On husustan bazılarını kadı dahi icra edebilir/Kadi is able to practice some of those ten issues*” (Sebzî Mehmed; 13/a). Initially attributing other doctrines, here considering the dispute between them, Dede Cöngi in following lines, presented the need for mentioning what the Hanefi scholars say about this issue, detail. Dede Cöngi’s, refers to “Muhit”, “In the presence of the court, if one of the parties salutes the kadi, he has to respond, in order to preserve respectfulness of the gathering, Those words considered truthful, in order to show authority. However conjecture of the situations and decisions of kadi should be extended, because kadi might make the decisions through evidence and witnesses and other imam’s opinions, customs. This is also mentioned in *Mu’inü’l-hükkâm.*”(Akgündüz, 1992:148)

⁵⁵ Sebzî Mehmed; ““*Mezheb sahiblerinden kutta-ı delalet vardır ki, on hususa bazıların kadı dahi icra eder.* “

At this very point of the text, Dede Cöngi depicted how he confronted the idea of restricting kadis from the application process of siyâsa. Dede Cöngi mentioned the Hanefî scholars's aspect on the issue, in order to bring about a legitimate decision: "Disciplining someone whose cruelty is obvious, derives from the necessities of Hanefîyye." (Article 61) (Akgündüz, 1992: 148) said Ârif Efendi, initiating the "fasl" where Dede Cöngi discusses what the Hanefî doctrine is for the Kadis in term of their scope, framework of their responsibilities and authority. Part of this framework is deducted from "karain-i ahval", obviously, conjectures, Ârif Efendi added here: "*Karain-i ahval ile hükm-i kadı ya'ni zikr ü beyani mucib-i tatvil olur. Witnesses and evidences need to be considered by kadi and previous decisions of former kadis need to be followed.*" (Akgündüz, 1992: 148) Thus Arif Efendi with, this quote from Mu'in ül Hükkâm, expands administrative functions of the kadi.

To Dede Cöngi's refers to sources such as *Muhît*, *Mu'in ül-Hükkâm*, *Vak'at-ı Hüsâmiyye (El Ecnâs)*, *Muzmerât* and *Tehzib of Tatarhaniye*, *Hizanetü'l-Fetava*, *Mecma'ül-Fetava*; and gives examples to kadi has authority to exercise tazir. For instance; in order not to overdue the debt of a child merchant, the kadi can practice ta'zir. If the parties swear at each other with an indecent attitude, the kadi would imprison them. If kadi ever get suspicious about any issue, the final decision would

have to depend on investigations and ask the opinion of the ulema as mentioned in the fourth chapter of Muinü'l-Hükkâm. (Akgündüz, 1992: 149)⁵⁶

According to Dede Cöngi and his previous references; kadi, more or less, possessed the authority to moderate in some of the situations. Kadi's duties here at this point, as Dede Cöngi pointed out for instance; whenever the path for peace is being damaged by hearsay and so, if necessary, and if there is a hope that this would bring peace, kadi is assigned to destroy emtia , as mentioned in 67th and 68th article (Dede Cöngi 85/a, Akgündüz 1992:149, Sebzi Mehmed 13/a). The kadi was ought to wait before the disagreement between uncle's sons come to an end, in order to avoid any risen hostility (Akgündüz, 1992: 149-150) Obviously, kadis were expected to make an agreement between parties, "umena vasıtasıyla sulh etmek" by employing trustees. (Sebzi Mehmed, 13/b)

As Sebzi Mehmed mentioned "From previous times, some of just judges invited two parties came to their presence and he advised compromise, just like Omar did,..." ; Sebzi13/b) However Dede Cöngi's text requires the counseling or advice of those judges who "invited" those two trusted men.⁵⁷

⁵⁶ Sebzi Mehmed's version does not require this detail of asking for the advice of "ehl-i ilim" (Sebzi 13/b) Dede Cöngi does not mention "ehl-i ilm" as Ârif Efendi did, only mentions the need of "kudat" to be careful practicing tazir and habs (Dede Cöngi; 85/a).

⁵⁷ (رجلين من صالح) and advised them, do not inform me about your mischief, hide your opinion from me."

Similar to original version, Ârif Efendi initiated this sentence by an addition of “ulema-ı asr-ı evvelden bazı kuzat-ı adl” (some of the kadis of justice from ulama of the previous century) although Dede Cöngi said “Kudate’l-adl” only, without using the attribute of “ulama”. (Dede Cöngi 85/a)

About making peace between relatives with “te’enni” (carefulness-تأني), Sebzî Efendi referred to the Caliph Omar, and brought him as an example for this method of peace under conditions which make kadi uncomfortable. Although this method being mentioned in Ârif Efendi’s version of the text, instead of mentioning “Omar” attributed to nickname “Faroq”, although Dede Efendi in the original text, directly mentioned “Omar ibn-I Khattab” who said:

رَدِّدْ وَ الْقَضَاءُ بَيْنَ دَوِي الْاِرْحَامِ حَتَّى يَصْلَحُوا

(Dede Cöngi 85/a) Which meant they (kudat) refused to give any decision between parties until the hearsay ends.

The reference to Vakıât-ı Hüsâmiyye⁵⁸ is also pointing out the necessity of kadi’s position as a moderator, which expresses decision of kadi should be delayed, until the conflict between brothers or uncle’s sons comes to an end, in order to ease the hostility.

⁵⁸ Known as El Ecnas, a fetwa book, written by Sadr-I Şehid Husamuddin Omar bin Abdulaziz, (Keşf, II, 1998-1999), (Akgündüz, 1992: 150)

At this point, as in Sebzî Efendi's version, according to this source, kadi was able to take an oath (tahlif) "Şehâdet-i Mesturî" (mentioned witnesses) if necessary. However, Sebzî Mehmed, did not emphasize this point on the second chapter on Muinü'l Hükâm, on "just witnesses" which was named as "باب القضاء بشهادة غير العدل" (the chapter on decision making-kaza with unjust witnesses), although it takes place in original version. This article emphasizes that, even if the witnesses are not known as just people, in order not to cause any legal loss or violation, their testimony would be accepted by kadi. This reference here is an extended version of Dede Cöngi's article with more explanations.(Dede Cöngi 85/a)

Consequently, the story mentioned by Ârif Efendi translated from Dede Cöngi's text, in order to prove that kadi had the authority to have the suspicious witnesses take an oath, he used the story of an inheritance issue during the time of Kadi'l-kudat⁵⁹ Ibn Shubruma of Cortoba (Al Andulus) and who had the witnesses to take an oath in order to prove the inheritance. (Dede Cöngi, 85/a, 85/b, Akgündüz, 1992: 150)

The 71st article of the text is dedicated to "*istihlâf-ı şuhud*"(oath of the witnesses), utilized the books inside *Tatarhâniye*; *Tehzîb* and *Muzmerât*. Proven by Dede Cöngi, some people from the great ulema indicated that when there is a presence of some "fesad" of our time, "*istihlâf-i şuhud*" was preferred. Ibn-i Ebi Leyla was asked and he also acclaimed that in that condition of spreading "fisk ve fesad", taking an oath was preferred (Dede Cöngi 85/b). At this point, Dede Cöngi, referred to

⁵⁹ The position of "Kadi'l-kudat" as an ancient term for superior kadi above all, was used before the term "Sheikhu'l-Islam".

Hizanetü'l-Fetava (Kitabü'd-dava), to mention that *tahlif* (oath) is permitted in the sect of Shafii, not allowed by Hanefi. Approving Hanefi point of view, Ârif Efendi used Hanefi sources as Hülâsâ and Bezzâziye, which mentioned “*La yemine ale’s-Şahidi*” (Administratin oath of witnesses is not allowed) He expressed that he did not approve the method, by using Behçetü'l-Fetava. Because of the fact that kadi did not have the right to rejecting the testimony of the one that took back his claims. Arif Efendi’s objection to the wide use of oath as a tool in the judicial procedure, is another example of the sophistication of the 19th century legal reformist judicial procedure.

Ârif Efendi’s was to emphasize this issue by referring to *Tehzib* He said that unlike the opnions of Ibn-I Ebi Leyla in favor of oath especially these times where sedition is spread this kind of contract which relies on a swear, is a weak one. Also from Mu’in’ül-Hükkâm he mentioned this quote “و يحكم بشهادة الأمتل فلأمتل من الفساق” (Akgündüz, 1992:151) (decision will be made according to the most convenient witnesses from mischieves).⁶⁰ This issue was significant, in order to Express the necessity of reliablity of the testimony and the proof of it. Most significantly, this issue is also brought by Ârif Efendi to a level where the doctrine of Hanefi reaches another victory discourse-wise. ⁶¹Moreover, the conclusion of this chapter, also brings about another attribution from Muinü’l Hükkâm, summarizing the fact that the

⁶⁰ This is verified by Imam Kenderi’s Menakıb, as referred by Ârif Efendi.(Akgündüz, 1992: 151)

⁶¹ “*Kaffe-i şerâit-i adâleti cami’ şâhid-i adl hakka ki, zamanımızda sâlis-i anka ve kimyâ-i gayr-ı maruftur.*”

issues that requires hesitation should be examined, and witnesses other than female ones, should be distinguished, according to Hanefi doctrine. (Akgündüz, 1992: 151)

Third chapter⁶² is on the differences of the aspects of Kadi and Vali, an emphasis on siyâset-i adile (just siyâsa). This chapter on Risale-i Siyâsetü'ş-Şerîyye, as indicated in the heading, is the main focus of this text as a political advise literate. In a general context, Dede Cöngi, indicated a difference between kadis and valis point of view; The kadis according to him, were appointed to resolve the conflicts between parties; however valis are responsible for the execution of the capital decisions and enforcement (*zecr-i ashâb-ı cerâyim*) of the criminals. This third chapter was dedicated to distinguish their duties. (Dede Cöngi, 85/b)

In order to criticize again, Dede Cöngi employed the discourse of two massive scholars of Shafii (Imam Mawardi) and Maliki (Imam İraqi) doctrines, and their books which were attributed before, *Zahirat'ül-Malikiyye* and *Ahkâmü's-Sultaniyye*; Dede Cöngi preferred to serve differences in nine articles: (Dede Cöngi 85/b, Sebzi Mehmed 14/a, Akgündüz 152-153)

⁶² *Fasl'üs-Salis; fi'l fark beyne nazari'l-kadi ve nazar-, vali'l-cerayim: yani siyâset-i adileyi izaha dair fusulden fasl-ı salis*)

- i. The first article refers to the one accused of “kazf” (slander) should be taken to a hearing (for *zahir-i emaret*) and investigated before the lawsuit. Dede Cöngi points out the institute of “*Avan-ı Emaret*” (assistant to local authority); the situation where *avan-i emaret* absolves the *müttehem* out of the accusation of “kazf” then *vali-i cerayim* would set him free. However, if he would be accused although he is absolved, the *vali* would have the right to imprison him during the investigation. Kadis are not allowed to do so. (Dede Cöngi, 85/b) Sebzi Efendi stressed that fact that if a person exercised *kazf*, he has to be investigated by the *vali* in his district. If he was accused of this kind of crime before, the *vali* could expand and exaggerate the investigation. (Sebzi Efendi, 14/a)

Translating this article which was a reference from other sects, Ârif Efendi as “*Mütercim-i Fakir*” interpreted this issue of a case of “accusation” (accusation) and as legitimizing and changing the conditions where *kadi* could interfere, unlike Mawardi and Iraqi who put him in a position which was out of this “administrative” process. He added, “the one who is acclaiming *kazf*, being “*beri üs-saha*” (if the person is brought physically to the court of *kadi*) prove his case by *hükm-i Shari’a*; *kadi* is not permitted to investigate this person”. (Akgündüz, 1992: 152) On one hand Ârif Efendi limited the interference of *kadi* into this process, on the other hand, he proposed another step for this investigation process and actually, extended it. As a matter of fact, he reinterpreted and detailed the administrative process and brought about individual’s role and extending the contribution of *Shari’a* law. *Shari’a* law, as

given by Ârif Efendi, interpreted as an instrument which is used in order to legitimize his claim.

- i. Vali-i cerâyim respects “karâin-i ahvâl” (the interferences of the situation) and the qualities of the accused. (Akgündüz, 1992: 152) At this point, Dede Cöngi gave the example from a zina (adultery) issue; “if one accused for zina, and he was known for his deceptiveness, the claims of zina would be strengthened, also with accusation of robbery, if the accused one’s hand was cut and had any scar by human effort and he was known for indications of robbert, the vali would punish him heavily. Or if one is known for making zina and he did not have any of th mentioned scars, vali would consider the lowest punishment (tehdid-i mücerred)(threatening) as adequate. (Akgündüz, 1992:152-153). Sebzî Mehmed, for the term for “heavy punishment” which was mentioned as “teşdid-i ukubet” in Ârif Efendi’s version; mentioned “siyâset-i galize” which indicated the “worst punishment” (Sebzî Mehmed14/a), where the word “siyâset” was needed here, to be used in order to stress “the villainy” of siyâsa. However kadi was not allowed to give those decisions (Ârif Efendi). Dede Cöngi (85/b) and Sebzî Efendi (14/a) just mentioned “These are all against whatever kadis are appointed to do.” According to two imams, kadi was not advised to interfere in this administrative process. Despite the fact that kadi was pulled out of this administrative process, the vali as a manager, was expected to have a command of the social networks and trust them.

- ii. This article points out the situation where vali-i cerayim could imprison the one who's under suspicion for one month during the investigation process which was made in order to conclude "accusation". Although vali could take initiative at this point, kadi cannot, unless Shari'a necessitates it.⁶³ (Akgündüz, 1992:153)
- iii. This article is about the conditions of ta'zir punishment and darb. "Vali-i cerâyim is allowed to give ta'zir punishment and "darb" to a suspect, if not exceeding the limits. If one confesses during ta'zir, this confession is not reliable. They would stop "darb" and call him for to confess again. If he does not repeat his confession with an irrelevant declaration, vali had the right to warn him and then operate according to the first confession. Kadı was not allowed to (Dede Cöngi 85/b). Here Dede Cöngi pointed out that two imams indicate that vali had the possession of applying ta'zir and determine which confession to rely on. As a matter of fact this approach obviously gives vali a position which requires further ability to adjudge, than kadi.

⁶³ When Dede Cöngi and Ârif Efendi have given this period of detention as "one month" (Dede Cöngi 85/b):

Sebzî Efendi, when indicating this time limit, adds, "*bir ay veyâhut muktezâ-ı hal*", one month or a time as required by the situation itself. (Sebzî Mehmed, 14/a)

- iv. Vali may apply the punishment of life imprisonment in order to overcome and keep away *the* troubles caused by *fesad* people (*da'ir-i müfsidler*) from the people (Ibadu'llah), using “beyü'l-mal”'s funds (nafaka). Those “mefasid” might repeat their (crimes), and then their penalty might not have been described by Shari'a. Kadı is not permitted⁶⁴ (Akgündüz, 1992: 153).
- v. Vali may have the suspect to take an oath, and make him swear on his submission to Sultan, or even ask for *talak* (divorce) and *ı'tak* (manumission) in order to strenghten the investigation (الختبار حاله). However kadi is not allowed to have anyone take an oath by oppressing him or her, if necessary, “yemin billah” (swearing to God) is adequate. (Dede Cöngi, 86/a)

This article was interpreted differently in Ismail Müfid's version, for instance. First of all, he did not use “yemin verdirmek” or “yemin ettirmek”(Ismail Müfid, 122/a) however he used another word for the same purpose; “kerhen tövbe ettirmek”, although the word “tövbe” has two meanings⁶⁵ (ethimological) in Turkish Language, both meanings in this context derives from same intention because of being used as

⁶⁴ Although, Ârif Efendi as he wrote in his version in 19th century, “hudud-ı şer'iyye” Dede Cöngi in his Risala, and Sebzi Mehmed in his version of the Risala, preferred to use “hududat” (Dede Cöngi 85/b), “hudud” (Sebzi Efendi, 14/b) directly, in order to indicate “Shari'a punishments”. Moreover, “cürm ü cinayet” crimes were given as an example above by Ârif Efendi. Neither Dede Cöngi, nor Sebzi Mehmed mentioned murder, as a crime which was practiced, however was not punished by Shari'a right after. (Akgündüz, 1992: 153)

“*tövbe ettirmek*”. “*Tövbe ettirmek*” has the meaning of oppressing someone to swear that he will not repeat his crimes.⁶⁶ Ismail Müfid’s version of the text, although being almost similar to original text, here at this point for instance, he changed the original and explained this article through the crime of murder.⁶⁷ Although the word “*cinayat*” in Persian used as “crime”.⁶⁸

- vi. Insulting the sinner, Vali would ask for a “*tövbe*”. Until sinner intend to clear out his sins and regrets what he did, he needs to be threatened with death or with other methods of discipline. This is out of Kadi’s scope.⁶⁹(Akgündüz, 1992: 153)
- vii. This article, pointed out that if the number of woman witnesses decrease (or too many already), kadi cannot accept them; however vali may accept and listen to their testimony.

Ârif Efendi, implied the testimony of women in a very different way than Dede Cöngi and Sebzî Efendi. Dede Cöngi wrote “*şehâdet-i ehl-i mehr*” (testimony of

⁶⁶ Meninski Lexicon Vol I, p.1449.

⁶⁷ “Mücrime kehren tövbe ettirib bir daha cinayete avdet ederse, eyd-i şedîd (عيد شديد) ve katl iktiza etmeğin mahalde katl ile imdad ve eyd ve daveret ettiği surette katlden gayrı nesne ile te’dib ve ta’zib-i şedîd dallette caiz-i kaza değildir.”(İsmail Müfid, 122/a)

⁶⁸ In Turkish, the word refers directly to “murder”. Despite, in this context, it is obviously used for the act of murder.

⁶⁹ Interesting detail at this point is, although Dede Cöngi and Sebzî Mehmed mentioned “mücrim” (criminal), Ârif Efendi calls him “günahkâr” (sinner) (Dede Cöngi 86/1-Sebzî Mehmed 14/b).

dowry people) (Dede Cöngi 86/a); Sebzî Mehmed “*avretlerin şehadeti*”(testimony of women) (Sebzî Mehmed 14/b), at last, Ârif Efendi “*sebük-mağzan*”(not intelligent) (Sebzî Mehmed 14/b) and “*kalilü't-temyiz olan bazı kesan*” (some people lack of discernment) (Akgündüz 1992: 153) When Dede Cöngi and Sebzî Mehmed clearly declare that those witnesses are “women”, Ârif Efendi preferred to generalize this issue to people who did not have the ability of judgement.

- viii. Despite the fact that a conflict or physical fight between two does not necessitate financial sanctions or Shari’a punishment; the vali has to give his opinion in order to prevent maltreatment. If one of them was heavily affected by this fight and he was beaten or so, his hearing would be held with the presence of Ulama. “البادى أظلم”: meant; one who started cruelty, is crueller than the oath. These disagreements would be solved by the giving its punishment, council by people who are known as witnesses or different methods and forces. (Akgündüz, 1992: 154) Although disagreements that don’t necessitate a punishment in Shari’a law, take place in between parties, the Vali at this point appears to be a moderator without any requirement for a legal assignment.

Differences with Hanefî doctrine were given in nine articles, with reference to Muinü’l-Hükkâm, practical distinction between responsibilities and duties of vali and kadi. Dede Cöngi broke down these nine articles into one paragraph: “*taife-i kudât ilzam-ı ahkâm-ı şerîyye ile ser-efraz ve zümre-i vülat icra-yı ahkâm-ı siyasiyye ile kesb-i imtiyaz etmiş...*” (Akgündüz, 1992:154); consequently, Dede Cöngi signified

and exquisitely specified the scopes of vali and kadi. When the boundaries of “kudats” (kadis) authority is “ilzam-ı ahkâm-ı şeriyye”, binded legally by Shari’a law; “vûlat” (valis) are appointed to apply those laws.

However, Cöngi pointed out a very significant detail; “On accepting the suspects, crimes being proved by just witnesses and Shari’a law; kudat and vulat are equal by means of establishing the limits (Dede Cöngi 86/a).⁷⁰ Instead of “vulat” which corresponds to a meaning that includes (not only vali) but all administrative bodies.

Ârif Efendi as an interesting addition at this point, actually an interpretation of the expression which meant those two positions were equal in a sense; “In the meaning of application, one is substitute to the other, which was a point required an agreement of everyone/people” then referring to the authors of nine articles; “This was the approach of two mentioned Imams”(Akgündüz, 1992: 154).

Dede Cöngi, right after signifying those nine points, endeavoured to explain and enlarged some necessary points as using Muinü’l-Hükkâm of Trablusi, “Vali-i cerayim would accept the word of anyone from avan-ı emaret that he appointed. According to Hanefî imams; kadı is allowed to appoint a dependable person to do investigation with a salary, he might be appointed to do investigation about suspects and witnesses. Some from Hanefî Ulama said, kadı is supposed to inform religious, just and honorable people about his “umur” (works, decisions, orders) and ask for

⁷⁰ As a significant detail, at this point Sebzî Mehmed and Dede Cöngi used the word “الامراء” (Al Umera: Ismail Müfid used “cümlesi”; which was not as obvious as other versions. (122/b))

their opinion and their help for his work as a kadı (...) Before kadı, Hanefi doctrine allows, revealing the truth and to trust someone who is just or rejecting the witnesses' testimony revealing their situations.”⁷¹(Akgündüz, 1992: 154)

Dede Cöngi highlighted the fact that in order to provide vali's confidence towards witnesses on a murder case, kadı has to trust and respect the authorities' orders and that he mentioned this on “*Bab'ül-Hükm Bi'l Karain*” (Dede Cöngi 86/b). And continued with kadı's right to imprison, unlike vali, kadı's permission to imprison is related to clearness of the investigation process.

Ârif Efendi and Sebzî Mehmed translated the part where Dede Cöngi referred to kadı's right to imprison, according to the opinions of “fukaha”; “the person who claims a murder as a protector of the murdered (veliyyü'd-dem) first of all, he had to prove that he was a relative of the late one. If he proves this, kadı had to question the witnessing of him. If the contender requests one or two days about his case, kadı would give the permission.” Subsequently, Sebzî Mehmed directly translated from Dede Cöngi “In a vendetta case, kadı would imprison the suspect, before his crime was proved, for one day and one night.”⁷² Significantly, Dede Cöngi stressed the fact kadı also had the right to give ta'zir punishment; however, “Kadı may not torture the one violating the explicit boundaries of Shari'a punishments. Because of the fact

⁷¹ As given above the translation by Ârif Efendi, Sebzî Mehmed in addition to descriptions of those “trustees” (religious and reliable), he mentioned “casus” (spy) or “kaşif” (discoverer) (Sebzî Mehmed 15/a).

⁷² Ârif Efendi only mentioned one night (Akgündüz, 1992: 155) which was a reference to Mohammed.

that kadi could only give this punishment in order to discipline.” (Akgündüz, 1992: 155, Dede Cöngi 86/b)

As it is mentioned repeatedly in Dede Cöngi’s Risala, the public opinion on the suspect is instructive. If the suspect was known and accused for his vibe for vengeance, he had to be imprisoned consistently. Ârif Efendi translated; if his situation is not clear, he would be imprisoned for one or two days as a measure, it was up to kadi’s opinion, also to protect him from murdered one’s relatives. Also mentioned in Fetavâ-ı Hülâsâ’s “Babü Men Yuhbes” (Chapter on prisoners) clarifying the fact that imprisonment was permitted to kadı also, “...kadi would put those fesad into prison until they forswear” (Akgündüz, 1992: 155) In addition to this, Dede Cöngi in the original text and Sebzî Efendi, also refers to Bezzâziye at this point (Sebzî 15/b, Dede Cöngi 86/a).

“يصلح به عباد و بلاد”

In order to provide people’s benefits (ibadullah) and security of the country, it is permitted for kadi to approach *ehl-i şer* (fesad) with violence (Ârif Efendi adds a point here which was not written, referring to the sources he mentioned), or through outlawing and compulsory laws. “Because, one outlaws another due to his crimes and sins with too much power and prohibiting people from haram, is not powerful enough to blame people.” (Akgündüz, 1992: 155)

Referring to Hanefi Doctrine, similar to vali, kadı was also permitted to have somebody take an oath, apply *talak* or *itak* on the suspect, or threaten him. Here at

this point, Dede Cöngi highlighted this argument with an instance from “Muhit” from Kinyetü’l-Fetava’s Kitabü’l-Vakf on the protector of an orphan. Protectors should declare the defters which included the distribution of the orphan’s property. Here the protector is threatened to declare the payments he made for reparation, if he was known for his qualifications as a trustee and religiousity, he would be called to the Shari’a court and make a declaration. If he is known for good intentions, kadi would threaten him, even imprison him for two or three days and make him declare everything. (Akgündüz, 1992: 156) As written in Hülâsâtü’l-Fetava, in fact many sheikhs do not permit talak, itak, or have somebody take an oathing which were considered as “siyâset-i hasene” unless it is necessary (Sebzî Mehmed 16/a). Significantly; Dede Cöngi indicates; more or less than “siyâset-i hasene” is not permitted for kadi (Dede Cöngi, 87/a). Ârif Efendi added another source to it as a reference; “Fetava-yı Suğra” and emphasized the fact that “If necessary, one should ask for kadi’s opinion” (Akgündüz 1992:156).

If necessary, calling for hearing the testimony of prisoners mentioned by Sebzî Mehmed; Dede Cöngi “اهل المهن” and Ârif Efendi said “sebük-mağzan-ı bî-idrak”(unintelligent people); are permitted in order to investigate for the truth and give the right judicial decision which took place in many Hanefî texts and Muinü’l-Hükkâm (Dede Cöngi, 87/a; Akgündüz, 1992: 156; Sebzî Efendi 16/a).

Mütercim-i Fakir, Ârif Efendi, before passing on to the 4th Chapter, previously made a note on “swearing on other things than Allah” which was not permitted. Although, one of two parties force kadi and insist on threaten with *talak*, *itak* or *having sb. take*

an oath kadi would not let his rights be violated and ask for ulema's opinion.(Akgündüz, 1992:157) Here he made a referrance to Şürünbülali el-Merhum. "Some people from Ulema, accepted and gave fetva for the removal of the one that was moved by *talak* and *itak*, in order to resolve their lack of authority or to protect their benefits." However, said Mütercim-i Fakir Ârif Efendi, "higher ulema's opinions are valid; according to them, this kind of *tahlif* cannot be accepted and is invalid, so was the kadi's decision and for benefits, Mevlana Alaaddin Dürr'ül-Münteka mentioned, *fâide-i matlube*, (which was the benefit) is provided if the person who was asked for an have somebody take an oath, confess the claims (Akgündüz, 1992: 156).

3.3.3. Fourth and Fifth Chapters: The Cases of Töhmety (Deava bi't-Töhem) and the Punishment of Ta'zir

The fourth chapter on Dede Cöngi's Risala, is dedicated to the issue of "accusation" (accusation) about sinners. Further analysis was employed at the end of this chapter, subsequent to Ta'zir issue. This chapter is intensely interpreted by Ârif Efendi. According to Dede Cöngi, ones who were under suspicion are of three kinds:

Kısm-ı Evvel: If accused one is known with his truthfulness, he would not be given punishment. Those who offend a good person, will be punished with "tazir". In order to protect the "ehl-I ard, sulh ve ebrar" (good people) from "ehl-i şer" (evil people) they would be punished (Sebzî Mehmed, 16/b). Those who slander those "ashab-ı

iffet” (people with honour) will be punished (Ârif Efendi, Akgündüz, 1992: 157). Mentioned in *Şerhü't-Tecrid* by Imam-I Azam; if one called out to the other “Ey fesad! Ey Fasık!”, the accused one would be investigated. If he turned out to dedicate his way to the great dergah of God, the liars will be punished with tazir. If he is just the opposite, ta'zir would be issued (Sebzî Mehmed, 16/b).

Kısm-ı Sâni: When one who was accused for theft, forestallment, *katle'l-nefs*, *zina* adultery attempt, *fisk ve fücür* and *cinâyât* are caught, they must be investigated carefully and thoroughly according to their bad reputation. Until their regret and their “tövbe” is explicit, they would be imprisoned accordingly, for a long period and whipped or only imprisoned (without beating) to understand their real situation according to the “*Fetavâ-ı Haniye*” (Akgündüz, 1992: 158).⁷³ On the other hand, Sebzî Mehmed emphasized the quote from Ibn-i Kayyım El Cevzi, “I don't know anyone from Muslims (müslimîn) would set the suspect (who was accused for one of those crimes mentioned) free, contended with a *tahlif* without imprisoning.⁷⁴“Because, the preference here would not be accepted by “mezheb-i arbaa ashabi”; great imams of four doctrines. If any vali or kadi release them, it would be a denial of “siyâset-i şerriyye” and a excessive mistake (*galat-ı fahiş*)” according to Sebzî Mehmed (Sebzî Mehmed, 16/b).

⁷³ Although Sebzî Mehmed mentioned this issue, he did not mention where the quote was from (Sebzî Mehmed 16/b).

⁷⁴ (Using one important word less than Ârif Efendi and Dede Cöngi, he attributed to “müslimin” generally, although they mentioned “eimme-i müslimin”; Muslim imams Dede Cöngi 87/a)

Sebzî Efendi did not translate this part where Dede Cöngi say;

و من ظن ان لا نأخذة الا بشاهدى عدل كان مخالفا للسياسة شرعية

Ârif Efendi: “Even if we declare that they would trust accusation who are known or their humiliating activities and say, we would only investigate with just witnesses; this kind of punishment is against Shari’a law (Akgündüz, 1992: 158).

“They would say” Dede Cöngi refers, “Because of these excessive mistakes, the valis and emirs (administrative bodies) who were appointed to practice the punishments, would not practice thoroughly for the things had to be done in favor of siyâset-i şeriyye, siyâset-i halk and umma (community). Those violated the boundaries of God and they have been cruel and done bidat have no place in just siyâsa. The reason here is the lack o knowledge on Shari’a siyâsa law. They have to be punished, the evidence here is whatever Resulullah (Mohammad) did.” (Dede Cöngi 87/b, Akgündüz, 1992: 158) The fact that Ârif Efendi emphasized this part which Sebzî Efendi did not even mention, is another evidence how Ârif Efendi considered and favored to refer to the Shari’a law.

Subsequently, Ârif Efendi here interpreted quoting form Muinül Hukkâm which Dede Efendi did as well;

“و قد تَقَمَّ في الباب كلامى معين الحكام” (Akgündüz, 1992: 158)

“Dede Efendi’s point was to explain the part on the books 3rd chapter about siyâset-i şeriyye, with the expression of ‘What Resullullah did’ was to bring about Resul’s

sunna in order to prove the legitimization of *siyâset-i şeriyye*.” Emphasizing Dede Cöngi’s aim, Ârif Efendi told the story of Ibn-i Hişam about the Resul’s conquest of a fortress and his agreement with Jews (Akgündüz, 1992: 159). The story was employed by Ârif Efendi evidence for *siyâsa* punishment, where Kinane bin Ebi’l-Hakîk was accommodated the fortress was conquered by the army of Mohammad and made an agreement with Jews. Although he asked about the *ganimat*, the protected valuable fabrics to Kinane, he claimed that it was demolished; he did not pay and hide the fabrics. Thus, Resul ordered Zübeyr to torture Kinane and take all the material that he possessed. Because of the fact that Kinane did not give up his denial, he was killed in order to demonstrate his evilness and has deceit he was punished by *siyâsa*. (Akgündüz, 1992: 159)

Dede Cöngi, in this chapter repeatedly stressed the fact that, people who were accused such as Kinane, must be punished according to Shari’a. “As mentioned in Muin’ül-Hükkâm; if someone breaks into other’s house, and the owner sees it, he might intend to kill him. Then goes to the vali and the kadi and tells them what happened, ‘This person is from *ehl-i fesad*, he entered my house and intended to kill me thus I killed him.’. The Vali or kadi, would investigate, if the one who breaks into the house is a person from *ehl-i şer* (would go for *vech-i meşruh*), this case would need ‘*kısas*’. (Sebzî Mehmed, 17/a)⁷⁵

⁷⁵ Mütercim-i Fakîr Ârif Efendi, interpreted this issue by the contribution of a quote from Siyer-i Kebîr in order to indicate the significance of “legal practice” (*teamül*); “The owner of the house when he sees the breaker, he would do what needs to be done. If he sees his assistant who collects things with him, he may execute both of them. But if he was one from *ehl-i hayır*, the owner had to do *iskan*

In the chapter of “Cinayat” (Murder) of Mecmaü’l-Fetava and the chapter of “Sirka” (Robbery) of Bezzâziye; if the owner of the house could prove that the murdered was from ehl-i şer and fesad, dem-i heder, the blood is shed; however, if he can not prove and the murdered was not known for his fesad, he is not from ehl-i şer, the owner of the house (sahib-i dar) would be killed, as kisas.” (Sebzî Efendi 17/a) Sebzî Efendi at this point did not mention whatever happened to the murderer, the owner of the house, if the person is known by his fesad. Ârif Efendi translate from Dede Cöngi “He would not be punished with kisas. However if the right to murder is not even clear, in this case, the blood money would be taken from the murderer.” (Akgündüz, 1992: 160)⁷⁶

This issue was also mentioned in *Muzmerat* (another Hanefi source), as the owner said “He had an eye on my property, and I killed him.” Imam-ı Azam considered there was no need to take action for this situation. (Dede Cöngi 87/b) He also reviewed what Muinü’l-Hükkâm on “accusation” one claims that he bought what he possessed at the moment and he could not prove it, he will be accused by robbery (Dede Cöngi 87/b; Ârif Efendi 160; Sebzî Efendi 17/b) The plaintiff will take a part

and ikram, killing him with arrow and bow or another method is not permitted.” (Akgündüz, 1992: 159-160)

⁷⁶ Dede Cöngi explained the reason of this as considering the unclearness of the situation, if the evidences cause suspicion like this and the suspicion cannot be cleared out, even if kisas was issued according to the suspicion, ‘*mal şübhe ile mündefi olmaz*’ (kisas would take away suspicion, not substitute mal/ the possessions) Dede Cöngi said (87/b);

دلالة الحال اورشت شبہتها فی القصاص لا فی المال

of what the suspect possessed. However, not all his possessions will be taken by this method (Akgündüz, 1992: 160).

Dede Efendi attributes at this point, to the role of administrative authority; and said “But if, the suspect “*müttehem*” is not famous for this crime the Sultan will imprison him and investigate him. Resulullah also imprisoned accused suspects who were well known with robbery. They will stay in prison until he accepts his crime. And also, about imprisoning, accused one (defendant) would be imprison in accordance to the “*R’ay al Imam*” (*the opinion of Imam*), according to the writings of Omar bin Abdul Aziz;

”يحبس حتى يموت انه اذا لم يقرر“

“He will be imprisoned, until he confesses.” (Dede Cöngi 88/a) This article must be reviewed through all three different versions;

First of all Sebzî Efendi; instead of mentioning “Sultan” as in the original version “*But if, the suspect “müttehem” is not known for this crime Sultan will imprison him...*” He used the term “Vali”; “Vali anı habs...(eder) Müddeanın sair malından sual ve tafhas eder” (Vali would investigate him). Moreover, he did not even mention the “*R’ay al Imam*”. (Sebzî Efendi, 17/b)

Ismail Müfid, on the same passage, attributed the administrative responsibility of investigation to Sultan also authentically translated this part and also mentioned “*Ra’y al Imam mikdarınca...*” (Ismail Müfid, 125/a) Ârif Efendi’s version, saying

“...ahvalinden keşf ve taharri için bir müddet anı habs eylemek, İmamü’l-müslimin üzere lazım ve sezavar idüğü...” (Akgündüz, 1992: 160) More significantly, instead of saying “ra’y al Imam mikdarınca”, once again, Ârif Efendi revealed that he employed the words “sultan” and “imam” as substitution. In addition to this, he mentioned “ulema indinde” and: “Ra’yü’s-Sultan mikdarınca”. Then he also mentioned the affirmation of Ebu Leys Semerkandi on keeping the suspect inside prison, until he confesses. (Akgündüz, 1992: 160) Sebzî Efendi did not mention, however in Dede Cöngi and Ârif Efendi’s versions, the opinion of imprisoning one until confession, referred through case in Fetava-yı Hülâsâ and Bezzâziye (Dede Cöngi 88/a; Akgündüz, 1992:161).

Dede Cöngi emphasized the situation of the suspect as a prisoner on the way to confession. Attributing to Muin’ül-Hükkâm one more time, claimed that the confession which the suspect make in the prison is valid. Because Vali considers this kind of “ikrar” out of the context of ikrah (intimidation) (Ârif Efendi says “Kadının bu habsi daire-I ikrahtan hariç tuttuğu bî-iştibahtır.”)(Dede Cöngi 88/a; Sebzî Mehmed 17/b; Akgündüz, 1992: 161) Subsequently, threatening with whipping or one day in imprisoning until the suspect confesses is not considered from ikrah, as told in Şerhü’t-Tecrid (Dede Cöngi 88/a).

Ârif Efendi translated, the quote from Imam Mohammad the detention periods, variable, since the affect of being imprisoned. “Some would be saddened with even one day detention in prison. Many people will be even bothered with being imprisoned according to them being honourable or not. Also the punishment of

imprisoning being of ikrah or not, is up to kadi's opinion and authority. Kadi of the time is appointed to do review.” (Akgündüz, 1992: 161) Despite the fact that Ârif Efendi directly translated this passage from Dede Cöngi (Dede Cöngi 88/a), Sebzî Efendi did a very significant change, “... *vakt ve zaman-ı habsleri ra'y-i vali ve kadiya müfeyvezdir.*” ; “the kadı and vali are appointed to determine their time of detention“ (Sebzî Mehmed 18/a)

Dede Cöngi said (88/a); “ If ikrah was not used on his rıza (will), his confession will be cancelled, he will compensate with “emval” . But if there was ikrah on ikrar (threat/pressure on confession), they would apply “kisas”. Ârif Efendi explained; “ If the suspect was not threatened by death and this is revealed, as a requiry, he would compensate the goods he expended (tazmin)... Thus, these indecent people will be punished with ikrah instead of an execution; whipping or one day detention. By this way, their ikrar (confession) although payment (tazminat) is also possible, the suspicious punishment and kisas are not allowed. (Akgündüz, 1992: 161)

A new reference to *Hizânet'ül Müftiyyin*, “If someone was threatened by death or a part of him being cut, and he gave his confession at the end of this process, his confession is not valid. However, if he was threatened by one day “habs” or being assaulted (whipped), confession at the end would be valid.” (Sebzî Efendi, s.18/a) Thus, Dede Cöngi constrained the results of these of two different processes with two different methods. Apperantly, we conceive from his referrance that, as; heavier the threat is, so faultier the result is. Continuing with the punishment in a denominational context and this indication is significant, in terms of Dede Cöngi's

understanding of social stratas; “If one who is arrested for whipping or given one day detention in prison is from “evsat nas” (middle class) and does not belong to “eşraf”, “the great ulema”; ikrah is allowed.” (Sebzî Efendi 18/a) Sebzî Mehmed did not handle with the price of this situation despite the fact that Dede Efendi and Ârif Efendi mentioned: “If one who is arrested for whipping or given one day detention and he is threatened with 1000 dirhem payment, and if he does not belong to “eşraf”, “the great ulema” or “ru’esa” and is from evsat annas, ikrar is allowed and this amount should be taken from him. If opposite happens ikrah is not allowed.” (Dede Cöngi, 88/a; Akgündüz, 1992: 161) Thus, Dede Cöngi indicated that ikrah is not allowed for people from Ulema, or Eşraf; which is a very broad distinction, directly pointing out to the powerful notables.⁷⁷

Dede Cöngi; continued the issue of ikrah; reffering to Mecma'ul- Fethava and Bezzâziye from Zahir. He pointed out the significance of the elimination of the subjects of *ikrah* and the convenient situations to use it as an administrative and judicial instrument, in order to resolve the case throughly. Though, this instrument might have been misused by cruel authorities in favor of their interest.

Ârif Efendi initiated with the attribution to “amir”; “Emval-i ibadı gasp ve garet birle sahib-i ikrah olan amire i'ta ve teslim ile ikrah olunan kimesne için imtisal-i emr ile

⁷⁷ Obviously, in detail, Sebzî Efendi did not mention “ru’esa”. Also, Ârif Efendi used the word for “ruesa-yı eşrâf”, although Dede Cöngi mentioned the word separate from “eşraf” and attributed to “ruesa” generally. (Dede Cöngi 88/a-2; Ârif Efendi 161)

iştigâl bir vakitte caiz ve helal olmaz.” An authority uses “ikrah” and he was to usurp one’s property, at a time when he is appointed to apply the orders, this kind of enforcement is not allowed. At the time of this usurpation, if this ”amir-I mükrih” who’s qualified to enforce his threat on this usurpation is not present, he would appoint some “nazır” that everyone is fearful of. However, there is neither amir nor his nazır present with the person who’s threatened, or the nazır he sent was someone noone is afraid of, “gasp” them here, would not be “helal”. Because of this “emr” although it is feared to be returned, “tahkik-i ikrah” is not allowed.” Ârif Efendi interpreted this and said, the action of mükreh (fi’il-i mükreh) is transited to “Amir”, the person who did this threat to the mükreh (one who was threatened) would be charged for usurpation immediately. Mükreh would take his property back. However the situation of mükrih would be left to time (Akgündüz, 1992: S 162). (Ârif Efendi directly translated this part from Dede Cöngi;

المكره باخذ مال الغير و دفعه الى المكره انما يسعه اذا كان المكره حاضرا فان كان غايبا وقت الاخذ ان كان مع رسول و يخاف المكره من الرسول مثل من يخاف من مرسله له ان ياخذ و ان لم يكن عنده رسول او كان لكن (يخاف عوده و لا يحقق المكره ... لا يخاف منه ليس له الاخذ اذا المكره زایل حقيقت

On the other hand, diversly, Sebzî Efendi made an addition and quoted from this matter Bezzâziye and Mecmua ül Fetava to explain it through a case: “If vali send someone from his own followers ‘you will take this amount of akçe from this person and bring it to me’ and if that man would give the money to Vali because of ikrah, would this man be able to take back his money from the receiver? If mentioned Vali appointed a nazır (assistant) along with the receiver, the ikrah is valid and that money

cannot be taken back. And if Vali did not appoint any nazır for this matter; money can be taken from the receiver.” (Sebzî Mehmed 18/a) Obviously, the Vali was the only officer to use the authority to do ikrah, and if money would be taken through theathening, only the Vali or the officer he appointed could take it. Here, this fetva is given in order to avoid corruption stems from Valis (with making an accompany appointed by Vali mandatory) and also from irrelevant people. Thus, this application is to protect “mükreh” from corruption and also Vali in a sense, from any accusation.

As a result, plainly explained in Sebzî Efendi’s version, the passages in Dede Cöngi’s and Ârif Efendi’s versions are more similar to each other; As seen above, the main difference between the two translations is that they all used a different expression for the authority. Ârif Efendi started of with “amir” and then continued with “mükrih” (the enforcer). However, Sebzî Efendi directly used the term “Vali” . Thus, although Ârif Efendi and Dede Cöngi intended to attribute the case to all administrative parts, any “amir” or any “mükrih” who had the authority of the state, Sebzî Efendi determined the boundaries only with “Vali”.

Sebzî Efendi did not translate the passage quoted from Imam Serahsî, in Şerhü’z-Zahidi. However, the instance he gave above as an addition, probably an indication for this quote. This passage is also dedicated to usurpation of the property of people. “If ikrah happens to mükreh with the company of mükrih-i amir (superior of mükrih) ; this kind of ikrah is a legal one.” And also “If mükrih send someone for ikrah and be lost, even if show he fears because of his action of usurpation of his property won’t be helal. Him being lost or away would invalidate his power. This matter, said

avan that were appointed by cruel ones to usurp the property of people, (the ones with the absence of those *avan* and *nazır*) said ‘ We are ought to usurp due to our fear, from the cruel ones punishments for example, however, their apologies would not be appreciated, there a “*resul*” must have been present. .”(Akgündüz, 1992: 162)

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Sebzî Efendi made additions and simplified the issues in a sense, however, he also referred to *Kınyet’ül- Fetava*. A significant detail here is that Sebzî Efendi used the term “*Vali*” for state agent continuously. “If there was a *vali* who was cruel and possessed fortune of many people and killed some of them.” (18/b) Sebzî Efendi does not attribute the story to Şems’ül-Melik. He told the story, in a simplified sense; “During the reign of this cruel *vali*, if one would say as a debtee, with the witnessing of everyone, I only take certain amount of *akçe* from his fortune for my debt, you have to give it to me, otherwise I will tell *Vali* that you possess the property of some person who’s property was confiscated.” (Sebzî Efendi, 18/b) “Even if the debtee gives *tahvil-temessük* here, this case is obviously *ikrah*. If he would sue him, he would take back this money.” (Sebzî Efendi 18/b)

.”A *melik*, who hide his property and gave all of it to trustees, was called Şemsü’l-Melik. When he was sentenced to death and his property would be confiscated, one

⁷⁸ As a significant note from Dede Cöngi for this passage was, when he intended to refer to the assistant or commissioner of the administrative superior here, he used the terms “*resul al amir*”. Despite the fact that Ârif Efendi also indicated “*amir*” here (as in *mükrih-I amir* for the *resul al amir*), as mentioned above, Sebzî Efendi refers to “*vali*” directly (Dede Cöngi 88/b; Sebzî Efendi 18/b).

“gammaz” (a tattletale) told that his property was hidden. Even before news were spread, people demanded this property. Thus, at a time where this kind of news would fear people; one as a debtee; addressing his debtor said; ‘If you hand me *tahvil* of my debt, I will declare I have no right on your fortune. Otherwise, I will inform the cruel ones (cebabire) against you saying you have hidden gold of Şemsü’-Melik’ (Akgündüz, 1992: 162) Dede Cöngi attributed to this instance in order to emphasize the fact that situations like this also considered “*ikrah*”, and could brought about a case against debtor. Sebzî Mehmed simplified this story, however made the comparison even more complicated. For instance, as mentioned before, when saying “I will inform the cruel ones” he directly attributed to “Vali” as a position, and presumed the this story’s cruel administration directly as Vali. (Sebzî 18/b) Moreover, Sebzî Mehmed instead of saying “during the time of strong fear” like Dede Cöngi did, he used “...during the time of cruel Vali”.(Dede Cöngi 88/b; Sebzî Mehmed; 18/b)

Risala continued giving examples for *ikrah* however, at this very point of the text, as “Article 98”, another issue which is a case of taz’ir punishment is also involved, which is accusation of zina. “A man got married secretly. If one of husbands’ friends would threaten the wife and say ‘If you don’t turn to him, we will tell *şihne* (officer) that we saw you with this man doing zina, they would black out your face, and expose you and black out your name.’ And if this woman has a clear name, and refrain his rights from the mehr, this is also considered as *ikrah*. However, if those people only proposed her to give up her rights but did not threaten her with

blackening out her face, (فيسود وجهك) this won't be considered from ikrah. (Akgündüz, 1992: 163; Sebzî Mehmed 18/b) This passage did not take place in our version of Dede Efendi's original text, including further example on ikrah again referred to Kinyetü'l-Fetava. "Some etrak-ı bî idrak came to a man and said 'if you don't sell this property of yours to me, I will give etrak and havaric 100 dinar, and I would encourage them to beat you.'. If the man obeyed it and sold everything to him with this threat, which is a situation that he is openly threatened and intimidated, his property would be given back to him. Although this person gave his property by the force of this cruel person's words, the threatened one put up with this threat, but obviously this kind of rascal person, cannot give out those "etrak" 100 dinar." (Akgündüz, 1992: 163) Frankly, Ârif Efendi did not reveal whether situation was considered as ikrah or not. Sebzî Efendi and Ismail Müfid are clear on this issue, that this attitude is not considered as ikrah. According to Ismail Müfid's version, if he accepted this debt or sold his property, the decision of ikrar would not be right (Müfid, 127). Likely, Sebzî Efendi also claimed that this is not considered as ikrah, "*herif vali-i zalime nesne vermez*" (Sebzî Mehmed 19/a). Dede Cöngi, did not mention in our version.

Another detail was that in different translations we have, a very significant point is considered. For the subject of the crime here; Ismail Müfid mentioned "bir şahs" and "zalime etrak", Ârif Efendi used the popular term "etrak-ı bî-idrak", "havaric-i nâpak", "etrak". On the other hand, Sebzî Mehmed saying; "Sell your bağ and bağçe to me, or I will tell Vali, and I would even bribe someone and I will cause bad things;

'fulan fulan muzır olan işleri başına getiririm' “ obviously avoid using any term. (Sebzî Mehmed 19/a; Ârif Efendi 163; Ismail Müfid 127/b)Furthermore; the investigation of “ikrah” in kadi’s council, is not more than a declaration on the probability of this situation is ikrah or not (Akgündüz, 1992: 163).

Another issue considered in the Risala was another contribution to the scope of kadi and vali and the validity of the methods of “sulh”. Referring to Bezzâziye, Zahirîyye, Mecmaü'l-Fetava and Münteka; Sebzî Efendi translated as “If the suspect was imprisoned for robbery or so, by the order of Vali, he cannot be released by making *sulh* , however if kadi gave the decision, it is allowed to free the suspect by *sulh*.” (Sebzî Mehmed, 19/)⁷⁹

Which is an expression indicate that, “A suspect could not be released by making sulh by vali” or “صاحب شرط” as Ârif Efendi translated; an officer who was appointed by Vali himself. On the other hand, in addition to original text, he emphasized the term “sulh” here, saying “*tahlîs-i nefis için bir mikdar mal ile an inkârin musâlaha olsa*”; an agreement was to be made with a certain amount of money (Akgündüz, 1992: 163) Although, Ârif Efendi said, one that vali imprisoned, is a *mükreh* (*vali threatens him*) or imprisoned by the vali unjustly. Also, kadi would imprison unjustly or does not imprison, but only give the decision of imprisoning.(Akgündüz, 1992:

⁷⁹ Sebzî Efendi; did not mention any authority other than Vali, although Dede Cöngi at this point declared (Dede Cöngi 89/a);

...كان حبسه الوالى او صاحب شرط فاصلح باطل و ان كان حبسه القاضى فالصلح جائز

163-4) Sebzî Efendi drew a strict line between those two authorities on imprisoning; “Vali and Sahib-i Şurta (mentioned the officer this time) could imprison, threatening him with cruelty. Although, kadi do not imprison; they, unjustly (illa hak) put into a *zindan*- detention room; this is allowed.(Sebzî Efendi, 19/a). Despite the fact that Sebzî Mehmed and Ârif Efendi needed to specify the authorities here, Dede Cöngi said “some of them” addressing the suspects .

و فى فتاوى الثانى فى بعضها بقوله لأن غالب انه حبس الحق و فى بعضها انه لا حبس الا حق و فى اكره...
بعضها بقول لانه مكره و فى بعضها لانه غالب انه حبس ظلما

(Dede Cöngi, 89/a)

Another source Fetava-yı Haniye, included the issue of kadi’s role on “*ikrah*” on the case where kadi threaten one, of cutting his hand due to the crime of robbery, or apply *kıyas* (and kill him) due to the crime of murder. One confesses due to the threat, if he is known as a truthful and religious person, kadi will be sentenced to *kıyas*, because of his *ikrah*. Or if he is accused for robbery and known for murder, kadi will be sentenced to *kıyas* again. Thus kadi would be given *kıyas*, due to the possibility of him, not only confessing because of the pressure, but committing the crime in reality. (Akgündüz, 1992: 164) Due to this example; Dede Cöngi had been very clear and strict about kadi practicing *ikrah* saying “kadis (meclis-i kadi) cannot practice *ikrah*, he would be discharged. Books such as *İzah (İbn Kemal) Kenz'ül-Fiqh*, *Şerh'ül-Mecma'* and *İhtiyârât* confirm that they would be discharged if they ever practice *fisk*.” (Dede Cöngi 89/a, Akgündüz, 1992: 164) Sebzî Mehmed did not

refer to those books, although, he included the contribution of Bezzâziye and Hülâsâ and Şerh-i Zeyla “ (According to Imam-ı Hûmameyn) Ikrah is conditioned with fetva for everyone but Sultan (who is capable of practicing his threat-Akgündüz, 1992: 164) (Dede Cöngi 89/a)

Although, there was a conflict about *darb* and *habs* for the suspects mentioned on Muinü'l-Hükkâm of Ibn'ül-Kayyım El Cevzi El-Hanbeli. “Both Vali and kadi would discipline through beating and imprisoning; however there is a conflict about kadi and those two punishments.” Dede Cöngi attributed to this story by İbn üHubeyb; “One made a name with his interest in young boys, came to the presence of Kadı of Medina Hişam bin Abdülmelik, he was claimed to corner one. Mentioned indecent person was sent by kadi to the presence of Imam Malik. Kadı was recommended to treat him roughly. Kadi obeyed this, and punished him with 100 hits of stick. And even Imam Ahmad bin Hanbel approved this and gave fatwa for it. The opinion of Imam Malik was accepted by Imam Malik (Akgündüz, 1992: 164; Sebzî Mehmed 19/b) In fact; directly translating from Dede Cöngi, Sebzî Mehmed determined this punishment of whipping, as 400 hits (اربع مائة سوط). (Dede Cöngi 89/b; Sebzî 19/b)

The reference from Hülâsâtü'l-Fetava is an addition by Ârif Efendi; the situations that were given fatwa to imprison someone were; to seduce one's wife or an under-age girl. Until he gives the girl back to her family, this person will be detained (Akgündüz, 1992: 164) Imprisoning as a matter of discussion, was emphasized in

Ârif Efendi's text by attributing Qur'an⁸⁰; "The punishment for the one wants to harm your wife, could not be anything but imprisoning or a great suffering." Although it was considered as a weak punishment, "this punishment causes more pain than just being prisoned."(Akgündüz, 1992: 165)

Imam Mawardi in Ahkâm-ı Sultâniye stressed the fact that kadis were not appointed to imprison, only Valis were. Dede Cöngi here when emphasizing the references here; (Dede Cöngi 89/b)

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Here Dede Cöngi referred to "Hanbeli" and "some of Shafiis". Unlike Sebzî Mehmed, Ârif Efendi referred to "some of Shafiis" who were approving what Imam Mawardi said. Moreover, Ârif Efendi's text at this point, is lack of refrance to *Zahire* unlike Sebzî Efendi. (Akgündüz, 1992: 165, Sebzî 19/b) Sebzî Efendi summarized, according to those sources; "Vali may apply *darb* and *habs*, though kadi may not." (Sebzî 19/b) According to Hanbeli Ulema, "Legitimate *darb* consists of *ikâmet-i hudud-ı mukaddere*- application of determined punishments and *tazir* which was up to kadi's opinion." (Akgündüz, 1992: 165) Here as Sebzî Efendi highlighted "darb-ı hudud-ı tazir" would only be valid after the reason (of the crime) was revealed. (Sebzî 19/b-20/a)

⁸⁰ Kur'an, Yusuf Suresi, Ayet 25.

Ârif Efendi refers to *Darü'l-İslam*, most of the punishments become useless after investigation of the reasons of those crimes as drinking *hamr* (wine) or *zina*. However, this issue of “salvation from punishments” belongs to kadi. Thus, vali is appointed to expel the problems of fesad inside his jurisdiction under “vilayat”. And he was appointed to investigate people under “accusation” (töhmət) and give “azab” to them. Unlikely, hükkâm (judges-kadis) are appointed to (ايصال الحقوق اثباتها) (Dede Cöngi 89/b) brings about and prove the Shari’a law. Thus, one vali/emir, has to fullfil his duty (in his vilayat), he has to keep himself away from interfering other vilayat (Akgündüz, 1992: 165; Dede cöngi 89/b).

Dede Cöngi at this point, referred to Hişam bin Abdülmelik’s (Kadı of Madina) story (as Ârif Efendi told above) which took place in Hülâsâ, if someone tricks other’s wife to marry somebody else, or if he tricks a virgin into marrying someone else, he will be prisoned. Although some confront it, habs is the most trustworthy punishment in these cases. (Dede Cöngi, 89/a; Sebzî Mehmed 20/a) Sebzî Mehmed finished this “fasl” here, continued with fifth chapter which configured the punishment of “ta’zir”(Sebzî 20/a). Though, Ârif Efendi continued to translate with the referrance from Ibn-I Kayyım el-Cevzi again; who said:

عموم الولايات و حصوصها ليس له خد في الشرعو ان ولاية القضاء فى بعض البلاد و بعض الولايات يتناول ما يتناوله اهل الحرب و بالعكس و ذلك كتب العرف و الاصطلاح...

(Dede Cöngi, 89/b)

“There is a lack of specific penalties for *umuma’l-vilâyât* and *husus’a’l-vilâyât* in Shari’a Law. Measures for war, for instance, which are valid in *vilâyât* administrations, might not be valid in some kaza administrations. Thus, bringing the *vilâyâts* together differs in terms of *örf* and *ıstılah*.”(Dede Cöngi 89/b) And Ârif Efendi emphasizes; “Guide of *vilâyât* would only be the traditions come from ‘Imamü’l-Müslimin Mohammad. And ‘taklid-i velayet’ (administration practices) both kaza (judicial) and emaret (administrative), rely on “örf”, “tansis” (to refer to Shari’a decisions) acceptance of *tamim* (generalization) and *tahsis* (specification)(Akgündüz, 1992: 165) In detail, Akgündüz, emphasized this article, “*Tagayyür-i azman tebeddül-ü ahkâm inkar olunamaz.*”(Akgündüz, 1992: 165) indicating the changes in decisions and change of times cannot be ignored: ” They rely on change; they don’t depend on invariable values. In a place, if velayet-i kaza would be left without with this ahkâm-ı siyâsiye (in örf or nassan, şer’an), without teamül (practices) and teati (Exchange of ideas) only with penalties, in this place, kadi’s ideas or the penalties that he gives, would not be applied.”

Dede Cöngi stresses the fact that in this example; if the the permission is given (terhis) without depending on evidences from Qur’an (tansîs) with nehy, decision of kadi would be applied. Because if the fact that legitimate siyâsa consists of Shari’a cases which are of experience, and they are due to decision of darb or habs. Those cases coincide under the vilaya authority of kadi, if necessary, if kadi is permitted to choose to give kazai decisions. (Dede cöngi, 89/b; Akgündüz, 1992: 166)

Dede Cöngi expanded the sources here; Hülâsâtü'l-Fetava, Bezzâziye; “According to those sources, some of meşâyih (plural of sheikh) started going to the door of Sultan or they carry out accomplishing the truth by their servants before accomplishing this by kadi. Fatwa is not given to until if the kadi is not able to or meşâyih won't start this if they say about going to Sultan's presence or (Ismail Müfid, 128-129. Dede Cöngi 90/a)

Fifth Chapter is on *Faslün Fi't-Tazir and Hâtîme*: Tazir chapter in Dede Cöngi's Risala takes 4 varak, 8 pages, from 90/a to 93/a. Akgündüz, 1992: in his work, published the transliteration of ta'zir chapter from Sebzî Mehmed's version, because of the fact that Ârif Efendi did not translate this part. On the other hand, Ismail Müfid Efendi who translated the Risala in late 18th century, concluded this chapter.(Ismail Müfid) Ârif Efendi a part from excluding ta'zir chapter, he added a chapter about “rüşvet”(corruption). Consequently, lack of Ârif Efendi's translation on this chapter, will make a comparison between approaches of Sebzî Efendi, Dede Cöngi and Ârif Efendi impossible in our study. However he not translating this chapter is another significant point which deserves to be studied on. Thus, to some extent, this chapter will be estimated within, in our study. Subsequently, with the accompanying of its content, the significance of Ta'zir issue in terms of Ottoman law will be discussed.

Ta'zir is a discretionary punishment in Islamic and Ottoman law, one of the most controversial ones in the literature of Islamic law as well. The meaning of the word is far explicit than the legal description; which is "to restrain, to discipline" In legal terms, ta'zir is a punishment given in cases of crimes of which the penalties are not determined in fiqh. (Başoğlu, 2011:198) Thus, the content of ta'zir penalty is various due to nature of the cases. Most significant detail about ta'zir penalties, is the fact that even parties, applicators or criminals could be various, also called discretionary penalties thus, ta'zir is a penalty boundaries are not very well determined. However, literature, "teamül" is used to determine the cases or situations which are resolved through ta'zir. Moreover, as a practice, ta'zir is not mentioned as a punishment which is created by any authority, it is applied due to fiqh texts⁸¹(¹ Islam Ansiklopedisi, Tazir maddesi volume 40, p. 199), which requires a great knowledge or adequate guidance of fiqh.

Crimes in Islamic Law are of three kinds; firstly, crimes against individual (against *hakk-i ademiye*) which included crimes such katl. This crime included sulh and af (peace and amnesty) (Akbulut, 2003:167-168) Secondly; crimes against Allah, which were addressed in Qur'an, crimes against Islamic social life such as, zina, drinking wine, kazf (accusation of zina), robbery etc. And lastly, ta'zir crimes, which were automatically punished by ulu'l-emr, as mentioned by Dede Cöngi, head of the state or his deputies kadis or vülat-ı cerayim.⁸² (Akbulut, 2003:168) Ta'zir,

considered as a side category to crimes against Allah or crimes against humans, presumably distinguished from first two categories as a major where a great part of Örf verdicts combined. Also, considering the kanunnames, which were the codification attempts since the reign of Mehmed II. were issued, in order to specify the boundaries and rules of this field of actions and authority of deputies of Sultan.

Thus, there have been plenty of classifications on the descriptions of crimes and criminals. Ibn-i Taymiyya made a classification for the determination of ta'zir crimes, in order to address the scope of punishment; "The criminals are the ones who try to establish a superiority over people and spread the fesâd; ones spread fesâd without establishing superiority; and the ones only establish superiority."⁸³ (Başoğlu, 2011:199) Although the conditions of ta'zir requires a variability of cultures and eras, from Ibn-i Taymiyya's description this penalty is obviously instrumentalized for controlling the balances and social strata because of the fact that concern of the authority benefiting ta'zir is concerned with ones that violate those balances and superior the others.

Primary object for ta'zir is "reformation" as it is mentioned in our Risala "te'dib". Another classification was by Al-Kasani; most distinguished man of upper classes, such as officials; upper classes intellectuals and fukaha; middle classes, merchants; lower classes, punished with imprisonment. (Hefening, 1934:710) Unlike Ibn-i Taymiyya, Al-Kasani's classification considers a class analysis, apart from taking

class or individual behavior as a measure. However, this penalty is valid for everyone, on this issue. According to Shari'a law, Muslims, Non-Muslims, free Muslims, slaves, civilians and soldiers, men and women all were liable to this penalty. (Heyd, 1973:274) Thus, despite the presence of pseudo equality of members of Islamic society before the jurisdiction, religious dignitaries and waqf officials (kadi, muderris, sheikhs, hatibs,...) had a privilege of being exempted from this penalty. However, in accordance with one Ilmiye Salnamesi, people came against an oppressive kadi and he was sentenced to strokes.(Heyd, 1973: 274)

The scope of the crimes resolved with ta'zir penalty is broad. One very certain fact about tazir punishment is that in the cases that require ta'zir, *Rights of God* and *Rights of the Individual* are considered. If one's crime affects people around him, ta'zir would be applied considering Rights of God (thus public interest); if the crime has individual effects, Individual rights are considered. However, in modern legal sense, some of the crimes such as the category of crimes that are committed against family order have equivalency in "Civil Law"⁸⁴. Ta'zir penalty considers protection of religious life, leaving worshipping as a society, self-security and honor, family life, work place order, morality and honor, public security and protection against political crimes. (Başoğlu, 2011: 199)

Another significant point about ta'zir penalty is the exercise of authority to give ta'zir penalty. Ta'zir authority is exercised by the one Sultan (head of the state) and

⁸⁴ Though, it is anachronical and not adequate to use this modern term for Islamic law, which is used for a category of regulations and punishments for modern state law.

his representatives in jurisdiction. In Ottoman law, most of the ta'zir penalties⁸⁵ were determined by Kanunnames and some of them are given by administrative staff. (Başoğlu, 2011:200) Heyd stressed the fact that in some cases the suspect was not even brought before kadi, was given strokes by the order of an executive officer (Grand vizier, Yeniçeri Ağası, a governor, subaşı, muhtesib, yasakçı, etc.) Tazir penalty established part of Örfî law; sometimes collected as a fine in advance. Moreover, ta'zir punishments were applied where the crimes distinguished from ones required had and kısas. (Yakut, 2006:40) Dede Cöngi drew that line through separating the specific chapter on Ta'zir from other penalties.

In consideration of the fact that Dede Cöngi's Risala is regarding the issues of ta'zir and Şeyhülislam Ârif Efendi did not translate this chapter; generates an idea on which any proclamation on ta'zir was not needed during his time. He claimed that, this chapter was proceeding in accordance with the issues mentioned at the beginning of the Risala, thus, he refrains from giving any detail, "Better be reviewed through translation." (Akgündüz, 1992: 166) Thus, translation of Sebzî Mehmed which was transcribed in Akgündüz's work will be employed for this part, unlike previous chapters, not as a comparison, however an assessment of the text only.

Dede Cöngi's chapter for ta'zir mostly emphasized the issues of family law, indicating the *Rights of God* and *Rights of Individual*. He referred to *Mecmua'l-*

⁸⁵ The penalties conclude; death penalty,whipping, imprisonment, exile, advise, condemnation, calling to court, ikrah (threatening), tecrit (segregation), revocation and exposition, financial penalties. ((Yakut, 2006:29), İslam Ansiklopedisi, (Başoğlu 2011:201)

Fetava, Ahkâm-ı Sultâniye and Hülâsâ, Müşkilü'l-Asar, Bezzâziye, Nevâzil, Zâhirüddin Merğınani, Hudud-ı Bezzâziye, Mi'rac'üd-Diraye, Müşte'milü'l-Ahkâm, Sığar'ü-z Zâhidî, İcarat-ı Bezzâziye, Zahire, Muğni, Boztanü'l-Fakih Ebü'l-Leys, Beyhâni Sa'id bin Müseyyeb, Hizane-ı Necmi'l-Vehhac. (Akgündüz, 1992: 166-170)

Dede Cöngi underlining the individual's rights said; "In the law of ibad (kul); Vali and haki (judge) won't forgive, unless the plaintiff does. If so, vali would have the chance to choose to forgive or not." The permission for taking property and ta'zir were written Ahkâm-ı Sultâniye and Hülâsâ. In Bezzâziye, hanging as a punishment was permitted too, for maximum 3 days. Also, false witnesses could be exposed, however, blackening face, or cutting hair and beard are not permitted according to Ulema(Akgündüz, 1992: 168).

Dede Cöngi quoted; "Ta'zir comes from Allah and this penalty is his right. One appointed by Cenab-ı Bâri (Allah) could use this authority" (Akgündüz, 1992: 167) from Mecmua'ül Fetava, was a clear expression of legal approach for sovereignty and the source of law. Here Sultan is Also indicating ones have the authority to use the right of Allah through ta'zir. "Abu Hânifa, Abu Yusuf and Imam Mohammad, and Imam Şafii are said to be agreed on the right for practicing (icrâ) and forgiving (afv) ta'zir belongs to Vali." in Tahâvi's Müşkilü'l-Âsâr (Akgündüz, 1992: 167) However, here Imam Tahâvi criticized those three imams and said "Vali has noathing to do with forgiving, only sahib-i cinâyet has that right. Tazir is law of God. What they claim on it is Imam's preference, practicing ta'zir or forgives; is a kind of ta'zir which is given in the circumstances where a crime does not have a punishment

in Shari'a or crime of murder. This is what they call law of God.” (Akgündüz, 1992: 167) Therefore, explaining Tahâvi's vision of ta'zir, Dede Cöngi approved that vali has noathing to do with forgiving him or give ta'zir in mentioned circumstances.

Ta'zir is mentioned in Kanunname's and kadi court records, specifically a punishment for Zina (adultery), prostitution, and other cases refer to morality and honour. For instance, Zâhirüddin Merğinani's approach to the witnessing of fuhuş (prostitution; mucib-i ta'zir) was “if one sees the other doing fuhş and apply ta'zir to him at the moment of the action, this is permitted; if he did ta'zir after they tear apart, vali would apply ta'zir to the one that has done ta'zir earlier.” (Akgündüz, 1992: 168) Those were some instances from Ulema acclaim that “ta'zir is for everyone”. Another instance of Zina was given, describing a situation where a man finds his wife with another man during adultery, murder is permitted here, according to Abu Yusuf in Mübteğâ, “But they fear, the judge might not accept it.” (Akgündüz, 1992: 168) By nature, all the scholars here have distinguished two different crimes, zina and fuhuş, by addressing the difference in their punishments. As seen in Kanunnames too, the penalties for zina is heavier than fuhuş. Thus, as Dede cöngi quoted from Miracü'l- Diraye, if one sees his wife doing zina with another man and kill her, two witnesses are enough (Akgündüz, 1992: 167). Or if a Zani (a fornicator) would attempt to do zina with a woman (a believer) or do “livata” (homosexual affair) to a slave by using force, if the victim is not able to escape and kill him, his blood will just be wasted, as written in Muzmerât and last chapter of Mecmua'ü'l- Fetavâ (Akgündüz, 1992: 169).

Dede Cöngi also emphasized some details about another crime that required ta'zir, which was robbery. Killing the thief who tried to break into your house is permitted. If a thief breaks into someone's house, the owner might scare him, or without using any threat, before thief does any attack, he might kill him, this is permitted. (Akgündüz, 1992: 169) In Bezzâziye, according to Dede cöngi, a limit for the property is mentioned, in order to prevent needless killings which were 10 dirhem. "If the value is less than 10 dirhem, he'd fight, but not kill. "و قاتل دون مالك" "Kill before your property" If the thief left the goods, he won't be killed (Akgündüz, 1992:169).

Not only crimes (sins too, yet most of the crimes require ta'zir, are sins) such as zina or robbery would be resolved with ta'zir. In addition to those sins, drinking is a very well-known sin required ta'zir, which was exemplified in Risala, quoting from the book Kinye's chapter of "Hudud", if neighbor of a drunk one informs whole district, imam, muezzin and vali, they could get in without permission and see it. Vali and kadi would beat him, send him to exile and discipline him. And Hz. Omar, burned down the house of drunks, bar. (Akgündüz, 1992: 170)

Doing magic is also a ta'zir required sin. (Başoğlu, 2011:198-199) Dede Cöngi addressed Icâzât-ı Bezzâziye, if the tenant does *fisk* or even magic inside the house he/she rented, neither owner, nor people can take the tenant out of the house. However, they can preclude him. If the news of is spread fisk in that house, the respect for that tenant is gone, so they could enter the house without permission and discipline him. Or if a singing is heard from a house, this one also can be entered and

people can be precluded, this behavior is a duty for the one who has the authority. (Akgündüz, 1992: 170) Lastly, the main function of this siyâsetname configured, Dede Cöngi's last references were on *emr-i bi'l-maruf* "ordering the goodness" from *Nihaye*, *Mi'rac'üd-Diraye*, *Zahire*, *Muğni* and *Bostan'ül-Fakih Ebuleys*. "If one orders goodness and the correspondent accept this and be prohibited, "emr" is necessary for this man, so the order has to be given. Otherwise, if the man swears and confronts this emr, this *emr* better be left aside. If he was to be beaten by the objects or has no strength to confront any strike or hostility came up between, he should be give up this emr. (Akgündüz, 1992: 170) This article specifically stressed out the necessity of a legitimate authority. Generally, Risala in terms of describing the authority considers this legitimacy and acceptance.

There are several quotes in Risala, other than acclaiming how the reflection of authority over people and between states officers should be, an ideal administrator is also described: "The administrator who does not fear strikes or abuses, is preferred. Ordering goodness is necessary or it is a religious duty (*farz*). If the administrator knows that people will quit *fesad* after his order, he would order the goodness; he won't give up giving this kind of orders. (Akgündüz, 1992: 170)

One of Ârif Efendi's reasons to abandon this chapter of Risala of Dede Cöngi might be derived from the fact that Dede Cöngi did not make a detailed analysis of this issue. On the other hand, Ismail Müfid who translated this Risala at the end of 18th century and also Sebzi Mehmed concluded this chapter. Speculatively, his reason

might be deducted from a simple ignorance. However this question is yet necessarily need to be asked from a different point of view.

In this study, the reformation process of Ottoman legal system will be referred further on. Thus, Meşrebzâde's abandoning this chapter, his contribution and the reasoning behind it, in addition to this, the meaning of the issue of ta'zir in a modern context will be discussed. However, at this point, the issue of ta'zir punishment should be mentioned because of the fact that ta'zir penalty until Tanzimat reforms, comprised a genuine part of "örf" laws. Legal system of Ottoman Empire as to be mentioned in the second chapter, in 19th century, with the contribution of modern law codifications, became a complicated dual system.

The framework of this dual system was mostly indicated as Gülhane-i Hatt-ı Humayun. Although *Tanzimat Fermanı* provided the "modern" context of the new political approach in Ottoman Empire, as a matter of fact, the codifications which were made for establishing this new legal system are to be observed further on. However, an introduction is needed to be made at this point.

A penal code was prepared gradually, subsequent to Tanzimat Fermanı, in 1840 and 1851, a final version was established in 1958. Naturally, due to the industrial process and trade relations which gradually became complicated, and disengagement of land system necessitated an urgent need for a codification in the area of criminal law. As a matter of fact, although these new laws were of a modern western legal context, they were considered as "Örf laws" by Ulama. This new applications were might be

considered as a codified method of for instance, applying “ta’zir”. Unlikely, penal code was strictly determined and crimes and penalties were described. Mahmud II issued two kanunnames for ulema and state officers in 1838. This was the first attempt to determine the rights, crimes and punishments of a “class” of the society; siyâseten katl was being promulgated due to the fact that execution of state employees was being revoked, except hadd and kısas punishments. Moreover they would not be accused of any crime which was not determined in the code. Moreover, first code to conclude every individual in the borders of Ottoman Empire (not described as citizens yet) was the penal code (Ceza Kanunu) which was issued in May 3rd, 1840 in order to prevent the problems derived from the code of 1838. This code classified the crimes, restraining the actions required death penalty, and assigned Sultan for the execution of this punishment.(Kılıç 2008:21-22) Penal Code will be mentioned further on, however considering this historical context of renovations around ta’zir punishments and Ârif Efendi’s attitude towards this chapter, the high probability of him simply “ignoring” this chapter due to new legal structure emerges. Most interesting detail about this *kanun*, is that Shari’a and örf laws were combined in one code.(Kılıç 2008:22)

Penal Code of 1858 was of (Ceza Kanunname-i Humayunu) 264 articles, which was prepared by a council concluding Ahmed Cevdet Paşa.(Aydın, 1993:482) The significance of this kanunname in terms of ta’zir issue was broader comparing to previous ones; for instance, this kanunname predicted, “if the murdered one has inheritors and due to their demand case will be held in Shari’a court, or if the

inheritors forgive the murderer he will be sentenced according to the law. Thus, murder as a crime, was considered as crimes against ‘individual rights’ “. Although by its nature, Kanunname was configured in order to prevent kadis from corrupting Ta’zir penalty (Kılıç 2008:21), which was attained to their own will, however, with this Kanunname as conceived from the regulation above, Ottoman legal system is intended to be integrate with Western legal framework as bringing the sense of the legal system from “individual’s rights” to “individual rights”.

Another contribution to Dede Cöngi’s Risalatü’s-Siyâseti’ş-Şeri’yye was “Hâtime” which does not exist in the original text. As an original chapter Hatime, generally deals with the issue of “rüşvet”; “bribery“. Subsequent to explaining the meaning of the word and how to write it in Arabic Alphabet, mentioned the meaning of it as “In order to fulfill the demand of someone, known as a specific kind of money which was known by Ümmet, Kitab and Sunna and given to hakim or others.” (Akgündüz, 1992: 170-171) Here Ârif Efendi revealed which kind of bribery he will deal with through “hakim (judge) or the others” (Akgündüz, 1992:171).

Ârif Efendi emphasized the sin of rüşvet in the Shari’a law context, referring to Mevlânâ Feyzullah Efendi, Ibn-i Nuceym-i Mısri and İmam Zahirüddin’s classification. According to Imam Zahirüddin, “hedaye” (gifts) are not different from

“rüşvet”. “Gifts are of 3 kinds: ones that are helâl for both parties; ones conduce to cruelty and the ones that prevent cruelty but still haram for the one receiver. Consequently the translator presented his claims into those three categories; and referred to hadis of Mohammad such as, “اخذ ه حرم اعطاؤه ما حرم ذ”, which meant,

taking and giving rüşvet is haram. And every Muslim should protect his property. And according to Ibn-i Nüceym El Mısri, one who bribes the other, and one who accepted his evilness are to be sentenced in accordance to kadı's opinion to ta'zir and te'dib.(Akgündüz, 1992: 172). There is a high possibility that Ârif Efendi added this chapter due to the problems derived from numerous rüşvet cases. In order to prevent the problems derived from corruption, inspired by French penal code, in February 3, 1855; "Rüşvetle Mücadele (Men-i İrtikab) Nizamnamesi" was issued. (Kılıç, 2008:22)

Lastly, ta'zir as discretionary punishment practiced in the name of Sultan, a part of law of God, was a product of the ideological perspective of Ottoman dynasty. Dede Cöngi and Meşrebzâde's contributions through Risala (even though Şeyhülislam ignoring the last part, also emerged a reasoning) will be conceived thoroughly by re-considering it in the 19th century context.

CHAPTER IV

OLD MEDICINE FOR THE NEW ORDER: DEDE CÖNGİ FOR THE NINETEENTH CENTURY

4.1 Historical background: Times of Change

Although the instruments of legitimization were the same, their use and the context due to “upcoming new order” in the 19th century were to change. Any historical narrative on the 19th century’s Ottoman State, descriptive or critical, should mention a new framework and sum of new structures as a result of an effort on an “adaptation” or “keeping in step” with World’s new order through “westernization”, “modernization”, “progress”. Thus, in the context of our text’s “adaptation” to the 19th century, several necessary points will be mentioned; such as; the new dual character of legal structure and the problem of renovation of its agents derived from interactions with Europe and change in new economic order, the Ulema’s attitude for the renovations and modernization, power relations with sects, Meşrebzâde Ârif Efendi’s attitude and his significance in this process.

Starting the history of modernization from the Treaty of Küçük Kaynarca (1774) is traditional and rightful. The rivalry between Ottoman Empire and Russia started the process of Western oppression for Ottomans, which was later to be called as the “Eastern Question”. As the territories shrank, the Ottomans lost not only territory, but also centers of production and markets to Russia. In addition to this, the indemnity Ottomans paid to Russia after 1768-74 war was almost equivalent to half of the annual cash receipts of the treasury. To make things worse epidemics were the results of the war.(Finkel, 2005: 387) The 1789 Revolution in France, also was a factor for Küçük Kaynarca to remain significant since it entailed two elements dominated the 19th century and the process of decentralization. Firstly, the capitulations also given to Russia were a major step for legitimate penetration of Russia by means of fiscal and economic influence. Secondly, the claim of Caliphate was mentioned, including a special status for the people of Crimea, it was symbolic for this transformation process, since the relation between state and people was to be described with an entirely different formula “citizenship” as an aftermath of French Revolution.

Prior to the treaty, the war between Russia and Ottoman Empire caused several situations to derive the necessity of modernizing institutions or change the rulership perspective, for instance during 1768-74 war, provincial governors and grandees bore much of the responsibility for provisioning the army-and profited from it through their control of the market, as the Grand Vizier Muhsinzade Mehmed Pasha was concerned about the rise of local troops and provincial notables of the Balkans

and Anatolia thus he was involved with negotiations with them.(Finkel, 2005: 388)

Certainly, the problematic here was due to the shortage of funds(with much tax-gathering in the hands of life-term tax-farmers). (Finkel, 2005: 388) Thus, apparently the dependency of state for military aid from provincial elite was a contaminant of the rise of power elites in 18th century. On the other hand, fiscal crisis was trying to be compensated various method from increasing taxes, melting down valuables or debasing coinage, after the Treaty of 1774, instituted a public borrowing system, however, at the end of the day, borrowing from abroad was brought about as the most favorable solution. (Finkel, 2005: 388) This process was a head start to a complete dependency to capitalism, thus this brought about the institutions that this system necessitated mostly by the political influence of the West.

On the other hand, the use of the claim of Caliphate was tied to the issue of presenting the superiority among Ottoman lands, despite the loss of Crimea a very significant reference was made to “People of Crimea being dependent to Ottoman Caliphate in terms of religious matters”, which practically meant no authority at all, however, it was valuable due to the fact that being used for the first time in an foreign affairs matter. the Treaty of Küçük Kaynarca in 1774, re-revealed this claim of Caliphate, the Ottoman Sultan was permitted to put forward 1as the supreme religious head of Islam”, he was the religious chief of Tatars (its counterpart was Russians claim of a protectorate for Orthodox Christian objects of Ottomans which gave Russia the advantage of extensive interventions. (Lewis, 1988:49) Also, in 1788 in the book by Ignatius Mouradgea, (Turkish Armenian in the Sweedish Diplomatic

Service) wrote a story of transfer of Caliphate from Cairo Abbasids to Ottoman Sultan Selim which relevant to new Ottoman religious pontific. (Lewis 1988: 50) In addition to this, in an English novel located in Middle East, had the claim of Sultan “cheated Allah himself when he assumed the title of caliph of the faithful.”, although, the idea developed rapidly in nineteenth century and at last, formally asserted in the first constitution of 1876.(Lewis, 1988:50) Moreover, Sultan Mahmud was presented as a traditional caliph-sultan. “It was either from the ulema’s regarded him as a traditional leader or public opinion was not ready to see or accept any leader except for the caliph-sultan.”; Erşahin highlighted that second argument had more grounds due to the belief that only a Muslim caliph-sultan could be accepted as ruler demand obedience from sultan. ⁸⁶(Erşahin, 2005:12)

According to Aarsal, Ottomans did not establish the central authority on the term of Caliphate due to the power they had. (Aarsal, 1999: 79-80; Akça, 2006:301) However, although the use of the term “Caliph” became often after 1774, the motivation could not be degraded into a simple demonstration of power in order to cover-up the failures. It was used until Abdulhamid II, in order to highlight the fact that although Sultan was presented as an overall authority, he was still preserving Muslim character of his authority as the revised and Westernized law still preserved the shadow of Shari’a law.

⁸⁶ This argument has a common ground with this study’s argument on caliph-sultan image through Meşrebzade’s translation. Although, it is difficult to develop a major argument through one translation with several “indications”, on the argument of Imam-Sultan word change has a meaning at the level of legitimization which was Shari’a and the legitimacy of Sultan keep ground.

The military reforms of Selim III started with establishing a modern army of Nizâm-ı Cedîd, enhanced and systemized by “modern” technics, the legalization of this army was issued through series of *Nizamnâmes*. According to Findley, these documents represent the initial point for systemizing spirit of “Renesseince” (esprit de système), Selim III’s insistence on establishing embassies all over Europe and abandoning ad hoc diplomacy, enhanced this approach. (Findley, 2011:38) In a Weberian sense, Selim III’s renovations was the beginning of a transfer from the “traditional” phase to a “rational-legal” one. However, according to Findley, Selim III’s failure was derived from his effort on modernizing institutions without abolishing the former ones. (Findley, 2001:38)

Subsequently, Mahmud II’s most appealing reform was definitely the abolishment of Janissary. This movement had two aspects that it was based on; firstly, on the fact that they represented the classical regime and institutions with the Sultan’s traditional authority as “the one”. Secondly, the members of the Ocak being a part of the new economic flows as entrepreneurs. Ocak as a structure, was reflecting many aspects of this process from relations with Islamic heterodoxy to new capitalist economic circumstances, the institutional transformation of it was parallel to rise and fall of Ottoman Empire.

Janissary Ocak was one of the most important characteristics of Ottoman Palace Structure, which was the institution representing the basic ideology of Ottoman dynasty, as a structure reproducing high positioned state members, scholars and soldiers. As an institution with religious and ideological motivations along with

Bektashi influence; Janissary Ocağı's attitude was standing at the very heart of Ottoman ideology and the environment of its social structure. Janissaries on the other hand, were appointed to protect everything that this imperial ideology represents. Thus, the abolishment of this institution and replacement of it with modern institutions underlined the fact that the sense of dynasty and rulership was changing.

In fact, in the past, against all odds, all the rebellions derived from their demands, and abolishment of Janissaries was a difficult matter considering them being the personal security agents of Sultan himself and the Bektashi affiliation of this army and the power came through this relation. Despite Janissaries had always emerged problems and rebelled, Ottoman state (at least to some extent, to some point). Thus, the abolishment of the Ocak and replacing it with a modern army educated by Europeans can also be considered as a massive move on the image of the authority of Sultan. The need for legitimacy for an Islamic leader which was apparently more popular discourse than a "just" leader in the 19th century and the general structure of Meşrebzâde's interpretation of Dede Cöngi's Siyâsatname. At the end of the day, accordingly, the system of justice was changing due to the change or transference in the idea of "justice" into the context of modern state jargon. The conflict here was between state and state's agents. On the other hand, Janissaries were a part of society now in the 19th century, was somewhere between masses and elites. Quataert indicates that there was a conflict between elites and masses too, about political supremacy, and one of the subjects was Janissaries. (Quataert, 2002:83) Ocak was

institutionally regressed, after Süleyman I, they started interfering the succession of Sultans due to their military influence. Quataert indicates a very significant point on how they switched their “class” perspective and became a part of a newly capitalist economic class. “They established relationships with people in Istanbul, Belgrad, Sofia, Cairo, Damascus who they protected in order to confront the decrease in their salaries; they made business; butchery, bakery, rowers, they did “zanaat”, owned coffee shops, thus, they became a part of a “producing class”, represented lonca organization’s interests and supporters of protective economy policies.” (Quataert, 2002:84)

Their ideological motivation was a question. Some power holders exceed their agenda by imperial interests, Selim III’s Nizâm-ı Cedîd not only included establishing a new military structure, but also, an extensive control on resources through a treasury administration, ”Janissaries, some functions in the learned hierarchy, and some parts of the larger public, openly or furtively, opposed the New Order on the grounds that reform threatened the ancient order, religion and vested interests.” (Yaycioğlu, 2012:449) Certainly, their position as elite class members, the protector of Sultan, gave them social status and respect, thus the system of “devshirme” completely disappeared with their effort on transforming this system into a successive one when they became establishing families. (Quataert, 2002:84) In addition to this, their attitude due to their social position somewhere “between classes” was towards injustice, protecting people and their benefits. (Quataert, 2002:85) Despite, for the view of “governors”, they were holding the lion and the

Deere in the same arm. Because their entire conception changed from one unique task of protecting Sultan to an almost independent institution which was a transformation blurred the behavior of Janissaries as a whole. Thus, the abolishment of Ocak cannot be considered as a military reform only, it was an antithesis for the former economic system and former regulations; furthermore it was an example for understanding the change in ideological perspective.

The abolishment of “Yeniçeri Ocagi” was a long awaited renovation by the governmental staff. Selim III was supported by Şeyhülislams of the time; Velizade Mehmet Emin and Tatarcik Abdullah along with kazaskers. Also, Mehmet Tahir (1825-28), Abdülvehhab (1821-22- 1828-33), Mustafa Asım(1818-19, 1823-25, 1833-46), mollas Mehmed Es’ad, Mustafa Behçet and others, supported the abolishment of Bektâşi order and the modernization of the state and military. (Heyd,2002: 100) They also purposed modernization plans, participated the process. Especially Tatarcik Abdullah, as Heyd (2002: 100-101) quotes from *Tarih-i Osmanî Encümeni Mecmuası*⁸⁷; presented a reformation project to Sultan Selim, advising him to import Western military methods and translating technical European books, hiring foreigner experts and educators.

Certainly, failures after confronting Russians, along with new economic order, the obvious effect of industrial revolution and Ottoman land and tax systems being torn apart, derived the renovations into a long process of dealing with history. On the

⁸⁷ *Tarih-i Osmanî Encümeni Mecmuası* (TOEM), VII, NO:41(1332), 257 vd.

other hand, under the shadow of those renovations made by Sultan as the ruler body, decentralization gained pace dramatically due to Ottoman demolished agricultural system and fall of manufacturing brought about the interference of Imperial powers such as Britannia. Capitalism made Ottoman land tenure system and trade systems even more complicated. Specifically the Treaty of Balta Limanı in 1838 was the “economic introduction” for Ahmed Reşit Pasha’s declaration of the new frame work as Tanzimat.

Reforms in the name of Allah: Ulema’s Support for Reforms

Ulema, as explained above, was a member of *tarîk-i ilmiyye*. This learned profession (Chambers 1972: 17) as a class in Ottoman terms, transformed content-wise and behavior-wise throughout the centuries, however, Ulema’s general contribution to an age of reformation starting off from Selim III, continued with Tanzimat, is very well known. The basic problematic here is what angle was this contribution presented prior to reforms especially on legal base, despite the jeopardy of change in legal framework. In addition to that, although those reforms provided a dual structure on jurisdiction, such Meşrebzâde Arif Efendi as Şeyhülislam, as an intellectual clique, part of Ulema supported new legal reforms, placing them into their legal frame of Örf as Sultanic decree, as administrative local regulation.

As a structure, ilmiyye had become an aristocratic clique as Chambers (1972:34) indicated “...constituted nearest thing to a hereditary aristocracy known in Ottoman

history”. As Zilfi (2008:37) also pointed out in her studies on 17th and 18th century Ulema aristocracy; the regulations were driven into a frame that “privilege” was instituted, even Hezarfen Huseyin wrote his attitude towards careers of Ulema underlining even Şeyhülislam did not have this much power and showiness “those functions were determined in accordance to person to hold the position, not to the position itself” .Although aforementioned transformations of Janissaries did not happen to Ulema in terms of reaching the ability to change the Sultan, their relationship with the ruler was based upon their support for Shari’a in terms of the power of legitimizing Ottoman dynasty through ahkâm-ı ilâhî. (Zilfi, 2008:38) Thus, there was a flow from 17th century customs in 18th century which were corruption and nepotism. 17th century elites had already established several central powers which were focuses of threat for dynasty (Zilfi, 2008:39) A very significant point that Zilfi (2008:40) warns about was Ahmed III’s (1703-30) effort to establish stability of ilmiyye as an institution; he gave privileges and status for children of Ulema, targeting Istanbul’s Ulema families lasted for ages and their fortune was a key to the regulations to be made in the system of “mülâzım”. However, the immunity of Ulema’s children were exempted from any investigation .The abolition of the Ocak was simply a representative act too, against former law and order, thus to Ulema’s intensively recognized administrative authority.

The word “stability” cannot be considered on any issue regarded in the the 19th Century. Breakdown of *kapıkulu* system along with pasha’s sons’ entering Ulemâ corps, blurred the line between the two classes, thus, at the end of eighteenth century,

Ulemâ was lack of attribute of *Ulemâ-ı Tarîk* who were the possessors of knowledge. (Chambers 1972:34) Thus, the replacement of new institutions such as establishing a new army by Mahmut II, was a representation of this focus of power. “Mahmud’s destruction of the Jannisary corps in 1826 and its replacement by a Western style army left the Ulemâ without similarly conservative military ally.” (Chambers, 1972:35) Although, the support of Ulemâ for this transformation process is valueable due to the fact that it was practically confronting the former institutions and the philosophy of their framework. Despite this fact, in passing these renovations, the task that the part of Ulemâ close to government took was to hold on to the justifications through Shari’a, for any Örf regulations that had been done. Due to the several references that Meşrebzâde made through Dede Cöngi’s text (which will be mentioned later on) to the necessity of regulations being compatible with Shari’a, it is conceived that in the eyes of a clique in Ulemâ “modernizations” by means of legal regulations was far from being revolutionary institution-wise. The example of Chambers (1972:34) is pointing out that the Ulemâ corps since at the end of 18th century, they were enjoying the benefits from purchasing diplomas, and establishing an unqualified official class still called “possessors of knowledge.” In addition to having been enjoyed an administrative autonomy “vis-à-vis” the Palace and the Porte, subject only to Sultan, however, in control of evkaf revenues made them economically independent (Chambers 1972:35) The emphasis on this independence is essential, since it clarifies close relations between different sects

such as Nakshibandiyya and State⁸⁸. Hence, State regulated the distance between sects and itself. Chambers considered (1972:35), Sultan Mahmud provided a official space for Şeyhülislam's authority by giving him an official residence in order to exceed Ulema's autonomy. State's growing control on evkaf revenues was a massive move, Mahmud II.'s re-organization of civil bureaucracy that the privileges are given to, was equalized with ulema in the sense of inheriting materials. (Chambers 1972:36) Thus, Mahmud II, regarded ulema in a new concept of classes, considered them at the same category of (some of the) rights with civil bureaucrats. The opposition of Ulema at this point could be considered from two sides; softas (students) and low ranking ulema members. Specifically the economic recessing of evkaf to the confiscation policy pushed this rank of ulema to oppose the reforms. According to Erşahin, (Erşahin, 2005: 14) after Mahmud confiscated waqfs, especially with the establishment of Evkaf Nezareti, State's authority on Order's financial sources decreased. Furthermore, they started giving salaries to Order members, so they became civil servants. (Erşahin, 2005:14)

The reformations in terms of establishing a new educational system, which was reinforced by Ahmet Cevdet Paşa who was an Islamic scholar and intellectual, however, such as Meşrebzâde Arif Efendi, he also contributed this new and secular educational system, highly inspired by Reşit Paşa. (Chambers 1972: 38)

⁸⁸ Nakshibandiyya's flows with State's patronage prevailed see (Manneh, 1982).

In the first half of the 19th century, most of the educated Muslims were the members of Ulema, thus, reformists were considering their publications as a reference for renovations and Ulema supported it. (Heyd, 2002:101) Molla Mehmed Esad's story of *Üss-i Zafer* which was supporting enthusiastically the abolition of Janissary Ocağı was an example for this, on the other hand Ahmed Cevdet Pasha and Ahmed Lutfi were members of reformer Ulema of the time (Heyd, 2002:102). They were reformers and tranquilizers of the new political order derived from new economic obligations or the struggle against Mehmed Ali Pasha's progress. Because of this reason, until the publication of *Takvim-i Vekayi* in 1831 (the first official newspaper), imams and mollahs; especially members of Mevlevi (Mehmed Said Halet was very close to Mahmud II) were the propagandists of new policies of the Ottoman State. (Heyd, 2002:102-104)

At this point, it's worth mentioning that the abolishment of Janissary Ocağı in 1826 had another feedback for some members of Ulema confronting the reforms of Mahmud II, after the Ocak was no longer under their influence, they rather kept themselves quiet or supported the reforms. (Yakut, 2005:50) This attitude was another contribution to reformation process, since reforms at the age of Mahmud II (also the subsequent ones) needed to be legitimized by an Islamic discourse. Thus, Mahmud II. made Şeyhülislam Yasincizade Abdülvenhab Efendi write a Risala in 1834 in Arabic called "*Hülasatü'l-Bürhan fi itaatü's-Sultan*" and translated it in

Turkish; tried to legitimize the obedience towards “Caliph-sultan” is “farz” and his reforms are practicing sunna or just about glorifying the religion.⁸⁹

Education was an area which the Ulema’s contribution was most visible especially by the help of alims like Hayrullah Efendi, Selim Sabit Efendi and Hoca Tahsin. (Chambers 1972:, 39) Hasan Tahsin was inspired by French system of education, thus when he became first director of Darülfünun like the Şeyhülislam Arif Hikmet Efendi, who also was a reformer alim, son of Ibrahim Ismet Bey Efendi, a part of ulema during the time of Selim III and Mahmud II.(Chambers 1972: 40) Ulema was educated in Europe, fluent in French and so on, represented a new expression of intellectuality in Ottoman Empire. This “revisionist” Ulema’s aim was apperantly to preserve the institutions of the classical age in order to maintain their significance, position and necessity on the other hand sort of enhancing Örf as they did in the past, in favor of Sultan or any administration. Though, this new system transferred the dichotomy in presence, into the contradiction of a duality in education as well. On one hand, there were traditional medreses (revised of course) producing a professional class, Ulema; on the other hand modern institutions for raising scientist, thus cultivating modern, liberal quasi secular ideas. It is obvious that education became a matter of rivalry, when Darülfünun included traditional sciences as kalam and fiqh and students were taken from medreses, director was an alim conservative

⁸⁹ This risala was published and copied, instrumentalized for legitimizing reforms among people. (Yakut, 2005: 50)

Şeyhülislam Hasan Fehmi Efendi considered Darulfünun as a rival to medreses and in the early 1870's and destroyed it. (Chambers 1972:41)

Tarikat relations with State was as essential as it was in 16th Century, as mentioned, “evkaf” (foundations) were the authority's trump when establishing relations with those religious orders. Hence, “The identity of Şeyhülislam Arif Hikmet Bey Efendi as a scholar, author, poet and reformer , referred to a display for Nakshibendi order which his father Ibrahim Ismet Efendi belonged to.” (Chambers 1972: 40)

On the other hand, the reactions for Tanzimat was intended to be repelled with continuous emphasis on Shari'a (Yakut, 2005: 51). Struggles with the rebellions of softas in pre-Tanzimat period and before who were capable of rebelling against Şeyhülislam and cause the discharge of him in 1817/18. (Heyd, 2002:109) In the records, there are expressions of foreigners on reactions against Tanzimat. İnalcık quoted from C. Hamlin from his article “Among the Turks” in 1878 (Hamlin 1878; İnalcık, 2006: 128), that “Ferman caused surprise among people; old-minded Muslims cursed the Hatt. They were considering Hatt was breaking the Shari'a law, equalizing Muslims with “Gavur”. However, non-Muslims considered it as opening of a new era. It was a victory of English politics...”

4.3 Tanzimat as a Framework for Legal Change: The Penal Law as the First Attempt to Legal Transformation

The problematic of Shari'a's incompatibility with modern codifications was tried to be resolved with the regulation of Mecelle which was opposed by Hasan Fehmi according to Chambers (1972:42), was a modern codification interpreted within Shari'a, recognized a source other than God and the Muslim ruler, identified the concept of "adalet" distinguishable from both Shari'a and kanun; and this conception of "Adalet" in Shari'a was completely contrary to the equality between Non-Muslim and Muslim (Chambers, 1972:42). This was the basic complication for adapting Western codification preserving the main framework of Shari'a.

In the legal history of the 19th century of Ottomans; the Western influenced tradition initiated with the regulation of criminal laws subsequent to a new conception established with Gülhane-i Hatt-ı Hümayun in 1839. And the first codification, derived from this new conception of "adalet" configured a series of reforms in law and jurisdiction in general, derived from Tanzimat context.

Gulhâne-i Hattı Humayûn which was promulgated in November 3, 1839 by Mustafa Reşit Paşa in the name of Sultan ; influenced by the principle of "equality before the law" which was obviously a reference to French Revolution in 1789. However, the requirement of preserving the basics of Shari'a, derived the necessity of sustaining Shari'a courts along with newly instituted consulate courts (a result for capitulations). (Bozkurt 1996:51) On the other hand, Manneh (Manneh, 1994:174)

indicates the Ottoman State tradition in the text of Gülhane, confronting the text was entirely a Western motivated political approach. Even though Reşit Paşa was influenced by Western political systems, but his main support was that of Pertev Paşa's, who was the mentor and the protector of him for years in the Porte, the latter famous with his conservative, Sunni-orthodox political attitude.(Manneh, 1994:175) However, although the principles of Gulhane somehow coincided with Shari'a, one of the basic principles such as legality before the law, caused the duality in legal level and contradiction of legal institutes and laws.

Abu Manneh's argument on the influence of Islamic tradition on Ottoman reformation process reflects one of the perceptions towards Ottoman modernization of legal structure. The basic arguments were that Ottoman "liberalism" was not authentic, whereas European liberalism was. Another other point was that violence was the norm for Ottoman liberalism.(Miller, 2008:291) Those two aspects were valuable, since, "...When early nineteenth-century jurists situated the elaboration of abstract citizenship rights in an Ottoman-Islamic tradition, therefore, this was described as either a hypocritical or a delusional move, whereas when early nineteenth century French jurists situated these same rights within a classical Greek tradition, this made perfect sense" (Miller, 2008, 291-292) The idea of supporting "inventing traditions" here is more practical than criticizing the legal influence of the liberal ideologies. However, discussing traditional structures (such as Shari'a's) is more workable than comparisons with modern law. "Coping with the changes in time" as it is purposed in Dede Cöngi's Risala may not be new as a trend. Thus, it is

essential to determine Ottoman administration's motivation of adapting former-traditional system and society into a legal frame which purposed to bring about a whole different system.

The basic conflict in this legalization process was about promulgating the Common Law, which was highly constituted in Shari'a. However, along with Shari'a, a independence of Trade Law due to trade relations with capitalists through treaties and capitulations were in presence as "Örf". (Bozkurt 1996:51)

The references of Montesquieu in Namık Kemal in 1863 indicate the compatibility of Shari'a and parliamentary administration saying "The just law of Shari'a is what Montesquieu noted as Natural Law. Basic regulations of the Natural law conclude the elements such as; individual's freedom, equality, freedom of assembly, civil servant's liability. Sovereignty of people derives from the government based on people, thus is a natural right. The way to keep the government in the boundaries of justice is to specify the laws which the government ought to obey, and the principle of *meşveret* which takes the power of legislation from government." (Bozkurt 1996:53) Namık Kemal took Shari'a as Montesquieu indicated "Natural law"⁹⁰; although Shari'a's religious character was confronting everything that Montesquieu considered as "Natural law". As a matter of fact, Namık Kemal took a very Christian Catholic attitude of equating Natural law and divine law. Shari'a as the divine law which was regulating life in the framework of common law through religion itself,

⁹⁰ For further information see Montesquieu, see, Montesquieu, Charles de Secondat, baron de, The Spirit of the laws, Cambridge ; New York : Cambridge University Press, 1989.

according to him, was considered as a necessary and natural framework of human life as a sociological surrounding. According to Montesquieu, this framework might change due to the conditions of human beings since they change so quickly, so easily. (Gürkan, 1988:11) Thus, as Namık Kemal represented basic idea of Tanzimat reforms; Shari'a law, was the natural law which has to be arranged due to the conditions (certainly through modern law) which was considered as "Örf" in pre-modern times in Ottoman Empire; thus, this means the perception of Örf was transferred into the perception of Modern discourse for a "non-religious" law. Another Tanzimat thinker Ali Suavi pointed out, "Since the human beings are equals, who would give them the right to make law and punish themselves. Thus, the power to make the laws, comes from a superior source, from Allah Himself. If a human being represent this power, ; it happens to be a monarchy, if a group of people represent it, it is oligarchy, but if all the human beings represent this, it happens to be a republic." (Bozkurt 1996:54) Consequently, Tanzimat reformers and members of Ulema who supported this transformation process had a common frame which is quite obvious in their texts and their aims, the fact that Ali Suavi summarized in two sentences in his description for ideal order and administration. Not so surprisingly scholars such as Meşrebzâde Arif Efendi easily accepted a dual system in law and education based on non-Islamic motivated methods, their perception was an acceptance of for a new method of representing authority of Allah through an Örf order.

In the context of Ottoman jurisdiction in the 19th Century, there were three main courts in use, in order to carry out this function. Two conceptions were essential in this process; change in legal structure and re organization of local administration. This issue is representing the bridge between Dede Cöngi's 16th century's problematic of monopolization of power of Sultan and Örf, balancing the Ulema and their reaction to Kanunnâmes and regulations surrounding Shari'a and the 19th century's problematic of decentralization process and the reforms around it.

In addition to classical Shari'a courts in control of kadis, there were cemaat courts (came along with the regulations on the structure of a so-called Millet System) and consulate courts (included foreigner jurists applying foreigners laws in those courts, multiplying the complexity of the presence of various laws in operation) (Bozkurt 1996:114) The presence of those three incompatible legal structures were accompanied with combined trade courts and Nizamiye Courts constructed by Abdülmecid completed by Abdülaziz (Bozkurt 1996:115). The other problematic parallel to this legal platform was the administrative chaos since the borders were shrinking and the land system was being transformed due to the new order. Due to the fact that the land system was anciently tied to administrative system by timar and for instance the scope of kadis and valis were lack of being clearly distinguished; new borders blurred the scope and the complexity of stratas was derived from this problematic issue. Tanzimat (Hatt-ı Hümayun) was presented as a solution for a new super structural description which purposed a new conception, "equality" where whole system was based upon those stratas. Thus, the reforms in jurisdiction were

derived from the necessity of reconciling new laws and the “effort” for establishing a basement for those reforms “concerning” Shari’a law. Thus, the reforms on the administrative system and judicial system which were parallel, in fact “embedded” to each other essential to mention, since it clarified this approach and Meşrebzâde had a contribution to it, from the side of education and legalization. All those problems had one basic aim on their background; to gather the appreciation and dependency for Sultan and central authority back together in the frame of modernization.

Problems were two sided; first the system was collapsed, second the agents were unqualified (which was also a problem derived from the complexity of Ilmiyye structure). A structural change was needed and predicted such as in 16th century, thus, transforming whole legal structure with the attitudes of its agents was based upon the change in Penal law. New penal laws are most favorable indicators for analyzing the change and transformation of State’s legitimacy attitude that was still in theory so called Shari’a originated Örf. Thus a general agreement on new laws were distant from being surprising for both reformers such as New Ottomanists and Ulema close to the ideal of renovate the State structure preserving the classical attitude of ruling.

Peters argued (2005:125), the opposition to the application of *siyâsa* from 1830s started to rise, thus the reforms were made in order re-organize this practice. Specifically, the arbitrariness of it was to be removed and administrated by the new modern influenced courts with new procedures in which the punishment for specific

offences were determined, however “Those new courts, did not infringe on the criminal jurisdiction of Shari’a courts. They continued to hear criminal cases, but mainly in order to deal with private claims, including retaliation.” (Peters, 2005:126)

Several penal Codes in Ottoman judiciary coincide with Kanunnâmes as discussed before, were issued for adapting Islamic law in Ottoman sense of penal law as kanun. Akgündüz has given four main Penal Kanunnâmes: (Akgündüz, 1986: 805) First Kanunnâme was Kanuni’s, consisting three parts; zina (adultery) and other crimes with ta’zir penalty, second part was of swearing, fighting, murder, and siyâset; third was of drinking wine, robbery, usurpation and rape. Those Kanunnâmes were mostly organized and inspirational for subsequent kanuns. Second kanun was belonged to Mehmed IV. (1680), it was promulgated for imputations and punishments for craftsmen.

Last two Kanunnâmes were the most essential ones and relevant to our study. Third Kanunnâme was issued under the reign of Abdülmecid, “Ceza Kanunnâme-i Hümayun” (1840) concluded references to Shari’a about *had* and *kıssas*, arranged ta’zir punishments. (Akgündüz, 1986:805) Significantly, emphasizing impartiality, this new penal code was applied to people with same status, concluding everyone. (Peters, 2005:126) Not quite explicitly however implying the social division that Shari’a makes-Muslims and Non-Muslims is no longer valid due to the new conception of legal status later to be called as “citizenship”. In addition to this, most important feature of this law was that it was emphasizing the principle of legality, according to Article 12/2: “punishment shall be inflicted only according to the law

and that persons against whom nothing has been proven during a trial shall not be punished.”(Peters, 2005:127)⁹¹ Reflecting the aforementioned principle of “kanunîlik” (legality), the arbitrariness of the former regulations here as this article demonstrated, hence, according to Peters, the siyasa punishment was not an initiative of Sultan’s anymore. (Peters, 2005:127) Consequently, as this law is to be declared as evidence, the reason why a part of Ulema legitimized their support to modern law automatically was based upon the fact that modern law replaced Örf, with the prevailing presence of Shari’a courts supported this claim. New assemblies undertook the function of örf, promulgating new laws, new courts were to implement it, along with this, a new provincial system was being established (with provincial courts and promulgation of Vilayat and such). These councils were the main administrative bodies, including *Meclis-i Valâ-yı Ahkâm-ı Adliye* which was established in 1838. The provincial kadis and muftis serving on those councils, is an implication of those bodies being in coherence with Shari’a, at least, not in a conflict with it. (Peters, 2005:127) Due to the fact that no criminal procedure was appointed for this Kanun, many of the Shari’a rules were applied by those administrative councils, this was a disadvantage for non-Muslims.(Peters, 2005:128)

Although being one of the sources to the Penal Code of 1858 (which was considered as a western style secular code), this Penal code of 1840 was entirely an instance for

⁹¹ Apparently, the punishments derive from the practice of ta’zir and other discretionary practices, social opinion on the suspect is quite essential, as it is mentioned in Dede Cöngi’s Risala. See Chapter III.

Shari'a Law. There are two essential issues around this legislation for our study; primarily, this law is the premiere penal code with explicit references to French law; secondly, our translator-interpretator Meşrebzâde Mehmed Ârif Efendi contributed to the preparation progress of this code.

Even though, through this law, a commission called Meclis-i Tahkîkât which participated the judiciary process, along with kadi, was established. (Bozkurt 1996:116) Thus, this kanun brought about a total reform on the judiciary process since the legal decisions were no more resulted only with kadi's decision, this commission included Vali as the chairman, members of "eyelet meclisi" or others from outside this commission and kadi. (Bozkurt 1996:116) Apparently, the influence of vali and administration apart from kadi, was attended to be enhanced by those reforms, still legitimizing it with Shari'a. In addition to this, about death penalties the consultant of Meclis-i Ahkam-ı Adliye and Padişah was sought, to whom it was sent for advice, thus, Meclis-i Tahkîkât was establishing to be modern courts. (Bozkurt 1996:116) As a result, the significance of this law happened to be it being an introduction to a modern legal system as an alternative to the ancient system of Islamic courts.

On the other hand, fourth Kanunnâme, "Kanun-ı Cedid" was completing former one, issued in 1851 with same contents. (Akgündüz, 1986:805) It was dealing with the issues such as crimes against life, honour and property purposed State protection in Gülhâne-i Hatt-ı Hümayûn 1839; which were the basic principles of state protection

for state security and public order, former domain of *siyasa* justice.(Peters, 2005:130)

In passing, *Islahat Fermani* in 1856, as a text organized the basic ideal of Tanzimat; regulating the relations between individuals and State, brought about a new description for whatever “reaya” included before. Aforementioned modern courts with the absence of domination of kadis on final decisions were to commercial and penal cases between Ottoman Muslims and non-Muslims, between non-Muslims, or between foreigners and Ottomans. Those cases were to be open cases, defendant and complainant to be faced and the case would be solved due to their religions and sects, Bâb-ı Zaptiye and Zaptiye Müşavirliği were appointed to execute the penalties in Istanbul, in other places executive authority was the highest administrative chief. (Bozkurt 1996:117)

Subsequent Ceza Kanunnâme-i Hümayun which was prepared by a commission including Ahmed Cevdet Pasha was issued in 1858 was a secular instance for legal regulations, influenced by French Penal Code in 1810, however, it was not exactly a copy, according to Akgündüz it was based upon old Islamic and Ottoman Penal Laws; significantly this regulation left appointing and practicing of “Şer’i Şerîf” to ulu’l-emr/legislative body.(Akgündüz,1986: 805-807) The character of this Kanunname differed from the former ones. There are several arguments on the influence of French Penal code of 1810 on this Kanunnâme, however, Ahmed Cevdet Pasha does not mention any inspiration, though it is derived from the dynamics of the law itself. (Gayretli n.d:2) Moreover, from the sources of this

Kanunnâme happened to be the regulations of 1840, 1851 and Men-i İrtikap Kanunnâmesi. (Akgündüz, 1986:806-807). Despite being presented as more “secular” than the regulation in 1840, supporting our thesis, Kanunnâme’s first article demonstrated that although the kanun as a whole, formulated “considering” Shari’a;

“Madde 1- Doğrudan doğruya hükümet aleyhine vuku bulan cerâyimin icrây-i mücâzâtı devlete ait olduğu gibi, bir şahıs aleyhinde vuku bulan cerayimin asayiş-i umumiye ihlal eylemesi ciheti dahi kezalik devlete ait olduğundan, tayin ve icrası şer’an emr-i ulü’l-emre ait olan ta’zirin tayin-i derecatını dahi işbu Kanunnâme mütekeffil ve mutazammın olup ancak herhalde şer’an muayyen olan hukuk-u şahsiyeye halel gelmeyecektir.” (Akgündüz, 1986:834) Not only the indicating the Shari’a, but the emphasis on State as a protector of individuals, refer to basic principles of Ottoman perception of adâla (justice) and a new aspect as a reflection of Western influence.

In addition, Peters predicted that (Peters, 2005:131) this code could be considered as a legislation of ta’zir and siyasa within the context of an Islamic legal system, due to the fact that the homicide and wounding issues are based upon their legislation in Shari’a. However, the essential note here is that for capital punishment, Şeyhülislam’s approval was needed. (Peters 2005:131)

As Gayretli mentioned in his short analysis for the draft text of this Kanun, the expression ; “the rights given to individuals by Shari’a will be preserved” was not

mentioned, however, it was noted on the paper of the draft of the kanun later added (Gayretli, n.d:7) Even though the context of this Kanun was presented as it does not exceed the boundaries of Shari'a, considering the fact that at an amendmend in 1860 on this law, in the statements of opinion (mazbata) of *Meclis-i Ali-i Tanzimat*, a direct quote from French penal law was mentioned.(Gayretli n.d:3; Şentop, 2004: 90-91) However, the question here was if the presence of foreign laws in a Shari'a context was acceptable. Understanding and legitimization of contribution of modern laws as Örf, is considerable explanation for this matter, when estimated the reaction of official Ulema.

As it is conceived from the legal reforms starting from the age of Selim III and continued with Mahmud II framed with *Gülhane-i Hatt-ı Hümayun*; along with modernizing and harmonizing the legal structure with new economic necessities, (commercial and the relations derived from it); the main problematic of those reforms was decentralization problem which was practically a consequence of this general conjuncture. Subsequent texts prepared; pre-Tanzimat text *Tarik-i Ilmiyye'ye dair Ceza Kanunnâmesi* (1838), *Metn-i Metin* (1855-Common law, not completed), *Arazi Kanunnâmesi* (1858, law organizing the land system), *Mecelle-i Ahkam-ı Adliye* (1868-76 code of obligations) were the examples of this framework of both establishing a centralized modern system and to demonstrate remaining inside the boundaries of Shari'a when issuing new laws.

Out of all, Arazi Kanunnâmesi⁹² was an example for a necessity of change in perception of property. The problem on land property was the description of Miri arazi, since the usufruct was given to reaya although the *rakabe*-bare ownership belonged to State (Kılıç; 2008:195) The regulations on this land type was various in different places all over Ottoman geography (Kılıç, 2008:196). However the perceptions offered in Tanzimat and Islahat Firmans proposed standardized institutions all over the *Memalik-i Mahruse*, the legal base of this, certainly derived from a change in land and tax systems. Although, this Kanunnâme was more of a “modification” than a “codification”, specifically concentrated on Miri land, re-regulated the land system aiming legal stability and more significantly, enhanced the State’s domination over grand land owners in order to establish a more centralized geo-political system. (Kılıç, 2008:196-197) This Kanunnâme had more effect than a simple regulation, despite a partial knowledge on it, “These administrative practices on the land resulted with stimulating a dynamic social space marked by negotiation, resistance and compliance from the part of ordinary people “(Rubin, 2008:9).

On the other hand, not quite coincidentally Arif Efendi referred to Mecelle carried Dede Cöngi’s explanation of the principle “Ma yuhdesu fi’t-tarik” to the 19th century context, to Mecelle’s aforementioned articles such as article no:26 “*Zarar-ı âmmı def’ için zarar-ı hâss ihtiyar olunur. Tabib-i cahili men’ etmek, bu asıldan teferru’ eder.*” (Berki, 1985:21). Despite it was considered as a work of Islamic law,

⁹² This kanunname is essential in the context of transformation of Ottoman political system as a whole, nececiates more concentrated research spesifically on the socio-political context of it from; (Barkan, 1940);(Cin, 1969); (Velidedeoğlu, 1940)

Mecelle was a regulation, reconciliation of basic principles Modern law and Shari'a law. Though, Mecelle was in general, highly effected by Hanafi doctrine in terms of for example "shurut doctrine", contract law of basic Ibn Taymiyya texts.(Araabi, 1998) The problems derived from the lack of legal reforms were based upon the necessity of a new common law. Thus, the reformers were to square the circle, through preserving the tradition when "producing" another one. In 1866 subsequent to a rebellion in Crete arose from the lack of a Civil law, a translation was made from an Arabic translation of French Civil law from Egypt was requested by Sadrazam Ali Pasha.(Yakut, 2005:109) On the other hand in 1868 a Mecelle commission under Meclis-i Vükela, inside Divan-ı Ahkam-ı Adliye was established, in order to implement Mecelle properly, by Ahmed Cevdet Pasha; subsequent to Ali Suavi's risala proving Shari'a's suitability and the ability to resolve new complications, not confronting the renovations. (Erdem, 1998:283-296, Yakut, 2005:210)

4.4 Dissolution and Re-Organization of Jurisdiction at the level of Judges and the contribution of Meşrebzâde Ârif Efendi

Legal regulations were also appointed to re-order the class of Ilmiyye. From the ages of Kadızadeli domination and Birgivi influence on Ilmiyye class, wide spread nepotism and corruption prevailed through the 19th century also. The blurriness on distinguishing scopes of kadi as a legal agent and administrative cast was deriving other conflicts in the context of decentralization.

One of the necessities of promulgating modern laws was to consider principle of separation of laws. Thus, regulations on the class of Ilmiyye was essential, since the agents of Ilmiyye were to practice the power of jurisdiction and in Ottoman System the distinction between the scope of administrative and jurisdiction agents (for instance Dede Congi's Risala deals with this matter) was not clearly distinguished. However, whole administrative structure was changing and being re-organized, new legislative councils were established, thus there was a presence of the necessity of re-organizing Ilmiyye in a different context however with a similar reasoning.

In classical and pre-modern ages, kadi's authority was based upon the authority of Sultan himself. Naibs were the representatives of kadis, this duty was given to local Ulema by kadis themselves; however, a disfunctional and damaging practice of appointing naibs through iltizam method initiated in 16th century (this practice prevailed through 18th century). (Cihan: 2004: 49-51)

The blurriness of scope of kadi resulted with a more profound problem, they misconducted their duty of "teftiş and keşif" (sort of investigation of villages and nâhiyes) gathering with a number of askerîs, and reinforced people to give their properties such as their animal feed for free, which was an example for the situation where people complained about kadi. (Cihan 2004: 52) However, from 17th century on, with the enhancing Ulema influence in *Meşveret Meclis* which was a commission of professionals summit for special occasions until 18th century with the presence of Padişah, referring to Tarih-i Cevdet, Cihan (2004: 72-77) claimed that on the conquest of Crimea, through this Meclis, a fatwa was agreed to be taken from

Şeyhülislam on giving Russia an indenture on conquest of Crimea; also the agreement was made on alliances in 1789 with Sweden and in 1790 with Prussia; on measures to be taken after the French invasion on Egypt in 1798 etc. were decisions influenced intensively by Ilmiyye members of this Meclis. On the other hand, the influence of Ulemâ on decisions made in this meclis decreased as “civil” powers and modern institutions such as Meclis-iVala-yı Ahkâm-ı Adliye (1838) took more of an influence, and Sultan had a role in the process of decision making. It is conceived from the fact that with *Gülhane –i Hatt-ı Hümayûn*, “it was given the “impetus” to become an effective organ in terms of legislation.” (Shaw, 1970:57)

Selim III appointed Dürriyade Arif Efendi in 1791 after Hamizade Mustafa Efendi, due to the necessity of re-organization of judgeship system, in this process another *firman* was issued which was indicating that the ignorance of *kadis* in Rumeli and Anatolia *mansıbs* caused the decisions made in the courts to be out of the boundaries of Shari’a law, so they will not be appointed without examination, they will be appointed according to their grades not their reputation and they would be prevented from processing rapidly in silk (Beyazıt, 2010:54).

Furthermore, as mentioned before, the dramatic change in the influence of Ulemâ became obvious when the dual legal system was institutionalized in the 19th century especially with local courts and later in the 19th century Nizâmiye Courts. Specifically local courts for administration and jurisdiction, sharing kadi’s authority, according to records are said to narrow kadi’s scope in local level. (Cihan 2004: 183-

185) Due to the fact that Shari'a institutions were practically being dominated and this domination was legitimized by Sultan's will. (Cihan, 2004: 183)

In the Kanunnâme of December 12 in 1838; "*Tarîk-i İlmiyye'ye dair Cezâ Kanunnâmesi*" was promulgated subsequent to the efforts of Selim III on practically separating legislative powers from jurisdiction. Kadis of the time of Mahmut II, were mostly accused of bribery (Çadırcı, 1983:141); as we consider our focus; as interpretation that Meşrebzâde Arif Efendi made for Dede Cöngi's Siyâsetname, he considered an addition for the matter of bribery was necessary thus it is conceived that the problem prevailed throughout the century.

Musa Çadırcı in his study on penal code of 1838 for İlmiyye class (1983:141), determined that kadis of the time, under the name of "Hediye" (gift) and "Bahşış" (tip) (as Arif Efendi also referred to the difference between those terms) kadis were accepting bribe under the name of "Mahsul-ü Def" and "Resm-i Def", however they were restricted by Shari'a on not to take any money but "Resm-i Adi". Specifically "tayyarat", "badihava" or "resm-i niyâbet" were taken by the order of naibs and registered under the income of timarli sipahi, when the timar system was demolished, this "tax" was only a matter of corruption.(İnalçık, 2006: 132) "Vali's corrupted payments such as *hazeriyye*, *severiye*, *kudumiyye* etc. were also abolished."(İnalçık, 2006:132) In addition to this, kadis were replacing and designating naibs very often, in order to take money from each, as it was necessary. They were interrupting whole local networks, appointing elits as ayan, muhtar or voyvoda, thus this sort of Kanunnâme was needed. (Çadırcı 1983:42) In addition to this, the implementation of

examination of current kadis which was promulgated with this Kanunnâme, was abolished since, through this regulation many of the kadis would lose their positions and there would be a presence of an employment crisis. (Beyazıt, 2010:56)

The discourse of this Kanunnâme was also instructed upon the contradiction of kadi's and naib's behaviours with Shari'a; "If those from Ulema who are in service of people, attend to do beyond personal needs and whatever Shari'a predicts, they will be warned, if they don't obey, they will be restrained from their duty." Or "...if those who are appointed to implement Shari'a law accept bribe, money will be given back; they will be punished with ta'zir" etc. (Çadırcı 1983:144)

When the Tanzimat Fermanı was issued, new administrative discourse of Ottoman State was revealed in record. As a re-organization of provincial system, the institution of kadi was entirely centralized; kadıs were still engaged with central authority, with Şeyhülislam thus Bab-ı Meşihât; on the other hand, naibs were to be paid as regular state officials.(Inalcık, 2006:129) The abolishment of iltizam from mukata'as was rapidly issued, since the iltizam method over customs was abrogated even before Tanzimat. (Inalcık, 2006:131)

In addition to this, some of the payments they take from documents such as resm-i kısmet, resm-i tereke and ilam, hüccet etc. were restricted, they would be paid monthly. (Inalcık, 2006:129) However, this implementation was failed after two years because of the financial crisis.(Akiba, 2005:46) Separating the scopes of kadıs and naibs was derived from separating naib from the responsibility of kadi through

appointing Şeyhülislam to designate them, however, the main criteria of appointment was reputation in elite Ulemâ circles in Istanbul (Akiba, 2005:47). Akiba indicated (2005:47) the significance of reputation, referring to Penal code of 1838 for Ilmiyye mentioned (the implementation of this rule is not coincided yet) the examination requirement for those applicants whose quality was unknown. Lastly,” the corruption issue on court fees was not resolved, although Şeyhülislam Arif Bey (1846-54) was frustrated by it”. (Akiba, 2005:47)

Reactions towards provincial reforms came with Tanzimat framework were various. First of all, the assemblies issued by Tanzimat were moderated by vali, muhassıl or kaza müdürü not by any member of Ulema as in former structure; thus non-Muslims would be represented by their religious heads and *kocabaşıs*, also increasing influence of the agents of the administration would restrain ulema and ayan from the local administration and centralize the provincial system. (İnalcık, 2006:135) Those assemblies were considered non-organized and their procedures were criticized to be not quite regulated. (İnalcık, 2006:136) Those who were against Tanzimat politics, were also taking place in those assemblies and they were aggravating people against those policies, which was coincided in Meclis-i Vala, one mufti in Adapazari Assembly, was aggravating people in coffee houses against taxes. (Inalcık, 2006:138) . Moreover, those processes concluded non-muslims in the context of Tanzimat, in terms of blurring the status of “dzimmi” and gather them around a new perspective of administrating and judging. Shortly, those reactions against legislative

and jurisdictional reforms were mostly over the regulations on taxes and new positioning.

Meşrebzâde Arif Efendi, the interpreter of Dede Cöngi was one of the front leaders of reforms at his time, as a Şeyhülislam. He was the representative for reforms from the Ulema class. He was complaining from the non-organized, abusive groups of Ulema, mostly kadıs and naibs and apart from his professional identity, as a 19th century reformer, he was aiming to resolve this problematic issue by legalization and educational reform.

Meşrebzâde Arif Efendi's age witnessed several regulations on İlmiyye class, at his time, especially in 1855 there were three main regulations on ilmiyye, presented to Meclis-iTanzimat; *"Tevcihat-ı Menasib-ı Kadı Nizamnamesi"*, *"Nüvvab Hakkında Nizamname"* and *"Kuzat ve Nüvvab'ın Suret-i Hareketi ve Rüsumatına Dair Ba-İrade-i Seniyye Karargir Olan Usulü Şamil Tenbihat"*. (Beyazıt, 2010:60; Seyitdanlioğlu,1994:49)

In April 1855 the order for kadıs and naibs' fees (*"Kuzat ve Nüvvab'ın Suret-i Hareketi ve Rüsumatına Dair Ba-İrade-i Seniyye Karargir Olan Usulü Şamil Tenbihat"*) was issued indicating the two basic issues in this contradiction; firstly, the corrupt judges appointed by iltizam, secondly "unknown" naibs were appointed by the holders of mansıb and maişet were charging illegal fees. (Akiba, 2005:48) This expression of "unknown" is a reference to their lack of reputation, rightfully, Akiba indicates it is again associated with injustice. (Akiba, 2005:48) A necessity of

fixing the naib's payment and associating them directly to the central authority was revealed. Thus, their appointment letters would be given by Kazaskers after this regulation, not by holders of mansıb and maişet, to sum up, they would be appointed directly by Kazaskers of Anadolu and Rumeli.(Akiba, 2005:48) For the reason of naibs established the main problematic of a chaotic judgeship, they were ought to be organized. Consequently, with the regulation of 1855; "*Nüvvab Hakkında Nizamname*" (which was passed the Meclis-i Tanzimat along with "*Tevcihat-ı Menasıb-ı Kadı Nizamnamesi*") ; they were categorized into five, "so the judge would be appointed to the post corresponding his grade", the posts of judges were classified due to the scale of each kaza, in addition to this a system of "loyalty" was proposed, judges would be granted accordingly. (Akiba 2005:48)

Systematic problems in legal organization of the empire caused another feedback which was a judge employment crisis. Tanzimat not only made this process even more complicated with legitimizing a dual legal system which was provided multiplying courts in various levels of the society. Thus, subsequent to contextually Tanzimat reforms in the areas as aforementioned legislative councils such as Meclis-i Tanzimat; along with re-organizing the present Ulema class in service, new employees needed to be educated with this new centralized perspective. Kazaskers, thus Şeyhülislam taking control of appointments was enhanced with the establishment of *Mu'allimname-i Nüvvab* in August 1855, educating naibs for between third and fifth grades of naibship.(Akiba 2005:49)

Akiba rightfully considered this grade system highly significant, due to the fact that it proposed a new hierarchical system in İlmiyye, where naibship was an official and independent institution, replacing kadı institution(Akiba 2005:49). Consequently, this renovation made in the system of appointing and definition of duty of judges brought about the function of the courts. Specifically after the promulgation of Nizamiyye courts in 1870 along with new legislative bodies from 1838 and 1840 (Meclis-iVala-yı Ahkâm-ı Adliyye, Şurâ-yı Devlet, local councils of Meclis-i Muhassilin, Müzâkere Meclisi) to some extent, separating legislation and jurisdiction at local level was achieved. However, it was a “limited centralization” since great kazas were out of Şeyhülislam’s control. (Akiba, 2005:51) Thus, basic target for centralization in fact was not achieved.

Limiting our research on legal history of the the 19th century with the time when Meşrebzâde interpreted Dede Cöngi’s Siyâsetname, his concentration on salvation from decentralized, highly dissolved system of kadıs and naibs and the chaos they created explains the necessity of him bringing about Dede Cöngi’s Risala when he was working as Fetva Emini around 1843, which was benefited in the 16th century. Through his additions and his own interpretation to several terms and customs which were reflecting the basis of Islamic law and Ottoman practice of them with him insisting on expanding some issues especially on kadı’s scope, demonstrated his attitude towards legal reforms and in general the support of Ulema for those renovations. The reliance on reconciling the basis of Shari’a with modern systems while preserving Islamic roots of legal system prevailed throughout the century.

Meşrebzâde's interpretation of Risala was given with some examples in Chapter III. When examining Dede Cöngi's original text along with its translations, some basic differences were observed. Due to the fact that Meşrebzâde interpreted the text with using a title "Mütercim-i Fakîr"; the Şeyhülislâm contributed to original text, expanded it with additional references and different usages. He added a Mukaddime and a Hatime which examined bribery issue. More interestingly, he preferred not to translate Dede Cöngi's last chapter on ta'zir.

Meşrebzâde's addition of Mukaddima, an introduction to Risala, in order to indicate the references inside the Risala and make several additions to it. In his very own Mukaddima, Arif Efendi wrote few points worth mentioning, one of them his description on "Siyâset" referring to its meaning in Kamus, entirely depends on the concept of protection "*hirâset vezninde bir nesneye tekayyüd ve salahı hususuna ihtimamla görüb gözetmek*" (to watch over goodness of a subject who needs to be protected) (Akgündüz, 1992: 128) This description is an explicit reference to the perception of ruling in the 19th century, more specifically, Tanzimat perception, in which Ottoman State positioned, declared itself as the protector of all peoples under its reign; "*umûr-ı raiyyete muhafaza birle vâli ve hâkim olmak*" (Akgündüz, 1992:128) Highlighting the significance of the positions of *vali* and *hakim*, he contributed to Dede Cöngi's description of declaring kadi and vali's scopes due to aforementioned changes in provincial system in the 19th century. The text was in favor of empowering the authority of kadis in order to reinforce the influence of state by means of public control through örf. Thus, a reflection of this aspect in re-

organization of the office of of kadis and naibs in the 19th century is observed since Meşrebzâde contributed this reform process personally. He agreed with this contribution, to Dede Cöngi's opinions on kadi's authority on appointing naibs, apply ta'zir and imprison fesad.

The terms public control, public order and public security were re-interpreted in a modern context. His reference to Mecelle, the term "*Zarar-ı âmmı def için zarar-ı hâss ihtiyar olunur/ Tabîb-i cahili men' etmek, bu asıldan teferru' eder*" referred to the preference for personal damage in order to prevent a social damage, such as preventing an ignorant doctor from working.⁹³

Ismail Müfid Efendi translated this text at the beginning of the long reformation process, directly, obviously did not have a reason to put the terms and conceptions of this Risala into the political environment which he lived in. Because, the Risala can easily be considered for a period of Reforms due to the issues and terms that are discussed, being beneficial for the 19th century context too. Thus, the reason Arif Efendi did not translated ta'zir chapter, and Ismail Müfid did was probably the renovations on penal code and jurisdiction came after Tanzimat, ta'zir as a category of penalty, as discretionary law of Sultan, was not needed since modern law replaced it. Akgündüz (1992:165) used a term: "*Tagayyür-i azman tebeddül-ü ahkam inkar olunamaz.*" (changes in time and decisions cannot be ignored) due to Dede Cöngi's claim on his quote from Ibn-i Kayyim el-Cevzi, in some provinces kadi's authority

⁹³ The term *masâlih-i mürsele* could also be considered in this context.

exceeds ehl-i harb/emir-i harb and sometimes, just the opposite. This change is based upon örf, ıstılah, ta'mim and tansis (Dede Cöngi 89/b).⁹⁴ According to Dede Cöngi, local differences in terms of örf is normal, in addition, the changes are up to örf which happens to be the new legal regulations in the context which Arif Efendi used this claim.

⁹⁴ “Taklid-i velayet’ (administration practices), kaza (judicial) and emaret (administration); rely on “örf”, “tansis” (to refer to Shari’a decisions) and acceptance of *tamim* (generalization) and *tahsis* (specification)”.(Dede Cöngi 89-b)

CHAPTER V

CONCLUSION

In our study, we endeavored to examine Dede Cöngi's Risala, in the 16th Century political atmosphere it was written and search for Meşrebzâde Arif Efendi's reasons for bringing about this text again, in the 19th Century. Dede Cöngi in his Risala, legitimized the siyâsa of the Sultan, clarified the legal jurisdiction of kadis in valis, and discussed the discretionary punishment, ta'zir. Thus, he created a text which proved very useful amidst the legal reform process of the 19th century.

The task at hand of Dede Cöngi was not an easy one. During the same period there is a heated debate on whether Islamic law permits the extensive jurisdiction of the Sultan on law and punishment. There were two clear ideological fronts on this matter. One represented by Ebussuud and those who allowed a wider space to sultan discretion on promulgating administrative law and supervising the administration of law and punishment, and those like Birgivi or Çivizade who tried to limit them, using Hanefi jurisprudence. In the Risala Dede Efendi is obviously on the side of the "reformists". He utilizes Hanefi and other schools arguments, -especially Ibn Taymiyya's and his followers, to support the concept of *siyasa shariyya*. Thus the

sultanic prerogatives are interpreted within the framework of Islamic law and they are also legitimized in the face of “conservative” criticism. The Sultan in the Arabic version of Dede Efendi’s text is an Imam and as such his action is legitimate. The equation of the Sultan and Imam concept is a reflection of another legitimization process underway during the time of Süleyman I.

After this argument was established Dede Efendi embarks on another thorny issue that of the duties and juridical jurisdiction of the valis as representatives of sultanic authority and the kadis. Similar to the argumentation on the canonical character of sultanic örf, Dede Efendi is employing the most handy of Islamic legal tools that of *maslaha*. After putting forward the standard hanefi doctrines on the matter, he proceeds in deconstructing them. According to the text the main function of vali’s justice is to protect the society at large from evil and ill behavior. This is why he has extensive power on the investigation and prosecution of a suspect. The val can use torture and imprisonment as means to get a confession and administer justice. On the other hand the kadi is under all the limitations of Islamic legal procedure. The kadi duty, in fact is different from that of the vali. The kadi is there to protect individual rights. Thus he cannot intervene in a dispute until one of the parties invite him to do so. However as the risala mentions then the kadi can exercise the same authority to the vali’s.

In his refutation of the inability of the kadi to intervene Dede Efendi provides verses from the Quran and hadiths in an effort to free the kadi, from the constraints of

Islamic procedural law. At the end of his chapter, it becomes clear that what he actually aimed at was to allow a more active role for the kadis in judicial procedure. To mention one example according to Dede Efendi the kadi can also imprison people to attain a confession, or hire people to do investigative work for him before he decides on a matter.

In his final chapter he then moves to discuss the thorny issue of ta'zir and whether it can be more severe than had punishment at times. Throughout his text Dede Efendi is preoccupied with public order. The same concern is reflected on this chapter too. Through his endless examples of whether an outsider can enter one's house and cases of fornication and illicit sex, his main concern is the avoidance of vice and the establishment of public control.

Thus, the Risala legitimized the supremacy of absolute authority of Sultan through örf and favored to empower the authority of kadis as the reflections of central authority in the local level, in order to balance the power of örf with Shari's influence. In addition to this, Dede Cöngi used various Hanafi references to prove the "supremacy" of it among other orthodox doctrines of Islam. Thus, he guaranteed the influence of Hanafi discourse on Ottoman perception of politics.

The need for this Risala emerged when new conceptions for administrating need to be legitimized inside the boundaries of Shari'a. Although the original Risala and Meşrebzâde's translation should be considered in different historical contexts, for different reasons and situations, they both appeared in a context where the conditions

and regulations brought about the domination of the office of Şeyhülislam. In the 16th Century, the Şeyhülislam Ebu Suud empowered the Sultan and enhanced his power. Dede Cöngi explicitly legitimized the Sultan's authority, re-defining the ancient Islamic leader "Imam" through referring to Süleyman's "Lawgiver" identity. This effort was worth examining in the context of Ebussuud's conflicts with contemporary scholars, due to his actions had a reflection on empowering his own position, Şeyhüislamlik.

Sebzi Mehmed's version in the 17th Century repeated Dede Cöngi's attitude and remained loyal to the main text in terms of its perception of "Siyâsa". Despite the presence of Sebzi Mehmed's version and Ismail Mufid Efendi's direct translation; Şeyhülislam Meşrebzâde Mehmed Arif Efendi took up the task to translate once more this text. He used it to reinforce his efforts on centralizing the legal structure. Arif Efendi, benefited from the same discourse to empower the authority of "Sultan" and legitimized through the Shari'a. . Moreover, as mentioned in the analysis of translations and original text, he used the term of Sultan instead of "Imam" in the translation, despite the presence of a claim of Caliphate which emerged again (in legal documents such as Treaty of Küçük Kaynarca-1774) which reached its climax at the age of decline, after his death. Arif Efendi's effort to indicate on the significance of örf by translating Dede Cöngi's text is parallel to his contribution on legal reforms at his time. As we have mentioned a modern legal structure replaced örf and had to survive along with another structure which was based on Islamic law. Legal reforms in the 19th Century were to establish a new legality which is more

workable with new order and based upon the basic principles of Shari'a. However, despite the society was organized through those basic principles such as the division of Muslims and non-Muslims, the Tanzimat was purposing a new principle, equality before the law. This new concept caused the duality, the results of it is depicted in our study through examining promulgation of new penal codes. Meşrebzâde's effort on the translation and the interpretation of Dede Cöngi's text, and his further references for the necessity of preserving the basic principles of Shari'a explains perhaps the support of the ulema to the Tanzimat reforms in the 19th Century. In the study, the notion of Siyâsa Shari'a was discussed along with the 16th century's political atmosphere, the differences between the translations of Dede Cöngi's Risala are assessed when comparing them to the original text, and Meşrebzâde's political motivations for translating the text are discussed in order to contribute to present studies on Dede Cöngi's Risalatü'l-Siyâsetü'Şer'iyye.

BIBLIOGRAPHY

Primary Sources:

T.C. Kültür ve Turizm Bakanlığı Türkiye Yazmaları (yazmalar.org)

Dede Cöngi's (d.1567) Risaletü's Siyâsetü's-Şer'iyye; 03 Gedik 18069/6, Collection of Afyon Gedik Ahmet Paşa II Halk Kütüphanesi National Library , Ankara

Sebzi Mehmed (öl.1680); 06 Mil Yz A 9124, Manuscript Collection of National Library, Ankara

İsmail Mufid b. Ali el-Attar, Terceme-i Siyasetü's-şer'iye, İstanbul Büyükşehir Belediyesi, Atatürk Kitaplığı, Osman Ergin Türkçe Yazmaları, Arc. No: 879/11

Secondary Sources:

Akbulut, İlhan. 2003. İslam Hukukunda Suçlar ve Cezalar, Ankara Üniversitesi Hukuk Fakültesi Dergisi, Vol. 52 no: 1, pp.167-181

Akça, Gürsoy and Hülür, Himmet. 2006. Osmanlı Hukukunun Temelleri ve Tanzimat dönemindeki hukuksal yeniliklerin Sosyo-Politik dinamikleri, Türkiyat Araştırmaları Dergisi.

Akgündüz, Ahmet Kanuni Sultan Süleyman Devri Kanunnameleri, Part 1: Merkezi ve Umumi Kanunnameler, Dede Cöngi Efendi'nin Siyaset-i Şer'iye isimli Eserinin Tercümesi (Siyasetname), İstanbul, Ocak 1992, pp. 122-212

Akgündüz, Ahmet. 1986. Mukayeseli İslam ve Osmanlı Hukuku Külliyyâtı, Dicle Üniversitesi Hukuk Fakültesi yayınlar No:6, Diyarbakır.

Akgündüz, Ahmet. 1991. Türkiye Diyanet Vakfı İslam Ansiklopedisi,, “Dede Cöngi”, Vol 9, pp.76-77.

Akiba Jun. 2005. “From Kadı to Naib, Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period”, Ed. Imber, Colin and Kiyotaki, Keiko; Frontiers of Ottoman Studies: State, Province and the West Vol.I, I.B. Tauris&Co. Ltd, pp.43-60

Aktan Hamza, 2002. Türkiye Diyanet Vakfı İslam Ansiklopedisi, “Kazf” Vol 25, pp.148-149.

Altay, Ahmet. 2001. Klasik Dönem Osmanlı Siyasetname Geleneğine Genel Bir Bakış, Turkish Studies,International Periodical for Language, Literature and History of Turkish or Turcic, Vol 6/3 Summer:2001, pp. 1795-1809, Turkey.

Araabi, Oussoma. 1998. Contract Stipulations (Shurut) in Islamic Law: The Ottoman Majalla and Ibn Taymiyya, International Journal of Middle Eastern Studies, Cambridge University Press, Vol.30, No:1, February, pp 29-50.

Arsal, Sadri Maksudi. 1999. Teoratik Devlet ve Laik Devlet, tanzimat 1, Milli Eğitim Bakanlığı Yayınları, İstanbul, pp.59-95

Aydın, Ahmet. 2006. “Çivizade Muhiyiddin Efendi’nin Fıkhi Görüşleri”, Marmara Üniversitesi İlahiyat Fakültesi, İslam Hukuku Bilim Dalı, unpublished M.A. thesis, İstanbul.

Aydın, Mehmet Akif. 1993.Türkiye Diyanet Vakfı İslam Ansiklopedisi, “Ceza: Osmanlı Ceza Hukuku”, Vol 7, pp. 478-482.

Azamat, Nihat. İslam Ansiklopedisi, İslam Türkiye Diyanet Vakfı Yayınları, Vol V, “Bali Efendi”, p.20.

Barkan, Ömer Lütfi. 1940. Türk toprak hukuku tarihinde Tanzimat ve 1274 (1858) tarihli Arazi Kanunnamesi, Maarif Matbaası.

Başoğlu, Tuncay. 2011. Türkiye Diyanet Vakfı İslam Ansiklopedisi, “Tazir”, Vol.40, pp.198-202

Berki, Ali Hikmet. 1985. Açıklamalı Mecelle: (Mecelle-i Ahkam-ı Adliyye) İstanbul: Hikmet.

Beyazıt, Yasemin. 2010. Tanzimat Devri Şeyhülislamlarından Meşrebzade Arif Efendi ve Kadılık Kurumundaki İstihdam Sorunu, Bilig, Summer, Vol:54, pp.47-74

Black, Anthony, History of Islamic Political Thought: From the Prophet to the present, Chicago University Press, 2001.

Bozkurt, Gülnihal. 1996. Batı Hukukunun Türkiye’de Benimsenmesi: Osmanlı Devleti’nden Türkiye Devleti’ne Resepsiyon Süreci (1839-1939), Türk Tarih Kurumu Basımevi, Ankara.

Bursalı Mehmed Tahir; Osmanlı Müellifleri: 1298-1915, Haz: Ali Fikri Yavuz, İsmail Özen, Meral Yayınevi, İstanbul, 1972.

Cihan Ahmet. 2004. Reform Çağında Osmanlı İlmîyye Sınıfı, Birey Yayıncılık, İstanbul.

Cin, Halil. 1969 Miri Arazi ve bu arazinin mülk haline dönüşümü, Sevinç Matbaası, 1969

Çadırcı, Musa.1983. Tanzimat'ın ilanı sıralarında Osmanlı İmparatorluğu'nda Kadılık Kurumu ve 1838 tarihli "Tarik-i İlmiyye'ye dair Ceza Kanunnamesi", Ankara Üniversitesi DTCF Tarih Araştırmaları Dergisi, Vol XIV. (Seperate Publication), Ankara.

Erşahin, Seyfettin. 2005. Islamic Support on the Westernization Policy in the Ottoman Empire: Making Mahmud II a Reformer Caliph-Sultan by Islamic Virtue Tradition, Journal of Religious Culture, No.78.

El-Rouayheb, Khaled 2008. The Myth of The Triumph of Fanaticism in the 17th Century Ottoman Empire, Die Welt des Islams 48, pp. 196-221.

Evliya Çelebi Seyahatnamesi, 1996. Yapı kredi Yayınları, Vol 2, İstanbul.

Evliya Çelebi Seyahatnamesi, 1996b. Yapı kredi Yayınları, Vol 4, İstanbul

Faroghi, Suraiya 1973. International Journal of Middle East Studies, Vol. 4, N:2 (April), pp.204-218

Findley, Carter V. 2011. "Tanzimat", ed. Reşat Kasaba, Türkiye Tarihi: Modern Dünya'da Türkiye 1839-2010, Kitap Yayınevi.

Finkel, Caroline. 2005. Osman's Dream; The History of Ottoman Empire, Basic Books.

Fleisher, Cornell. 1986. Bureaucrat and Intellectual in the Ottoman Empire, The Historian Mustafa Ali (1541-1600), Princeton.

Gayretli, Mehmet n.d 1858 Ceza Kanununun kaynağıyla ilgili tartışmalar ve bu kanuna ait bir taslak metnin bir kısmıyla ilgili değerlendirmeler, E-akademi, sayı 106, <http://www.e-akademi.org/makaleler/mgayretli-2.pdf>

Gerber, Haim. 1999. Islamic Law and Culture 1600-1840, Brill.

Gürkan, Ülker. 1988. Montesquieu ve Kanunların Ruhu: Hukuk sosyolojisi açısından bir değerlendirme, Ankara Üniversitesi Hukuk Fakültesi Dergisi.

Hassan, Umit. 2001 Örgüt-İnanç-Davranıştan Hukuk ve ideolojiye, İletişim Yayınları.

Heyd, Uriel. 1973 Studies On Ottoman Criminal Law, Clerandian Press.

Heyd, Uriel. 2002. “III. Selim ve II. Mahmud Dönemlerinde Batılılaşma ve Osmanlı Uleması” In Türk Hukuk ve Kültür Tarihi Üzerine Makaleler, Ankara Okulu Yayınları, pp.99-136.

Imber, Colin. 2004 Kanun ve Şeriat, Tarih Vakfı Yayınları, İstanbul.

İnalcık, Halil, 2006. “Tanzimat’ın Uygulanması ve Sosyal Tepkileri”; Halil İnalcık-Mehmet Seyitdanlıoğlu, tanzimat: Değişim Sürecinde Osmanlı İmparatorluğu, Phoenix Yayınevi.

İnalcık, Halil. 2001. Türkiye Diyanet Vakfı İslam Ansiklopedisi, “Kanunname” Cilt 24, p.333-32

İnalcık, Halil. 1998. Essays in Ottoman History, Eren Yayınları, “Islamization of Ottoman laws on Land and Land tax”, İstanbul.

İnalcık, Halil 1993 Osmanlı Hukukuna Giriş, Osmanlı İmparatorluğu: Toplum ve Ekonomi, Eren yayınları, İstanbul , pp. 319-343

İnalcık, Halil. 1991. Encyclopedia of Islam, New Edition, “Mahkeme”, Vol.6, “Mahkama”, p.3

İnalcık, Halil. 1988. The Ruznamçe Registers of the Kadiasker of Rumeli, Turcica, 20, p.112.

İnalcık, Halil. 1975. Ottoman Empire The Classical Age: 1300-1600, Phoenix Yayınevi.

İpşirli, Mehmed, 1998, “Çivizade Muhiyyidin Mehmed Efendi”, Türkiye Diyanet Vakfı, İslam Ansiklopedisi Vol. 8, p. 348

Karateke, Hakan and Reinkowski, Maurus (eds.). 2005. Legitimizing the Order – The Ottoman Rhetoric of State Power Colin Imber, “Frozen Legitimacy”, , Brill: Leiden & Boston, pp. 99-110.

Katib Çelebi, Mîzanü'l-hakk fî ihtiyarî'l ahakk = (En doğruyu seçmek için hak terazisi), Katip Çelebi, 1609-1657, İstanbul : Tercüman, 1980.

Keddie, Nikkie. 1972. Scholars, Saints and Sufis; Muslim Religious Institutions in the Middle East since 1500, University of California Press;

- Repp, Richard “*Some Observations on the Development of the Ottoman Learned Hierarchy*”, pp.17-33

- Chambers, Richard L. “*The Ottoman Ulema and Tanzimat*”, pp. P.33-46

Kılıç, Muhammed Tayyib. 2008. İslam Hukukunda Kanunlaştırma Olgusu, Ankara Üniversitesi Sosyal Bilimler Enstitüsü, Temel İslam Bilimleri (İslam Hukuku) Ana Bilim Dalı, Unpublished Phd Thesis.

Lewis, Bernard . 1988. The Political Language of Islam, The University of Chicago Press, Chicago.

Mandaville Jon, E. 1979. the Cash Waqf Contraversy in the Ottoman Empire, International Journal of Middle East Studies, Vol.10, No.3 (Aug.) pp.289-308.

Manneh, Butrus Abu. 1982. Naqshibandiyya and Mugadi Die Welt des Islams, New Series, Bd. 22, Nr. ¼, pp.1-36

Manneh, Butrus Abu. 1994. The Islamic Roots of the Gulhane Rescript, Die Welt des Islams, New series, Vol.34, Issue 2, November, pp. 173-203.

Mehmed Süreyya. 1996. Sicill-i Osmani, Eski Yazıdan Yeni Yazıya; Tarih Vakfı Yurt Yayınları, Vol III, Vol V, Nisan, Istanbul.

Meninski, Franciscus à Mesgnien. 2000. Lexicon Vol I: von *elif* bis *chy*, Simurg, Istanbul.

Miller, Ruth. 2008. Ottoman Legal History, History Compass, Volume 6, Issue 1, January, pp.286-296

Montesquieu, Charles de Secondat, baron de. 1989. The Spirit of the laws, Cambridge ; New York : Cambridge University Press.

Mundy, Martha ; Smith, Richard Saumare. 2007. Governing property, Making the Modern State, Law Administration and Production in Ottoman Syria, Palgrave Mcmillian, pp.15-20.

Necipoğlu, Gülrü. 1989. "Süleyman the Magnificent and the Representation of Power in the Context of Ottoman-Hapsburg-Papal Rivalry," *The Art Bulletin* 71, No. 3, pp. 401-427.

Nev'izade Atai, 1591. *Şakaik-i Nu'maniye ve Zeyilleri; Hadaiku'l-Hakaik fî Tekmileti's-Şakaik*, Transcription by Mehmed, Mecdi. 1989. İstanbul: Çağrı, 1989. (p. 119-120)

Ocak, Ahmet Yaşar. 1988. *Zındıklar ve Mülhidler*, Tarih Vakfı Yurt Yayınları.

Ocak , Ahmet Yaşar. 1989. *Şeyhülislam Ibn-i Kemâl Sempozyumu; Ibn-i Kemal'in yaşadığı 16. Ve 17. Asırlar Türkiye'sinde ilim ve fikir hayatı*), *Şeyhülislam İbn Kemal Sempozyumu*, haz. Prof. Dr. S. Hayri Bolay, Bahaeddin Yediyıldız, Mustafa Said Yazıcıoğlu, Türkiye Diyanet Vakfı Yayınları, Ankara.

Okur, Kaşif Hamdi 2005. Para Vakıfları Bağlamında Osmanlı Hukuk Düzeni ve Ebussuud Efendi'nin hukuk anlayışı üzerine bazı değerlendirmeler, *Gazi Üniversitesi Çorum İlahiyat Fakültesi Dergisi*; 1-2, cilt IV, sayı 7-8.

Önder , Şule. 2006. *İslam ve Osmanlı Hukukunda İmam Birgivi ve Ebussuud Efendinin Para Vakfı Tartışmaları*, Selçuk Üniversitesi Sosyal Bilimler Enstitüsü, Temel İslam Bilimleri Anabilimdalı, İslam Hukuku Bilimdalı, Unpublished M.A Thesis, Konya.

Pamuk, Şevket 2000. "Osmanlı İmparatorluğu'nda Para", *Osmanlı İmparatorluğu'nun Ekonomik ve Sosyal Tarihi*, Vol II, Eren Yayınları, İstanbul.

Peters, Rudolph. 2005. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*, Cambridge University Press.

Rubin, Avi. 2008. Ottoman Judicial Change in the Age of Modernity: A reappraisal, History Compass 6, 10.1111/j.1478-05422008.00563.x

Quataert, Donald. 2002. Osmanlı İmparatorluğu 1700-1922, İletişim Yayınları.

Schacht, Joseph. 1982. An Introduction To Islamic Law, Oxford University Press.

Scacht, Joseph. 1986. “Kıyas” Encyclopedia of Islam, Vol V, pp. 177-180.

Seyidanlıoğlu, Mehmed. 1994. Tanzimat Devrinde Meclis-i Vala: 1838-1868, Ankara Türk Tarih Kurumu. 1994.

Shaw, Stanford J. 1970. The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement before 1876, Cambridge University Press, International Journal of Middle East Studies, Vol. 1, No. 1 (Jan., 1970), pp. 51-84

Şapolyo, Enver Behnan. 1964. Mezhepler ve Tarikatlar Tarihi, Türkiye Yayınevi.

Şentop, Mustafa. 2004. “Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü”, Türk Hukuk Tarihi, TALİD, İstanbul, Vol 3, No:5.

Terzioğlu, Derin. 1999. Sufi and Dissident in the Ottoman Empire: Niyazi-i Mısri (1618-1694), Unpublished PHD Thesis, Harvard University.

Terzioğlu, Derin. 2007. “Bir tercüme ve bir intihal vakası: Ya da İbn Teymiyye’nin *Siyasetü’ş-şer’iyye*’sini Osmanlıcaya kim(ler) nasıl aktardı?” [A case of translation and plagiarism: On the Ottoman translation(s) of Ibn Taymiyya’s *Siyasa al-shar’iyya*] *Journal of Turkish Studies/Türklük Bilgisi Araştırmaları Dergisi* 31/II: 247-275.

Uğur, Ahmet. 2001. Osmanlı Siyasetnameleri, Milli Eğitim Bakanlığı Yayınları.

Uzunçarşılı, İsmail Hakkı. 1988. Osmanlı Devleti'nin ilmiye Teşkilatı, Ankara: Türk Tarih Kurumu.

Velidedeoğlu, Hıfzı Veldet. 1940. Kanunlaştırma Hareketleri ve Tanzimat, Maarif Matbaası.

Vogel, F.E; "Siyasa", Encyclopedia of Islam, Vol.9, Brill, pp. 693-696.

Yakuboğlu, Kenan. 2006. Osmanlı medrese eğitimi ve felsefesi, İstanbul : Gökkuşbu.

Yakut, Esra. 2005. Şeyhlüislamık: Yenileşme döneminde Devlet ve Din, Kitap Yayınevi, İstanbul.

Yakut, Esra. 2006. Tanzimat Dönemi'ne kadar Osmanlı Hukuku'nda Ta'zir'i Gerektiren Suçlar, Türk Hukuk Tarihi Araştırmaları, No:2, Güz, pp. 25-40.,

Heffening, W. 1934. Encyclopedia of Islam, "Tazir", Vol IV, Brill.

Woodhead, Christina, ed. 2012. The Ottoman World; Yayınoğlu, Ali; "Provincial Power Holders and the Empire in the Ottoman World: Conflict or Partnership?", Routhledge, pp.436-453.

Yılmaz, Hüseyin 2005. The Sultan and the Sultanate: Envisioning Rulership in the Age of Süleyman the Lawgiver (1520-1566). Unpublished PHD Thesis, Harvard University.

Yosmaoğlu, İpek. 1997. “Kanun, Kanuniyet ve Meşruiyet: Osmanlı’da Meşruiyet Meselesi Hakkında bir Deneme,” [Law, Legality and Legitimacy: An Essay on the Issue of Legitimacy in the Ottoman Empire] in Oral Sander’e Armağan, Ankara: Siyasal Bilgiler Fakültesi Yayınları, pp. 507-519.

Yurdakul, İlhami. 2008. Osmanlı İlmiye Merkez Teşkilatı’nda Reform (1826-1876), İstanbul : İletişim.

Zilfi, Madeline. 2008.“Dindarlık Siyaseti: Osmanlı Uleması Klasik Dönem Sonrası“ Birleşik Yayınevi, Ankara.

Zilfi, Madeline C. 1983. "Elite Circulation in the Ottoman Empire: Great Mollas of the Eighteenth Century."*Journal of Economic and Social History of the Orient* 26, pp.318–364.