

BOYS IN COURT: QUESTIONING CHILD ABUSE CASES
BETWEEN 1860 AND 1865

ERKAN ORUÇOĞLU

BOĞAZIÇI UNIVERSITY

2019

BOYS IN COURT: QUESTIONING CHILD ABUSE CASES
BETWEEN 1860 AND 1865

Thesis submitted to the
Institute for Graduate Studies in Social Sciences
in partial fulfillment of the requirements for the degree of

Master of Arts

in

History

by

Erkan Oruçođlu

Bođaziçi University

2019

DECLARATION OF ORIGINALITY

I, Erkan Oruçođlu, certify that

- I am the sole author of this thesis and that I have fully acknowledged and documented in my thesis all sources of ideas and words, including digital resources, which have been produced or published by another person or institution;
- this thesis contains no material that has been submitted or accepted for a degree or diploma in any other educational institution;
- this is a true copy of the thesis approved by my advisor and thesis committee at Bođaziçi University, including final revisions required by them.

Signature.....

Date19.08.2019.....

ABSTRACT

Boys in Court: Questioning Child Abuse Cases Between 1860 and 1865

This thesis explores how the sexual offenses committed against the male children were handled by the Ottoman courts and the society at large in the Ottoman lands between the years 1860 and 1865 together with the regulations drafted and implemented in the Ottoman reform period. As the study comprehensively analyzes the court cases in which numerous male children and their families stood as victims of sexual crimes and which were referred to *Meclis-i Vâlâ-yı Ahkâm-ı Adliye*, the official council formed to serve as the Supreme Court for legal matters and an ultimate court of appeals. This thesis reveals significant points regarding the court practices, interrogation methods, the concept of childhood and how the social and cultural codes were reflected on the court proceedings as well as the relations between the individual and state reshaped under the *Tanzimat* regulations and the relations between the center and the periphery.

ÖZET

Mahkemenin Çocukları: 1860 ve 1865 Yılları Arasındaki Çocuk Tecavüzü

Davalarının İncelenmesi

Bu tezin amacı, 1860 ve 1865 yılları arasında Osmanlı topraklarında erkek çocuklarına karşı işlenen tecavüz suçlarını mahkemelerin nasıl ele aldığını ve toplumun konuya nasıl yaklaştığını reform hareketlerini de göz önünde bulundurarak incelemektedir. İstinaf mahkemesi olarak konumlanan *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* kayıtlarında yer alan erkek çocuklarına karşı işlenen tecavüz davası dosyalarından yola çıkarak Tanzimat'ın 1860 ve 1865 yılları arasındaki mahkeme pratikleri, Osmanlı mahkemelerinin yürüttüğü soruşturma süreçleri ve sorgulama teknikleri, 19. yüzyıl Osmanlı dünyasında çocukluğun hukuki tanımı, sosyal ve kültürel kodların mahkeme süreçlerine nasıl etki ettiği incelenmiştir. Bunun yanında, sıradan Osmanlı bireylerinin sıradışı hikayeleri ve devletle kurdukları ilişkiler Tanzimat dönemi reformları ve merkez-taşra ilişkisi bağlamında incelenmiştir.

ACKNOWLEDGEMENTS

In the academic profession, the most useful findings are outcome of informal and fruitful discussions with friends and professors. I do not want their contributions remain anonymous. The bright ideas and guidance of my professors and friends are invaluable. I would like to express my special thanks of gratitude to some of them.

I would like to thank my advisor, Arzu Öztürkmen and committee members, Başak Tuğ and Yaşar Tolga Cora. Başak Hoca's thought-provoking critics and comments make this work better and Tolga Hoca provided intellectual and emotional support during his course and writing process of this work. Their contribution and support inspired me to see certain cases from different perspectives. I am thankful to them for taking time out of their busy schedules.

I owe my deepest gratitude to some of my friends. Ahmetcigim's encouragement when the times got rough are much appreciated and duly noted. It is a great comfort and relief to have such a friend who has everlasting energy to continue in academia. I shared the funniest and the most difficult times with Bihter Gız at Şehir. She is not my friend, she is my Gardaşım and I can write another thesis about her contributions to my life. Three years at Boğaziçi have been more than bearable with Cafer. He is the sincerest friend of mine at Boğaziçi and I could keep up with his emotional support to overcome various difficulties. If Fikri was not my friend at Şehir, I would not be able to survive in academia. His passion on history is contagious. I thank him for his generosity in sharing his wisdom with me. Mahmud Hocam always make me jealous about his vast knowledge of everything. Watching his transformation is more entertaining than Netflix. You may see his fingerprints in all paragraph of this work. Murat Can's magical world and intellectual profundity

would helpful to translate primary sources in literary form. It was delightful to discuss with him to find the exact definitions.

I would not have been able to pursue this way if I did not choose İstanbul Şehir University in 2010. Studying History at Şehir is the most accurate decision I have ever made. It was not just a university, I may call it home. My professors at Şehir supported me throughout my undergraduate and master years and showing what academia is really about.

To my mom and dad, I owe the greatest debt. They always let me discover my own way. Nobody can guess how lucky I am to have them.

At the end, I dedicate this work to my granddad, Bayram Kadak, for his love and support.

To my half and source of inspiration.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION	1
1.1 Purpose of the study	1
1.2 Structure	10
CHAPTER 2: HISTORICAL SURVEY OF CHILDHOOD STUDIES IN THE OTTOMAN WORLD	14
2.1 Approaching childhood studies and Ottoman socio-legal studies	14
2.2 Trans (re)formation: 19 th century Ottoman legal reforms and the establishment of the <i>Meclis-i Vâlâ-yı Ahkâm-ı Adliye</i>	24
2.3 Interrogation protocols and investigation process.....	30
2.4 The imperial Ottoman penal code of 1858.....	37
CHAPTER 3: LEGALIZATION OF CHILDHOOD: COURT PRACTICES ON IDENTIFICATION OF OTTOMAN CHILD	49
3.1 The transformation of the concepts “crime” and “victim” in the 19 th century legal system.....	50
3.2 Legalization of childhood: the legal context of being a child in the 19 th -century Ottoman empire.....	59
CHAPTER 4: COURT PRACTICES ON SEXUAL CRIMES AGAINST CHILDREN.....	74
4.1 Interrogation processes in cases of sexual crimes.....	74
4.2 The case of the armenian six-year-old adult	84
CHAPTER 5: CONCLUSION.....	91
APPENDIX.....	97
REFERENCES.....	116

LIST OF FIGURES

Fig. 1 BOA. MVL. 1039/22/1/2. 21 § 1287.....	97
Fig. 2 BOA. MVL. 931/27/1/3. 20 L 1277.....	98
Fig. 3 BOA. MVL. 672/51/2/1. 9 Z 1277.....	99
Fig. 4 BOA. MVL. 633/67, 10 M 1279.....	100
Fig. 5 BOA. MVL. 791/16/1/3. 24 R 1282.....	101
Fig. 6 BOA. MVL. 742/107/2. 5 M 1281.....	102
Fig. 7 BOA. MVL. 931/27/2/1. 16 Za 1277.....	103
Fig. 8 BOA. MVL. 931/27/1/3. 20 L 1277.....	104
Fig. 9 BOA. MVL. 931/27/4/1. 7 M 1278.....	105
Fig. 10 BOA. MVL. 933.21.3.1. 18 R 1277.....	106
Fig. 11 BOA. MVL. 672/51/4/1. 8 Z 1280.....	107
Fig. 12 BOA. MVL. 672/51/2/1. 27 § 1280.....	118
Fig. 13 BOA. MVL. 759/95/8/1. 20 S 1278.....	109
Fig. 14 BOA. MVL. 672/51/1/2. 16 Ra 1280.....	110
Fig. 15 BOA. MVL. 791/1/2. 3 May 1279 (R.)	111
Fig. 16 BOA. MVL. 791/2/1. 17 Z 1279.....	112
Fig. 17 BOA. MVL. 791/1/3.....	113
Fig. 18 BOA. MVL. 759/95/1. 9 R 1277.....	114
Fig. 19 BOA. MVL. 791/8/1.....	115

CHAPTER 1

INTRODUCTION

1.1 Purpose of the study

This thesis is an attempt to explore how the sexual offenses committed against the male children were handled by the Ottoman courts and the society at large in the Ottoman lands between the years 1860 and 1865 together with the regulations drafted and implemented in the Ottoman reform period. As the study comprehensively analyzes the court cases in which numerous male children and their families stood as victims of sexual abuses and which were referred to *Meclis-i Vâlâ-yı Ahkâm-ı Adliye*, the official council formed to serve as the Supreme Court for legal matters and an ultimate court of appeals, the thesis reveals quite significant points regarding the court practices, interrogation methods, the concept of childhood and how the social and cultural codes were reflected on the court proceedings as well as the relations between the individual and state reshaped under the *Tanzimat* regulations and the relations between the center and the periphery.

It is possible to argue that children are almost always lacking in such studies when the historical studies of Europe, Ottoman Empire or other regions in the world are concerned. Having struggled for long decades for this end, the feminist studies and feminist historiography incorporated women as an integral and indispensable part of society and the historical reality, and recently, of the historiography, as well.¹ In addition to the social science studies, the literary works that were either written by

¹ There are various inspiring works of Leslie Peirce, Fatmagül Berktay, Joan Wallach Scott, Afsaneh Najmabadi, Irvin Cemil Schick and et al.

² Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-*

the female authors or focused on female figures and problems and the statuses of females in the society from different perspectives were quite influential in the introduction of women so decidedly into the social sciences.

The recent years, on the other hand, focused on the historical study of the LGBTs and the history of sexuality as well,² while at the same time incorporating the history of children and childhood into the historiographical narratives. It is indeed true that children, whose voices were either anonymous or outright unheard or ignored, were a significant part of history. The studies within the history of children not only reflect the long-term policies of the state regarding educational methods and approaches but also reveals significant data about the social and cultural influences together with the legal reforms and changes of the era, as this thesis attempts to do.

Micro history studies, one example of which is this thesis aspires to be, are the studies that focuses on a historical period and transformation through the viewpoint of a single individual. Natalie Zemon Davis's *The Return of Martin Guerre*, which started out the tradition in a way, and Carlo Ginzburg's *The Cheese and the Worms* can be considered as the first serious microhistory studies in this regard. Both studies basically tell the period of the subject they are dealing with through the extraordinary stories of ordinary individuals. Since the narrative in these books is based generally on legal texts (court proceedings), the studies shed light on micro historical research also in terms of the use of sources. In her engaging book, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, Leslie Peirce focuses on the lives of women in the 17th-century Ottoman city of Aintab as reflected on the court registers and presents us with neat findings regarding the law practices

² Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-1900*. London: University of California Press, 2006, and Serkan Delice, "Friendship, sociability, and masculinity in the Ottoman Empire: An essay confronting the ghost of historicism," *New Perspectives on Turkey* 42 (Spring 2010): 103-125.

of the period, the social gender, societal relations, the relationship between the center and the rural and the one between the state and the individual in the region in question.

Highlighting that the history is concerned not with the non-existent but with the one that existed once, Cemal Kafadar unveils in his book, *Kim Var İmiş Biz Burada Yoğ İken* (Who Were Here When We Were Not) the astonishing stories of Mustafa, the janissary who applied to *Divan-ı Hümayun* [the Imperial Council] to complain about the field bequeathed by his father to him but got seized unlawfully by the authorities; Asiye Hatun from Skopje who regularly wrote her dreams to her sheikh (Sufi master); and other stories of a merchant and a dervish.³ While conveying to the present day the unique stories of these four different individuals living in the Ottoman lands, his main motivation is his very excitement regarding who lived previously on these same territories and what kind of lives they had, just as Karacaoğlan told in his verses. His study in question holds that the ‘ordinary’ stories of the individuals are unique and quite extraordinary. These stories formed a vital source of inspiration for this thesis as well. The book presents an astonishing intellectual character regarding the life of an Ottoman woman, who was previously introduced to us only from behind an opaque glass with weak and vague images in the Ottoman historical studies. As I was focusing on the people of the past rather than the past itself, I constantly kept meditating on the question, which humans are those who lived in the Ottoman lands before us, then? While delving into the entries of the list which continued like women, men, merchant, slave, concubine, Armenian, Christian, peasant, military officer, farmer, pasha, janissary, I totally got excited to focus on a category that all of these categories once belonged to: children. The

³ Cemal Kafadar. *Kim Var İmiş Biz Burada Yoğ İken: Dört Osmanlı: Yeniçeri, Tüccar, Derviş ve Hatun*. İstanbul: Metis Yayınları, 2009.

question remained, however, about how to handle this subject, within which context to focus on, and, consecutively, whether historical and gender studies would be an appropriate context to do so.

When gender studies are concerned, what first crosses one's path are the closely intertwined disciplines of Women Studies and Gender Studies, which both generally deal with the problems of women under masculine domination. While focusing on the social, economic and cultural problems that women experience in society, it has always been neglected to address the problems experienced by men in certain periods of history, where also men experienced similar forms of these problems that were thought to be specific to women, and were expected to act according to the strict masculine codes of society.⁴ The same was true for children as well. The education and rising of children raised under a certain authority and seen as the source of the political projects of the states were regulated through the relevant state policies in education and military areas and the accompanying clarification of the concepts such as the fatherland and the nation.

Besides this, as I was exploring the studies regarding the sexual assault cases against women and the abduction of girls, it coincided with a time when a group of male children experienced rape and sexual assault incidents in a distant part of Anatolia, which got immediately aired, shocked the masses, raising some surprising and convoluted reactions of the politics, law and society in the country. Most likely because none thought that a similar incident had also been experienced in the past, it was not possible to see a thesis written in this regard within the field of history. A comprehensive exploration in the Ottoman Archives of the Republic of Turkey reveals more than 200 cases of sexual crimes against boys, their comprehensive

⁴ Karras, Ruth Mazo, and Tom Linkinen. "John/Eleanor Rykener Revisited." In *Founding Feminisms in Medieval Studies: Essays in Honor of E. Jane Burns*, edited by Laine E. Doggett and Daniel E. O'Sullivan, 111–22. Boydell & Brewer, 2016.

interrogation reports and *mazbatas* (the report of court proceeding details), all at once. The most difficult part of this process was to concentrate on the relatively unknown period between 1860 and 1865, which differs from other periods in terms of scope and details and where extraordinary storylines of ordinary people can be written through the interrogation reports at hand. The primary characteristics of this period were the momentum that the reforms gained, an Empire that started to transform itself in many regards, a relatively darker and more silent period of transition also from one emperor to the other, namely, from Abdülmecid I (r.1839-1861) to Abdülaziz (r. 1861-1876), on which there are still not enough studies conducted. A couple of reasons led me to focus on reform movements and state policies through the experiences of the children. These reasons are that the period was relatively untouched, that the sexual assault incidents against the children were quite a rare area of study and that the archival documents regarding the period rather surprisingly contain interrogation reports and *mazbatas*.

The court registers in which law, ethical norms and social gender notions were intertwined, rather vividly reflect the legal understandings of the individuals in the court (the victim, the defendant, the officer) and law in practice, the approach of the court towards the social problems and its role in shaping and handling the problems that arose. The courts, in this regard, seemed to be public spaces designed where both Muslim and non-Muslim Ottoman subjects would come and voice their concerns. Every researcher that works with the court registers lacks the knowledge of what actually lies ahead. As one reads through the *mazbata* and interrogation reports and witnesses very special details and expressions that are quite impossible to be found elsewhere, one is assured that the right source to study is the court registers. One vital question arises here, though: do the documents reflect first-hand accounts

or do they meet some sort of a state intervention? Even though the court records are questioned and examined extensively for answering this question throughout this study, it should be noted regardless that the court records are unique in order to see the language used by the state about sexual crimes and children, how special concepts such as honor and gender-based ones were perceived. The court registers are priceless documents in this regard, though it is questionable whether they are the verbatim accounts of the actors involved.

Leslie Peirce calls court records “a record of voices.”⁵ While reading about how real sounds were presented in detail and alongside the local elements, as Leslie Peirce observes, it is not hard to see that the interrogation reports and *mazbatas* were exposed to the interpretation and intervention of the court officials. The words and expressions of the ordinary Ottoman citizens were being documented by the Ottoman officers and their discourse had quite institutionalized perspectives and clichés. The relationship between the individual and the court was, to a large extent, determined by the state. While the boundary between the state and the individual was not clear enough before the 19th century, in this century the state-individual relationship was reconstructed and designed in a more institutional and hierarchical structure through the legal and official reforms, in line with the spirit of the period. As it can be seen in this study, this design rendered the state-individual relationship difficult and led to a visible gap between the two and to the introduction of legal solutions within the penal code that did not conform to the cultural codes of the society at large.

If the study was concerned only with the history of childhood, then, it would be more understandable and easier to sort the individuals under study according to their age rather than their gender and to categorize them by their habitation locations

⁵ Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (California: University of California Press, 2003), 20.

such as orphanages and dormitories or huts and houses. This study, however, attempts to deal with the larger picture by focusing solely on the court cases of sexual crimes against male children. In the basic social history studies of the Ottoman law, if the issue is within the field of gender, it is explained only through women, what women were exposed to in the male-dominated world and how they struggled in the midst. Almost all rape cases that have been studied focus entirely on adult women. Regarding the rapes and sexual violence experienced by children and males, a weird silence prevails.

The Ottoman penal code partially distinguished between the adults and the children. The court records show few cases of adult men being victims of sexual harassment. Is it because, even if adult men got raped, the notion of masculinity and the accompanying masculine power and the will to be a part of it were held dear so these cases were just overshadowed and smoothed over the cracks?⁶ Is it because it was impossible to conceive men, the guardians of the social welfare and order, as sub-humans who could get also into troubles that only women were seen to be fit to endure? Were these cases neglected in the court records because the men were thought to be too sacred or exalted to get raped? Rape cases of women, on the other hand, were turned into public honor issues at once not only by women but also by men, and these cases got registered on the court records as "honor" cases.

It was not only the honor of the woman herself, but also the honor of her patron or her father (and the whole family at times) that was at stake. Sometimes even the honor of a village or a neighborhood could be embodied in the life of a single woman. In the cases of children, this did not change much either; whether the child was a boy or a girl, it could be perceived as an issue of honor without

⁶ Afsaneh Najmabadi, "Vatan, the Beloved; Vatan, the Mother," in *Women with Mustaches and Men without Beards: Gender and Sexua Anxieties of Iranian Modernity* (London: University of California Press, 2005): 97-132.

distinguishing between genders. In many cases the court records accordingly reported that the rape inflicted on the child had contaminated the family's honor. At this point, before moving to the questions whether the child's or the family's honor was the priority, where exactly the state and the society were located and how they approached the issue, it needs to be highlighted that the gender of the victims was not specified in the penal code as a criterion, which in turn leads to the fact that the relevant offenses were not classified based on gender both qualitatively and quantitatively. The answer to the question of why the sexual crimes against boys rather than the girls are studied can be the fact that genders were not specifically detailed in the penal code. Indeed, as this study frequently reveals, while studying the problems stemming from the failure of penal code to define the childhood and adulthood clearly in the legal texts, the rape incident against an adult woman was analyzed in detail and in comparison, in an attempt to grant depth to the study. For this reason, it is important to state that this study is a small touch to fill the gap in this field in that no previous study has focused on the rape cases against the boys who lived in the Ottoman lands and the legal struggle of the families in the aftermath of these incidents. The thesis makes use of the court records of the cases solely involving the male children and ultimately aims to serve as a humble and slight collection of the voices previously unheard. It additionally attempts to be a modest reference study for the research in future that might wish to focus on the rape and sexual assault cases against the female children as well as adult males and females in the Ottoman lands and that delve deeper into the notions of masculinity and femininity in the eyes of the society and the state, how these two were perceived, constructed and reproduced by various mechanisms.

From a methodological point of view, this thesis is a systematic transfer of ideas that develop around many case studies and an attempt to look at them from different perspectives. It was also difficult to limit the study to a narrow chronological and geographical framework and to try to make sense of the reform processes and their local impacts, while struggling to make sense of a larger period of singular events. The study can be described in a way as an attempt to include the voices of the masses of humans previously ignored, rather than an elitist, narrow narrative that focused only on the institutions or the political processes with the state and the process as its focal point.

Furthermore, it would be more appropriate to call this study as micro-historical study to explore societal and cultural forms in the primary sources. To see a period of history through the eyes of the individual(s), to revive it with his/her unique experience, to look at how larger macro events affected their tiny worlds while making sense of the singular world of the ordinary individuals both constitute an enjoyable adventure full of excitement and offer a different historical perspective for the researcher and for the reader. The period studied coincided with the reforms movements after the Edict of the Gülhane, more commonly known in the historical circles as the Tanzimat period. The families who lived in the Ottoman Empire and who happened to resort to courts got immortalized in a way on the court registers and their children formed quite convoluted relations with the state as the court proceedings continued. The thesis focused on the children who were victims in the cases or the experiences and statements of the defendants and analyzed the relations between the state and the individual as well as the center and the periphery, to frame it in the terms of political theory. Sometimes these cases did not arrive at a conclusion, some were not settled, and some were interrupted by a strange sense of

curiosity, as their results were not clear. All the inferences drawn from the unique clues presented by the Ottoman courts, however, revealed to us significant details about the period, the state, politics, society and, more importantly, the individuals.

Between the years 1860 and 1865, what kind of a process was an Ottoman citizen supposed to go through at an Ottoman court as a suspect or a victim? How and through which stages did the state establish its relationship with the victim and the suspect? What were the regulations regarding the legal status of children and the definition of childhood, the phenomena of crime and the punishment procedures in the usual court practices? How did the Tanzimat reforms influence the lives of ordinary people? How did the state bureaucracy implement its own reforms, or rather, was it able to do in the first place at all? While searching for answers for all these questions, this study encountered quite different questions and ways of answering and it is, in a way, written down to reconstruct the worlds of a 19th-century child, a father, a mother and a suspect regardless of their social and economic status, to describe and define the role played by the state as it shaped the social life and to understand the reactions of the society and the individual towards the case at hand.

1.2 Structure

This study explores and evaluates the 19th-century Ottoman legal reforms in the code of criminal law through the court case registers in the Ottoman Archives of the Republic of Turkey. The examples included in the study are the sexual assault and rape cases against the male children, referred to the Ottoman courts between the years 1860 and 1865. In addition to these cases, one rape case against a female in the same period as well as another rape case against an Armenian boy in the 17th century

are also included in the study as comparative and complimentary examples. The main reason to choose these cases is actually they have detailed interrogation reports. However, it took quite long court processes, from couple of months to a year, and it would be possible to see the details how individuals were deal with the judicial procedures and bureaucratic processes during the period.

Though the 1860's constitute a decade that relatively lacks profound studies thereupon and are thus comparably unknown to the Ottoman historians, the period is quite significant since it was in this period that the Ottoman Empire newly started to show 'activist state' responses in the wake of the establishment of *Nizamiye Courts*, the modernized courts the Ottoman state created as part of larger wave of modernization. In this period, the Ottoman modernization process should not be seen as a full-scale secularization process or Westernization one; rather it harbored more intermingle dynamics and hybrid processes on the legal and bureaucratic reforms during the 19th century. Instead of merely paraphrasing and comparing the normative texts of the Ottoman legal tradition with each other, the court files of *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* can be used as a source of socio-legal applications for the re-conceptualization of the 19th century Ottoman legal reformation as well as furthering the debate to the extent to which this modernization process is a continuation of Islamic legal frameworks or not. The chapter thus attempts to explore the "law in practice" from different perspectives, the cases that both provide valuable insights and information about this crucial transformation period.

The archival registers show that the court case examples not only contain court verdicts regarding the cases in question but also include the detailed interrogation reports obtained from both parties of the cases. These registers provide significant data on interrogation processes and functioning of the courts as well as

the meaning of the concept of “child” in the official discourse and public mindset judging from the word’s definition in the penal code texts as a crucial point that might convey the characteristics of this modernizing period. It would help us understand better the transformation of the concepts such as “crime,” “offense” or “victim” through the inclusion of the ordinary individuals in the investigation and judicial proceedings upon experiencing sexual assault and rape incidents, both as the victims and perpetrators of these offenses.

The first part of the third chapter examines a report, addressed to Grand Vizier [Keçecizade] Mehmed Fuad Pasha (1815-65), and was dispatched from the local council in Sivas to the capital in 1862. The court report clearly states that no legislation existed regarding those who engaged in willful acts of *fi’l-i şeni*’ (literally meaning indecent act;⁷ here referring to any sexual conduct out of wedlock)⁸ and that this might possibly result in social hazards, requesting for proper amendments to the law. Based on the statements and concepts contained within this report, some critical insights on the structure and transformation of the 19th-century legal reforms will be revealed in the first part of this chapter. The second part of the chapter explores the context and characteristics of being a child in the 19th-century Ottoman Empire through the provisions of the penal code. The special case in the Ottoman town of Ruscuk, the present-day Ruse in Bulgaria, in which two children (aged 12 and 13) were the victims of a rape incident, is quite revealing in this regard. Yet another case in 1860 from Ruscuk of a 15-year-old male “child” of Jewish origin, the object of a rape incident, is an aptly chosen example of how the penal code was applied in this 19th century reformation period in the Ottoman Empire. Through the details of these two cases, the interrogation reports and court registers, this part of the chapter

⁷ Başak Tuğ, *Politics of Honor*, 190.

⁸ Adjective; infamous, abominable: vile, immoral. Source: S. J. W. Redhouse, *A Turkish and English Lexicon*, (İstanbul: Çağrı Yayınları, 2006), 1056.

examines the definition of age of puberty according to the legal provisions, the meaning of childhood and the penalization examples in this regard.

The fourth chapter reviews and analyzes the interrogation, witness testimony hearing and evidence gathering processes of the sexual assault cases in question. While doing so, this part attempts to compare the interrogation report of a case in which four adult individuals raped a male child in Balıkesir in 1864 with that of another case in which an adult female got raped in 1863 in the town of Baf, the modern-day Paphos District, located west of Limassol on the Cyprus island. Last but not the least in this chapter, the case of Mihail is examined. Mihail, a 6-year-old boy of Armenian origin had been exposed to a rape incident by Mehmed, a member of the elite Imperial Corps (Ordu-yu Hümayun) in the capital city. The case is quite illuminating in that it reveals the contradiction the court experienced in the face of different identities and professions and that it reveals the extent to which the age and profession of the parties influenced the judicial penalization process. The analysis of the example court cases whose main subject was the sexual offenses against the children shows how the legal regulations were translated into daily life practices, what kind of difficulties lied ahead, how the court and the society positioned themselves in this process, within a neat and general framework.

CHAPTER 2

HISTORICAL SURVEY OF CHILDHOOD STUDIES IN THE OTTOMAN WORLD

2.1 Approaching childhood studies and Ottoman socio-legal studies

It was quite a heterotaxic process to define this study either as a part of the gender studies or the socio-legal studies in terms of its concepts and content. It is actually not the main intention to define childhood as one of the central categories of gendered representations in this study. The very basic explanation of what gender studies is actually mainly argued ascribing the experiences of women and men; but women's experiences dominated this set of experiences in gender studies. What it means, especially historically, to be a man and a woman on the basis of social experiences, the main works of gender studies take women as its main research subject. It was very strong and common where Ottoman studies and gender studies encountered but for the last decades, Ottoman studies overcome this issue;⁹

Most scholars have been careful to avoid pitfall of celebrating the “openness” of Middle Eastern sexual attitudes - Islam was once famously described as a “sex-positive” religion- and to reconcile sexual explicitness in some sources with the erasure of all but heterosexual upper-class males and their voices in other sources.¹⁰

This is one of the most explicit definitions of where gender studies started in Middle Eastern and Ottoman studies. In 1975, two North African sociologists,

⁹ Leslie Peirce, Judith Tucker, Fariba Zarinebaf, Madeline Zilfi are the pioneers of this encountered area where women dominated Ottoman and gender studies.

¹⁰ Leslie Peirce, “Writing Histories of Sexuality in the Middle East,” *The American Historical Review* 114, No. 5 (December 2009): 1326-7.

Fatima Mernissi and Abdelwahab Bouhdiba concentrated on Islamic sexuality.¹¹

While Fatima Mernissi focused on sexualized spatial boundaries and traditional borders of gender segregation between male and female individuals, Abdelwahab Bouhdiba clarified how these boundaries distorted “the intrinsic harmony between Islam and (male) sexuality.”¹² Additionally, during the same years, Ronald Jennings wrote an article, using the primary sources, based on the court records regarding the practical experiences of the Ottoman women in the courts. It is not hard to make coherent and invaluable analysis from the legal sources on how gender and sexuality perceived by the state and society while walking around socioeconomic, cultural and sociological frames.¹³

Beyond their comprehensive concept of gender and legal studies, Leslie Peirce and Judith Tucker centered women identities in their inspirational works on Ottoman women studies.¹⁴ Additionally, a brilliant work by Başak Tuğ, named *Politics of Honor in Ottoman Anatolia: Sexual Violence and Socio-Legal Surveillance in the Eighteenth Century* would not be only a great inspiration for this study with its exploration on specific applications of Islamic law that served to construct sexuality and gender in the everyday life experiences of men and women in the mid-eighteenth century Ottoman Empire.¹⁵ In her experience to work on archival sources, specifically the state produced legal documents, it would not seem easy to reflect the experiences of the Ottoman subjects and to trace how an intensification of

¹¹ Fatima Mernissi. *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*. Translated by Mary Jo Lakeland. London: Reading, Mass., 1991. Fatima Mernissi. *Women and Islam: An Historical and Theological Enquiry*. Translated by Mary Jo Lakeland. Oxford, 1991. Abdelwahab Bouhdiba, *Sexuality in Islam*, London: Saqi Books, 2012.

¹² Ibid., 1327.

¹³ Ibid., 1326-7.

¹⁴ Leslie Peirce. *Morality Tales: Law and Gender in the Ottoman Court of Aintab*. California: University of California Press, 2003. Judith Tucker, *In House of Law: Gender and Islamic Law in Ottoman Syria and Palestine*. California: University of California Press, 2000.

¹⁵ Başak Tuğ, *Politics of Honor in Ottoman Anatolia: Sexual Violence and Socio-Legal Surveillance in the Eighteenth Century*. London: Brill, (2017), 24.

the discourse of honor in the relationship between the state and its subjects in the eighteenth century changed men's and women's experiences of sexuality. Beyond Başak Tuğ's centered scope on illicit sex and sexual crimes against women, the court cases did not provide her fruitful insights and data to discuss a women's consent in the context of her sexuality. Since the Ottoman legal court records were mainly interested in the intentions of the male individuals rather than in the question of whether the female consented to the deed, it was not easy to follow victimization and Başak Tuğ overcame this obstacle "by tracing women's subjectivity through certain matrimonial disputes in which females stood on the borderline between the licit and the illicit."¹⁶

However, the oral and written sources of Ottoman Empire are very rich about the perspective and understanding of gender and sexuality. The main sources for gender and sexuality are mostly literary and legal documents. They provide us with deep insights and let us understand the sense of various social and cultural issues such as honor. Many of these sources are mostly untouched by researchers or historians. Mehmet Kalpaklı and Walter Andrews are the pioneers on gendered perspective of literary sources in the early modern Ottoman culture through beautiful lyric love poetry.¹⁷ In *The Age of Beloveds: Love and the Beloved in Early-Modern Ottoman and European Culture and Society*, the authors explain that the period of "Turkish Renaissance" as an "age of beloveds," in which young men became the focal points for the desire and attention of powerful officeholders and artists as well as the inspiration for a rich literature of love. It is a profound challenge to

¹⁶ Ibid., 25.

¹⁷ Walter G. Andrews and Mehmet Kalpaklı. *The Age of Beloveds: Love and the Beloved in Early-Modern Ottoman and European Culture and Society*. (London: Duke University Press, 2005).

heterocentric assumptions of Ottoman and European literature and history regarding sexuality and morality while using the literary sources.¹⁸

Asking the right questions about a society and culture means walking gingerly through the tangled webs of culture and history. It would be possible to argue that signifiers of gender are among the factors that shape those webs and court records shed light on those signifiers. *Fatwas*, *kadı* registers and court records are the main signifier sources that provide a wide perspective of the Ottoman social and cultural life from the unique perspectives of Ottoman state and ordinary people. The legal records created by court clerks and court reporters and these records include procedural treatments, criminal interrogation reports, statements and petitions of plaintiffs and defendants and sometimes evidences and final decisions of the judges.¹⁹ Many of the legal records in the Ottoman Empire have specific and different procedures depending on the case type and the issue that applied in the court. Unfortunately, the criminal interrogation reports did not exist in all court records and it is not possible to hear the voice of victims and criminals. Some of the socio-legal studies argue that the criminal interrogation reports can reveal first person, especially the voices of the ordinary subjects without any interference by judicial authorities,²⁰ and Claudia Verhoeven described the court records as “the best sources relatively uninterrupted narrative from the lips of the lower order.”²¹ It would be quite safe to act to interrogation reports and other court reports with deliberation because it has certain interferences and reviews on it. These sources are not the uninterrupted narratives from the lips of ordinary people. Undoubtedly, criminal

¹⁸ Ibid., 23.

¹⁹ Claudia Verhoeven, “Court Files,” in *Reading Primary Sources the Interpretation of Texts from Nineteenth and Twentieth Century History*, ed. Miriam Dobson, Benjamin Ziemann (London: Routledge, 2009), 91.

²⁰ Please see: Gamze İlaslan, “Abduction of Women and Elopement in the Nineteenth Century Ottoman Nizamiye Courts” Unpublished MA thesis, Boğaziçi University, 2015), 17.

²¹ Ibid., 93.

court records contain invaluable insights, expressions and clues from centuries and give us clear reflections on the interaction between the state and ordinary people. The main handicap in using the legal written sources is that it is quite hard to grasp every single detail since the reports briefly summarized the content before they were dispatched to higher courts with short and superficial explanations by the court reporters.²²

Claudia Verhoeven clarifies the problems deriving from the interrogator. The questions and the discourse within themselves could slightly direct the answers or the socio-cultural filters could hinder the message of the testimonies, victims or culprits. It is therefore similar to the Rashomon effect: the historian has to put the puzzle of the story together according to his/her intentions and using documents as “real” sources because the language in the court files creates this opportunity.²³ It is crucial and necessary to show how these court records may be used in history, their potentials and limits for historical studies.

The nature and extent of useful historical information obtainable from legal records depend, of course, upon recordkeeping practices of the tribunal in which the litigation occurs. The volume and character of available records thus vary greatly in accordance with the habits of the particular court, as affected by time and place.²⁴

However, the victim or perpetrator becomes a prominent factor in the case. Criteria of seriousness for a crime differed by the time and place. Court records offer vivid insights into the daily life and cultural forms but a researcher must be quite careful on the information about what it means to be a judge with its limits as a profession, and how the conduct of being a judge in time had changed. In addition, the interpretation of law by the judges, the language of law and criminal codes, and

²² For detailed examples, please see “4.1. Interrogation Processes in Cases of Sexual Crimes.”

²³ Claudia Verhoeven, “Court Files,” 93.

²⁴ Edward Dumbauld, “Legal Records in English and American Courts,” *The American Archivist* 36, no.1 (Jan., 1973): 16.

legal literature are other primary subjects for a dedicated historian to study court materials.

At the beginning of the journey of this study, there were more than one hundred court cases and specific reports involving the sexual crimes against children in the 19th century Ottoman Anatolia and Rumelia provinces in the Ottoman Archives of the Prime Ministry (BOA).²⁵ Since I decided to examine the relations between the law and ordinary Ottoman subjects, their perception and usage of law, the sounds and character of these court cases vary greatly from each other in accordance with the location and practices of the court. However, victims and perpetrators draw various profiles in manners of identity, age, profession, religion and nationality. The main locations of the court cases from 1848 to 1914 in Balkans were Manastır, Tikveş, Kosova, Vidin, Ruscuk, Resmo Province, Bayındır, Limni, Hanya province, Arnavud village, Hezargrad, Plevne, Piriştine, and Gilan. In Anatolia; Kayseri, Bursa, Isparta, Tokat, Trabzon, Balıkesir, Diyarbakır, Zile, Konya, Giresun, Sivas, Yozgat, Büyükada, İstanbul are the locations of the primary sources founded in the Ottoman Archives of the Prime Ministry (BOA) in 2016.

Child abuse and rape as a crime generally becomes a subject of the court cases of honor issue. Physical injuries were also a part of these cases, at times. When one ask who are abused in these court cases, there are three main criteria we can classify the children who are abused or raped: religion, nationality, and parentage. The main figures in the court records were Christian, Jewish and Muslim children, hafız and madrasah students, an Armenian child, a Circassian immigrant, children of Kazak nation, the son of a senior captain, the sons of English and French citizens, the

²⁵ The name of the archive has been changed with the enactment dated on July 16, 2018 as the Ottoman Archives of the Presidency. The code of the primary sources used in this study referenced as the prior abbreviation as BOA (Başbakanlık Osmanlı Arşivleri).

son of a pharmacist, the son of a porter, the son of a woman named Hırısı, the son of a carpenter at Tersane-i Amire (the Imperial Docks), and an eighteen-months-old baby. Perpetrators also differ in three categories: their professions, nationalities and religion: they are artisans, keeper of a coffeehouse, cooker, ice-cream seller, waterman, an Iranian tobacco seller, porters, a shepherd and his friend, Copt, a cartwright, a Greek from Crete, a high school student (*mekteb-i idadi talebesi*), noted bandits (*meşahir-i eşkiyadan şahıslar*), Sheikh of Diyarbakır Keçekülah, Christians, a converted keeper of coffeehouse (*kahveci mühtedi*).

When the primary sources has decided to narrow down the period of time and the number of cases, the main sources included in this study are the sexual assault and rape cases against the male children, referred to the Ottoman courts between the years 1860 and 1865 with six cases with detailed interrogation reports and a single report from a local council to the central government. In addition to these cases and report, one rape case against a female in the same period, as well as another rape case against an Armenian boy in the 17th century, is also included in the study as comparative examples. 1860s constitute a transformational decade for the Nizamiye Courts that relatively lack extensive profound studies thereupon and are thus comparably quite unknown to the Ottoman historians.

Taken directly from the archival registers, the court case examples include the detailed interrogation reports obtained from both the complainants and defendants of the cases alike. These registers provide significant data on interrogation processes and functioning of the courts as well as the meaning of the concept “child” in the official discourse and public mindset judging from the word’s definition in the penal code texts. As a crucial point that might convey the characteristic of this reformation period, the concepts such as ‘crime,’ ‘offense’ or

‘victim’ got transformed through the inclusion of the ordinary individuals into the investigation and judicial proceedings upon experiencing sexual assault and rape incidents, both as the victims and perpetrators of these offenses.

Additionally, it is quite necessary to define childhood studies in the Ottoman history. Since Philippe Ariès published his groundbreaking *L'enfant et la vie familiale sous l'Ancien Régime* in 1960, the history of childhood has been a nascent field of area in the social sciences. His work, translated into English as *Centuries of Childhood: A Social History of Family Life* in 1962, mainly concentrated on the early modern period of the European continent (ca. 1450-1750). He basically concentrated on the history of family and he positioned the child as the heart of family. He claimed that in the medieval society the idea of childhood did not exist.²⁶ The “idea” was discussed for a long time as a dichotomy of “sentiment” or “existence as a class” because what Ariès means here is that the idea of childhood was not recognized as a separate class of society and there was not a distinct separation between the categories of adulthood and childhood in medieval societies. Henceforth, the field of childhood studies has gained acceleration to expand both chronologically and geographically. The field is mostly based on the primary sources and offer vivid insights about the experiences of children in various societies from antiquity to the modern times.²⁷ These studies mainly concentrated on certain environments that are shaped by familial and household backgrounds of children and how religious and educational institutions regulate the idea of childhood and lives of children in the European history.²⁸ Most recently, very few Ottomanists have begun to take interest

²⁶ Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York: Alfred A. Knopf, 1962), 125.

²⁷ I am very grateful to Derin Terzioğlu for her *HIST 69Z History of Childhood in the Early Modern Ottoman Empire* course and readings that allowed me to discover how Ottoman childhood studies have immense amount of subjects and sources.

²⁸ Please see, Philippe Ariès, *Centuries of Childhood: A Social History of Family Life*, trans. Robert

on childhood in the Ottoman studies as a sub-field because childhood studies was mainly under the shadow of women studies, Ottoman political studies or other conventional and more familiar fields of study. Some of these works rendered the main idea of Ariés obsolete.²⁹

It is possible to find to first touch on the certain terms in 16th century Ottoman Empire for male and female individuals as *kız*, *avret*, *hatun* and *oğlan*, *ergen*, *er* in Leslie Peirce' article, "Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society." She warns researchers about the historical journey of these terms and how gender identities got continually transformed over the course of one's lifespan since various normative behaviors are associated with some specific phases in the life cycle of an individual.³⁰

In the Ottoman studies, most of the works towards Ottoman children and the ideal world of children did not use the primary sources related to court records. Nazan Maksudyan, Benjamin Fortna and Yahya Araz are the pioneers in the field of childhood studies in Ottoman history and they view children as invaluable and hidden historical actors. In her current works, Nazan Maksudyan broke the new

Baldick (Vintage, 1962). *Gender and Early Modern Constructions of Childhood*, ed. N.J. Miller and N. Yavneh (Ashgate, 2011). *Children in the Middle Ages: Fifth-Fifteenth Centuries*, trans. Jody Gladding (University of Notre Dame Press, 1999). *Becoming Byzantine: Children and Childhood in Byzantium*, ed. Arietta Papaconstantinou and Alice-Mary Talbot (Washington D.C.: Dumbarton Oaks, 2009). *A Cultural History of Childhood and Family in the Early Modern Age*, ed. Sandra Cavallo and Silvia Evangelisti (Oxford and New York, 2010). *Children in Slavery through the ages*, ed. Gwyn Campbell, Suzanne Miers, Joseph C. Miller (Athens: Ohio University Press, 2009).

²⁹ Madeline Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden: Brill, 1997). François Georgeon and Klaus Kreiser, *Enfance et jeunesse dans le monde musulman/Childhood and Youth in the Muslim World* (Paris: Maisonneuve et Larousse, 2007). *The Living and the Dead in Islam: Studies in Arabic Epitaphs* (Wiesbaden, 2004). *The Kin Who Count: Family and Society in Ottoman Aleppo* (Austin: The University of Texas Press, 1999). Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley and Los Angeles: University of California Press, 1998). Benjamin C. Fortna, *Learning to Read in the Late Ottoman Empire and the Early Turkish Republic* (Pallgrave Macmillan, 2011). Madeline C. Zilfi, *Women and Slavery in the Late Ottoman Empire* (Cambridge: Cambridge University Press, 2010). Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003).

³⁰ Leslie Peirce, "Seniority, Sexuality, and Social Order," 170.

ground and explores the variegated experiences and involvement of Ottoman children and youth in World War I. She sheds light on how the war dramatically impacted children's lives and how they came to be described as "precious adults" during the period.³¹ In her other impressive work, *Orphans and Destitute Children in the Late Ottoman Empire*, she presents the readers with orally transmitted histories from below and shows how children must be seen as integral to the Ottoman modernization.³² Benjamin Fortna and Yahya Araz are among the first names alongside Maksudyan that come to mind as far as childhood studies in the Ottoman history are concerned. Fortna and Araz mostly avoided a dependence on archival materials and other state produced sources. They used variety of sources, chiefly textbooks, magazines, and such folkloric sources like memoirs. Using these sources as a fruitful blend, they have created very original and inspiring studies on how children were and should be raised, the imperial ideal and purpose of child raising and how children are perceived according to the social and cultural perceptions of the Ottoman society.³³ Benjamin Fortna's studies are still pioneer in this literature mainly on education and learning experiences of children in the late Ottoman Empire. He focuses on an important aspect of education that was influenced by the state but was hardly dominated by it during the transformation from the Empire to the Republic.³⁴ For Maksudyan, Fortna and Araz, it is clear to see that children were seen as a cultural and social phenomenon and the crucial source of the state for the future. This is why it is critical to understand how the concept of childhood was

³¹ Nazan Maksudyan, *Ottoman Children and Youth During World War I*. (New York: Syracuse University Press, 2019).

³² Nazan Maksudyan, *Orphans and Destitute Children in the Late Ottoman Empire*. (New York: Syracuse University Press, 2014).

³³ Yahya Araz, *Osmanlı Toplumunda Çocuk Olmak*. (İstanbul: Kitap Yayınevi, 2013).

³⁴ Benjamin Fortna, *Learning to Read in the Late Ottoman Empire and the Early Turkish Republic* (New York: Palgrave Macmillan, 2011), 7. Benjamin Fortna, ed., *Childhood in the Late Ottoman Empire and After* (Brill, 2016).

reshaped and defined by Ottomans during the 19th century. This study, beyond their inspirational works on Ottoman children, analyzes the sexual assault and rape cases referred to the Ottoman courts between the years 1860 and 1865 from the registers and reports of *Meclis-i Vâlâ-yı Ahkâm-ı Adliye*. The analyses of the example court cases whose main subject was the sexual offenses against the children shows how the legal regulations translate into practical daily life applications, what kind of difficulties lied ahead, how the Ottoman children were defined according to the legal procedures and the penal code and how the court and the society positioned themselves in this process, within a neat and general framework.

2.2 Trans (re)formation: 19th century Ottoman legal reforms and the establishment of the *Meclis-i Vâlâ-yı Ahkâm-ı Adliye*

In the nineteenth century, the judicial system of the Ottoman Empire faced radical reforms and transformation. The Declaration of the Edict of Gülhane, more popularly known as the Tanzimat (i.e. Reforms) in 1839 was the first step in this transformation. Safety of life, honor and property was guaranteed to be protected by the Ottoman Empire under the law. Sultan Abdulmecid promised to protect these right of the Ottoman subjects and attempted to position the Ottoman state as a supervisor and guarantor on personal rights of its citizens. Sultan's promises required legal reformations and the enactments of the new penal codes of 1840, 1851 and 1858 were the first fruit of this period that prepared the groundwork for the establishment of the *Nizamiye* courts in the 1860s.³⁵

Constituting new legislation began in the late 1830s with the establishment of the Supreme Council of Judicial Ordinance (*Meclis-i Vâlâ-yı Ahkâm-ı Adliye*), during

³⁵ Ebru Aykut Türker, "Judicial Reforms, Sharia Law, and the Death Penalty in the Late Ottoman Empire," *Journal of the Ottoman and Turkish Studies Association*, Vol. 4, No. 1, (May 2017): 11.

the reign of Sultan Mahmud II in 1837. The reforms were actually launched and endorsed with a famous Edict of *Gülhane*, prepared by *Meclis-i Vâlâ* in 1839. *Meclis-i Vâlâ* was the main bureaucratic institution to conduct the administrative and cultural reforms during the *Tanzimat* period (1838-1876). It was established to meet at the Topkapı Palace to advise the Sultan himself, and the *Dâr-ı Şûrâ-yı Bâb-ı Âlî* was created to perform the same function at the Porte for the Grand Vezir, the ministers, and the members of the administrative councils.³⁶

Meclis-i Vâlâ had a separate and distinct status right from the start.³⁷

Originally it was composed of its president (*Reis*) and five members, all of whom continued to hold additional regular administrative positions along with performing their Council duties. After a few months, *Meclis-i Vâlâ* developed its own rules and procedures, and it is only from this period onwards that we are able to find the first detailed information on its administrative and judicial operations. *Meclis-i Vâlâ* and *Dâr-ı Şûrâ-yı Bâb-ı Âlî* incorporated their findings and recommendations into reports, called *mazbatas*, which were presented to the Council of Ministers for action.³⁸ These *mazbatas* survive in the Ottoman Archives and provide the principal source for study not only of the early *Tanzimat* reforms, but also of the operations of the councils themselves.³⁹

The scope of *Meclis-i Vâlâ* now was restricted in the sense that it was supposed to take into account only the measures which were referred to it by other executive bodies, be it either the Council of Ministers or the specialized departments or councils. *Meclis-i Vâlâ* was enlarged to ten permanent members, chosen from

³⁶ Stanford Shaw, "The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement Before 1876," 36-37.

³⁷ *Ibid.*, 55.

³⁸ *Ibid.*, 56.

³⁹ *Ibid.*, 57.

senior officials from all four institutions of the Ottoman ruling class.⁴⁰ *Meclis-i Vâlâ* itself was assigned the task of studying and resolving provincial administrative and legislative issues such as education, public services, land reform and juridical matters. One of the more interesting aspects of the Council's legislative work appeared in 1845/1261, when each provincial representative council was invited to send a delegation (called *Meclis-i İmariye*) of two representatives to Istanbul to convey its annual reports on provincial conditions and requests for legislations needed.⁴¹ A second objective of the program was to enable the delegates from different provinces to meet one another and to exchange information and reports on local problems and experiences in applying the reforms in the provincial lands. The delegates stayed in Istanbul for more than two months, and while they formally expressed their general desires in audiences with the Sultan, they actually spent most of their time in closed meetings with *Meclis-i Vâlâ*. The *meclis* used their reports as bases for much of the provincial legislation enacted, specifically in the fields of taxation, education, infrastructure, public works, and land reform.⁴² In consequence of the task, the center-periphery relations tightened with the establishment of *Meclis-i Vâlâ*.

The Ottoman legal system was the primary area where the 19th century reforms played out. For forty reform years, the central government issued three penal codes (1840, 1851, and 1858). The first Royal Criminal Code, *Ceza Kanunname-i Hümâyûn*, was promulgated in 1840 by a committee headed by Hüsrev Paşa and various copies of the newly enacted criminal code were sent to all governors and

⁴⁰ Mehmet Seyitdanlıoğlu, *Tanzimat Devrinde Meclis-i Vâlâ* (Ankara: Türk Tarih Kurumu Yayınları, 1999), 72.

⁴¹ Shaw, "The Central Legislative Councils," 62.

⁴² *Ibid.*, 63.

courts to be applied in juridical/legal affairs in the Ottoman provinces.⁴³ It was revised in 1851 with slight changes. Almost two decades after the first penal code, Imperial Ottoman Penal Code of 1858 was promulgated on 9 August 1858 during the reign of Sultan Abdulmecid (r.1839-1861). Ahmed Cevdet Paşa (b. 1823-d.1895) was the hidden power behind this code of 1858. According to Ze'evi, Ahmed Cevdet Paşa, trained under the traditional education system, became an *alim* who was appointed as *qadi* to Mecca. He embraced the “Western-style” reform movement and was a diligent promulgator for it.⁴⁴

In the 568th issue of the newspaper *Takvim-i Vekayi*, published on Rajab 11, 1275 (February 14, 1859), an announcement was made about copying the transcripts of the penal code to be delivered all across the country and translating it into various languages in order to comply with them, and considering that the recently enacted penal code binds all people and all high and low ranking officials in the country.⁴⁵ On Sha'ban 29, 1275 (April 3, 1859) it was required “to pay attention to the prosecution of the criminals by observing this law” and the bureaucratic and organizational changes were explained in detail. Among these, the Council of Public Security (*Zabtiye Meclisi*) was abolished and two new councils were established in Offices of the Minister of Police (*Bab-ı Zabtiye*); one called the Council of Investigation (*Meclis-i Tahkik*) and the other was called Council of Public Security (*Divan-ı Zabtiye*). It is reported that the deliberations and proceedings of the crimes and murders to be seen in *Divan-ı Zabtiye* remained in *Meclis-i Tahkik*. The issues of provision and punishment were referred to *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* (the

⁴³ Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-1900* (London: University of California Press, 2006), 70.

⁴⁴ *Ibid.*, 71.

⁴⁵ *Takvim-i Vekayi*, s.568, H. Recep 11, 1275.

Geçenlerde ilan olunan ceza kanununun istisnasız herkesi ve büyük küçük bütün memurları bağladığı göz önüne alınarak bunlara uyulması için kanunname suretinin çoğaltılarak her tarafa ulaştırılması ve çeşitli dillere de çevrilmesi hakkında.

Supreme Court of Judicial Ordinances). The Council of Investigation should include eight members from Muslim and other subjects of the empire, with a leader named as *Reis*. However, there are some decisions of appointment also mentioned in this announcement; “the Director of Prisons to control and supervise the House of Detention (*tevkifhane*) and prisons; the Director of Separation (*Tefrik Müdürü*) to separate suspects who come to the Office of the Minister of Police (*Bab-ı Zabtiye*) and to appoint as many examining magistrate (*müstantık*), interrogation clerks and lieutenants (*istintak katipleri ve mülazımları*) as necessary to question the suspects carefully and impartially.”⁴⁶ In the related issue of the newspaper, such details were clarified and arrangements were made in order to avoid any problems in terms of implementation of the new rules and regulations according to the penal code. A noteworthy detail here is that the necessary arrangements and procedures for the suspects were clearly defined, while no procedural information was available for the victims. Additionally, the extent to which these regulations and decisions were

⁴⁶ *Ceza kanunnamesi yayınlanmış, bu kanuna göre suçluların yargılanmasına dikkat edilecektir. Fakat Muhakemât Nizamnamesi Meclis-i Ali-i Tanzimat'ta düzenlenmektedir. Bunun düzenlenmesine kadar Bâb-ı Zabtiye'de yapılacak sorgulama, hapis, cezalandırma maddelerinin geçici surette bir kaide altına alınması gerektiğinden Zabtiye Meclisi kaldırılarak biri Meclis-i Tahkik diğeri Divan-ı Zabtiye adıyla Bâb-ı Zabtiye'de iki yeni meclis kurulup uygulaması geçenlerde doğrudan doğruya Zabtiye Müşiri'ne ihale edilen kabahat türleri ile suçların belirli bir derecesinin Divan-ı Zabtiye'de muhakeme edilerek hüküm verilmesi; Divan-ı Zabtiye'de görülecek suçların ve cinayetlerin görüşülmesi ve muhakemesi Meclis-i Tahkik'de hüküm ve ceza tayini hususunun Meclis-i Vâlâ'ya havalesi; Meclis-i Tahkik bir reis ile Müslüman ve diğer tebedan olarak sekiz azadan, Divan-ı Zabtiye'de bir reis ile Müslüm ve diğer tebedan dokuz azadan oluşup Meclis-i Tahkik riyasetine Zabtiye Müsteşarlığı ünvanıyla Zabtiye muavini Tefrik Efendi'nin; Divan-ı Zabtiye Riyaseti'ne de Meclis-i Ali Tanzimat Katib-i Sânisî Celal Beyefendi'nin tayini ve Tomruk Müdürlüğü'nün kaldırılarak Zabtiye Müşiri'nin maiyeti ve emri altında Dersâdet'te bulunan Zabtiye Askeri'ne kumanda etmek ve Tomruk Müdürlüğü'ne mahsus olan kol gezme ve yangına gitme gibi hizmetleri yerine getirmek üzere bir Zabıta Muavini; Tevkifhaneler ve hapishaneleri denetlemek üzere bir Hapishaneler Müdürü; Bâb-ı Zabtiye'ye gelen zanlıyı ilk iş olarak ayırmak töhmetini tetkik ile gerekeni uygulamak için de bir de Tefrik Müdürü zanlıları dikkatle ve tarafsız sorgulamak için gereği kadar Mustantık efendiler, İstintak Katipleri ve Mülazımları tayin edilmesi; önceki Zabtiye Meclisi'nin azasından bir sınıfı yeni tertip gereği istihdam edilecekse de taşralara görevlendirilmelerine başka hizmetler kayrılacak tabiatıyla azalıktan çıkmış olmalarıyla onların bundan sonra azadan sayılmamaları husus için oluşturulan komisyonda ve Meclis-i Hass-ı Vükela'da konuşulup uygun bulunarak gereken yapılması ve Zabıta Muavinliği'ne İmalat Meclisi azasından Miralay Selim Bey; Hapishaneler Müdürlüğü'ne İsmail Efendi; Tefrik Müdürlüğü'ne de Mehmed Bey tayin edilmiştir. Takvim-i Vekayi, Şaban 29, 1275, No. 569.*

implemented and how feasible they practically were are also a matter of discussion because it is not possible to find out who prepared the interrogation reports and some reports for higher councils. Neither the name nor the title is included in the reports.

The Ottoman administration started to show activist state reactions through the detailed interrogation techniques, seeking to increase its control over the subjects, a typical feature of the centralization. This also coincided with a period when the bureaucratic processes increased both in terms of time and paperwork and when the state increasingly distanced itself from the local cultural codes and social perceptions on the ground. Though the articles of the Imperial Penal Code (IOPC) of 1858 regarding the sexual offenses were inspired by the French penal code, in practice, the *shari'a* practices were still going on even after the adoption of the reformist civil code by the courts that were supposed to pass judgments based on the newly devised 1858 text. In, “The Faces of Justice and State Authority: A Comparative Approach to the Legal Process,” Mirjan Damaska suggests an approach that distinguishes between the activist state vs. the reactive state. As quoted Omri Paz;

Reactive state adopts a laissez-faire philosophy, and that its judiciary tends to serve as an arbiter of social conflict. By providing a framework for resolving disputes, a reactive state reorganizes the autonomy of its subjects/citizens and gives them substantial input into the legal process. An activist state, on the other hand, seeks to implement specific, moral values through both judicial and non-judicial means. In such a state, a dispute between individuals triggers a legal process whose resolution is less important than the state’s primary goal, namely to promote official policy.⁴⁷

With the entrance of the monolithic norms brought about by the central authority in the Tanzimat period, however, that are binding for Ottoman subjects alike, an activist state model emerged in the picture where the state drew definite

⁴⁷ Omri Paz, “Crime, Criminals and the Ottoman State,” 97.

clear-cut boundaries rather than flexible, lighter lines.⁴⁸ In this period during which the relationship between the state and the individuals was not in a clear and sharp fashion, the legal practices. It would not be possible to argue practically the state transformed into an activist state model, predicting in a way the establishment of the *Nizamiye* courts that would soon emerge.

The most remarkable reform among all these, within the partial scope of this study, is the hierarchically reconstructed court structure. The evidences and interrogation reports were written down on paper in detail, an unusual practice for the period, and with a cover letter that constantly summed up the whole content, were sent for approval to the higher court. This practice soon turned into a routine bureaucratic process, which implies a classical state model. While the central authority had little influence on, and interference in, the criminal cases in the classical decentralist period practices, the novel legal system sought to decrease the influence of local dynamics and increase the might and visibility of the central authority.⁴⁹

2.3 Interrogation protocols and investigation process

During the process of the proclamation and implementation of the Tanzimat reforms, the *Meclis-i Vâlâ* was the highest judicial body within the Ottoman Empire.⁵⁰ As both the administrative court and court of appeal, the *Meclis-i Vâlâ* was the highest body to make final decisions of the councils and local courts in the empire.

Additionally, *Meclis-i Vâlâ* had made several arrangements on how the court practices should take place.

⁴⁸ Omri Paz, "Documenting Justice," 87.

⁴⁹ Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*, 43.

⁵⁰ Mehmet Seyitdanlioğlu, p.118

One of the most crucial practices of the Ottoman courts during the reformation period is the interrogation protocols. In various works on socio-legal and legal history studies are not strongly engaged with the operation of the court records and interrogation reports, basically with an understanding of “law in action.”⁵¹ Recent studies in the Ottoman history have utilized the interrogation reports to analyze the social and cultural insights of the ordinary people in the Ottoman Empire. Milen Petrov utilized interrogation reports to interpret how legal procedures applied and discursive strategies used by the legal authorities.⁵² Additionally, in his dissertation named “Ottoman Modernity: The *Nizamiye* Courts in the Late Nineteenth Century,” evaluates the judicial processes and legal culture while using interrogation reports.⁵³ In this study, I utilized the interrogation reports to see how the reforms applied, how Ottoman officials defined children and how social reactions have brought to trial.

The criminal investigation reports are very unique and invaluable sources to see particular type of relationship between individuals and political power. These reports gives us fruitful insights about the social and cultural norms and reactions about the issues of child abuse, specifically for this thesis. Unfortunately, the criminal interrogation reports did not exist in all court files and it is not possible to hear the voice of victims and criminals at all. In spite of the relative lack of resources, court records are described as “the best sources relatively uninterrupted narrative from the lips of the lower order.”⁵⁴

⁵¹ Omri Paz, “Documenting Justice: New Recording Practices and the Establishment of an Activist Criminal Court System in the Ottoman Provinces (1840-late 1860s),” *Islamic Law and Society*, Vol. 21, No. 1/2 (2014); 83.

⁵² Milen V. Petrov, “Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868,” *Comparative Studies in Society and History*, No. 46 (2004): 730-759.

⁵³ Avi Rubin, “Ottoman Modernity: The *Nizamiye* Courts in the Late Nineteenth Century” (PhD diss., Harvard University, 2006).

⁵⁴ *Ibid.*, 93.

How interrogation protocols prepared and how the process worked? In this practices, the local councils prepared detailed interrogation reports during the investigation process, and the decision of punishment at the end of the trial. These documents had to be reported to the Sublime Porte (Bab-ı Ali) at the end of each month. As Avi Rubin clearly mentioned that, according to the one of the recording clerk (Zabıt Katibi) in the court of Edirne, criticized clerks who inscribed protocols (zabt) of criminal trials, for their usage of vague expressions such as, “nothing in the defense of the attorney was found legally acceptable” or “until now, no contradiction has been found between the testimonies heard in court and those made during the interrogation.”⁵⁵

The local courts responsible on the phrasing the court decisions, recording of the protocols, the preparation of appellate petitions and send the review of the process as *mazbata* to the higher court. According to Milan Petrov, in the new legal system, courts could be described as bureaucratic judicial councils.⁵⁶ Procedurally, the main difference between the two institutions, *kadı* courts and *Nizami* courts, lay in the degree of their involvement in the investigation process: while a *kadı* was merely required to hear the testimony proffered to him by the rival litigants, a *Nizami* courts actively gathered evidence through interrogations, sometimes aided by the police, but often on its own through *ad hoc* interrogations committees made up of several court members. Local courts and provincial councils were routinely submitted their decisions for review to the next higher court in the system.⁵⁷

⁵⁵ Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 87.

⁵⁶ Milen Petrov, “Everyday Forms of Compliance,” 736-737.

⁵⁷ *Ibid.*, 736-737.

Interrogation clerks and lieutenants (*istintak katipleri ve mülazımları*) assigned by the Council of Investigation (*Meclis-i Tahkikat*) as necessary to question the suspects carefully and impartially.

Pre-Tanzimat criminal proceedings took place in Şeriat courts, where a judge (*kadı*) asked a defendant to respond to charges made by the plaintiff. If he or she confessed freely, this statement was recorded, the facts were proven, and the case closed. In cases where a defendant denied in charges against him/her, the plaintiff was asked by the judge to procedure evidence to support the charges against him/her, the plaintiff was asked by the judge to produce evidence to support the charges.⁵⁸

At the middle of the nineteenth century, these responsibilities were transferred to the Zaptiye as part of pre-trial procedures and evidence had to be found or produced before the trial in court. After the establishment of the Directorate of Police and Gendarmerie in 1846, the interrogation reports prepared by the police officers. "...unlike pre-*Tanzimat* police, they were charged with interrogating, in detail, people drawn from the local population, and then taking down in writing, point-by-point, their declarations regarding the criminal's description... (Article 55)."⁵⁹ Without interference of *Meclis-i Vala*, most cases were decided according to confessions during the interrogation process. The local councils prepared a case file with mentioning to confessions of defendants, that means confessions in the interrogation protocols were one of the most crucial.

Additionally, it must be clear to see the fact that the testimonies of the women and men during the interrogation process were shaped by the questions they were asked and behaviors they were exposed.⁶⁰

These interrogation protocols may also shed light on the workings of a court session.

⁵⁸ Omri Paz, "Crime, Criminals, and the Ottoman State," 278.

⁵⁹ Omri Paz, "Documentign Justice," 116.

⁶⁰ Omri Paz, "Crime, Criminals, and the Ottoman State: Anatolia between the late 1830s and the late 1860s" (PhD diss., Tel Aviv University, 2010), 120.

At the top of the interrogation report, the page says who is being questioned and also it is possible to read where the person in question lived; “the interrogation report of son of Ali, Sadullah from Ruscuk.”⁶¹

Right after that, judges usually began an interrogation with a few formal questions, such as; “What is your name?”, “What is your father’s name?”, “What is your occupation?”, “Where are you from?”

Question: What is your father’s name, and how old are you?

Answer: Lazor. My father’s name is Molyodor. I am twenty years old.

Q: Where is your dwelling place?

A: Kavadar district in city of Tikveş.⁶²

These reports (see Appendix, Figure 1) reveal much about the interactions between judges and perpetrators, and the strategies they applied in court.⁶³ In this procedures, the court tried to force to confess the perpetrator its own crime; the person either admitted guilt of his or her own volition, or was forced to admit guilt. Acknowledgement of the validity of the accusations by the defendant (ikrar), or his/her confession (ikrar, itiraf) was therefore the first means by which a case could be proven. As a consequence, courts first attempted to prove a case by means of confessions.⁶⁴

It would be quite safe to act to interrogation reports and other court reports with deliberation because it has certain interferences and reviews on it. “The interrogators ask the questions and these questions limit and manipulate the answers of the litigants and witnesses.”⁶⁵ Additionally, it is mostly possible to confront that

⁶¹ “Ruscuklu Sadullah veled-i Ali’nin istintakıdır.” BOA.MVL.933/21/2/1 (28 R 1277).

⁶² BOA.MVL.1039/22/1/2. 21 Ş 1287.

⁶³ Omri Paz, “Crime, Criminals, and the Ottoman State,” 122.

⁶⁴ *Ibid.*, 126.

⁶⁵ Ebru Aykut Türker, “Alternative Claims on Justice and Law: Rural Arson and Poison Murder in the 19th Century Ottoman Empire” (PhD diss., Boğaziçi University, 2011), 12.

litigants and witnesses may manipulate the courts to tell lies and interrogators exposed their lies and made them confessions;

Question: Which one of you first untied the pants of Salim and Hüseyin and perpetrated the indecent action on the boys and did you approach Hüseyin or Salim?

Answer: I did not perpetrate this action on any of them and I am not aware whether my friends did it or not?

Q: This incident happened at night; how come can you not know whether or not your friends did it?

A: I only know myself and I do not know whether they did it or not.

Q: If one of the two children comes along and tells your face that you committed the indecent act on himself, what would you say?

A: I would still deny it.

Q: Who taught you to deny so?

A: No one taught it.

Q: You must have surely committed this act, and this must surely be true. This child is too young to make up such a story and therefore he would slander in a different way rather than like this, if the allegations had no grounds.

A: I slapped this child yesterday so that is why he is slandering me now.

Q: Just because of a couple of slaps, one would not accept to slander another person, defaming one's own name. You would not defame yourself and blacken your face, devaluing your honor, due to a few slaps, if you were in the child's shoes, I guess.

A: I would not slander someone else in such a way, defiling my honor, either, if it were me.

Q: You are telling this now because you well know that this child, Hüseyin, is not making up false slanders. Now tell what happened.⁶⁶

Here is the interrogator conducting the interrogation on behalf of the court thus successfully arrived at a conclusion, and the defendant confessed to the offense (see Appendix, Figure 2).

When the interrogation ended, local councils write a detailed interrogation report which can sometimes be found attached to the memorandums (*mazbata*) to define comprehensively all the details about the case.⁶⁷ Both the *mazbata* and the interrogation report consist of the court file. Local councils had to send the file to the higher council and this council write its verdict then send to the Grand Council for

⁶⁶ BOA. MVL. 931/27/1/3. 20 L 1277.

⁶⁷ Ebru Aykut Türker, "Alternative Claims on Justice and Law: Rural Arson and Poison Murder in the 19th Century Ottoman Empire" (PhD diss., Boğaziçi University, 2011)

review. “Grand Councils, in turn, submitted their verdicts to the Supreme Council for review. The Supreme Council could either approve or overturn the Grand Council’s verdict.”⁶⁸

This hierarchical structure resembles the later *Nizamiye* court system. Although district courts were not really Courts of First Instance, provincial courts were certainly not Appellate Courts, and the Supreme Council did not serve as a Court of Cassation.⁶⁹

By 1849, the Meclis-i Vala had made it clear that it was not going to accept incomplete files.⁷⁰ Moreover, files usually contained additional materials and documents. For example, in child abuse cases, doctor examination report included (see Appendix, Figure 3);

Despite the fact that Mehmed denied all the accusations during the investigation, the medical examination by the doctor in charge revealed that Mihail’s anus was visibly injured and bruised due to external pressure and Mehmed had considerable lawn dirt around the knee area of his pants and on his shirt, which assured the authorities that the alleged incident really took place, leading to Mehmed ultimately pleading guilty.⁷¹

Honestly, these sources undoubtedly contain invaluable insights, expressions and clues from centuries and give us clear reflections on the interaction between the state and ordinary people. “In contrast to the limitations of şer’i registers as a source that is highly formulaic and lack direct quotations from the interrogations,”⁷² the court cases of *Meclis-i Vala* have a detailed expressions derived from the ordinary people in the Ottoman Empire. The main handicap in using the legal written sources is that it is quite hard to grasp every single detail since the reports briefly summarized the content before they were dispatched to higher courts with short and

⁶⁸ Omri Paz, “Documenting Justice,” 102.

⁶⁹ Ibid., 103.

⁷⁰ Sedat Bingöl, *Tanzimat Devrinde Osmanlı’da Yargı Reformu: Nizamiye Mahkemeleri’nin Kuruluşu ve İşleyişi 1840-1876* (Eskişehir: Anadolu Üniversitesi Yayınları, 2004); 39.

⁷¹ BOA. MVL. 672/51/2/1. 9 Z 1277.

⁷² Türker, “Alternative Claims on Justice and Law,” 45.

superficial explanations by the court reporters.⁷³ At that point, “court cases generate evidence that has been polluted by authority since only one party has the power to coerce and the command of all the information.”⁷⁴ The questions and the discourse within themselves could slightly direct the answers or the socio-cultural filters could hinder the message of the testimonies, victims or culprits.

2.4 The imperial Ottoman penal code of 1858

It is mostly asserted by researchers that the Imperial Ottoman Criminal Code (IOPC) of 1858 included more adaptations of the French Criminal Code of 1810 and a process of Westernization and secularization.⁷⁵ What renders the code of 1858 different from the previous codes was the crucial attention paid to the protection of individual rights as its essence. For Schull, the promulgation of the Imperial Ottoman Penal code of 1858 had a strong link with Ottoman and Islamic criminal law. The first article of the code gave a strong reference to Islamic principles, the *shari'a*;

Art.1. - Whereas the punishment of offences taking place directly against the Government lies with the State, and the consideration that offences taking place against a person disturb the public tranquility likewise concerns the State, this Code also guarantees and secures the determination of the degrees of the punishment the fixing and execution of which lie with the order of the Supreme Authority according to the Shari'a; without prejudice, however, in any case to the personal rights prescribed by the Shari'a.⁷⁶

It is clear to see on the first article that defines the certain offences, crimes and infringements which concentrated on violation of public order (*asayiş-i*

⁷³ For detailed examples, please see Chapter 4.1. Interrogation Processes in Cases of Sexual Crimes.

⁷⁴ Türker, “Alternative Claims on Justice and Law,” 13.

⁷⁵ Roderic Davison, *Reform in the Ottoman Empire 1856-1876* (New Jersey: Princeton University Press, 1963), 96.

⁷⁶ John Alexander Bucknill and Haig Apisoghom Stepan Utidjian, *The Imperial Ottoman Penal Code: A translation from the turkish text, with latest additions and amendments, together with annotations and explanatory commentaries upon the text and containing an appendix dealing with the special amendments in force in cyprus and the judicial decisions of the cyprus courts*, (London: H. Milford, Oxford University Press, 1913), 1.

‘umumi).⁷⁷ Beyond the first article of the penal code of 1858, the Ottoman state acted as a supervisor and guarantor on personal rights of its citizens⁷⁸ and on the basis of Islamic principles and precedence, the very first article of the IOPC of 1858 claims legitimacy to protect public order and rights of individuals according to the shari’a.⁷⁹ The Ottoman Penal Code of 1858 refers two spheres in its context; the jurist’ law (*shari’a*) and the ruler’s law (*kanun*) as a hybrid form of legislation.⁸⁰ As we learn from the official sources, it was not easy to transform from *shari’a* to a Westernized, uniform and secular criminal system while Islamic court judges still carrying out on judgments and managing the processes and cases for a while.⁸¹ It is possible to confront with these contradiction that *shari’a* judges and judges of the new system on variety of sources that they had legal power until the end of the 19th century.⁸²

The passage of Ottoman law to modernity in the 19th century did not result in a complete disappearance of this centuries-old pact between the ruler and his subjects. However, justice increasingly came to be defined in terms of procedural standards and universality of judicial practice.⁸³

The IOPC of 1858, which is said to have felt the influence of the West in a very intense way, actually reflects a perspective which is the continuation of the shari’a tradition under the influence of the *ulema* in general. The first article of the penal code mentioned above promises to protect the rights of individuals based on the shari’a tradition and this very first article of the penal code is one of the clearest evidences that casts a shadow on this debate.

⁷⁷ Tobias Heinzelman, “The Ruler’s Monologue: The Rhetoric of the Ottoman Penal code of 1858,” *Die Welt Des Islams* 54 (2014); 294.

⁷⁸ Kent Schull, *Prisons in the Late Ottoman Empire: Microcosms of Modernity* (Edinburgh: Edinburgh University Press, 2014), 27.

⁷⁹ Utidjian, *The Imperial Ottoman Penal Code*, 1

⁸⁰ Tobias Heinzelmann, p.296.

⁸¹ Jun Akiba, “From *Kadı* to *Naib*: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period,” 49. and Kent Schull, “Comparative Criminal Justice in the Era of Modernity: A Template for Inquiry and the Ottoman Empire as Case Study,” 626

⁸² Ahmet Mithat Efendi, *Dolaptan Temaşa* (İstanbul: Türkiye İş Bankası Yayınları, 2019), 4.

⁸³ Avi Rubin, *Ottoman Nizamiye Courts*, 82.

In the introductory text of the English translation of the penal code, the comprehensive interpretation by Utidjian summarizes the relation between sharia' and the Ottoman penal code more clearly;

The general scheme of the Ottoman Penal Code follows that of the French *Code Penal* both in its classification of offences and in its main divisions; but in detail there are many differences and indeed although a number of Articles in the Ottoman Code have been bodily translated from the French whilst the large majority of the former have some sort of counterpart in the latter yet some of the clauses in the Turkish enactment are substantially original.”⁸⁴

When we consider these implications, it would not be appropriate to claim that the 1858 Criminal Code was a copy of the 1810 French Criminal Code (renewed in 1832 with some updates). Although it is possible to argue that the Ottoman penal code was inspired and influenced by the French penal code, it would be unwarranted to claim that it was completely a copy. The adaptation is clear to see in the Ottoman penal code but Ottomans adapted the revised version of 1832 French penal code. Actually, the Ottoman Empire was no exception to get influenced from the 1832 *Code Penal*, it had a greater influence during the legislation process and penal codes on other European countries and their earlier versions of the penal codes.⁸⁵

Nevertheless, the rationalization and codification of the legal regulation caused defunction of the autonomy of Islamic court judges and standardized the outcomes of the courts. The reforms and preparing the proceedings of criminal law of 1840, 1851 and 1858 must be seen as the continuation of centralization and standardization of the Islamic criminal law, instead of viewing as Westernization or secularization of the Ottoman criminal law at all.⁸⁶

⁸⁴ Utidjian, *The Imperial Ottoman Penal Code*, XV-XVI.

⁸⁵ Tobial Heinzelman, “The Ruler’s Monologue,” 295.

⁸⁶ Kent Schull, *Prisons in the Late Ottoman Empire*, 27.

However, the IOPC of 1858 is actually more detailed than the one promulgated in 1840 and main legislative principles were mentioned in the preamble;

Some thought was given to the relationship with the *şeriat*, and the guiding concept offered is that the criminal code is situated in the gray area where the *şeriat* has no say. Whenever the *şeriat* decrees that criminal matters be returned to the concerned parties for arbitration, the new code explains, it confers on the state the right to punish criminals under the principle of *tazir*. In practice, though, the new code allows itself a much broader margin of jurisdiction, sometimes in clear contravention of the sacred law.⁸⁷

At this point, the question brought about by Ruth Miller in his study is critical: How did the first Tanzimat reformers approach criminal law and how did they think they had to position religion in order to develop the new legal system?⁸⁸

Additionally, who was the victim of the first period Ottoman criminal law aimed to protect? Was it ordinary people, society, God or state? As Uriel Heyd points out, the main emphasis of the early criminal law and also the main purpose of the 16th and 17th century Ottoman penal codes were not only to protect society against criminals;⁸⁹ but also to protect the people from oppressive state officials and manorial.⁹⁰ The criminal law which was designed to protect the society, the individual within it, God and morality all together, would now have the purpose of protecting the state in the 19th century, in line with the Baroque political spirit of the mainland Europe. At that point, it would be better to look superficially how the classical Ottoman penal code took into consideration on the issues of sexual crimes against children.⁹¹

⁸⁷ Ibid., 71.

⁸⁸ Ruth Miller, *Legislating Authority*, 45.

⁸⁹ The main emphasis is placed on the protection of society, and not, as in the shari'a, on safeguarding the rights of the individual. Uriel Heyd, *Studies in Old Ottoman Criminal Law*, 202.

⁹⁰ Ibid., 176.

⁹¹ Uriel Heyd (1913-1968), collected nearly 100 kanunname texts and he attempted to put together a single standard text, with the title "The Ottoman Criminal Code," by taking as the basis the longest text (of the time of Süleyman the Magnificent) and inserting into it other clauses found in the other texts. These articles derived from his magnificent work.

The first part of the criminal code in the classical period of the Ottoman Empire (15th to 18th centuries) begins with the title “On Fornication and Other (Offences).”⁹² The thirty-five articles under this heading contain various details of the crime of fornication. The main distinctions of the social status of the individuals are handled in different categories such as being married or single, being rich or poor, being a slave or free, being a girl or woman, being married or single (non-Muslim) woman, being married or single Muslim woman. There some articles concerning sexual crimes against children. It is stated in Article 20 of the document that if a person kissed another person’s son and turned towards him with indecent words, it shall be a crime and thus subject to a certain punishment. Article 27 is quite interesting in that it describes the sexual intercourse that a man enters if he is an adult or not;

Article 27. Furthermore, if a person’s son yields to a pederast – if (the youth) is of age (*baliğ*), (the kadi) shall chastise the youth severely and a fine of one *akçe* shall be collected for each stroke; and if he is not of age, his father shall be collected for each stroke; and if he is not of age, his father shall be chastised because he has not guarded (him), but no fine shall be collected.⁹³

In this article, the fact that his father is seen as responsible for the sexual intercourse that the boy enters may be related to father’s financial gain from this situation. Similarly, in Article 35, an arrangement was made on sexual practices of children;

Article 35. If little boys from among the townspeople or peasants (Turk) perform sexual acts with one another, (the kadi) shall punish (them and) a fine of 30 *akçe* shall be collected from each one.⁹⁴

Actually, there is no comprehensive description of the exact definition of ‘little boys’ used here in the Article 35. What was the limit of being an adult? Do we

⁹² Uriel Heyd, 95-102.

⁹³ Ibid., 102.

⁹⁴ Ibid., 103.

know what the age limit of ‘little boys’ is? Or, was there a certain definition of a child or a clear distinction between child and adult? At this point, Leslie Peirce put the definition of the end to childhood (*buluğ*) and certain assumptions of social responsibility;

The legal definition of the end to childhood-attainment of majority (*buluğ*) and the assumption of social responsibility that went with it-introduced an asymmetry into the evolution of male and female life cycles. According to chief müfti Ebussuud Efendi, both males and females were considered “of age” (*baliğ/baliğa*) if their majority could “be confirmed,” that is, if signs of physical maturity were observable (one had however to be at least twelve years old); in the absence of such signs, females were considered to come of age at seventeen, males at eighteen. The socio-sexual implications of physical maturation complicated the notion of adulthood. Both Pubescent boys and pubescent girls-those approaching legal majority-might be “carnally desirable” (*müşteha*), and thus the potential object of the desire of adult males. The socio-sexual construction of male adulthood required that the adult male be a penetrator (desiring) rather than penetrated (desirable). Males were thus off limits as sexual objects once they acquired full physical (and thus legal) maturity. For an adult male to allow himself to be penetrated was considered aberrant, indeed pathological.⁹⁵

It is easy to understand that physical maturity was the main criteria to become legally competent and to be accepted as such. Leslie Peirce defines the socio-sexual implications of physical maturation based on “carnally desirable” (*müşteha*), and the potential object of the desire of adult males.⁹⁶

A crucial difference between female and male lay in the implications of sexual desirability for the capacity to function as an autonomous individual in society. In the social definition of the female, sexual desirability was an attribute that persisted (necessarily) through young and middle adulthood, that is, through the childbearing years. For the female, to be the object of male sexual interest was not incompatible with social maturity (although her mobility might be constrained by social norms restricting contact between the sexes). Not so for the male, for whom the quality of being sexually desirable was incompatible with social maturity, and for whom the passage from pubescence to mature adulthood was more problematic (a difference reflected as we shall see, in the vocabulary for male and female in this transition period). The socio-sexual construction of male adulthood required that the

⁹⁵ Leslie Peirce, “Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society,” in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline Zilfi (New York: Brill, 1997), 173.

⁹⁶ *Ibid.*, 174.

adult male be a penetrator (desiring) rather than penetrated (desirable). Males were thus off limits as sexual objects once they acquired full physical (and thus legal) maturity. For an adult male to allow himself to be penetrated was considered aberrant, indeed pathological.⁹⁷

As Leslie Peirce clearly points out, the socio-sexual differences between child and adult are based more on showing physical indications and differ for boys and girls according to sexual desirability. In this case, how was this situation in the 19th century Ottoman legislations, especially in the IOPC of 1858 that referenced by the court records in this study?

Half of the articles in the IOPC of 1858 are political crimes and crimes against the state and only one fourth of the crimes are committed against the individual. In addition to that, some of the crimes committed against the individual were left ambiguous, even though open-ended statements were tried to be resolved by prioritizing Islamic law,⁹⁸ the crimes committed against the state were elaborated and covered the whole aspects.⁹⁹

There are various allegations and assumptions that the Ottoman penal code of 1858 was a copy of the French penal code. Although there is no consensus on this matter, it is generally stated on the IOPC of 1858 that the European influence is intensely felt.¹⁰⁰ The French Penal Code of 1810 consists of 484 articles in total,¹⁰¹

⁹⁷ Ibid., 174-175.

⁹⁸ Ruth Miller, *Legislating Authority*, 112.

⁹⁹ Ibid., 113-114.

¹⁰⁰ For those arguments, please see; Yusuf Ziya, “Kanun-ı Ceza Layihasının Hutut-u Asliyesi”, *Ceride-i Adliye*, Birinci sene, sayı 4, 17 Kânunusani 1325, s. 138; Bahaeddin Kantar, *Hukuk-u Ceza Tatbikatı*, İstanbul 1338, s. 75; Gülnihal Bozkurt, *Batı Hukukunun Türkiye’de Benimsenmesi*, TTK Yay., Ankara 1996, s.100; Sulhi Dönmezer-Sahir Erman, *Nazari ve Tatbiki Ceza Hukuku*, İstanbul 1994, c. I, s. 126; Ahmet Akgündüz, “1274/1858 Tarihli Ceza Kanunnamesinin Hukuki Kaynakları, Tatbik Şekli ve Men-i İrtikâb Kanunnamesi”, *Belleten*, c. LI, sayı 199, s. 157–158; Halil Cin- Ahmet Akgündüz, *Türk İslam Hukuk Tarihi*, Timaş Yay., İstanbul 1990, c. I, s. 346. Hıfzı Veldet, “Kanunlaştırma hareketleri ve Tanzimat”, *Tanzimat* c. I, İstanbul 1999, c. I, s. 198; M. Akif Aydın, “Ceza”, *Türkiye Diyanet Vakfı İslam Ansiklopedisi (DİA)*, c. VII, s. 478–482; M. Akif Aydın, “Batılılaşma”, *DİA*, c. V, s. 162–167; Mustafa Şentop, “Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü”, *Türk Hukuk Tarihi*, TALİD, İstanbul 2005, c.3, sayı 5, s. 658. Mustafa Şentop, *Tanzimat Dönemi Osmanlı Ceza Hukuku*, İstanbul 2004, s. 89–91. “Kanun-ı Cezamızın Edvar-ı Tekâmülü-IV,” *Ceride-i Adliye*, Mart 1333 (7. Sene), No. 156; 481.

while the IOPC of 1858 consists of 264 articles. As Ruth Miller points out, the French and the Ottoman penal codes follow similar outline but retain certain differences as well. The last section of the French Penal Code of 1810 was not included in the Ottoman version of it. It is basically concerned with the crimes committed by religious sects against the state and it is one of the intentions of the French Penal Code to restrict the movements of the religious establishments.¹⁰² It is quite impossible for the Ottoman reformers to restrict the religious establishments because “by the Tanzimat period, *ulema* had in fact become fully integrated state functionaries, and articles limiting their role would have been at best meaningless and at worst damaging to the new political theory.”¹⁰³ Here, of course, the question arises whether what is meant by the religious establishments. It might be the *ulema*, fully or partially official religious figures, or the Sufi circles or lodges that might or might not be supported by the state or be seen as total heretics also in the state’s view. This thesis is, however, not concerned about such a distinction for convenience purposes.

The main purpose of this section is not to identify and analyze the similarities of the IOPC of 1858 with the French Penal Code of 1810 (and revised version of 1832), but rather, to identify and analyze the similarities between the articles related to the sexual crimes in the Ottoman Penal Code and the related articles of the French Penal Code.

There are three main categories of crimes against individuals in the IOPC of 1858: (1) crimes committed against lives and individual security, (2) crimes against

¹⁰¹ Ruth Miller, *Legislating Authority*, 55. For the text of the French Penal Code, see: Bibliothèque nationale de France:

<https://gallica.bnf.fr/ark:/12148/bpt6k57837660/f94.double.r=code+penal+de+l'empire+français>.

¹⁰² Ruth Miller, *Legislating Authority*, 57.

¹⁰³ *Ibid.*, 56-57

honor and dignity, (3) crimes against the property of citizens.¹⁰⁴ Sexual offenses were catalogued under the main title of “Of Offences against the Person, and the Punishment of the same,” and specifically mentioned under the title of “About Crimes Concerning Violation of Honor” (*Şahıslara Aleyhine İşlenen Cinayet ve Cünhalar > Irz ve Namus Aleyhine İşlenen Suçlar*).

Under these headings, the statement on the Article 197 of the penal code, which reads as follow “whoever does the abominable act to a child under eleven years of age is punished with the punishment of temporary imprisonment for not less than six months”¹⁰⁵ defined the ultimate limit of being a child as eleven indirectly. At that point, the article 197 of the IOPC of 1858 that defines the sexual crimes against children was taken directly from the French Penal Code of 1832;

Art.331__ (a) Every indecent assault, consume or attempt without violence on the person of a child of either sex under the age of eleven shall be punished with reclusion.¹⁰⁶

The article 331 of the French Penal code defines sexual crimes against children under the age of eleven as “indecent assault,” while it defines at the Article 332 as “rape” for children under fifteen years of age.

¹⁰⁴ Kent Schull, “Ottoman Criminal Justice and the Transformation of Islamic Criminal Law and Punishment in the Age of Modernity, 1839-1922,” *Prisons in the Late Ottoman Empire*, Edinburgh: Edinburgh University Press (2014): 27.

¹⁰⁵ *Ibid.*, 74.

¹⁰⁶ French Original: Art.331__ Tout attentant à la pudeur consomme ou tente sans violence sur la personne d’un enfant de l’un ou de l’autre sexe, age de moins de onze ans sera puni de la réclusion. (Loi, 28 Avril 1832).

The sexual crimes against children defined in the French Penal Code of 1810 quite differently, as the age of puberty was 15 year-ages:

Article 331_ Who shall commit the crime of rape, or shall be guilty of any other attack upon the modesty, consummated or attempted, with violence, against an individual of either sex, shall be punished with solitary imprisonment. (French original: Article 331. Quiconque aura commis le crime de viol, ou sera coupable de tout autre attentat à la pudeur, consommé ou tenté avec violence contre des individus de l’un ou de l’autre sexe, sera puni de la réclusion).

Article 332_ If the crime has been committed upon the person of an infant, under the age of fifteen years complete, the criminal shall undergo the penalty of hard labour for time. (French original:

Article 332. Si le crime a été commis sur la personne d’un enfant au-dessous de l’âge de quinze ans accomplis, le coupable subira la peine des travaux forcés à temps.) Source:

https://ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_3.htm. Accessed on June 3, 2019.

Article 332. (b) Whoever commits the crime of rape shall be punished for hard labor. If the crime was committed on the person of a child under fifteen years of age, the culprit will suffer the maximum punishment of hard labor. Anyone who has committed an indecent assault, consumes or tries violently against individuals of either sex will be punished with reclusion.¹⁰⁷

The fact that sexual offenses committed against children are included in the French penal code as two articles, but the same issue is dealt with as a single article in the 1858 Ottoman penal code shows that the French penal code deals with the subject in a relatively more comprehensive way. Again, some similarities are remarkable when the Article 332 of the French penal code is compared with the Article 198 of the Ottoman penal code. In the Article 198 of the IOPC of 1858, “if a man does the abominable act to a person, that is to say, violates his honor, by force, he is placed in kyurek [forced labour as oarsman] temporarily.”¹⁰⁸ The article clearly describes rape as a crime against person’s honor but it confuses with its open-ended structure. Then, it revised in 1860 as; “where one has attempted to commit such abominable act by force but it has not come into effect by the intervention of impediments not under his control he is punished with the punishment of imprisonment for not less than three months.” In this updated version of the Article 198, the emphasis on “violation of honor” was completely removed in 1860. In addition, instead of the previously determined kyurek sentence, now it was decided to be sentenced to imprisonment according to the Article 198.

¹⁰⁷ Art.332__ (b) Quiconque aura commis le crime de viol sera puni des travaux forces a temps. Si le crime a ete commis sur la personne d'un enfant au-dessous de l'age quinze ans accomplis, le coupable subira le maximum de la peine des travaux forces a temps. Quiconque aura commis un attentat a la pudeur, consomme ou tente avec violence contre des individus de l'un ou de l'autre sexe, sera puni de la reclusion.

Source:<https://gallica.bnf.fr/ark:/12148/bpt6k57837660/f94.double.r=code+penal+de+l'empire+francais>. Bibliothèque nationale de France. Code Penal Annoté: édition de 1832, contenant l’indication des lois analogues, des arrêts et décisions judiciaires...

<https://gallica.bnf.fr/ark:/12148/bpt6k54717901.texteImage>.

¹⁰⁸ Utidjian, *The Imperial Ottoman Penal Code*, 150-151.

Article 331 of the French Penal Code is about sexual offenses against children under eleven years of age. The IOPC of 1858 also transferred it as it was and set an age limit of eleven. Actually, this age limit was not a transformation in accordance with the Ottoman social and legal codes (according to Hanafi School of law). The regulation according to Hanafi law defines the age limits of puberty between 9-12 years of age for girls, and 12-15 years of age for boys as transition from childhood to adulthood.¹⁰⁹ If the person is above this age limit and is still not observed to be an adult, it is stated that this should be questioned by the court.¹¹⁰ This lack of clarity in the IOPC was clearly removed through *Mecelle* in 1868, which was intended to address the unrest felt due to the influence of the European legal codes on the 1858 Penal Code and to include local social values into the legal scheme. The Article 986 of *Mecelle* defined what being an adult meant, stating that “the beginning of the time of arrival at puberty is, for males, exactly twelve years of age, and, for females, exactly nine years, and the latest for both is exactly fifteen years of age.”¹¹¹ During the ten-year period between the 1858 penal code and *Mecelle* (dated 1868), there was, as can naturally be expected, a conceptual gap in terms of the age of puberty.

¹⁰⁹ Yahya Araz clearly defines that the highest age limit of being puberty is fifteen years of age for both girls and boys. Please see; Yahya Araz, “Osmanlı İstanbul’unda Çocukluk, Çocuk Evlilikleri ve Cinsellik Yaşı Üzerine Bir Değerlendirme (19. Yüzyılın Başlarından İmparatorluğun Sonuna): Cinsel İlişkiye Uygundur Lakin Kendi Adına Konuşamaz!” *Toplumsal Tarih*, 274 (Ekim 2016); 44.

¹¹⁰ It was clearly defined in the IOPC of 1858.

Art. 40 may be thus summarized:

- A. A child (in the case of a male under 12 years old and in the case of a female under 9 years old) is regarded as unable to distinguish between right and wrong and is punished for an offence by being bound over on suitable recognizances or falling recognizances by reformatory treatment in prison.
- B. A child who is in the case of a male of 12 years but not of 15 years of age and in the case of a female of 9 years but not 15 years old and who is not in a physical state of puberty is *murahiq* or *murahiq*a and it is then a question of fact whether or not such child has the capacity of distinguishing between right and wrong. Such a child having such capacity is punished for an offence by the mitigated penalties prescribed in the Article, such a child not having such capacity is punished for an offence as one falling under the category described in A above.

Utidjian, *The Imperial Ottoman Penal Code*, 29-30.

¹¹¹ *Ibid.*, 27-28.

In conclusion, there are various important and informative sources on child abuse in the Ottoman archives. Recent studies on Ottoman legal reforms, crime and punishment have stayed away from issues of child abuse. Indeed, there is a considerable gap in Ottoman social and legal historiography regarding these issues. It would be possible to argue that such extraordinary stories of ordinary people will give us substantial information about the Ottoman legal system, community relations, gender construction and concepts of honor. In the primary sources of this study, where the victims of rape were not present in the court, the court might have chosen to follow and protect the rights of its citizens. Last but not the least, following Türker's arguments, primary motivation of the state with the legal reforms was to protect people from "tyrannical behaviors of pashas and governors"¹¹² but it is open to discussion in this study. Additionally, state authorities wished to prevent arbitrariness and overdose corporal punishment of local authorities by the help of the reforms, and "a fair and impartial treatment of all subjects before law supposedly would deliver the expected obedience since jurisdiction was a crucial element of community life"¹¹³ was the substantial expectations by Ottoman citizens from the Ottoman Empire.

¹¹² Ebru Aykut Türker, "Alternative Claims on Justice and Law: Rural Arson and Poison Murder in the Nineteenth Century Ottoman Empire," (Ph.D. diss., Boğaziçi University, 2011): 67, and İlaslan, "Abduction of Women and Elopement in the Nineteenth Century Ottoman Nizamiye Courts," 6.

¹¹³ İlaslan, "Abduction of Women and Elopement in the Nineteenth Century Ottoman Nizamiye Courts," 73.

CHAPTER 3

LEGALIZATION OF CHILDHOOD: COURT PRACTICES ON IDENTIFICATION OF OTTOMAN CHILD

The first part of this chapter examines a report, addressed to Grand Vizier [Keçecizade] Mehmed Fuad Pasha (1815-65) and dispatched from the local council in Sivas to the capital in 1862. The court report clearly states that no legislation existed regarding those who engaged in willful acts of *fi'l-i şeni* (literally meaning indecent act;¹¹⁴ here referring to any sexual conduct out of wedlock)¹¹⁵ and that this might possibly result in social hazards, requesting for proper amendments to the law. Based on the statements and concepts contained within this report, some critical insights on the structure and transformation of the 19th-century legal reforms will be revealed in the first part of this chapter. The second part of this chapter explores the context and characteristics of being a child in the 19th-century Ottoman Empire through the provisions of the penal code. The special case in the Ottoman town of Ruscuk, the present-day Ruse in Bulgaria, in which two children (aged 12 and 13) were the victims of a rape incident, is quite revealing in this regard. Yet another case in 1860 from Ruscuk of a 15-year-old male “child” of Jewish origin, the subject of a rape incident, is an aptly chosen example of how the penal code was applied in this 19th century reformation period in the Ottoman Empire. Through the details of these two cases, the interrogation reports and court registers, this part of the chapter examines the definition of age of puberty according to the legal provisions, the meaning of childhood and the penalization examples in this regard.

¹¹⁴ Başak Tuğ, *Politics of Honor*, 190.

¹¹⁵ Adjective; infamous, abominable: vile, immoral. Source: S. J. W. Redhouse, *A Turkish and English Lexicon*, (İstanbul: Çağrı Yayınları, 2006), 1056.

3.1 The transformation of the concepts “crime” and “victim” in the 19th century legal system

The 19th-century is seen aptly as the age of reforms and regulations in the Ottoman Empire.¹¹⁶ The reform waves that developed in the wake of the Imperial Edict of Gülhane (1839) in the early 19th century and transformed the concepts and conceptions in the legal, socio-political, and economic as well as military regulations. It would be proper to explore one aspect of this transformation through the contents of a report written by the Sivas state council, an administrative body that was created as the representative of the Supreme Court as part of the legal reforms initiated by the Imperial Edict of Gülhane in 1839. In the form of a report, this document was dispatched on 8 July 1862 (10 Muharram 1279) by the Grand Provincial Council of Sivas [*Meclis-i Kebir-i Eyalet-i Sivas*], addressed to the Grand Vizier [Keçecizade] Mehmed Fuad Pasha. The seal on the envelope of the report indicates that it was duly referred to the Supreme Council of Judicial Ordinances [*Meclis-i Vala-yı Ahkâm-ı Adliye*]. The content of the report presents examples for the “principle of legality”, “multiple jurisdictions” and the perception of the concepts such as ‘crime’ and ‘victim’ that were in transformation. The report, in this regard, is a key projection of the reconstruction efforts of law system in the practical life, embodied in the Edict of the Gülhane. The report starts by repeating the article 200 and 206 of the penal code of 1858 (see Appendix, Figure 4);

¹¹⁶ Selim Deringil, *The Well-Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire, 1876-1909* (London and New York: I.B.Tauris, 1998). İlber Ortaylı, *İmparatorluğun En Uzun Yüzyılı* (İstanbul: Kronik Yayınları, 2018). Donald Quataert, “The Age of Reforms, 1812–1914,” in *An Economic and Social History of the Ottoman Empire*, volume 2, eds. Halil İnalcık and Donald Quataert (Cambridge, New York: Cambridge University Press, 1994). Eric Jan Zürcher, *Modernleşen Türkiye'nin Tarihi* (İstanbul: İletişim Yayınları, 2015). Avi Rubin, *Ottoman Nizamiye courts: Law and Modernity*. (New York: Plagrave MacMillan, 2011). Ruth Miller, *Legislating Authority: Sin and Crime in the Ottoman Empire and Turkey* (New York: Routledge, 2013).

[It is decreed that] if the abducted child is a girl that has not yet reached the age of puberty, the perpetrator shall temporarily be condemned to penal servitude in the galleys [as oarsman] and if the abducted girl has also been subjected to indecent act [sexual assault] then the highest degree of the penalty determined for that offense shall be applied and if marriage has taken place then the criminal conviction as required by the *shari'a* shall be according to the two hundred and sixth article of the Imperial Penal Code and a person who has abused the virginity of a virgin female pubescent on promises to marry her and then has abstained from marrying shall be sentenced to imprisonment from one week to six years after the value of compensation for virginity is collected...¹¹⁷

These two articles stated that, based on the Islamic jurisprudence, in the cases of child abductions through coercion and deception, the malefactors would get a prison sentence of three months to one year, if the child was a female one, then penal servitude on galleys would also be added to the sentence, if the abducted female child was exposed to 'indecent act' (sexual assault), the penalty would be determined based on the requirements of *shari'a* on the condition the parties in question get married, and, lastly, if the girl in question experiences a sexual conduct on false promises to get married and then gets left unmarried afterwards, then a compensation and a prison sentence of one week to six months would duly apply. The report (see Appendix, Figure 4) then goes on to highlight that no legal provision existed to cover those who willingly engaged in all these acts, that this fact might lead to hazardous implications for the social order and ask for necessary legal regulations.

bir bîkr-i bâliğanın bekrini izâle idivire sonra almaktan istinkaf iden kimse kendisinden bedel-i tazmini bîkr alındıktan sonra bir haftadan altı aya kadar habs olunması iki yüzüncü maddeye ilave olarak zeyl kanunda muharrer ve mukayyid ise de rızalarıyla bu fiil- i feci'aya mücâseret idenler haklarında bir nev'i ceza kaydı görülememiş ve halbuki bu takımdan bazıları nikah ile almak dai'yesiyle bir takım bîkr-i bâliğaya iğfâl iderek kaçırmakta...şu yolda mesbuk olan mesarif dahi heder olarak ashâb-ı ma'zur olmakda bulunan ve bu makûle rızalarıyla bu fiil-i menhiyye ve memnu'ayı mürtekib olanlar hakkında bir münâsib ceza tahsis ve tayin olunmadıkça bu madde-i kabiha refte refte teksir iderek ve maâzallah-u teâlâ giderek bu keyfiyet ashâbı ırz ve

¹¹⁷ BOA. MVL. 633/67, 10 M 1279 (July 8, 1862).

namusa dahî sirayet eyleyerek mugâyir-i emr-i bari ve rıza-i âli pek çok harekâtı fecia' zuhûruna sebep vireceği derkar/derkenar(?) görülmüş...¹¹⁸

One of the most significant points the document indicates is the principle of legality with mentioning *shari'a*, a principle summed up in the meaning that no person could be sentenced to a penalty for having conducted an act that was not previously stated in the law or to a penalty harsher than what was mentioned in the law for that certain crime.¹¹⁹ Being aware of this principle, the report firstly lists the sexual assault offenses openly stated in the articles 200 and 206 of the penal code of 1858,¹²⁰ upon which it highlights that no penalty was stated for these acts in the cases where there was free will. This, according to the report, was doomed to bring about a social degeneracy and debauchery if the authorities failed to draft legal regulations for the seemingly willing sexual misconduct cases.

her sınıf teba' ve milletin mal ve can ve ırzı ve namuslarının ikmâl ve muhâfazasıyla her yüzden mâzhar-ı âsâyiş ve istirâhat olmaları kazıyye-i mültezimesine masrûf ve mâtuf olub şu kız kaçırma madde-i --- ise câbecâ zuhûr iderek halkın insilâb-ı huzur ve asâyişine sebep virmekde bulunmuş olduğundan...¹²¹

The drafters and executives of the law, as the report implies, seem to remain loyal to the principle of legality, as explained before. An interesting transformation-period principle of note, though ignored in several cases, the legality principle showed the striking difference between the reformist Tanzimat-era legal structure and the *shari'a* law. The practices of the *shari'a* law allowed the *kadi* to consider the social fabric of the society in which they performed their profession taking the local dynamics in the due process. It is therefore possible to argue that the *kadi* courts are expected to have a perspective that harbored a more flexible and responsive approach

¹¹⁸ BOA. MVL. 633/67, 10 M 1279 (July 8, 1862).

¹¹⁹ Ezgi Aygün Eşitli, "Suçların ve Cezaların Kanuniliği İlkesi," 1.

¹²⁰ I.Tertip, "Düstür," (Matbaa-i Amire, H.1289), 581-582

¹²¹ BOA. MVL. 633/67, 10 M 1279 (July 8, 1862).

away from the monolithic centrality, facilitating a legal paradigm that focused more on the solutions in terms of praxis.

Additionally, the *shari'a* law was a driving force that motivated the 19th-century reforms. It was actually not just because the state was more Islamic and religious; the reforms and the changes on the legal system are examples of global changes, the fact that religion played a crucial part in this process was not unique for the Ottomans.¹²²

In France, the cradle of secularism, in the mid-19th century, the state and religion were reunited to some extent while Italy and Austria had never separated them in the first place. In fact, the list is quite long, but it is critical to understand that the role of religion in reforms is a universal phenomenon and not a unique case for the Ottoman reformation period. All the legal changes in the Ottoman Empire were carried out under the auspices of the *ulema*. At that point, both religion and law tried to define changing social norms.¹²³ The codification of the criminal law emerged as a response to certain changes related to individual freedom or moral boundaries, and the *ulema* supported it.¹²⁴ While the *kadi* courts tried to punish the criminals according to these laws, they indicated practically where the new borders of the criminal code were drawn. While *ulema* provided legitimacy and security for the state-run legal reforms in response to changes in society, the limits and adequacy of this change were observed with practical applications, as mentioned above. The 19th century reforms is somewhat distinctive; *ulema* began to become more dependent on bureaucracy and the state and to define the legal system, institutions and

¹²² Miller, p. 45 and Heinzelmann, p. 297.

¹²³ Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 67, 76.

¹²⁴ Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 174. and Jun Akiba, "From Kadi to Naib," in *Frontiers of Ottoman Studies*, ed. Colin Imber (New York: I.B.Tauris, 2004), 47-48.

bureaucracy, rather than to follow and define social norms.¹²⁵ The religion, which is also seen as the source of legitimacy and reliability in the change of the criminal law, was then beginning to respond to the institutional changes, not to social changes, and to define and legitimize institutionalization and bureaucratization. As it will be seen in the decision texts of the case files contained in this thesis, it is no longer social norms came to the fore, but rather the legal regulations and reforms.

Another point that the report indicates regarding the Tanzimat-era legal reformation was the practice of having dual legal systems, in other words, multiple jurisdictions.

henüz sinn-i bulûğa varmamış bir çocuğun cebr veya hîle ile bir tarafa kaçırılanların üç aydan bir seneye kadar habs ve eğerce bu kaçırılan çocuk henüz sinn-i bulûğa varmamış bir kız ise kaçırılan şahsın muvakkaten küreğe konulması ve eğer kaçırılan kız hakkında fiil-i şen'i icra olunmuş ise bunu mürtekb olanlara o fiil için muayyen olan cezanın müntehâ-yı derecesinin icrası ve nikah vuku bulmuş ise iktiza-yı şer'iyyesi üzere hükm olmuş ceza kanunnameyi hümayunun iki yüz altıncı maddesinde ve tezvic ideceğim deyu iğfâl ile bir bîkr-i bâliğanın bekrini izâle idivire sonra almaktan istinkaf iden kimse kendisinden bedel-i tazmini bîkr alındıktan sonra bir haftadan altı aya kadar habs olunması iki yüzüncü maddeye ilave olarak zeyl kanunda muharrer ve mukayyid ise de rızalarıyla bu fiil-i feci'aya mücâseret idenler haklarında bir nev'i ceza kaydı görilememiş...¹²⁶

The part in the report in question stating the fact that the penalty of the perpetrator in the cases when a girl who had gotten abducted and experienced sexual misconduct married her rapist would be determined based on the requirements of the *shari'a*, in other words, the Islamic criminal law, as also stated in the 206. Article of the 1858 penal code. The report clearly proves that the dual jurisdiction existed both in the norms and in the application, in theory and in praxis, for the period, as well. What should be proposed here is that, though a dual system seemingly exists, as also argued by a number of studies, ontologically accepting the duality and considering

¹²⁵ Ruth Miller, *Legislating Authority*, 23.

¹²⁶ BOA. MVL. 633/67, 10 M 1279 (July 8, 1862).

the existence of both “activist” and “reactive state” responses are not sufficient in themselves to explain why the duality existed in the first place. The inner motives and dynamics should also be comprehensively taken into consideration to understand the period more accurately, though the transition from one model to another is an acceptable but insufficient explanation. As the cases in this study reveal, the definite legal provisions and restrictions brought about by the central authority in an ‘activist’ fashion in the period that can be a transitional one challenged the social perceptions and already-consolidated judgments in the meantime. The statement on the 197th article of the penal code which reads as “whoever does the abominable act to a child under eleven years of age is punished with the punishment of temporary imprisonment for not less than six months” defined the ultimate limit of being a child as eleven sharply but indirectly. The interrogation reports that the local courts prepared to be sent over to the higher appeal courts clearly and constantly referred to the sexual assault victim individuals with 12, 13, 14, and even 15 years of age as “children” but preferred to penalize the perpetrators not actually considering the victims as legal children but rather as adults with full faculty. For this reason, examining the extent to which the legal sets established by the central authority in a definite and clear-cut fashion were successful in application yields far more meaningful and comprehensive insights rather than merely proving that a duality existed in terms of the legal systems.

The penal code of 1840 was the first fruit¹²⁷ of the legalization and codification reforms promised in the Edict of the Rose Chamber, a prominent characteristic of the modernization struggles that followed.¹²⁸ Upholding the principle of legality mentioned above and promising an end to the arbitrary conduct,

¹²⁷ Mustafa Şentop, “Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü,” *Türkiye Araştırmaları Literatür Dergisi*, Cilt: 3., Sayı 5 (2005): 652

¹²⁸ I. Tertip, “Düstür,” (Matbaa-i Amire, H.1289), 4

this code was followed by the penal code dated 1851. These two codes partly copied the European penal codes in terms of order, scheme and codification and were partly exposed to a process called *tedvin*.¹²⁹ Ruth Miller lays down the most remarkable differences between the two codes as follows. While the statements in the 1840 text attributed the values contained within the Edict of the Gülhane to “justice,” the 1851 text attributed them to “the Imperial State.” Similarly, while the loyalty was to the Sultan in the 1840 code, it was deemed reserved for “the Imperial State” in the 1851 text. The interest in the equality principle seemed to wane in the 1851 text compared to the former one.¹³⁰ Additionally, Miller holds that, as a result of all these, the process of transformation from classical absolutism represented by the monarch to modern authoritarianism represented by the nation-state had begun. All these transformations, whether subtle or visible, suggest a transformation also in the concept of crime and therefore the victim in front of the law and led to the emergence of cases with no individual claimants. Almost all the court cases analyzed within this study lack a claimant person except for one case, for which a distinct, detailed and comprehensive analysis was written. Even though the court reports mention some specific names as the victims of the incidents, they included no official “complainants” or “injured parties.” The reason that led the Grand Provincial Council of Sivas to write down the aforementioned report was willful sexual engagements out of wedlock, deemed by the Council as the “horrendous act (*fi'l-i fecia*¹³¹)” though no ontological evil dimension to it likely existed and thus no complainant might arise. The Council then goes on to highlight the risk of social order falling into disarray due to apparent immorality.

¹²⁹ To write or collect in a register or volue of codes.

S. J. W. Redhouse, *A Turkish and English Lexicon*, (İstanbul: Çağrı Yayınları, 2006), 1119.

¹³⁰ Miller, *Legislating Authority*, 85.

¹³¹ *fecia*: tragedy; calamity. Redhouse, *Lexicon*, 362.

...zeyl kanunda muharrer ve mukayyid ise de rızalarıyla bu fiil-i feci'aya mücâseret idenler haklarında bir nev'i ceza kaydı görilememiş...mesbuk olan mesarif dahi heder olarak ashâb-ı ma'zur olmakda bulunan ve bu makûle rızalarıyla bu fiil-i menhiyye ve memnu'ayı mürtekib olanlar hakkında bir münâsib ceza tahsis ve tayin olunmadıkça bu madde-i kabiha refte refte teksir iderek ve maâzallah-u teâlâ giderek bu keyfiyet ashâbı ırz ve namusa dahî sirayet eyleyerek mugâyir-i emr-i bari ve rıza-i âli pek çok harekâtı fecia' zuhûruna sebep vireceği derkar görülmüş...her sınıf teba' ve milletin mal ve can ve ırzı ve namuslarının ikmâl ve muhâfazasıyla her yüzden mâzhar-ı âsâyiş ve istirâhat olmaları kaziyeye-i mültezimesine masrûf ve mâtuf olub şu kız kaçırma madde-i --- ise câbecâ zuhûr iderek halkın insilâb-ı huzur ve asâyi.ine sebep virmekde bulunmuş olduğundan...¹³²

Even in the cases in which one individual violates the rights of another individual and commits a crime harming the other in the Ottoman society, the victim was thought to be the “public” itself. The offense was, then, committed not against the other individual but rather against the state itself. The state seems to be victimizing itself in these cases, and through this victimization, reasserting its authority and renewal under the guise of protecting the social status and honor of the subject individuals.

While mentioning about the incidents of willful sexual misconduct, the report implies that the parties engaging in such sexual acts involving mutual consent could as well be boys, judging from the first sentence of the document. The report, however, later elaborates solely on what the female children suffered, what kind of a process they went through, and the regulations implemented in order to protect them. The document insists that these regulations fall short of covering the need and that further and stricter regulations should be prepared. The control over the individual no doubt increased as a result of this. The significant point to note here is that the control over the women increased even more than the average. The questions such as how the future of the victim males was determined should they be object of a sexual

¹³² BOA. MVL. 633/67, 10 M 1279 (July 8, 1862).

assault case, how they would be able to get rid of the situation they were in and how they would survive within the society with the stigma constituted a puzzle. It is almost as if the males chose to remain silent in the face of a crime generally committed against females being committed against another male this time in order not to injure the masculine authority they enjoyed. The document gradually details the control over the body and social status of women. The incidents witnessed are being exposed to sexual assault, losing virginity, sentencing the perpetrator to prison after the collection of the price of virginity, official marriage, abduction and rape on false promises of marrying, the girl's eloping with a male with her consent and even claiming that she herself abducted him. All these bear witness to the state devising its own language and describing the incident in her own terms while it was the females that suffered the misconduct.

Additionally, two times did the council report in question explicitly mention the phrase “honor and dignity (*ırz ve namus*),” which was mentioned eight times in the Edict of Gülhane, the famous modernization and reformation document referred simply as the Tanzimat Edict. The first referral to the phrase on the report is while expressing a concern for the possibility of malice posed by those who engaged in willful sexual misconduct “spreading over to the honor and dignity” of the society at large and the second referral is in the statement which reads as “the fulfillment and protection of the property and life and honor and dignity of each class of subjects and each nation.”¹³³ This phrase is remarkably similar to the one used in the context of the “equality” principle openly stated on the Edict of Gülhane itself. To what extent the Tanzimat-era reforms penetrated and influenced the social lives of the individuals, how much these reforms succeeded in affecting the social perceptions

¹³³ BOA. MVL. 633/67, 10 M 1279 (July 8, 1862).

and the social fabric, is an area of Ottoman history studies in an increasing fashion and is a point that needs to be touched upon regarding the reform efforts of the time. The court case examples analyzed in this thesis and in this chapter in particular reveal how the sexual assault incidents were perceived within the flow of social life, what the approach to the concepts such as honor, child, law was like and what kind of meanings such terms had in the lives of ordinary Ottoman citizens. The report prepared by the Grand Provincial Council of Sivas mentioned above is especially valuable and worthy of note in that it reflects the social perceptions in the region. In this regard, the males and male children were part of the honor phenomenon. The males had their fair share of being exposed to the sexual assault incidents, probably as frequently as the females were, and they were no doubt included in the sexual honor mechanism constructed collectively by the society as well. The analyses of the cases also quite rightfully question whether the newly devised penal code and regulations were effective or not in the face of the offenses in question.

3.2 Legalization of childhood: the legal context of being a child in the 19th-century Ottoman empire

Just as the concept of childhood does not have a universal definition, the Ottomans did not define childhood in a definite fashion and did not ground it on a legal basis. For Elizabeth Warnock Ferns, childhood as a "cultural ideal," might be based on religion, morality and cultural values such as honor. It is possible to argue that social, cultural and religious practices were effective at this point, and drew the boundaries of childhood and adulthood just like they did those of masculinity and femininity. Despite the abundant discussions on the legal status of children from the mid-18th century onwards, the Ottoman state failed to define childhood through serious

reforms or regulations. In the cases referred to them, the kadi courts added their comments during the procession of the cases, taking into consideration whether the defendant or the victim was a child, or an adult and the nature of the offense committed, which rendered a strict regulation quite unnecessary. The Islamic law dictates that a person must reach the age of puberty in order to be liable for an offense.¹³⁴

It is necessary to touch upon the relevant regulation of the Ottoman civil code here. As Peters quite succinctly states “[w]hereas the penal codes of 1840 and 1850 were much a continuation of traditional Ottoman legislation in criminal matters, the 1858 penal code was different; it was clearly of French inspiration, especially in its structure, system and general notions.”¹³⁵ Despite all its clarity and advanced stance, the 1858 penal code did not define what constituted the liability for an offense, what reaching the age of puberty meant or what was required for being an adult. The articles 40 and 197 of the relevant penal code reveal this vagueness when examined together. The 40. Article, as translated by Utidjian into English, reads as follows:

Article 40. An offender who has not attained the age of puberty is not liable to the punishments prescribed for the offence, which he has committed and if he is further not a person possessed of the power of discernment he is given up to his father, mother or relatives by being bound over in strong security. In case no strong security is produced by the father, mother or relatives he is put

¹³⁴ Outside of criminal culpability, Islamic legal discourse also debates the issues of when children begin to obtain rational thought and discernment concerning religious truth and the difference between right and wrong. Eyal Ginio looks at how Islamic court judges and scribes determined the appropriate age when a child could legally convert to Islam in seventeenth- century and eighteenth-century Ottoman Salonika. Two prominent eleventh- century Islamic thinkers and jurists, Al- Ghazali and Al- Sarakhsi, divided childhood into three general time periods: ‘(1) the total absence of reason; (2) imperfect reason following the development of discernment; and (3) the full possession of reason when the child approaches maturity’ (Ginio, ‘Childhood, Mental Capacity, and Conversion’, pp. 100–1). Salonika Islamic court jurists assigned specific ages to these periods. ‘The Lasonican scribes registered three different categories of minors when dealing with conversion to Islam: Children under the age of seven [the undiscerning child]; children age seven to ten; and adolescents above [ten]’ (Ibid., p. 101). There is a significant difference, however, between age- appropriate conversion to Islam and criminal culpability. While Ginio’s analysis demonstrates that childhood was subject to different Islamic- based legal interpretations, the age of criminal accountability is very clear. Kent Schull, *Prisons in the Late Ottoman Empire: Microcosms of Modernity* (Edinburgh: Edinburgh University Press, 2014), 171.

¹³⁵ Rudolph Peters, *Crime and Punishment in Islamic Law*, 131-132.

in prison for a suitable period through the instrumentality of the police for self-reformation. But if such offender who has not attained puberty is *murahiq* that is if he has committed that offence deliberately by distinguishing and discerning that the result of his action and deed will be an offence...¹³⁶

The penal code did not clearly define the boundaries of being an adult. As the cases in this study indicate, the court proceeded with definitions that were quite ambiguous and vague. This lack of clarity was substantially removed through *Mecelle* in 1868, which was intended to address the unrest felt due to the influence of the European legal codes on the 1858 Penal Code and to include local social values into the legal scheme. The Article 986 of *Mecelle-i Ahkâm-ı Adliye* defined what being an adult meant, stating that “the beginning of the time of arrival at puberty is, for males, exactly twelve years of age, and, for females, exactly nine years, and the latest for both is exactly fifteen years of age.”¹³⁷ Additionally, the Article 987 of *Mecelle* highlighted that when a person showed no signs of being an adult, then only the age would matter: “a person in whom the signs of puberty do not appear, when he has reached the latest time for arrival at puberty (Article 986) is considered in law as arrived at the age of puberty.”¹³⁸ What can be deduced from these articles is that, though the courts were to pass their rulings based on the penal codes, they had to be open to subjective evaluations as well while deciding adulthood, and, for that matter, childhood. A person had to show the signs of adulthood physically and if not, to prove the age, in order to be held liable before law. During the ten-year period between the 1858 penal code and *Mecelle* (dated 1868), there was a conceptual gap

¹³⁶ John Alexander Bucknill and Haig Apisoghom Stepan Utidjian, *The Imperial Ottoman Penal Code: A translation from the Turkish text, with latest additions and amendments, together with annotations and explanatory commentaries upon the text and containing an appendix dealing with the special amendments in force in Cyprus and the judicial decisions of the Cyprus courts* (London: H. Milford, Oxford University Press, 1913), 27.

¹³⁷ Utidjian, *The Imperial Ottoman Penal Code*, 27.

¹³⁸ *Ibid.*, 27.

in terms of the age of puberty. Despite this gap in the code, the Ottoman courts did not wait for Mecelle's issuance in 1868 in applying what Mecelle would later require. For instance, in the case of Lazari, the 15-year old male child who got raped and ended up at the court, the court questioned the child whether he had come of age or not during the interrogation (see Appendix, Figure 5).¹³⁹ This case clearly shows that the boundaries drawn by the articles of *Mecelle* were already in practice by the time this hybrid code came into effect. It actually comes from the practices of the kadı courts. In the succeeding period, the legal registers witnessed quite a lot of cases in which the Ottoman courts passed rulings involving their *ad hoc* decisions rather than waiting hands-tied in the face of the unaddressed legal points.

The Imperial Ottoman Penal Code (IOPC) of 1858 defined the age of puberty for the defendant persons but it failed to come up with the age of puberty definitions for the victims. Ten years later than proclamation of the IOPC of 1858, the statement in *Mecelle* (promulgated in 1868) which read as, “if such offender who has not attained puberty is *murahiq* that is, on the verge of puberty, between the ages of nine and fifteen and still not having shown the physical signs of puberty...”¹⁴⁰ required that a person needed to show the signs of being an adult as well as being between the ages of 9 and 15, which, in a way, determined the boundaries which were meant to be defined by the ruling courts themselves.¹⁴¹ Rudolph Peters highlights that the Hanafi school of thought determined the age of puberty as 12 for boys and 9 for girls and 15 as the highest age limit for both.¹⁴²

There is no *mens rea* if the perpetrator of an offence, according to the law, lacks the intellectual capacity to realize fully the implications of his conduct. This is the case with minors and the insane. Minority ends with (physical) puberty. There is, however, an irrefutable presumption that children cannot

¹³⁹ BOA. MVL. 791/16/1/3. 24 R 1282.

¹⁴⁰ Utidjian, *The Imperial Ottoman Penal Code*, 27.

¹⁴¹ *Ibid.*, 27.

¹⁴² Peters, *Crime and Punishment in Islamic Law*, 21.

have reached puberty before a certain age (defined differently by the various schools) and must have reached it after a certain age. Between the age limits, puberty can be proven by establishing that a person has the physical signs of sexual maturity.¹⁴³

The phrase ‘age of puberty’ in the Article 40 in the IOPC of 1858 and the age limitations stated in Mecelle 1868 were valid for a child’s committing a crime, in other words, when a child was the defendant at the court. The cases differed, however, when children were victims of an incident. It is necessary, therefore, to analyze the cases and the statuses of the children when they were the victims of an offense committed against them. In order to clarify this context, the Article 197 of the penal code of 1858 needs to be touched upon here:

Article 197. Whoever does the abominable act to a child under eleven years of age is punished with the punishment of temporary imprisonment for not less than six months.¹⁴⁴

In Article 197 of the IOPC 1858, the age limit of being adult for the victims was set at 11, while the state of being defendant was not clearly stated; the court practices remained in a strange uncertainty in that regard. But why did the regulation leave an open arrangement? To protect the victims more comprehensively or to leave the Article 40th open so that the courts could make their own decisions?

At the time when the central authority is trying to strengthen the control mechanisms and close the ranks in bureaucracy, let us keep the Article 40th on the edge and concentrate on the Article 197, which would clarify the matter. Article 197 of the IOPC 1858 seems to be translated directly from Article 331 of the French Criminal Code;

Art.331__ (a) Every indecent assault, consume or attempt without violence on the person of a child of either sex under the age of eleven shall be punished with reclusion.¹⁴⁵

¹⁴³ Ibid., 21.

¹⁴⁴ Utidjian, *The Imperial Ottoman Penal Code*, 149-150.

The age limit defined in Article 197 is the definition of the age of puberty of the victims mentioned in the French Criminal Code of 1832 but the age of puberty referred in Article 40 of the IOPC 1858 is a statement defining the defendants. The strict definition set out in Article 197 of the IOPC 1858 is directly translated from the French Penal Code and that was the phrase formulated in accordance with social, cultural and historical fabrics of the French society (if they were not translated from elsewhere). That was not actually suitable for the cultural and social codes of the Ottoman society. It also led the Ottoman courts into a highly difficult situation in the process of investigation while trying to make suitable and fair decisions. For this reason, the Ottoman courts were quite abstained from applying the article that was derived from the French penal code and Ottoman jurists managed the investigation process in a manner appropriate to the Ottoman social and historical codes and fabrics. In the complaint petition dated June 1864 (H. 1281 Muharrem),¹⁴⁶ a 15-years-old Greek boy named Lazari, the son of Captain Kirako, declared that he had been raped the day before the complaint (see Appendix, Figure 6). It is evident that the victim 15 years old Lazari named boy was an adult according to the Article 197 of the IOPC 1858, but the cross-interrogation questioned whether Lazari was an adult at that point, in a way arguably questioning the Article 197 as well;

Question: Do you know how old you are?

Answer (Lazari): I turned to 16,

Q: Are you adult or not?

A: I reached puberty.¹⁴⁷

¹⁴⁵Article 331. “Tout attendant a la pudeur consommé ou tente sans violence sur la personne d’un enfant de l’un ou de l’autre sexe, age de moins de onze ans sera puni de la reclusion.” (Loi, 28 Avril 1832). For the text of the French Penal Code, see: <https://gallica.bnf.fr/ark:/12148/bpt6k57837660/f94.double.r=code+penal+de+l'empire+francais>. Bibliothèque nationale de France, and https://ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_3.htm. Accessed on June 3, 2019.

¹⁴⁶BOA. MVL. 742/107/2. 5 M 1281.

¹⁴⁷BOA. MVL. 791/16/1/3. 24 R 1282.

During the investigation, the questioning of whether Lazari was an adult or not shows that the Article 197 adapted from the French Penal Code of 1832 was not accepted in the investigation process of the Ottoman court. At least, some local executives regarded this article as unsuitable for the bureaucratic contexture and social and cultural fabrics of the Ottoman society. In this part of the work, it would be possible to examine how the 11-year age limit affects the lives of ordinary people in the Ottoman Empire in terms of social perception, cultural values and the sense of justice and law. Additionally, the analysis of the court cases would show inconsistencies and occasional uncertainties at some part of legal reforms on the issues of sexual crimes against children in practical applications.

The details of a case in Ruscuk town (present-day Ruse in Bulgaria) might explain how the matter of age of puberty was subjective and sensitive for the Ottoman court. The four residents of the Vetova township of the Ruscuk town, Veli, Mustafa, Ali and Süleyman named people took twelve-years-old Hüseyin and thirteen-years-old Salim named children to the countryside to graze their oxen together on the 27th day of the month of Shawwal 1270 (May 8, 1861) and captivated them for the night and sexually assaulted them for the whole night (see Appendix, Figure 7).¹⁴⁸ During the interrogation process of this court case, while the officers questioned the four suspects, they constantly referred to the victims Hüseyin and Salim as “child” and continuously put this in writing in the interrogation report.¹⁴⁹ The court officers considered Hüseyin (12) and Salim (13) physically as children while they said, “it would not have been possible for them [Hüseyin and Salim] to escape their [suspects Veli, Mustafa, Ali and Süleyman] clutches by night” during the investigation.

¹⁴⁸ BOA. MVL. 931/27/2/1. 16 Za 1277.

¹⁴⁹ BOA. MVL. 931/27/2/1. 16 Za 1277.

Nevertheless, since Article 197 covers children under eleven years of age as rape victims, in the case of Hüseyin and Salim named children, suspects of the case were tried under the Article 198 of the IOPC and were declared as rapists and requested to be penal servitude from the Supreme Court. Although, the officers clearly mentioned Hüseyin and Salim as “child” in the interrogation report and it was stated in *mazbata*, a detailed summary of the case, that Hüseyin and Salim could not defend themselves physically. It is emphasized in the interrogation report (see Appendix, Figure 8) that Hüseyin and Salim are unable to reason out this indecent act;

Answer: He might as well be uttering such slanders in order to be saved from herding oxen, what shall we do then?

Question: Given that [making up] such matters would be horrendously shameful for them, even though these children are unable to reason out these things, how could they possibly have surrendered their chastity to you willingly? These comments utterly lack credibility and you must have forcibly committed this [offense].¹⁵⁰

Hüseyin (12) and Salim (13) were constantly defined as “child” during the interrogation and the court report continuously used it to identify them. However, in the document (see Appendix, Figure 9) dated June 6, 1861 sent to the Supreme Council by the Local Council of Silistre clearly identified Hüseyin and Salim as children.¹⁵¹ It is obvious to see that identifying 12 and 13 years age boys as children by local council and court officers means acknowledging them as children by the reference of social and cultural fabrics of the Ottoman society.

Subsequently, in the decision report of the Supreme Court clearly indicated that, “twelve-years-old Hüseyin and thirteen-years-old Salim named children were raped by force and the incident was denied by the suspects... [Suspects] accused children allegedly of having criminal records on indecent acts... and [they] have

¹⁵⁰ BOA. MVL. 931/27/1/3.

¹⁵¹ BOA. MVL. 931/27/4/1. 7 M 1278.

raped without their consent.”¹⁵² By this indication, both local court and the Supreme Court explicitly described and legitimized Hüseyin (12) and Salim (13) as children. Although Hüseyin and Salim were still defined as children by the Supreme Court, the court made its decision based on the rules drawn by the criminal code. On July 15, 1861 (7 Muharrem 1278) the Supreme Council of Judicial Ordinances found it appropriate to punish the suspects with three years penal servitude (*kürek cezası*) according to Article 198 which reads as follow, “if a man does the abominable act to a person, that is to say, violates his honor by force,¹⁵³ he is placed in penal servitude temporarily.” But actually, the statement on the 197th article of the penal code is as following, “whoever does the abominable act to a child under eleven years of age is punished with the punishment of temporary imprisonment for not less than six months” defined the ultimate limit of being a child as eleven indirectly. The interrogation reports and the reports that the local courts prepared to be sent over to the higher appeal courts clearly and constantly referred to the sexual assault victim Hüseyin and Salim as “children” but preferred to penalize the perpetrators not actually considering the victims as legal children but rather as adults with full faculty. In this case, in the newly created bureaucratic order, the decisions taken in the local courts are sent to the higher courts and finally sent to the Supreme Court for a review and latest judgment. Even if legislation determined by the central authority to be implemented in all legal institutions was not intended to be implemented practically in local councils, the decisions/legislations were obliged to be enforced because every case file was prepared and reported to the upper councils and finally to the Supreme Council within the new legal order.

¹⁵² BOA. MVL. 931/27/4/1. 7 M 1278.

¹⁵³ “by force” or “by compulsion,” “by constraint,” “by coercion.” It is important to notice here that “force” or “constraint” would, and has often been held in Cyprus to, include threats or coercion inducing a great state of fear: --- e.g., brandishing a knife, threatening to kill or disembowel and the like. For details, see Utidjian, *The Imperial Ottoman Penal Code*, 150.

Another incident in Ruscuk shows us also how Ottoman children were defined and how the child identity handled in court case files is revealed in a sexual crime case. According to the interrogation report (see Appendix, Figure 10) dated November 3, 1860 (18 Rabiyyülahir 1277), Sadullah, Ahmed and Ismail named persons raped a son of Jewish tailor, 15 years-old İlyazar named boy. Not only suspects but also the interrogation officer consistently identified İlyazar as a “child”;

Answer (Ahmed): After we had performed portorage with Sadullah that day, we were heading towards our houses when we came across İbrahim Efendi. He came near us and proposed to have a walk in the garden, upon which we went to the said garden. There was no one in the garden; only the child we raped was there. He brewed coffee for us, and we drank it. After we drank [the coffee], as we were walking down from the pavilion, İsmail Efendi cried out “Hold him down!” upon which Sadullah and I grabbed hold of the hands of the Jewish child. İsmail Efendi unbounded the child’s pants and raped him, after which I, and then Sadullah raped him forcibly, all of us one by one.

Question: Did he let no cry at all as you raped this Jewish child?

Answer: He never shouted.

Question: Then it means that İsmail Efendi wanted to rape this child and since the said child did not agree to it, you raped [“performed the ‘indecent act’ on the child” in the original text] him forcibly.

Answer: When İsmail Efendi first proposed it to the child, he refused, saying that we were also present there. He [İsmail Efendi] then made us hold the child as he raped him, then he held the child and we raped.¹⁵⁴

One significant point regarding İlyazar’s (15) and Hüseyin (12) and Salim’s (13) is that both the interrogation reports and court report submitted to the higher courts and the Supreme Courts constantly referred victims as child(ren) and it seems they all agreed that these boys were children in view of social and cultural expressions of court officers and perceptions. Despite all these facts, suspects are not punished according to Article 197 that mentioned the abominable act to a child under eleven years of age, they were punished according to the Article 198 that covers the

¹⁵⁴ BOA. MVL. 933.21.3.1. 18 R 1277.

abominable act to a person and violation his honor, by force.¹⁵⁵ The Ottoman court did not take all these crimes as sexual ones, violation of honor instead. The statements contained in the interrogation reports of the court cases show that both the reports of the local courts and the statements of the Supreme Court are inconsonant with the Ottoman criminal code of 1858. At the end of the court cases, the conflict of the latest judgment of the Supreme Court with the statements used gives a strong impression of how the central authority got logistically close to, but distant from, the local.

A different example regarding the age of the victim is another court case, registered in the judicial records in 1864 in Balıkesir. The report (see Appendix, Figure 11) prepared by the Supreme Council of Judicial Ordinances (*Meclis-i Vâlâ-yı Ahkâm-ı Adliye*) dated 15 May 1864 (8 Dhu'l-Hijjah 1280) stated that, “according to the Article 198 of the Penal Code, a person perpetrating the indecent act on another person shall be temporarily sentenced to forced servitude in the galleys [as oarsman]...and, starting from the 21st day of Ramadan in the year 1280, be sent to the Capital in order to be put to servitude [as oarsman] in the Royal Dockyard for three years after public exposure on the spot, according to the Article 198.”¹⁵⁶ The fact that the offense against İbrahim was judicially processed based on the Article 198 (the one regarding the sexual assault), rather than the Article 197 regarding the sexual assault against the individuals under 11 years of age that his age was not stated at any point during the investigation implies that he was an adult.¹⁵⁷ In most of the example cases reviewed in this study, in the cases where the victims were either children or minors who had not come of age, the matter of age was often brought up and stated in the records. When the investigation details were reported to the higher

¹⁵⁵ Utidjian, 150.

¹⁵⁶ BOA. MVL. 672/51/4/1. 8 Z 1280.

¹⁵⁷ Utidjian, *The Imperial Ottoman Penal Code*, 149.150.

court or council, if the age of the victims had the potential to affect the ultimate court verdict, this detail was surely stated in the investigation report. In this particular case, then, what would it imply to us that the age of the sexual assault victim was not stated? It is highly challenging to figure out whether this detail regarding the victim's age was omitted because he was already an adult and his age was not stated or because he was on the verge of reaching the age of puberty, in other words, between 12 and 15. The reason for this is that, as it is witnessed from some other previous cases, the defendants who raped the children in the ages 12, 13 and 15 stood trials also based on the Article 198. At least in this incident in Balıkesir, even though it is possible to evaluate that the "child" was not under 11 years of age, this is not quite possible in practice. This can ultimately be interpreted as ambiguity and inconsistency in the application of the penal code, which is arguably one of the basic points this present study attempts to bring up.

In yet another court case, a military officer named Mehmed, a member of the Royal Legion of the Capital (Dersaadet Ordu-yu Hümayun) visited the house of Cebrail Behim, an individual member of Armenian community of the Empire, for repairment purposes and sexually assaulted the 6-year old Mihail, the Armenian's son who was then present in the house by forcibly taking him to a distant corner of the garden on 18 June 1861 (9 Dhu'l-Hijjah 1277). Despite the fact that Mehmed denied all the accusations during the investigation, the medical examination by the doctor in charge revealed that Mihail's anus was visibly injured and bruised due to external pressure and Mehmed had considerable lawn dirt around the knee area of his pants and on his shirt, which assured the authorities that the alleged incident really took place, leading to Mehmed ultimately pleading guilty (see Appendix, Figure

12).¹⁵⁸ The final verdict dated 27 August 1861 (20 Safar 1278) ordered Mehmed's dismissal from his military post, his banishment from his city of residence, his being bashed with stick [200 times] and finally, as required by the Article 198 of the Penal Code, his being sent over to the Fortress of Akka (present-day Acre in Israel) to be put to forced servitude as an oarsman for five consecutive years (see Appendix, Figure 13).¹⁵⁹ While in theory, Mehmed, having raped a 6-year-old and having pleaded guilty, needed to face trial based on the Article 197 calling for prison sentences for the sexual assault offenses against the children under the age of 11, he stood trial based on the Article 198, the one regarding the rape incidents against the individuals well over the age of 11. This court case reveals that in practice different penal provisions regarding the persons below and above the age of 11 or the definition of "child" were effectively disregarded or ignored by the courts. Stemming from this reason, in the cases where the age of a child was not clearly stated in the records, it is not quite possible to predict according to which legal article or through which penalty the defendant faced trial. The reason for this apparent failure to process judgments according to the stated articles of the penal code might as well be the conditions of the prisons at the time. Though this is not one of the focal points of this thesis, what can be soundly derived from the primary sources is the apparent lack of the definition of the term "child[ren]."

Yet another strong impression these cases reveal is that, even though who would be considered a child and who not was defined in the penal code partially in a clear-cut way. It was quite difficult to discern the difference because of the differences in the phrases. The sexual assault case reviewed above, the one that took place in Balikesir on March 21, 1864 (Shawwal 27, 1280), resulted in the final

¹⁵⁸ BOA. MVL. 672/51/2/1. 9 Z 1277.

¹⁵⁹ BOA. MVL. 759/95/8/1. 20 S 1278.

verdict that three individuals raped a child and the perpetrators were sentenced to forced labor on the galleys for three years each, based on the Article 198 of the penal code. It is quite difficult, however, to understand according to what criteria the victim child was considered a “child” or around which ages he was in, due to the fact that the interrogation of the case or the consecutive judicial reports did not clearly state the age of the victim and that the final verdict by the Supreme Court [*Meclis-i Vâlâ*] failed to do so. Similarly, the record referred to the Supreme Court, on November 12, 1865 (22 Jumada al-Thani 1282) in Tuna province stated that two men named Hasan and Keço allegedly forced a child named İstanço to get off from the animal he was riding, that Hasan raped the child (“perpetrated the indecent act”) as Keço held him, and that, both were sentenced to six months in prison based on the Article 206 of the penal code. In addition, based also on the Article 198 requiring a temporarily forced servitude on the galleys for the ones who sexually assaulted another individual by coercion, Hasan was additionally sentenced to three years on the galleys as an oarsman. In this case as well, it is impossible to learn what age the “child” was in from the documents at hand or from the statements or phrases used during the interrogation or final verdict of the court.

As these cases quite clearly indicate, the Article 197 and 198 of the Penal Code did not provide clear definitions for childhood or adulthood, though they were quoted to a large extent from the French Penal Code and though Mecelle, the hybrid civil code of the Ottoman Empire enacted in the year 1868, attempted to clarify the legal terms partially. The cases in this regard point out to an actual confusion, seriously inconsistent and disharmonious statements, age restrictions and definitions quite incompatible with the social and cultural codes already present on the ground. It is possible to see these legal and linguistic discrepancies both in the interrogation

files and the texts of the reports or final verdicts. It is possible, then, to argue that, at the end of the 1850s and the beginning of the 1860s when the reforms were rapidly put into effect, the numerous failures in the application of codes and reforms, the ambiguous phrases and terms that frequently appeared and the lack of necessities of the society at the time, that these reforms were insufficient and distant in the face of the actual requirements on the ground, and that, some legal regulations were updated in the course of time and tailored in line with the social and cultural codes.

At this point, the question of exactly where to place the arguments regarding the central role of the state in the nineteenth century, along with state control and discipline, and how to approach these sort of arguments may arise. The reforms, legal practices and social realities that developed according to traditions and evolve while following the traditional practices and rules seem to be more effective than the penal codes in the court practices. In this case, do we need to revise our presumptions about existence of an omnipotent state in the 19th century? These court case examples and certain practices reflecting the 19th century Ottoman world are very critical in terms of showing that the omnipotent state can be questioned.

CHAPTER 4

COURT PRACTICES ON SEXUAL CRIMES AGAINST CHILDREN

This chapter reviews and analyzes the interrogation, witness testimony hearing and evidence gathering processes of the sexual assault cases in question. While doing so, this part attempts to compare the interrogation report of a case in which four adult individuals raped a male child in Balıkesir in 1864 with that of another case in which an adult female got raped in 1863 in the town of Baf, the modern-day Paphos District, located west of Limassol on the Cyprus island. In the second phase of this chapter, the case of Mihail, a 6-year-old boy of Armenian origin, in which he had been exposed to a rape incident by Mehmed, a member of the Imperial Corps (Ordu-yu Hümayun) in the capital city, as the perpetrator. The case is quite illuminating in that it reveals the contradiction the court experienced in the face of different identities and professions and to what extent the age and profession of the parties influenced the judicial penalization process.

4.1 Interrogation processes in cases of sexual crimes

There are no enough sources mirroring what was experienced during the interrogation processes. The interrogation reports do not clearly specify or explore who conducted the interrogations in the first place, whether there was any kind of coercion and pressure, or any set of rules according to which the interrogations were concluded. The interrogation report of a case processed in Balıkesir on 29 February 1864 (21 Ramadan 1280) makes it clear that the accurateness of the claims was tested through doctor report, as the investigation report of the case required so. Four friends, namely, Ali, Ömer, Halil and İbrahim, sat together in a coffee shop in Hoca

Kapısı neighborhood until around six o'clock during the evening, after which they decided to leave for their homes together. The other three approached İbrahim from behind, strangled his neck and took him to Ali's house forcibly. Having stuffed a handkerchief into his throat, Ömer, Halil and Ali raped the child successively. The document states that "when the aforementioned [person] was examined by the doctor sent over [for the purpose], it was found out that he had nail marks on his neck and his health was in poor condition," which points out to an actual doctor examination before the interrogation process.¹⁶⁰ A similar doctor examination was performed as part of a sexual assault case involving Mihail, a 6-year-old Armenian child, who got raped on 18 June 1861 (9 Dhu'l-Hijjah 1277). The fact that the defendant committed the crime was proved when the child's anus was found to be swollen and injured during a doctor examination. The archival records do not specify the details of the court case processes and neither do they name the officer(s) responsible for collecting evidence or for interrogating the different parties of the cases, just as they do not mention the names of the doctors who conducted the physical examination in the name of the court. The report added to the case file together with the interrogation reports and intended to be cover letter specify these names openly.

Yet another interesting point of the aforementioned case of Balıkesir, dated 29 April 1864, is that the eyewitnesses and the two informers indeed changed the course of the court proceeding. Witnesses getting involved in the case process and influencing its course was quite frequent in the kadi courts. While referring to evidence and witness accounts was a crucial step of the case process,¹⁶¹ for adultery cases this had an additional meaning and importance since these cases essentially needed only two things: "four trustworthy male eye-witnesses to the act and the

¹⁶⁰ BOA. MVL. 672/51/2/1. 27 § 1280.

¹⁶¹ Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-1900* (London: University of California Press, 2006), 51.

notion of quasi-ownership, which affords men a series of claims to ownership in many cases.”¹⁶²

During the interrogation, the defendants denied having left the coffee shop together, in the hope of getting through the claims in this way. When two individuals, Hacı Hasan, the coffee shop owner, and Ahmet, testified at the court and informed the authorities that the four of the aforementioned individuals (including the victim, Ibrahim) left the coffee shop all together, upholding the sexual assault claims. When questioned, the defendant trio responded to the questions as follow:

Question: Did you and your friends, Ali, Halil and İbrahim, sit down in a coffee shop on the 21st Monday night of Ramadan and play cards and then leave the coffee shop at around 5-6 o'clock, strangle the aforementioned Ibrahim and rape him by force?

Answer (Ömer): Though we played cards in the aforementioned coffee shop on that night, I left the coffee shop instantly, leaving Ali, Halil and Ibrahim behind; I am unaware of what happened.

Q: If a witness who saw four of you leaving the coffee shop together after playing cards comes here and tells otherwise, what will you say?

A: If two persons come and testify otherwise, I will then have nothing to say and agree to my punishment (see Appendix, Figure 14).¹⁶³

In a similar fashion, the other defendants, Ali and Halil, also made a false statement claiming that it was them who left the others behind in the coffee shop, in order to present themselves as totally unaware of the incident. The testimonies of Hacı Hasan the coffee shop owner and Ahmed changed the course of the case altogether. The official conducting the interrogation asked “Though you have been denying it, here is Hasan the coffee-shop owner and Ahmed, telling your face that you actually left the coffee shop altogether. Do you have any other thing to say?” It is possible to deduce from the interrogation report that the defendants and the witnesses were in the same place, face to face, questioned altogether in the same

¹⁶² Ibid., 54.

¹⁶³ BOA.MVL.672/51/1/2. 16 Ra 1280.

room. After the last question, Ömer confessed to having committed the offense, though Halil and Ali kept denying the allegations. The court ruling convicted, however, the trio all and the case was so concluded.

Insistent attitudes of the interrogation officers in order to solve the incident in question are quite remarkable in the interrogation files. On May 8, 1861 (Shawwal 27, 1277), Veli, Mustafa, Ali and Süleyman, four residents of the Vetova township of the Ruscuk town (present-day Ruse in Bulgaria), took Hüseyin, 12-year old son of Çakır Ahmed and Salim, 13-year old son of Pehlivan Ali, to graze their oxen together, luring the latter two by telling them that “We have some bread [to eat] with us, so let us come and graze all our oxen together.” Taken unawares, the boys were held as captives for the night and sexually assaulted by the other four. The court report (see Appendix, Figure 7). accused the four of ravishing the chastity of the boys.¹⁶⁴ The interrogation report of the case, as can be expected, contains remarkably interesting details, revealing in sum that the defendants committed the crime.

As the interrogation report dated 1 May 1861 (20 Shawwal 1277)¹⁶⁵ indicates, the insistent and result-oriented efforts of the officer who conducted the interrogation when questioning Veli, one of the accused four, are quite eye-catching and reveal a lot of insights regarding how the sexual assault incidents were perceived back then:

Question: Which one of you first untied the pants of Salim and Hüseyin and perpetrated the indecent action on the boys and did you approach Hüseyin or Salim?

Answer: I did not perpetrate this action on any of them and I am not aware whether my friends did it or not?

Q: This incident happened at night; how come can you not know whether or not your friends did it?

A: I only know myself and I do not know whether they did it or not.

¹⁶⁴ BOA. MVL. 931.27.2.1. 16 Za 1277.

¹⁶⁵ Here it must be noted that there must have been a clerical error on the document regarding the dating since the date of the interrogation report seems actually one week before the incident itself.

Q: If one of the two children comes along and tells your face that you committed the indecent act on himself, what would you say?

A: I would still deny it.

Q: Who taught you to deny so?

A: No one taught it.

Q: You must have surely committed this act, and this must surely be true. This child is too young to make up such a story and therefore he would slander in a different way rather than like this, if the allegations had no grounds.

A: I slapped this child yesterday so that is why he is slandering me now.

Q: Just because of a couple of slaps, one would not accept to slander another person, defaming one's own name. You would not defame yourself and blacken your face, devaluing your honor, due to a few slaps, if you were in the child's shoes, I guess.

A: I would not slander someone else in such a way, defiling my honor, either, if it were me.

Q: You are telling this now because you well know that this child, Hüseyin, is not making up false slanders. Now tell what happened (see Appendix, Figure 8).¹⁶⁶

The Ottoman official conducting the interrogation on behalf of the court thus successfully arrived at a conclusion, and the defendant confessed to the offense.

Though the insistent efforts of the interrogation officials to conclude the case will not be analyzed in detail here, it is possible to argue here that the court intended to facilitate and speed up the case process in this way, rather than forming pressure on the defendants. According to this and the previous court cases and interrogation reports, it seems that the culture of detailed interrogation and preparation of an interrogation report, a novelty for the period that was newly added into the judicial process, was still not fully consolidated and clarified. It is clear to understand that interrogation reports became an indispensable place in court practices. While the interrogation reports provide us invaluable data on social, economic and cultural life and habits of the Ottoman society, relations between the state and the society, it is

¹⁶⁶ BOA. MVL. 931/27/1/3. 20 L 1277.

possible to understand to what extent the reforms and regulations affected the life of Ottomans.

It is actually not definite to conclude that it may be drawn from this case is that the children who were abused were also present in the interrogation room, as implied by the sentence of the interrogating officer: “This child, Salim, tells to your face that you perpetrated the indecent act on him forcibly while he was lying down with you in the meadows beforehand.”¹⁶⁷ This sentence may implies that defendants and victims stood in the same room during the interrogation process. Some other sentences in the said report also imply that not only the victims and the defendants were in the same room, but also all the defendants were present there. This sentence on the report indicates the presence of the other defendants: “O you Ali! Your friends Veli and Mustafa and Süleyman have now been telling your face how this incident took place and now tell the truth of the matter.”¹⁶⁸ This is an important point at hand that frequently appears on the reports regarding the judicial interrogation processes.

Yet another judicial interrogation process belongs to a court in 1863 in which the victim of the incident was a married female person rather than a male child this time. The case deserves attention in that it is an illuminating example to show that the defendants, upon denying the allegations against them in the court, were required to bring along witnesses to the court. Giannis (written simply as Yani on the report in line with the Ottoman transliteration), a resident of the Istado village of the Baf town, when returning from irrigating the crop fields at night on 15 May 1863 (3 May 1279 according to the Rumi calendar) with Lino, his wife, and another female called Varvara, the wife of a certain Mihail greeted three persons from the Greek subjects called Hristogli, Haralanbo and Aghabiyo Papas Giannis (see Appendix, Figure

¹⁶⁷ BOA. MVL. 931/27/1/3. 20 L 1277.

¹⁶⁸ BOA. MVL. 931/27/1/3. 20 L 1277

15).¹⁶⁹ After the friendly greeting moment, however, Hristogli grabbed Giannis's beard and Haralanbo dragged the latter's wife to an open field nearby. As he was engaging in sexual assault against the wife under a valonia oak (an image that frequently appears in the rape case texts), the victim let out a cry, which instantly alarmed some certain individuals who happened to be around at the moment. The report names these rescuers as Sava Isladircı, Cirkafo Isladircı, Hristogli the son of Hadzi Mihail and Giannis the son of Ilia Papas, who rushed to the crime scene to save the victim from the sexual assault. The victim wife, Lino, testified at the court that Haralanbo raped her as well as the others who sexually assault taking turns for some time (see Appendix, Figure 16).¹⁷⁰

During the investigation phase of an offense in the judicial process, due process of law required that the personal testimonies of the defendants were listened in the interrogation process, which were then collected, classified and dispatched to a higher court with a cover letter summarizing the content of the findings in the file. The defendants almost always denied their involvement in the crime and pretended to be totally unaware of what actually happened (see Appendix, Figures 15 and 17).¹⁷¹ As the excerpt from the interrogation report points out below, Hristogli, one of the defendants of the case, also denied all accusations. Interestingly as it is, the court demanded him to bring along a witness to the court to support his case.

Question: How did it exactly happen that you and Haralanbo and Aghabiyo gripped hold of Giannis, a resident of your village, and cut down his beard and moustache and [sexually] assaulted his wife while he was returning from his field around the village together with his wife Lino and Mihail's wife Varvaro on the 14th of May, Tuesday night around 12 o'clock?

Answer: I am totally unaware of this said act and indeed I returned home from irrigating my tare field on that Monday at around 8

¹⁶⁹ BOA. MVL. 791/1/2. 3 May 1279 (R.).

¹⁷⁰ BOA. MVL 791/2/1. 17 Z 1279.

¹⁷¹ BOA. MVL. 791/1/2 and BOA. MVL. 791/1/3.

o'clock and was busy boot making, my profession, and never went out and I am totally unaware of what happened.

Q: Were you not together with these guys on Tuesday night and did you not meet and were you not present with those guys in the aforementioned Kamno Tepe and what would you say if they prove that you were there?

A: I did not meet these guys in Kamno Tepe at the said Tuesday night and I am unaware of this incident and if someone proves that I was there with them then I will have nothing more to say.

Q: I demand one witness from you, one that will be acceptable to the Council of the District so that he/she comes and testifies until the certainty of the allegations against you.

A: I am unable to show any witness here.¹⁷²

It is not a frequently observed scene in the sexual assault cases that the defendants were required to bring along a witness after having denied the accusations. It is both historically and logically appropriate to demand witnesses from the defendants accused at the time. For instance, in one sexual assault case on June 19, 1662 (2 Dhul Qadah 1072) in the 17th century, witnesses were present before the *kadi* to testify for a crime. A Muslim convert of Armenian origin in Constantinople named Ogas was caught as he was raping a child named Mehmed Şahbaz under a tree upon which he was handed over to the authorities. When the defendant Ogas denied the allegations against him, two witnesses from the Otakbaşı neighborhood, namely, Osman and Ahmed, were brought to the court and testified against the defendant, stating that they actually caught Ogas sexually assaulting the child named Mehmed Şahbaz under a tree around (probably a valonia tree again, in keeping with the trendy rape location of the century). They testified that they took Ogas up from over the child and handed him to the officer around.¹⁷³ For the *kadi*

¹⁷² BOA. MVL. 791/1/3.

¹⁷³ Mahmiye-i İstanbul hısnı ebvabından Balatkapısı dahilinde sakin Ali [b.] Abdullah nam mühtedi Ogas v. Ferharad nam Ermeni'yi meclis-i şer'a medine-i Hazret-i Eba Eyyüb el-Ensari subaşısı Seyfullah Ağa mübaşeretiyle ihzar ve muvacehesinde üzerine takrir-i da'va edip işbu tarih-i kitabdan bir gün mukaddem kibel-i? mağribde merküm Ogas sagır oğlum hızır bi'l-meclis Mehmed Şahbaz nam sağrı medine-i mezburede Çömlekçiler kurbunda Tokmaktepe demekle ma'rif mekâbir-i müsliminde bir ağaç dibinde fi'l-i şeni' ederken Defterdar iskelesini bekleyen yasakçı ve bir müslüman dahi rast gelip merküm Ogas'ı oğlum sagır-i mezburun üzerinden kaldırıp zabıt-i merküma

court practices in the 17th century, as exemplified by this particular case as well, it was a quite frequent scene that the witnesses stood present in the court and gave testimonies that would change the course of the case. According to this specific case and Omri Paz' expressions in his work, it was neither frequent nor obligatory for defendants to bring four witnesses to the court though the claimants brought their witnesses.¹⁷⁴

In Gianni's case above that took place in the Istado village of the Baf town, the court referred to the testimonies of the eyewitnesses regarding the crime allegedly perpetrated by Hristogli, upon his statement that he would be unable to bring witnesses to prove his point.¹⁷⁵ Precisely like the case example in the 16th, in this case as well, the testimony that stated the crime was actually committed constituted the backbone of the judicial ruling. An excerpt from the official testimony of Sava Isladırcı, one of the eyewitnesses, reads as follows:

Question: What is your knowledge regarding this incident?

Answer: I was irrigating potatoes on the said day in the vicinity called Sarullu [when] I heard a cry [and] I rushed to the spot at once thinking that they destroyed the chest of Kel Haçi Mihail [and when] I stood half a decade away from the spot I saw that the aforementioned Alyanos Bali holding the said [person and] Aghabiyo had taken the aforementioned Lino downwards under a valonia oak

teslim eylemişlerdir hala sual olunup ihkāk-ı hak olunmak matlubumdur deyicek gıbbe's-sual ve'l-inkar ve isre talebi'l-beyyine udul-i ricalden Otakçıbaşı mahallesinde sakin Mahmud b. Osman nam kimesne ile marrü'z-zıkr Defterdar iskelesini bekleyen Osman Beşe b. Ahmed nam racil li ecli'ş-şehade makām-ı kazaya hazıran olup istişhad olunduklarında, fi'l-vaki' tarih-i mezburda ve vakt-i merkūmda mersum Ogas sagır-i merkūmu marrü'z-zıkr Tokmaktepe bir ağaç dibinde yatırıp fi'l-i şeni' ederken biz rast gelip merkūm Ogas'ı sagır-i mezburun üzerinden kaldırıp zabıt-i merkūma teslim eylemişizdir, biz bu hususa bu vech üzere şahidleriz, şehadet dahi ederiz deyu her biri eda-i şehadet-i şer'ıyye eylediklerinde gıbbe't-ta'dil ve't-tezkiyye şehadetleri makbule olmağın yemin billah [etmeğın kayd şüd].

F. 2 min Zilka'de sene 1072.

Şuhudü'l-hal: Ömer Beşe b. Memi, Eyüb Çelebi b. Mehmed, Mustafa b. İbrahim, Mehmed Çelebi b. [R]ıdvan, Hamza Efendi naib-i recül, Hüseyin Çelebi b. Tayyib, Hüseyin Muhzır, Salih Mehmed Efendi b. Mehmed, Murtaza b. Şaban ve gayruhüm.

İstanbul Bâb Sicilleri 291, 64/B1, 286.

¹⁷⁴ Omri Paz, "Crime and Criminals," 279.

¹⁷⁵ BOA. MVL. 791/1/2 and BOA. MVL. 791/2/1.

[and she was] crying out “For the Lord’s sake, please do not violate my purity”

Q: Did the batter Giannis?

A: All of them had been pushing him to the ground with their feet and I and Cırfako and İlia rescued him.

Q: Did the others injure Leno?

A: I came later and it was far away [so] I did not see.¹⁷⁶

The defendants’ bringing their own witnesses to the court was quite common practice; however, it is possible to logically make reasoning here that the reason why the court demanded witnesses from the defendants might be the intention to balance out the counter testimonies which were already there against the defendants. It must also be noted here that this was not a common practice when the practices of the penal code cases are reviewed. Witnesses, one of the common feature of the *kadi* court cases, appear also in the *Meclis-i Vâlâ* cases of the later period. Appearance of four witnesses is an even rare scene but *Zaptiye* wanted to have the most reliable evidence; it would be a willing confession or the testimony of two witnesses.¹⁷⁷ Within the context of this case in particular, the non-Muslims seem to have no obstacles in enjoying the legal system. Whether they faced similar judicial treatment and were wanted to bring witnesses during the interrogation process in the aftermath, however, gave us an insight about the continuation of pre-Tanzimat judicial traditions and practices.

All in all, witnesses, an integral part of the *kadi* courts, lack their previous position in the cases processed at the court after the introduction of the Tanzimat era judicial reforms, especially the interrogation protocols. It is possible to argue therefore that, though their number was not restricted or stated openly for certain cases as in the *kadi* courts, it was a continuing practice to refer to the witnesses

¹⁷⁶ BOA. MVL. 791/1/2.

¹⁷⁷ Omri Paz, “Crime, Criminals and the Ottoman State,” 279.

during the judicial process during the process of transition from *kadi* courts to the *Nizamiye* courts as well.

4.2 The case of the armenian six-year-old adult

The court case regarding Mehmed, a member of the Royal Legion of the Capital City, sexually assaulting the six-year-old Mihail, member of the Armenian community resonates powerfully how the Armenian community use the Ottoman courts and how the legal regulations were translated into practical daily life applications (see Appendix, Figure 18).¹⁷⁸ Delving deeper into the case, one encounters the testimony of Meryem, the mother of the victim, stating that Mehmed actually raped the six-year-old Mihail and the perpetrator had previously been to the household the incident took place in for minor repair purposes and that mother Meryem personally knew him for some time;

Dersaadet Ordu-yu Hümayunundan piyade dördüncü nizamiye alayı... neferatından Mehmed nam kimesne...Salı günü saat yedi kararlarında kaza-yı mezkur ahalisinden ve Ermeni milletinden Cebrail Behim nam kimesnenin oğlu altı yaşındaki sebi Mihail nam çocuğa fi'l-i şeni' icra eylemiş olduğunu sabi merkum validesi Meryem nam hatunun haber verip..bu askeri bilir misin deyu sual eyledik de bundan evvel bizim hanemizin tamirinde istihdam olunan çavuş bey askeridir deyü takrir eylemek üzerine...¹⁷⁹

The judicial allegation held that the defendant followed the child for some time inside the inner garden, took him to an invisible garden corner and raped the victim there. The defendant denied the allegations and pleaded not guilty, the court requested a medical examination of the victim, which consequently revealed that the victim's anus had gotten swollen and bruised as a result of the external pressure the defendant might have applied during the rape incident (naturally due to the lack of a

¹⁷⁸ BOA. MVL. 759/95/1. 9 R 1277.

¹⁷⁹ BOA. MVL. 759/95/1. 9 R 1277.

lubricant as the incident was perpetrated all of a sudden). The interrogation report also confirmed that the defendant actually had large unusual dirty spots on the knees of his pants and his shirt;

Tabib marifetiyle sabi merkum muayene ettirilerek fiil-i mekruheyi icra iylemek üzere haylüce uğraşmış olduğundan sabi merkumun sufresi ziyadece kızarub ve biraz dahi zedelenmiş olduğu ve nefer-i merkumun pantolonu dizlerinde olan çayır pisliği emaresiyle gömleğinde bulunan pislikden bilmüşahede nefer-i merkum sekr haliyle fiil-i mekruhayı icra eylediğinden... (see Appendix, Figure 19).¹⁸⁰

The next judicial document regarding the same case states yet another detail, that Mehmed was drunken (or rather, most likely intoxicated, since the Ottoman word for both is the same). The case was referred to the Supreme Council (*Meclis-i Vâlâ-yı Ahkâm-ı Adliye*) by the Office of the Ministry of War (*Makam-ı Cenab-ı Seraskeriyye*), as required by the bureaucracy of the time, and, as the result of the investigation and interrogation, the judicial opinion held that the incident actually happened. Though it was also debated in the judicial process that Mehmed should have been executed by the firing squad as a result of his being a military officer, the final verdict decided that he was to be barred from his position in the military, to be publicly exposed, to get battered by stick two hundred times and as the verdict dated August 27, 1861 (20 Safer 1278) additionally stated, to be sent over to the Fortress of Aqqa (in Acre) to serve as a forced oarsman for five years, based on the Article 198 of the Penal Code;

fakat böyle bir edepsizin askeriyede kalması caiz olmadığından merkumun alay huzurunda ilan-ı askeriyesi koparılarak ve tard-ı ilan olunarak iki yüz değnek darb olunduktan sonra beş sene müddetle küreğe konulmak üzere taht-el hıfz Akka kalesine gönderildiği ve burada olan kaydının dahi terkin olunduğu gösterilmiş ve evrak-ı merkum üzerine muhakeme dairesinden 27 Rabieülevvel 1278 tarihiyle verilen mezkurede dahi merkum hakkında tahdid olunan kürek cezası kanun-u cezanın yüz doksan sekizinci maddesi

¹⁸⁰ BOA. MVL. 759/95/8/1. 20 S 1278.

hükmüne muvafik olduğu beyan kılınmış olduğundan merkumun hapis tarihinden itibaren müddet-i merkum ile Akkada küreğe konulub...¹⁸¹

Numerous points are present in this court case, which make it stand out from the rest of the cases. Arguably the most significant point in this case is the frequent reference to the social position and profession of the rapist, Mehmed. Being an officer in the military legion in the capital and that he was still holding the office though actively not on duty at the moment were the alarming problems, discussed over and over on the judicial proceedings. As mentioned previously, that Mehmed should face a firing squad due to his military position was fiercely debated on the written records. It is not possible to understand whether this was the regular practice in the military courts. It is, however, possible to see that the older practice of battering a criminal with sticks which had no place in the 1858 Penal Code was revived in the case and applied, a practice that arguably injured the principle of legality, an ideal that the newly-devised Penal Code aspired to reach. Though the case was referred from military court (which was expected to pass more martial-style verdicts) to the Supreme Court (which was more civilian in its proceedings and verdicts), battery (*değnek* punishment) sentences were one of the common corporal punishment before the legal reformations. The articles in the Penal code regarding the incident did not state battery as a penalty. It is highly likely that a penalty had been passed within the military judicial proceedings of the time even before the case was referred to the Penal Code. Then, why was the case not processed in the military court and was referred to the Supreme Council? The reason for this transfer was that the Supreme Council was positioned higher in the bureaucracy for this case, resulting

¹⁸¹ BOA. MVL. 759/95/8/1. 20 S 1278.

in the case being investigated and processed firstly in the internal structure of the military court and then getting referred to the Supreme Council for the final verdict.

Mehmed's dismissal from the military ranks and his exposure to the public as a penalty must be highlighted here as measures aimed at informing the masses of the incident and at raising a kind of social awareness. For the case that was thought to have the potential to kindle social havoc, the military court additionally passed its own sentence, likely to divert the social reaction that might have formed at the time. A question necessarily rises here: was the penalty here a result only of the injury conflicted on the professional dignity of the military or the societal norms? One of the places that the perception of masculinity secured itself a mighty position in the society and the state hierarchy was, and has always been, the military. In this particular case as well, was it possible that within the military ranks, a male military officer's acting like a female and approaching another male in a way that only females and males were allowed to enjoy disturbed or deconstructed the consolidated masculinity codes of the society and the military? Might this have been the reason why the offense was processed in the military court in addition to the civilian one?

Whatever the reason might have been, this case had two significant edges that need attention. Firstly, a non-Muslim child's having been raped, and secondly, a member of the military having been the perpetrator doing it. The discourse of the document leaves no doubt that the real concern in the case was the rapist's holding a military office, rather than the victim's being a 6-year old and/or member of the Armenian community of the Empire.

Regarding the related offense, the Penal Code openly stated that in the cases where the rape victims were less than 11 years of age the penalty would be a prison sentence for a period of not less than 6 months. In Mihail's case, though, the final

verdict sentenced the rapist to an additional battery penalty of 200 sticks, even though no such penalty was stated anywhere in the penal code. In addition to this unstated penalty, on the other hand, the Supreme Court (*Meclis-i Vâlâ*) sent the defendant to the Fortress of Acre under forced servitude for 5 years, based on Article 198 of the Penal Code, a sentence actually stated in the code.

Then, why were the battery and forced servitude penalties applied in this particular case, rather than the prison sentence of 6 months to 3 years that the Article 197 of the Penal Code envisioned for the sexual assault incidents against the minors under 11 years of age? Was the battery [with sticks 200 times] penalty passed by the military court thought of as an alternative to the prison sentence that *Meclis-i Vâlâ* was supposed to pass? Or rather, was the victim evaluated as an adult because of his being a member of the Armenian subjects of the empire and consequently, did Mehmed face trial as a defendant who committed a sexual assault offense against an adult rather than a child and based on the Article 198 rather than the Article 197? What was the exact reason for Mihail's being considered an adult and why was the forced servitude sentence passed for the defendant? It is not quite possible to find answers for these questions. Milen V. Petrov argued that *Nizami* court impose had labor (*kürek*) punishment but it has no place in *şer'i* law but this argument is a total .¹⁸² Actually, the penalty of forced oars servitude was nothing new, though. A similar case can be seen on a judicial report written down on August 2, 1564 (23 Dhul Hijja 971),¹⁸³

Muharrem, the son of Seydi Fakih, from the township of Zaviye, subject to the aforementioned, forcibly raped the child named Efendi, the son of a person named Aşık Ali in the aforementioned township, and, having already

¹⁸² Milen V. Petrov, "Everyday Forms of Compliance," 737.

¹⁸³ Vilayet-i Karaman'ı teftiş iden Bayezit Beg ve Dergah-ı Ali Çavuşlarından Mehmed Çavuş ma'rifetiyle gelüp küreğe emr olunan mücrimlerdir. Fi 23 Zilhicce sene 971.

pleaded guilty [besides] having been on evil and rebellion, was sent at once to the forced labor as an oarsman.¹⁸⁴

Sentencing the perpetrators of the rape incidents against children to forced oars servitude was a practice surviving from the older periods. Though passing a forced servitude penalty for the person who committed sexual assault offense against the “child boy” was a familiar practice, it clearly indicates that the relevant article of the 1858 Penal Code was effectively ignored by the authorities who preferred passing a forced servitude sentence rather than a prison term and that, a hybrid legal paradigm emerged where the *shari'a* practices were still going on in the reformed courts. Sentencing Mehmed, the rapist, to a battery [with sticks] penalty, which actually had no place in the penal code seems the court has imposed a heavier penalty than the one stated in the criminal code and followed previous legal practices. Considering the conjuncture, the penalty given to the accused Mehmed is much heavier than the one stated in the criminal code. In addition to that, considering the seriousness of the court and its' sharp attitude and approach to this case and crime committed, it may be seen that the issue has been handled with care. Although, it is not always possible to learn directly about sensitivities and precisions of the society from the court reports but this sharp and hard attitude of the court shows both the sensitivity and how legal authorities approached the sexual crimes against children. The hierarchical relations in the Ottoman society also manifested itself in the distribution of roles in sexual relations. Sexual intercourse and rape with children were absolutely not welcome, and the court was very keen on this issue. This situation may also be regarded as a pathology that also violates social morality, according to aforementioned court cases.

¹⁸⁴ Mehmet İpşirli, XVI. Asrın İkinci Yarısında Kürek Cezası ile İlgili Hükümler,” *İÜEF Tarih Dergisi* (Prof.M.Tayyib Gökbilgin Hatıra Sayısı, 1982): 238.

Furthermore, even though the offense committed would normally fall under the Article 197, he was sentenced to prison, as if he had sexually assaulted an adult person, an offense falling under the Article 198. This means that the principle of legality was left aside in this particular case and the judicial authority did not apply the provisions of the 1858 Penal Code in this specific court case. What is more crucial here at this point is not the principle of legality, there may be another reason behind this decisions; the court followed the traditional *shari'a* regulations from the pre-*Tanzimat* era. The Supreme Court punished perpetrator Mehmed to forced to oars servitude penalty as like 17th and 18th century practices of the Ottoman courts. When the legal regulations would not meet the needs of the Ottoman society and legal practitioner, they found their own ways that inspired from the pre-*Tanzimat* legal tradition, *shari'a* practices.

In conclusion, the analysis of the example court cases whose main subject was the sexual offenses against the children shows how the legal regulations were translated into practical daily life applications, what kind of difficulties lied ahead, how the court and the society positioned themselves in this process, within a neat and general framework.

CHAPTER 5

CONCLUSION

This thesis attempts to explore and evaluate how the Ottomans handled the sexual assaults against male children through the court case registers, referred to the *Meclis-i Vâlâ-yı Ahkâm-ı Adliye* between the years 1860 and 1865. While inquiring the court cases into the relations between the Ottoman Empire, its' subjects, and local courts, it was fascinating to explore how specific practices and applications of the legal practices and reforms served to construct child and adult identities in the experiences of the Ottoman subjects in the Ottoman courts of *Meclis-i Vâlâ*. From one angle, the extraordinary stories of these cases clearly show us how the implementation and institutionalization of reforms affected the lives of ordinary people.

In the second chapter of this study, child studies both in the field of European history and Ottoman history were evaluated. The focus on child studies on the end of the 1800s and the first quarter of the 1900s revealed that there was a huge gap in both the *Tanzimat* and classical periods of Ottoman Empire. Gender studies have works mainly on women studies and address the social, economic and cultural problems of women. For the last decade, masculinity studies are also integrated in the gender studies. Additionally, contrary to Philippe Aries' claims that the idea of childhood did not exist in the medieval society, there are certain definitions and forms of childhood was part of the Ottoman society and its language.¹⁸⁵

Nevertheless, there is no serious studies have been conducted on this subject yet.

In the third section of the second chapter, the trans (re)formation of Ottoman law and the establishment process of the *Meclis-i Vâlâ* were evaluated in order to

¹⁸⁵ Leslie Peirce, "Seniority, Sexuality, and Social Order," 173.

examine seven different court cases used in this study. While the Ottoman Empire was trying to strengthen the influence of central authority, it increased the center-periphery relations by expanding the area of bureaucracy and *Meclis-i Vâlâ* is one of the major actors of this process. In this study, I had the opportunity to examine how this process and bureaucratic structures worked and how they directly and indirectly affected the lives of ordinary people. One of the most striking details here is that the interrogation reports became an indispensable place in court practices. While the interrogation reports provide us invaluable data on social, economic and cultural life and habits of the Ottoman society, relations between the state and the society, it is possible to understand to what extent the ordinary people found a new stage in the Ottoman courts.

In the third chapter of this study, it was stated that the reforms of the Tanzimat period were influenced by Western law, especially French criminal law. Not only the Imperial Ottoman Penal Code (IOPC) of 1858, but the whole Tanzimat reforms reflected partially an idea of continuation of the *shari'a* tradition nevertheless. It is not a surprise to see the first article of the IOPC of 1858 claims legitimacy according to the *shari'a* because *ulema* was the driving force during the reforms. It is a crucial area of study for the *Meclis-i Vâlâ*, which was established for the implementation of reforms, to act as a court, to become a significant actor of the bureaucracy that increased its influence and hierarchy and to carry out the process leading to the Nizamiye courts.

Additionally, the IOPC of 1858 was found insufficient to define sexual offenses against children. As the article 197 was directly taken from the French Penal Code of 1832 and it was experienced that it did not comply with the needs and cultural and social codes of Ottoman society. The article was then reorganized in

Mecelle, dated 1868, and the age of puberty was increased from 11 to 15 year of age. Despite this fact, during the ten-year period between 1858 and 1868, the Ottoman courts did not wait for *Mecelle*'s issuance in 1868 and applied 15 years of age to define victims as children. In the following parts of the thesis, it was examined that how local and central courts of Ottoman Empire resisted against an arrangement that did not conform to the social and cultural codes and fabrics.

The local courts had some certain duties in this hierarchically reconstructed court structure. They were responsible to initiate the investigation process and prepared a single court case file. The evidences and interrogation reports were written down on paper in detail and with a cover letter that constantly summed up the whole content, were sent for approval to the higher court. This practice turned into a routine bureaucratic process. The final decision was made by the Supreme Court, the higher court the case file was referred to.

Additionally, the third chapter of this study examines a crucial report, addressed to Grand Vizier [Keçecizade] Mehmed Fuad Pasha (1815-65), and was dispatched from the local council in Sivas to the capital in 1862. The content of the report presents examples for the 'principle of legality' and 'multiple jurisdictions', and the perception of the concepts such as 'crime' and 'victim' that were in transformation. The report then highlighted that no legal provision existed to cover those who willingly engaged in *indecent act* [sexual assault] and the local court demanded necessary regulations based on the requirements of *shari'a*. It is possible to argue that the *shari'a* law was a driving force that motivated the 19th-century reforms and ulema provided legitimacy and security for the state-run legal reforms in response to changes in society.

The second part of the third chapter explored the context and characteristics of being a child in the 19th century. It was clearly defined that the IOPC of 1858 did not clearly define the boundaries of being an adult and child and this lack of clarity was substantially removed through *Mecelle* in 1868. According to the court case examples in this section, the interrogation reports clearly and constantly referred to the sexual assault victim individuals with 12, 13, 14, and even 15 years of age as “children” but preferred to penalize the perpetrators not actually considering the victims as legal children but rather as adults with full faculty. During the ten-year period between the 1858 penal code and *Mecelle* (dated 1868), there was a conceptual gap in terms of the age of puberty. Despite this gap in the code, the Ottoman courts did not wait for *Mecelle*’s issuance in 1868 in applying what *Mecelle* would require.

The fourth chapter of this study reviewed and analyzed the interrogation, witness testimony hearing and evidence gathering processes of the sexual assault cases in question. The personal testimonies of the defendants were listened in the interrogation processes, which were then collected, classified and dispatched to a higher court with a cover letter summarizing the content of the findings in the file. It was quite interesting to see the insistent attitudes of the interrogation officers in order to solve the incident in question are quite remarkable in the interrogation files. Additionally, the children who were abused were also present in the interrogation room, as implied by the sentence of the interrogating officers in the investigation reports. This part of the thesis shows by the real case examples how the practical applications of legal regulations carried out. The second part of the fourth chapter, the court case regarding sexual rape against the six-year old Mihail from the Armenian subjects of the Empire by a member of Royal Legion of the Capital City,

named Mehmed, gave us how the Ottoman court failure to meet the principle of legality that I have mentioned at the beginning of the thesis with a report sent from Sivas to the Supreme Court.

All these cases reveal that the 1858 Penal Code fell short of defining the sexual offenses committed against children, especially male children. It was unable to effectively define the term ‘child’ in the first place and draw the boundaries of childhood in this regard. The Ottoman administration started to coincide with a period when the bureaucratic processes increased both in terms of time and paperwork and the courts meet with the local cultural codes and social perceptions on the ground. That is actually why the Ottoman Empire, as seen in the court case examples in practice, opposing the activist state approach; it has put the traditional *shari’a* legal culture in the forefront approach. Though the articles of the IOPC of 1858 regarding the sexual offenses were inspired by the French penal code, in practice, the *shari’a* practices were still going on even after the adoption of the reformist civil code by the courts that were supposed to pass judgments based on the newly-devised 1858 text, used the *shari’a* based approaches that comes from pre-Tanzimat period. The verdicts by the Supreme Court had the statement, “*daire-i muhakematta mütalaa kılınan mazbatalarıyla melfûf ilam-ı şer’i ve istintakname mealinden müsteban olduğu üzere,*”¹⁸⁶ constantly referring to the term *shari’a*, which reassures the researcher that the Islamic legal framework was not only continuing with all might but also was the source of justification. It is indeed possible to define the period as a unique case of reformation. It would be wiser to define this process in Kent Schull’s words, rather than merely a process of modernization, Westernization or Europeanization; “Ottoman efforts to transform the

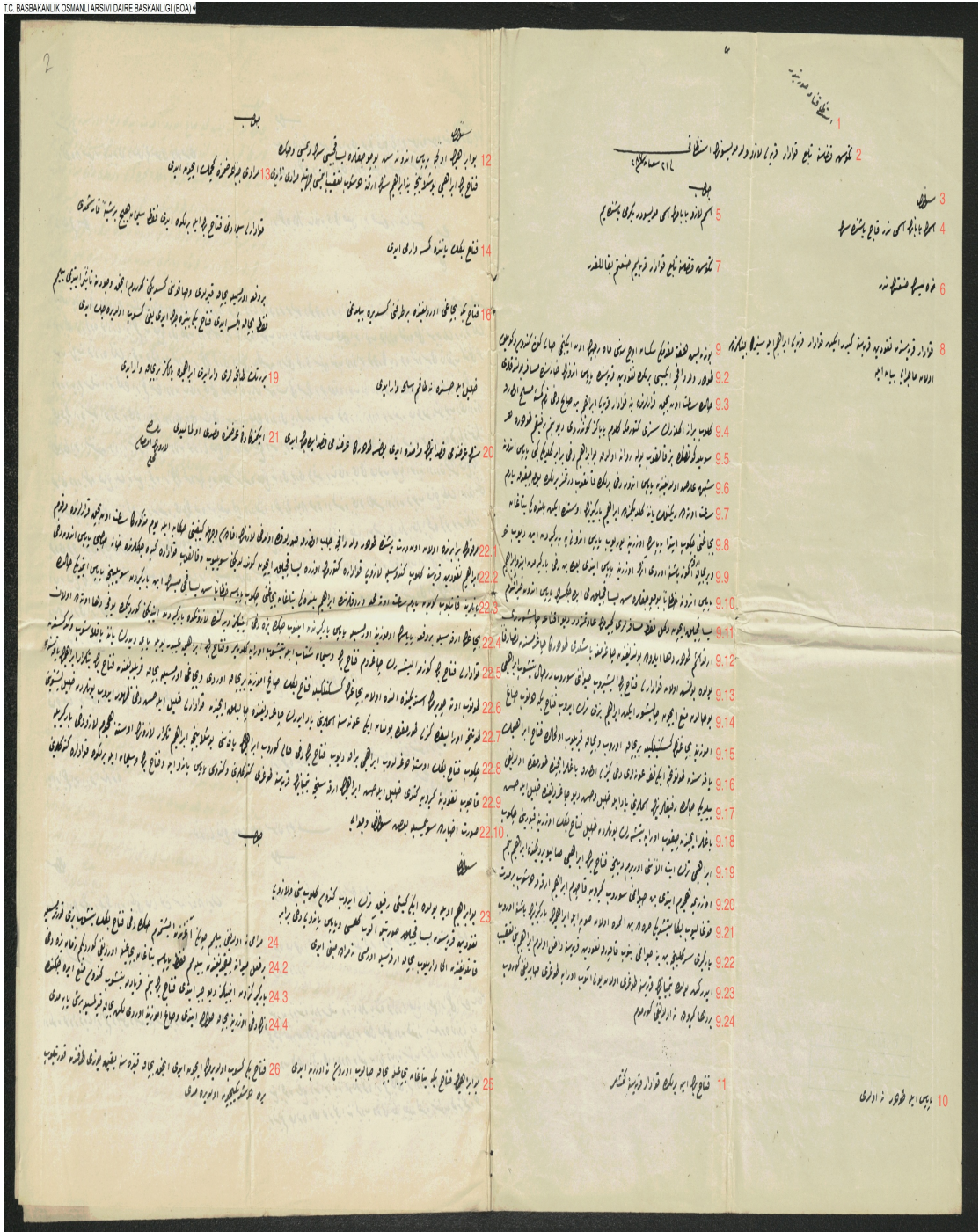
¹⁸⁶ BOA. MVL. 791/4/1.

empire's criminal justice system do not constitute a process of secularization and Westernization, but an example of a specific Ottoman modernity that is simultaneously unique and globally comparable during the long nineteenth century."¹⁸⁷

The example cases in this study showed how this unique transformation was shaped, how it was realized into practice in the Ottoman legal framework, how the older legal practices of *shari'a* found themselves frequent places within the reformed courts and how the bureaucratic processes were devised from bottom to the top, affecting the lives of Ottoman children and citizens however distant they might have been, or wished to be, away from the evolving giant called the 'empire.' Recent studies on the Ottoman legal reforms and crime and punishment in the Ottoman Empire have stayed away from issues of sexual crimes against children. Indeed, there is a considerable gap in Ottoman social and legal historiography regarding these issues. For further studies, I believe such extraordinary stories of ordinary people will give us substantial information and insights about the Ottoman legal system, 19th century reforms, community relations, gender construction and concepts of children and adult identities.

¹⁸⁷ Kent F.Schull, "Comparative Criminal Justice in the Era of Modernity: A Template for Inquiry and the Ottoman Empire as Case Study," *Turkish Studies*, Vol. 15, No.4 (2014): 632.

APPENDIX
ARCHIVAL DOCUMENTS



MVL.01039.A.0022.001

Fig. 1 BOA. MVL. 1039/22/1/2. 21 § 1287

مقام جیس جہتہ و طہنہ



کھنڈر سے بلوچہ ڈرامہ برج جو جو عنج جبر و یا جہ ایدہ بر طرفہ قاجارین اور جہ ایدہ بر سرہ قدر جسی و اکبرہ بودا جہ بر ملاہ جو جو و ہنڈر سے بلوچہ ڈرامہ
برقیانہ قاجارہ سہلک موقا کورکے نکس و اکفا جہ بر ملاہ نیز حقیقتہ فصل شمع اجہ اگنہ لہ بودی حرکت اولندہ اوضن کجہ معیہ اولادہ جزا ہن و شہای
در جہ سنک اجری و نکاح و تو غیبتہ بر قتلکے بر عین و ذرہ حکمہ اسی جزا خانوئہ لہ بودن یکیز البتہ ما و حوض و تزویج اسی کجہ بودا افعال ایدہ
بر یکبار لغتہ لہ بکین ازاد ایدہ حکمہ المقدسہ استکشاف ایدہ کک کد و سندن بد لہ نامہ بکرا اندک قاجارہ بر حقیقتہ دہ اسی قدر جسی اسی کجہ
مادہ علاوہ اہل و عیال قانویں مور و عقیدہ بر رضایہ بودن جہ بر مجاہدہ ایدہ حقدن بر نوع جزا قری کو بودہ نامہ و جہ بودک بودا قدر بودی
نکاح ایدہ المہ و عیدہ بر حاتم بکرا بڈرا افعال ایدہ قاجارین و جہا نہ حکومتہ جلب ایدہ استظا و اولد قورن قز قز قز بہ بودا غنی بودا حاتم
رہ بودی و بر یوب بنہ نرہ زنا فع سببہ ایدہ ازادہ بکری و وضع اولدین سو حکمہ و نکاح ایدہ یکدیگرہ تزویج اجتماع مزدوری اولدین واکرہ
ایکک و ایسرہ نیکو مگرہ اولدین اوقولہ قز قز اکثرین افرن نامزد لوی اولدین تحقیقہ ایدہ نامزدی دولوی ط فرہ دعا و مساز عا کتیرہ
و تو کبہ تو یوز مسوق اولدہ مصارف دین لہ اہل و عیال اصحاب معذور اولدین بکینہ دیو بقولہ رضایہ بودن ضریہ و منوعہ بکینہ اظہر حقیقتہ
جزا نکاح و تیسہ اگنہ بودکہ کجی رفہ رفہ عتہ ایدہ و معاذہ تعالی کیدرک بکینہ اصحاب عین و نامہ دین سربہ ایدہ دل معایرہ
باری و رضایہ ایدہ جہ جو کجہ کجہ ظہورہ سبب ویرہ کجی لککار کوشہ و جہا نہ حیدر و رضایہ بودن ضریہ و منوعہ بکینہ اظہر حقیقتہ
و زانہ بیورہ ایدہ کجہ افکار معلومہ تا عالیہ ضرورتہ و مزاجہ حیدرہ معادہ معلومہ ایدہ کوشہ معلومہ ایدہ کوشہ معلومہ ایدہ کوشہ معلومہ
اکلی و محاذہ سبب لہ بودہ فطراساس و استراحتہ اولدی قیہ ملتہ سنہ ملوف و مطوف اولدین سوز قاجارہ مادہ رضایہ بودی بر صدہ ایدہ
ایدہ حقیقتہ اسلوب حضور و اسببہ سببہ و بر یک بکینہ اولدینہ اوقولہ باکرہ قدری و خصوصہ بودی نامزد لوی معادہ معلومہ
و افعال ایدہ قاجارین ایدہ اولادہ قز قز حقدن بر نوع مجازہ یعنی و طریقتہ معیہ نامہ و جہا نہ ایدہ اولدین حادہ ایجابک اجرہ ایدہ معلومہ
تیسہ ایدہ قز نکاح ایدہ قاجارین اوغلانہ و بر یوب دینہ سیم کجی صدہ کجی ملاحظہ ایدہ عدلہ اولدین حادہ ایجابک اجرہ ایدہ معلومہ
سینہ لہ ایدہ کسبانہ بیورین متوقفہ ایدہ ایدہ معالیمہ اصفایہ دینہ بکینہ اصفایہ دینہ بکینہ اصفایہ دینہ بکینہ اصفایہ دینہ بکینہ



OSMANLI ARŞIVI		
MVL		
633	67	1

MVL.00633.00067.001

Fig. 4 BOA. MVL. 633/67, 10 M 1279

1 ونوه لا باقا دفع سماك وغيره عنك نظري
 2 سرخ لسيه ارك و با بانك ارك ندر
 3 بيه روكور فضنه ونوه هم ادم على با باره ارك باق
 4 سرخاچ پشم سبه
 5 باكي پشم هم
 6 اولسيه بكار ميسه
 7 اوله كللم
 8 اولكيه اوگور كوكله بكيه قاج ارضا سدا برك
 9 دره رخصه سدا بديان
 10 ارضا سدا برك برك
 11 غولجي اوله وک و مظهظي و بيس سماك ارك
 12 بوسالم اوله جبهه دغي اولكيه سرخ برك ارك 13 اوله نهد بزا بريد
 14 قشكرا اوله بو جوهضاره طوباري جوز دكر
 15 بزر بونلر طوباري جوز عدك
 16 پلك اعلو جوهضاره دوسره بر بزيك ارك
 17 خيره بر نه و ورت اكلدك
 18 بونلر اوله سوبوسيه بوساطك ايتلا قيه قورلر
 19 سوبوسيه بونلر اوله سوبوسيه ايتلا قيه قورلر
 20 قانوسوبوسيه بونلا در سبه
 21 بو جوهضاره جوز ايتلا قيه قورلر
 22 بونلر اوله سوبوسيه بوساطك ايتلا قيه قورلر
 23 ايتلا قيه قورلر اوله سوبوسيه بونلر
 24 باوركل بوسالم جوهضاره اولكيه سرخ برك باكاره بونلر
 25 ايكه ايتلا سدا برك كلويه سبه كندونك طوباري جوز
 26 برك فعل سنج ايتلا سدا برك برك برك برك
 27 كلويه بيه سبه اوله سوبوسيه بونلر
 28 سدا برك قانوسوبوسيه بونلر
 29 بونلر اوله سوبوسيه بوساطك ايتلا قيه قورلر
 30 قير اركوگور كوكله اوصا ندر جوهضاره سبه با سده اوله
 31 اوله سوبوسيه بونلر اوله سوبوسيه ايتلا قيه قورلر
 32 سبه ايتلا قيه قورلر اوله سوبوسيه بونلر
 33 ونوه قير له جوهضاره سدا بديان
 34 سرخ لسيه ارك و با بانك ارك ندر
 35 بزم سماك با بانك جوهضاره سدا بديان
 36 قاجي پشم سبه سمنلر ندر
 37 اوله سوبوسيه بونلر اوله سوبوسيه ايتلا قيه قورلر
 38 اوله سوبوسيه بونلر اوله سوبوسيه ايتلا قيه قورلر
 39 قير له جوهضاره سدا بديان
 40 بونلر اوله سوبوسيه بوساطك ايتلا قيه قورلر
 41 سوبوسيه بونلر اوله سوبوسيه ايتلا قيه قورلر
 42 بو جوهضاره جوهضاره جوهضاره جوهضاره
 43 بو جوهضاره جوهضاره جوهضاره جوهضاره
 44 بونلر اوله سوبوسيه بوساطك ايتلا قيه قورلر
 45 بو جوهضاره جوهضاره جوهضاره جوهضاره
 46 بو جوهضاره جوهضاره جوهضاره جوهضاره
 47 بو جوهضاره جوهضاره جوهضاره جوهضاره
 48 بو جوهضاره جوهضاره جوهضاره جوهضاره
 49 بو جوهضاره جوهضاره جوهضاره جوهضاره
 50 بو جوهضاره جوهضاره جوهضاره جوهضاره
 51 بو جوهضاره جوهضاره جوهضاره جوهضاره
 52 بو جوهضاره جوهضاره جوهضاره جوهضاره
 53 بو جوهضاره جوهضاره جوهضاره جوهضاره
 54 بو جوهضاره جوهضاره جوهضاره جوهضاره
 55 بو جوهضاره جوهضاره جوهضاره جوهضاره
 56 بو جوهضاره جوهضاره جوهضاره جوهضاره
 57 بو جوهضاره جوهضاره جوهضاره جوهضاره
 58 بو جوهضاره جوهضاره جوهضاره جوهضاره
 59 بو جوهضاره جوهضاره جوهضاره جوهضاره
 60 بو جوهضاره جوهضاره جوهضاره جوهضاره
 61 بو جوهضاره جوهضاره جوهضاره جوهضاره
 62 بو جوهضاره جوهضاره جوهضاره جوهضاره
 63 بو جوهضاره جوهضاره جوهضاره جوهضاره
 64 بو جوهضاره جوهضاره جوهضاره جوهضاره
 65 بو جوهضاره جوهضاره جوهضاره جوهضاره
 66 بو جوهضاره جوهضاره جوهضاره جوهضاره
 67 بو جوهضاره جوهضاره جوهضاره جوهضاره
 68 بو جوهضاره جوهضاره جوهضاره جوهضاره
 69 بو جوهضاره جوهضاره جوهضاره جوهضاره
 70 بو جوهضاره جوهضاره جوهضاره جوهضاره
 71 بو جوهضاره جوهضاره جوهضاره جوهضاره
 72 بو جوهضاره جوهضاره جوهضاره جوهضاره
 73 بو جوهضاره جوهضاره جوهضاره جوهضاره
 74 بو جوهضاره جوهضاره جوهضاره جوهضاره
 75 بو جوهضاره جوهضاره جوهضاره جوهضاره
 76 بو جوهضاره جوهضاره جوهضاره جوهضاره
 77 بو جوهضاره جوهضاره جوهضاره جوهضاره
 78 بو جوهضاره جوهضاره جوهضاره جوهضاره
 79 بو جوهضاره جوهضاره جوهضاره جوهضاره
 80 بو جوهضاره جوهضاره جوهضاره جوهضاره
 81 بو جوهضاره جوهضاره جوهضاره جوهضاره
 82 بو جوهضاره جوهضاره جوهضاره جوهضاره
 83 بو جوهضاره جوهضاره جوهضاره جوهضاره
 84 بو جوهضاره جوهضاره جوهضاره جوهضاره
 85 بو جوهضاره جوهضاره جوهضاره جوهضاره
 86 بو جوهضاره جوهضاره جوهضاره جوهضاره
 87 بو جوهضاره جوهضاره جوهضاره جوهضاره
 88 بو جوهضاره جوهضاره جوهضاره جوهضاره
 89 بو جوهضاره جوهضاره جوهضاره جوهضاره
 90 بو جوهضاره جوهضاره جوهضاره جوهضاره
 91 بو جوهضاره جوهضاره جوهضاره جوهضاره
 92 بو جوهضاره جوهضاره جوهضاره جوهضاره
 93 بو جوهضاره جوهضاره جوهضاره جوهضاره
 94 بو جوهضاره جوهضاره جوهضاره جوهضاره
 95 بو جوهضاره جوهضاره جوهضاره جوهضاره
 96 بو جوهضاره جوهضاره جوهضاره جوهضاره
 97 بو جوهضاره جوهضاره جوهضاره جوهضاره
 98 بو جوهضاره جوهضاره جوهضاره جوهضاره
 99 بو جوهضاره جوهضاره جوهضاره جوهضاره
 100 بو جوهضاره جوهضاره جوهضاره جوهضاره

Fig. 8 BOA. MVL. 931/27/1/3. 20 L 1277

سنده ایاتی مجسمه کبریست باوردیج لایحه تاریخده جمعیه اعظمه تکریم بر طرفه ضبط سنده رجوعه قضیه دفع ونه قیام اهلیتیه و
 در طرفه و علم نام تحضیرت اولوز اولانجه ادره رفاهتیه و قضاوتیه اولان قیام سنده اهلیتیه اولان ایام اولوز بکننده حشر
 اجماعیه صیبه در هوا بخل و علم نام ایام حریفه نیلا فعل شیع اولان بکننده حریفه صلوات افکار ایام اولوز قضیه دعایه دفعه ترقیات
 استحقاقیه لایحه ایستاد رفو ماه ارمه وقوع حریفه نظایر حریفه بقد و قضیه دعایه ایام اولوز بکننده حریفه صلوات
 اولانیه قضیه سینه سینه کلانیه دفعه و کدولینت اولوز نام صیبه دعایه قیام بکننده و استحقاقیه صلوات و ایام اولوز بکننده حریفه
 قیام قضیه سینه سینه کلانیه دفعه و کدولینت اولوز نام صیبه دعایه قیام بکننده و استحقاقیه صلوات و ایام اولوز بکننده حریفه
 مالک حکم قضیه تاریخ حریفه ایستاد رفو ماه ارمه وقوع حریفه نظایر حریفه بقد و قضیه دعایه ایام اولوز بکننده حریفه صلوات
 در وجه اولانیه حکم بکننده مالک قضیه سینه سینه کلانیه دفعه و کدولینت اولوز نام صیبه دعایه قیام بکننده و استحقاقیه صلوات
 مذکره سینه ایام اولوز بکننده حریفه ایستاد رفو ماه ارمه وقوع حریفه نظایر حریفه بقد و قضیه دعایه ایام اولوز بکننده حریفه صلوات

OSMANLI ARŞIVI		
MVL		
931	27	4

MVL.00931.00027.004

Fig. 9 BOA. MVL. 931/27/4/1. 7 M 1278

1- وکجه باجه اوغنی اهرک استغی قیسا ۲۸ دلا قیسا

2 احمد استانبول اوغنی باغچه خندکار برفه جوری یوردیک اوغنی فعل
3 شیو اوجا ایلیکلر وقع استغین افسیه سعاه ده بقه ده اوشا زواری 4 بقه اوقلا سز یوردیک یاکاز اوغنی زورک

6 اسغین افسیه تشویق اولدی

5 برمیوردی به فعل شیو ایملر نص اولدی

8 بز سعاه اید اولکونه حالله ایدوب اولر بزه کیدرکه طاسه کوری یاتغ اسغین
افقیه قوشو کلدی بکیرم حایر بیخیم کیدوب بیز کونیم دیر کیم بیخ
سولیس اذک اورنیه موقیم اید بربر استانبول اوغنی باغچه کونک

7 اسغین افسیه سز نه م بولدی زه سزی بولاشه تشویق اولدی

10 بقه کسیر یوقی افسیه شیو استیکیز یوردی جوجنی اورد ایدی به قیوم
یا به اجمک

9 کتیلر وقع باغچه نیاییکلر واورم کیر واری ده

12 وقع ایچکده نعل کوشده استغی اینیکیز مره طوتک سوزی دیر کده اسغین
افقی بیخ سولیم اورنیه سعاه اید به یوردی جوجنیک الدنی طوتده
اسغین افسیه رض کونیز جوجیه انا کدوس صک به اوجنی سعاه
جهد نه برکده موقیم جوجنی فعل شیو اهل ایدک

11 مک نص

13 سز برمیوردی جوجنی طوتک فعل شیو اینیکیز مره م کوج باغریه

16 اوره ابلک بنده اسغین افسیه جوجنی سعاه اید به یوردی جوجنیک کدوس فعل شیو
دیر کده جوجیه جوب وریکین اولونده نه طوتیردک کدوس فعل شیو
اهل ایدی صک اسغین افسیه طوتک بزم فعل شیو ایدک کوشریه
بوله

14 دعلک اولدی لورک اسغین افسیه جوجنی فعل شیو یاغیه استه
15 موقیم جوجیه رض اولدیفنده سز طوتیردک جوجیه جوجیه فعل شیو ایدک کوشریه

عل
موقیم اهرک
اصح

OSMANLI ARSIVI		
MVL		
933	21	3

Fig. 10 BOA. MVL. 933.21.3.1. 18 R 1277

Handwritten Ottoman script at the top right of the page, including a date and possibly a signature or official stamp.

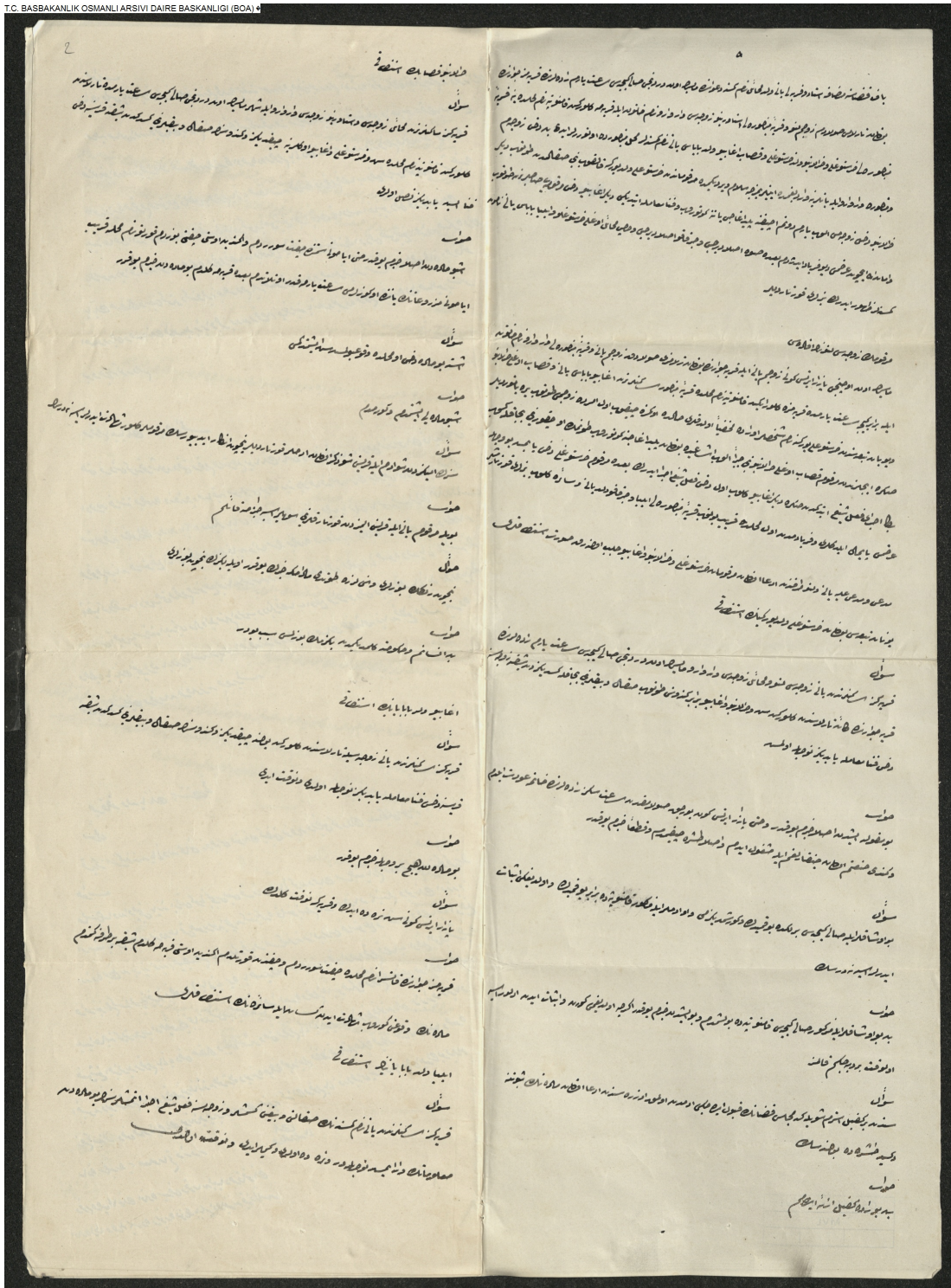
Main body of handwritten Ottoman script, likely a legal or administrative document, written in a cursive style.



OSMANLI ARŞIVI
MVL
672 51 4

MVL.00672.00051.004

Fig. 11 BOA. MVL. 672/51/4/1. 8 Z 1280



MVL.00791.00016.001

Fig. 15 BOA. MVL. 791/1/2. 3 May 1279 (R.)

مقدمه حضرت عثمان

خدا صبر نازی و نورو نوازیه حضرتک طرفه زنده ابورور و استویاره حواله بویله خبرات و معطوفه مضبوطه لعل الفناء عانده رسالت اردوی هرلوه مسوالتنه و عود اردی القورده
 مویطنه دردی نظامیه الیه برنجی و نوبتک اوچی بویله فضا ننده استانه محمد به محمد کزاده اید شهنزاد انجیرت قطره بی صا کونه سرفوسه اوچی حالک در ایتر ایلینده
 دردی حضرتک حیلینلی نخب نم کسنتک اوچی انی باشده صبی مجانیلی نع جو عیفا ابرای فعلی شیخ ایمنه اوچی مرقومت و ادره سی طرفنه هنر و یسه اوسیده الای و کله
 صبا بطا ننده و کسه تشکیل اظهاره بویله حریف استظانه بالاجل و عقم محرمت بوضی مکرده ای ارتکاب ایمنه و لیبی بنیه ابتدایی و اوانک حال نظری ای بی خبر و ایلینده
 ایچوره عیقه نسانیه عقم قوتونه دردی لارنگه ایلرجه کدوره بونظافه حیانه سنه لایعقل اولینی حالک و قوعی عیله او عورتله همانا ننده حرفه نظره و نظره و نظره
 بیا بلسرت عسکرکده قلمی حایز او عیضونه و عیضک الیه حضورک علامته عسکرکی تواید رنه و طریقی اعلاوه تقدیره ایچوره کسنتک ضیه اولنده نکلرک سربینه وینه کورده
 توکل و اوزده وقت الحفظ عکا فلعسره کونه بایکی افا ننده عبارتته او صبح بویله کوره مضبوط اردوی نکلرک بونظافه اولونه قیدیه ترقیه ایلیلی ایجاب و صا کورده
 و ذکر اظهاره مضبوطه و تحریزانه لفا فقیح فقهیه مواضعه ادره علیه بیوردینی حالک مضبوط قیدی بالذقیه منظره عا بویله اوزره ویرات و عیضک نکلرک سربینه وینه کورده
 بیه عالیه تقدیمی بنی امر و نوازه حضرتک مراد اولکده



تعماره
 عریات
 ملوزنه
 ملوزنه
 نه بیضه
 نه بیضه
 نه بیضه
 نه بیضه

OSMANLI ARŞIVI		
MVL		
759	35	8

MVL.00759.00095.008

Fig. 19 BOA. MVL. 791/8/1

REFERENCES

Primary Sources

Ottoman Archives of the Presidency (Cumhurbaşkanlığı Osmanlı Arşivleri, BOA)

BOA. MVL.1039/22/1/2. 21 Ş 1287.

BOA. MVL. 931/27/1/3. 20 L 1277.

BOA. MVL. 672/51/2/1. 9 Z 1277.

BOA. MVL. 633/67, 10 M 1279.

BOA. MVL. 791/16/1/3. 24 R 1282.

BOA. MVL. 742/107/2. 5 M 1281.

BOA. MVL. 931/27/2/1. 16 Za 1277.

BOA. MVL. 931/27/4/1. 7 M 1278.

BOA. MVL. 933.21.3.1. 18 R 1277.

BOA. MVL. 672/51/4/1. 8 Z 1280.

BOA. MVL. 759/95/8/1. 20 S 1278.

BOA. MVL. 672/51/2/1. 27 Ş 1280.

BOA. MVL. 672/51/1/2. 16 Ra 1280.

BOA. MVL. 931/27/1/3. 20 L 1277.

BOA. MVL. 791/1/2. 3 May 1279 (R.).

BOA. MVL 791/2/1. 17 Z 1279.

BOA. MVL. 791/1/3.

BOA. MVL. 759/95/1. 9 R 1277.

BOA. MVL. 791/8/1.

Ahmed Cevdet Paşa. (1960). *Tezâkir 21-39*. Edited by Cavid Baysun. Ankara: TTK Basımevi.

Bibliothèque Nationale de France. (1832). Retrieved from <https://gallica.bnf.fr/ark:/12148/bpt6k57837660/f94.double.r=code+penal+de+l'empire+francais>.

Bucknill, John Alexander and Haig Apisoghom Stepan Utidjian. (1913). *The Imperial Ottoman Penal Code: A translation from the Turkish text, with latest additions and amendments, together with annotations and explanatory commentaries upon the text and containing an appendix dealing with the special amendments in force in Cyprus and the judicial decisions of the Cyprus courts*. London: H. Milford, Oxford University Press.

French Criminal Code. (1810). Retrieved from https://ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_3.htm. (Accessed on June 3, 2019).

Code Penal Annote: Edition de 1832. (1832). Retrieved from <https://gallica.bnf.fr/ark:/12148/bpt6k54717901.texteImage>. (Accessed on June 3, 2019).

I.Tertip. (1289). *Düstûr*. İstanbul: Matbaa-i Amire.

İstanbul Bâb Sicilleri. (1072). 291, 64/B1.

Takvim-i Vekayi, (Recep 11, 1275).

Takvim-i Vekayi, (Şaban 29, 1275).

Secondary Sources

Ahmet Mithat Efendi. (2019). *Dolaptan Temaşa*. İstanbul: Türkiye İş Bankası Yayınları.

Akgündüz, Ahmed. (1990). *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri II Kitap II. Bayezid Devri Kânunnâmeleri*. İstanbul: Osmanlı Araştırmaları Vakfı Yayınları.

Akiba, Jun. (2005). From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period. In Colin Imber and K.Kiyotaki (Ed.), *Frontiers of Ottoman Studies: State, Province, and the West*, (pp. 43-60). London: I. B. Tauris.

Andrews, W. G., & Kalpaklı M. (2005). *The Age of Beloveds: Love and the Beloved in Early-Modern Ottoman and European Culture and Society*. London: Duke University Press.

Araz, Yahya. (2016). Osmanlı İstanbul'unda Çocukluk, Çocuk Evlilikleri ve Cinsellik Yaşı Üzerine Bir Değerlendirme (19. Yüzyılın Başlarından

İmparatorluğun Sonuna): Cinsel İlişkiye Uygundur Lakin Kendi Adına Konuşamaz!. *Toplumsal Tarih*, 274, 42-49.

- Araz, Yahya. (2013). *Osmanlı Toplumunda Çocuk Olmak*. İstanbul: Kitap Yayınevi.
- Ariés, Philippe. (1962). *Centuries of Childhood: A Social History of Family Life*. New York: Alfred A. Knopf.
- Bingöl, Sedat. (2004). *Tanzimat Devrinde Osmanlı'da Yargı Reformu: Nizâmiyye Mahkemeleri'nin Kuruluşu ve İşleyişi 1840-1876*. Eskişehir: Anadolu Üniversitesi Yayınları.
- Davison, Roderic. (1963). *Reform in the Ottoman Empire, 1856-1876*. Princeton: Princeton University Press.
- Deringil, Selim. (1998). *The Well-Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire, 1876-1909*. New York: I.B. Tauris.
- Etişli, Ezgi Aygün. (2013). Suçların ve Cezaların Kanuniliği İlkesi. *Türkiye Barolar Birliği Dergisi*, 225-246.
- Fortna, Benjamin. (2016). *Childhood in the Late Ottoman Empire and After*. Leiden: Brill.
- Fortna, Benjamin. (2011). *Learning to Read in the Late Ottoman Empire and the Early Turkish Republic*. New York: Palgrave Macmillan, 2011.
- Gerber, Haim. (2010). *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*. Farnham: Ashgate.
- Heyd, Uriel, and Nage, V. L. (1973). *Studies in Old Ottoman Criminal Law*. Oxford: Clarendon Press.
- İlaslan, Gamze. (2015). *Abduction of Women and Elopement in the Nineteenth Century Ottoman Nizamiye Courts*. (Master Thesis). Boğaziçi University, 2015.
- İpşirli, Mehmet. (1982). XVI. Asrın İkinci Yarısında Kürek Cezası ile İlgili Hükümler. *İÜEF Tarih Dergisi*, Prof.M.Tayyib Gökbilgin Hatıra Sayısı, 203-248.
- Jennings, Ronald C. (1975). Women in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri. *Journal of the Economic and Social History of the Orient* 18(1), 53–114.
- Karras, R. M., & Linkinen T. (2016). John/Eleanor Rykener Revisited. In Laine E.Doggett and Daniel E. O'Sullivan (Ed.), *Founding Feminisms in Medieval Studies: Essays in Honor of E. Jane Burns* (pp. 111–22). London: Boydell & Brewer.

- Maksudyan, Nazan. (2019). *Ottoman Children and Youth during World War I*. New York: Syracuse University Press.
- Maksudyan, Nazan. (2014). *Orphans and Destitute Children in the Late Ottoman Empire*. New York: Syracuse University Press.
- Miller, Ruth. (2013). *Legislating Authority, Sin and Crime in the Ottoman Empire and Turkey*. New York: Routledge.
- Najmabadi, Afsaneh. (2005). *Women with Mustaches and Men without Beards: Gender and Sexual Anxieties of Iranian Modernity*. London: University of California Press.
- Ortaylı, İlber. (2018). *İmparatorluğun En Uzun Yüzyılı*. İstanbul: Kronik Yayınları.
- Paz, Omri. (2010). *Crime and Criminals, and the Ottoman State: Anatolia between the late 1830s and the late 1860s*. (Doctoral dissertation). Tel Aviv University.
- Paz, Omri. (2014). Documenting Justice: New Recording Practices and the Establishment of a Criminal Court System in the Ottoman Provinces (1840-late 1860s). *Islamic Law and Society*, 21(1), 81-113.
- Paz, Omri. (2015). The Policeman and State Policy: Police Accountability, Civilian Entitlements, and Ottoman Modernism, 1840-1860s. In Dror Ze'evi and Ehud R.Toledano (Ed.), *Society, Law, and Culture in the Middle East: "Modernities" in the Making* (pp. 104-120). Berlin: De Gruyter.
- Peirce, Leslie. (2003). *Morality Tales: Law and Gender in the Ottoman Court of Aintab*. California: University of California Press.
- Peirce, Leslie. (1997). Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society. In Madeline Zilfi (Ed.), *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (pp. 169-198). New York: Brill.
- Peirce, Leslie. (2009). Writing Histories of Sexuality in the Middle East. *The American Historical Review*, 114(5), 1325-1339.
- Peters, Rudolph. (2005). *Crime and Punishment in Islamic Law Theory and Practice from the Sixteenth to the Twenty-first Century*. New York: Cambridge Press.
- Petrov, Milen V. (2004). Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868. *Comparative Studies in Society and History*, 46(4), 739-759.
- Quataert, Donald. (1994). The Age of Reforms, 1812–1914. In D. Quataert, & H. İnalcık (Eds.), *An Economic and Social History of the Ottoman Empire, 1600-1914* (pp. 794-823). New York: Cambridge University Press.

- Redhouse, S.J.W. (2006). *A Turkish and English Lexicon*. İstanbul: Çağrı Yayınları.
- Rubin, Avi. (2011). *Ottoman Nizamiye Courts: Law and Modernity*. New York: Plagrave MacMillan.
- Seyitdanlıoğlu, Mehmet. (1999). *Tanzimat Devrinde Meclis-i Vâlâ (1838-1868)*. Ankara: Türk Tarih Kurumu Basımevi.
- Shaw, S. J., & Shaw E. K. (1988). *History of the Ottoman Empire and Modern Turkey II*. New York: Cambridge University Press.
- Shaw, Stanford J. (1970). The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement Before 1876. *International Journal of Middle East Studies*, (1), 51-84.
- Schull, Kent. (2014). *Prisons in the Late Ottoman Empire: Microcosms of Modernity*. Edinburgh: Edinburgh University Press, 2014.
- Schull, Kent. (2014). Comparative Criminal Justice in the Era of Modernity: A Template for Inquiry and the Ottoman Empire as Case Study. *Turkish Studies*, 15(4), 621-637.
- Schull, Kent. (2014). Ottoman Criminal Justice and the Transformation of Islamic Criminal Law and Punishment in the Age of Modernity, 1839-1922. In Kent Schull (Ed.), *Prisons in the Late Ottoman Empire* (pp. 1-17). Edinburgh: Edinburgh University Press.
- Şentop, Mustafa. (2005). Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü. *Türkiye Araştırmaları Literatür Dergisi*, 3(5), 647-672.
- Tucker, Judith E. (2008). *Women, Family and Gender In Islamic Law*. Cambridge: Cambridge University Press.
- Tucker, Judith. (1998). *In The House Of The Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley: University of California Press.
- Tuğ, Başak. (2017). *Politics of Honor in Ottoman Anatolia: Sexual Violence and Socio-Legal Surveillance in the Eighteenth Century*. London: Brill.
- Türker, Ebru Aykut. (2011). *Alternative Claims on Justice and Law: Rural Arson and Poison Murder in the Nineteenth Century Ottoman Empire*. (Doctoral dissertation). Boğaziçi University.
- Türker, Ebru Aykut. (2017). Judicial Reforms, Sharia Law, and the Death Penalty in the Late Ottoman Empire. *Journal of the Ottoman and Turkish Studies Association*, 4(1), 7-29.
- Verhoeven, Claudia. (2009). Court Files. In M. Dobson and B. Ziemann (Eds.), *Reading Primary Sources the Interpretation of Texts from Nineteenth and Twentieth Century History* (pp. 91-105). London: Routledge.

Ze'evi, Dror. (2006). *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East 1500-1900*. Berkeley: University of California Press, 2006.

Ze'evi, Dror. (1998). The Use of Ottoman Sharī'a Court Records as a Source for Middle Eastern Social History: A Reappraisal. *Islamic Law and Society*, 5(1), 35-56.