THE BUREAUCRATIZATION AND MODERNIZATION OF THE NAIB IN THE OTTOMAN EMPIRE: 1839-1864

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2023

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Thesis submitted to the

Institute for Graduate Studies in Social Sciences

in partial fulfillment of the requirement for the degree of

Master of Arts

in

History

by

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Boğaziçi University

2023

DECLARATION OF ORIGINALITY

I, Hasan Fatih Öyük, certify that

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ABSTRACT

The Bureaucratization and Modernization of the Naib

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This thesis analyzes the office of naib in the Ottoman Empire during the early Tanzimat era. The aim of the research is to understand the reformation and transformation in the legal domain of the Ottoman Empire during the Tanzimat period. With the spread of tax farming in the Ottoman legal system during the 17th and 18th centuries the naibs became important power holders in the provinces with the total legal and administrative power of the kadıs. With the Tanzimat order, this position became a target of the newly established central government together with the other local power holders. The transformation in the legal domain in this period is analyzed according to the centralization narrative of the Tanzimat era. The thesis argues that the naibs were important local political actors with their legal and administrative capacities, who allied or challenged the other local and central actors and played an essential role in local politics. Lastly, it is claimed that the government created new forms of control over the naibs to increase its control over the judiciary domain. Based on the analysis of the number of dismissed naibs between 1839 and 1864, it is argued that the government used the practice of dismissing naibs with the claims of impropriety, corruption and bribery frequently to establish a power mechanism against the naibs.

ÖZET

Osmanlı İmparatorluğu’nda Naiblik Kurumunun Bürokratikleşmesi ve Modernleşmesi: 1839-1864

Bu tez, erken Tanzimat döneminde Osmanlı İmparatorluğu'nda naiblik makamını incelemektedir. Araştırmanın amacı, Tanzimat döneminde Osmanlı Devleti'nin hukuk alanındaki reformlara ışık tutmaktır. 17. ve 18. yüzyıllarda Osmanlı hukuk sisteminde iltizamın yaygınlaşmasıyla, naibler, kadıların hukuki ve idari yetkileri ile taşrada önemli güç sahipleri haline gelmişti. Tanzimat'la birlikte bu konum, diğer yerel iktidar sahipleri ile birlikte yeni kurulan merkezi yönetimin hedefi haline geldi. Bu çalışmada, hukuk alanında yaşanan dönüşüm, Tanzimat döneminin merkeziyetçilik anlatısına göre analiz edilmektedir. Bu tez, naiplerin yasal ve idari güçlerini kullanarak diğer yerel ve merkezi aktörlerle siyasi ilişkiler kuran ve yerel siyasette önemli rol oynayan siyasi aktörler olduğunu öne sürmektedir. Son olarak, hükümetin yargı alanı üzerindeki kontrolünü artırmak için naipler üzerinde yeni kontrol biçimleri yarattığı iddia edilmektedir. 1839-1864 yılları arasında görevden alınan naiplerin sayılarının analizine dayanarak, hükümetin naiblere karşı bir güç mekanizması kurmak için usulsüzlük, yolsuzluk ve rüşvet iddialarıyla naipleri görevden alma uygulamasını sıklıkla kullandığı ileri sürülmektedir.

ACKNOWLEDGEMENTS

First, I must thank my supervisor and mentor, Yaşar Tolga Cora, who made this research possible through his constant support. He always encouraged me on my academic journey and offered me solutions when I was puzzled. From my undergraduate years, his courses had a transformative impact on my approach to historical studies. His seminar courses were always educational and inspiring. I always felt his genuine interest in my comments and questions, and he always made time for me when I needed it. This limited space cannot be enough to express my gratitude towards him. It was a pleasure to work as a student of Yaşar Tolga Cora, which I am looking forward to continuing in the upcoming years.

I also would like to thank my jury members, Jun Akiba, and Nadir Özbek. Prof. Akiba showed serious interest in this project from the beginning and was more than helpful with his immense knowledge in the field. He always had fulfilling answers to my detailed questions. He read my research carefully, gave detailed and helpful feedback, and showed me my mistakes without discouraging my arguments, even when he disagreed. Prof. Özbek also encouraged this research from early onwards with his support. His critical and thought-provoking approach opened up my perspective on Late Ottoman history. I am grateful to both of them.

I should also thank The Scientific and Technological Research Council of Türkiye (TÜBİTAK) for giving me generous financial support with the TÜBİTAK-BİDEB 2210/A program.

I am thankful to my dear friends Tunç İbrahim Ceylan and Deniz Yüce, who were always encouraging and supportive, filling me with helpful feedback throughout this research. Their friendship eased the burden of writing this thesis.

Tunç was a friend who I could always spend joyful time with. As the most supportive colleague, Deniz took on many of my responsibilities at work, which helped me focus on my research.

I would like to show my gratitude to my friends Furkan Taşpınar, C. Onat Atış, Furkan Sarıer, and Hami Utku Topkaya. From our undergraduate years, their friendship was educative and inspirational. They did not only teach me a lot about topics that I was not aware of but also encouraged me to study further with their immense intellectual capacities. I always miss and look forward to our late-night talks. I should also thank my dear friend Eray Avan, who helped me clear my mind when I struggled. My dear fellow and friend Mert Aydemir listened and commented on the very early drafts of this project. I am also grateful to our department secretary Buket Köse, whose support and care were more than helpful.

I should mention my dear uncle Cengiz Öyük, who passed away during the last phase of this research. He was always kind and supportive of me. I wish he could have seen my graduation. I do miss him a lot.

I must thank my brothers Talha and Akif for being wondrous and curious little brothers to me. I am also thankful to my sister-in-law Zeynep for her continuous support. I should also thank my dear cat Leyloş for sitting on the keyboard when I needed a break.

I cannot express my feelings towards my parents, Hamdiye and Hüseyin Öyük. If they would not have been amazing parents, it could not be possible for me to pursue an academic journey. They were very supportive and encouraging from my high school years, always triggered my curiosity, and did their best to support my journey.

Lastly, I owe the greatest thanks to the love of my life, Nazmiye, for being the most amazing wife a man can have. She was my constant inspiration and encouragement. She supported me in every way possible during this study as being my editor and spent quite an amount of time understanding and criticizing a study that she knew little about. She was very patient and understanding toward all my neglect and mess during the last days of the research. Without her support, this thesis would not have been possible.

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CHAPTER 1

INTRODUCTION

This thesis analyzes the transformation of the Ottoman judiciary domain with a particular focus on the office of *naib* from 1839 to 1864. This office transformed into the acting judiciary bureaucracy of the Ottoman Empire in the 17th and 18th centuries with the practice of *iltizam* in the judiciary system. During this period, the practice of tax farming became a prominent feature of the system. The *kadı*s started to farm out their offices, mostly to the local ulama, for a sum payment and left their legal and administrative duties to the naibs, who were originally deputy judges under the kadıs. The practice became systematized in the 18th century, and the government's efforts to end the iltizam in the legal domain proved unsuccessful. One of the most critical concerns of the central government was its poor authority on the naibs. Since their initial contracts were with the kadıs, and kadıs were free to appoint anybody as their naibs, the government had very limited control.

From the late 18th century onwards, The Ottoman government aimed to initiate reform projects in the judiciary. These reforms targeted terminating the tax farming practice and using the kadıs as the acting judges. However, these attempts could not bring an end to the tax farming practice in the legal system, and the government changed its strategy to reform and modernize the office of naib, instead of eradicating it, starting from the reign of Mahmud II. Most of the attempts in this period could not succeed to modernize and centralize the naibs. The real transformation in the office started with the *Tanzimat* reforms. One of the first reform agendas of the Tanzimat order was the modernization of the judiciary domain.

In 1840, the Ottoman government enacted the Manual of Judges (*Talimname-i Hükkam*). This new manual ended the economic relationship between the kadıs and naibs. The kadı became salaried officers and were paid by the central government instead of making iltizam contracts with the naibs. The same policy to make the naibs as salaried officers could not succeed due to a lack of financial sources. Instead, the government continued to pay the kadıs a fee, which replaced the payment that used to be made by the naibs. The naibs continued to generate their economic income with their legal services.

Another vital transformation with this manual was the bureaucratization of the naibs. The appointment and dismissal rights were taken from the *kadı*s to the central state. With this wave of bureaucratization, the Ottoman judiciary domain underwent a serious transformation. In the previous system, the naibs had a fragile relationship with the central government. The appointments were made by the kadıs, though approved by the *kadıaskers*, and the state had no economic relationship with the naibs. The naibs generated their income with their legal services. The central government had poor information regarding naibs, including their names and backgrounds.

The office of naib carried characteristic features of the pre-Tanzimat order. This office gave local ulama members an opportunity to cultivate political power in their provinces, who did not have the social and political network to be circulated in the central legal bureaucracy. Instead, they established their networks with the center through *sarraf*s and *kapıkethüdası*s and leveraged their economic and political power in a sort of entrepreneurship. The business required certain risks as a part of tax farming practice. For instance, the office might have not brought the expected

income, or the operating costs might have appeared larger than as expected. As a part of the entrepreneurial relationship, the naibs aimed to increase their total income.

The legal and administrative power of the naibs was significant. As a representative of the kadı, the naib did not have any hierarchical relationship with the local administration and directly received orders from the central government. They were the sole legal power in their legal domains with no systematic appeal system available. Apart from their legal rights, the naibs also carried the kadı's administrative responsibilities in collecting certain taxes, army provisions, and infrastructure.

For these reasons, a particular focus on the modernization of the office of naib would be helpful in understanding the Tanzimat order. With a careful analysis of the bureaucratization practice of the naib, I aim to evaluate the state's strategies of modernization and centralization against pre-Tanzimat powerholders, who were seen as the leftovers of the *ancien regime*. The study highlights the government's methods and practices in the modernization process of a pre-modern institution. Focusing on a particular institution, we can follow the government's policy agendas while observing the reactions received from the naibs. The modernization of the office of naib is one of the many modernization stories of the Ottoman Empire.

This thesis considers the transformation in the office of naib with respect to the establishment of the modern Ottoman state. Critiques of modernity and liberal governments pointed out the modern state's complex relationship with the law and legality. For instance, Wael Hallaq argues, in his *Impossible State*, that the concept of the modern state is ontologically incompatible with Islamic legality.[1] The author's argument is based on the assumption that Islamic law, *shari'a*, as taking the highest

[1] Hallaq, *The Impossible State*.

and sole legal authority as God, is founded upon the protection of the rule of law. Hallaq argues that the legal institutions of Islamic law, historically, were independent of the political authority and focused on the protection of legal legitimacy and protection rather than the politicization of the legal entity.

Hallaq's work deserves detailed critiques from many different angles. Firstly, he draws an ahistorical, timeless, and abstract notion of Islamic legality. Moreover, in his mind, this legality carries certain moral values in the perfect symbiosis of Islamic ethics.[2] He overlooks the pragmatic and dynamic aspect of the law in general and tries to define a legal system that is solely composed of a set of moral values. On the other hand, his work is very helpful in highlighting the relationship between the state and the legal domain during the modern era. Not idealizing Islamic law, but a simple comparison of pre-modern legality with the modern overarching rule of state can be convincing enough to see the modern state's growing influence and control in the legal domain.

This study, supporting this claim, indicates that the Ottoman central government gained more authority in the legal domain after the introduction of the modern state institutions following the Edict of Tanzimat. Previously autonomous and economically independent institutions of kadıhood and naibship were transformed into state bureuacrats under the new regime, with the bureaucratic and financial interventions of the Tanzimat government.

Though there is a considerable amount of study regarding the Late Ottoman legal history, not many focused on the office of naib. Jun Akiba contributed significantly to the literature regarding the transformation of the Ottoman judiciary

[2] Ahmad, "On the state of the (im)possible," 101.

class from kadıs to the naibs in the Tanzimat era.[3] This important study underlined the process of bureaucratization and the role of the office of naib in the Late Ottoman legal structure. In this study, Akiba showed the process in which the institution became the major judicial office in the practice and the theory. In another article, the author made a detailed analysis of the Manual of Judges of 1840 (*Talimname-i Hükkam*), highlighting the bureaucratic transformation in the domain.[4]

Another important scholar focusing on the transformation of the naibship during the 19th century is Musa Çadırcı. His study on the Penal Code of Judges of 1838 was one of the earliest studies regarding the reform agenda of the state regarding the Late Ottoman judges.[5] In this study, the author seems to embrace a modernist view regarding the office of naib, which perceived tax farming and venality as a form of corruption. Following his work, a student of Çadırcı, Hamiyet Sezer Feyzioğlu wrote a broad history of the Ottoman judges during the Tanzimat era.[6] This study evaluates the traces of modernization in the institution from the late 18th century to the Hamidian era. With a similar approach to Çadırcı, the author discusses the transformation process with a centralist perspective.

A problem with this approach is its teleological framework. This perspective sees the modernization in the judiciary realm as a necessary reform project in Ottoman modernization. This view fails to understand the pre-Tanzimat legal domain in the historical context. Instead, Çadırcı and Feyzioğlu take the Tanzimat reform for granted, and the analysis is established around the Tanzimat government's centralist perspective. This study, on the other hand, offers a historical perspective regarding

[3] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period."
[4] Akiba, "Kadılık Teşkilatında Tanzimat'ın Uygulanması: 1840 Tarihli Talimname-i Hükkam."
[5] Çadırcı, "Tanzimat'ın İlanı Sıralarında Osmanlı İmparatorluğunda Kadılık Kurumu ve 1838 Tarihli 'Tarik-i İlmiyye'ye Dair Ceza Kanunname'si.'"
[6] Feyzioğlu, *Tanzimat Döneminde Kadılık Kurumu ve Şer'i Mahkemelerde Düzenlemeler*.

the pre-Tanzimat Ottoman legal order, which does not see the tax farming as a form of corruption, but an administrative and bureaucratic shift of the power instruments from central to local actors.

Last but not least, Jun Akiba's recent research on the practice of iltizam in the legal domain is the first detailed analysis of the tax farming practice in the Ottoman legal structure. Though the existence of the iltizam practice in the legal domain was known and mentioned by authors like İsmail Hakkı Uzunçarşılı[7], Musa Çadırcı[8] , and İlhami Yurdakul[9], it was not studied in detail. In this study, Akiba carefully evaluated and documented the details of this practice for the first time relying on the primary documents and enlightened many aspects of the financial relationship between kadıs and naibs.[10]

In his research, Akiba offers a new perspective on tax farming practice in the Ottoman legal realm. In contrast to the established position that sees the tax farming practice as a form of corruption in the Ottoman ilmiyye structure[11], the author suggests seeing this transformative change from a more structural perspective.[12] However, the author does not relate this transformation to the larger narrative of the 'decentralization' during the 18th century of the Ottoman Empire. There is a consensus in Ottoman historiography regarding the weakening power of the central government, especially after the 18th century, which allowed local actors to play more important roles in the provincial administration. The established historiography preferred to see this change in line with the 'failed-state' narrative. This established

[7] Uzunçarşılı, *Osmanlı devletinin ilmiye teşkilâtı*.
[8] Çadırcı, "Tanzimat'ın İlanı Sıralarında Osmanlı İmparatorluğunda Kadılık Kurumu ve 1838 Tarihli 'Tarik-i İlmiyye'ye Dair Ceza Kanunname'si.'"
[9] Yurdakul, *Osmanlı İlmiye Merkez Teşkilâtı'nda Reform, 1826-1876*.
[10] Akiba, "Farming out Judicial Offices in the Ottoman Empire, c. 1750– 1839."
[11] As an example of this view, see Çadırcı, "Tanzimat'ın İlanı Sıralarında Osmanlı İmparatorluğunda Kadılık Kurumu ve 1838 Tarihli 'Tarik-i İlmiyye'ye Dair Ceza Kanunname'si.'"
[12] Akiba, "Farming out Judicial Offices in the Ottoman Empire, c. 1750– 1839," 3.

position was criticized by the works of the scholars like Ariel Salzmann and Ali Yaycıoğlu in recent decades.[13]

Apart from these studies, Muzaffer Şakar's Ph.D. dissertation[14], which is recently published from İletişim Yayınları[15], on the bureaucratization of the judiciary offices is an important work in the field. The author argues the bureaucratic identity of the judiciary class is an historical attachment to the office which undermines its independence from the political power. According to the author, the bureaucratic identity of the modern Turkish judicial domain should be seen as a continuation of the Ottoman ilmiye bureaucracy, which was heavily reliant to the central government.[16]

Though the idea of a highly bureaucratic central ilmiye structure can be followed through historical sources, the author seems to overlook the differences between the pre-Tanzimat judiciary structure and the modern bureaucratic legal domain, which was established with the Tanzimat regime, especially regarding the relationship between the judiciary class and the central government. Moreover, the author does not refer to the existence of the office of naib, which changed the character of Ottoman legal bureaucracy with the expansion of the practice of tax farming. Hence, the study can be seen as a significant contribution to the Late Ottoman legal history in terms of highlighting the bureaucratic identity of the judiciary class in respect to the modern-state structure, but misses to differentiate the pre-modern and the modern legal structures from each other.

[13] Salzmann, "An Ancien Régime Revisited"; Salzmann, *Tocqueville in the Ottoman Empire*; Yaycıoğlu, *Partners of the Empire*.
[14] Şakar, "Bir Bürokrat Olarak Türkiye'de Hakim (Osmanlı İlmiyesinden Cumhuriyet Bürokrasisine)."
[15] Şakar, *Kadıdan hâkime*.
[16] Şakar, 36.

This study indicates that the shift from kadıhood to naibship should be seen in the historical framework of the Ottoman Empire. The change of the power dynamics between kadıs and naibs may project the process of shifting central power instruments to the local actors in the Ottoman Empire in different aspects. Moreover, this change has a particular importance in the Ottoman historiography since this shift was not initiated or supported by the central government. On the contrary, from the 16th century onwards, evidence shows the capital tried to end the tax farming practice in the legal domain and aimed to use kadıs as the acting judges.[17] This mentality did not change until the last years of Mahmud II, in which the government was convinced of the impossibility of finishing the naibship without radically demolishing the total legal establishment and aimed to reform the naibship itself.

This aspect of the office makes it particularly different from the other 'decentralized' power instruments and institutions, since, in the legal domain, the power dynamics changed without the active participation of the central government. Instead, the government actively tried to stop the tax farming practices between kadıs and the naibs. Thus, this particular story highlights that there were different aspects of the shift of power from the central to local institutions. On the other hand, this project only focuses on a specific time period, from the beginning of the Tanzimat Order to the establishment of *Nizamiye* courts, tracing the modernization of this specific office, and does not offer a broad historical analysis of the naibship.

This study is also a micro level analysis of the transformation of the tax farming practices in the Ottoman Empire following the Tanzimat order. Many scholars saw the Tanzimat as a breaking point that managed to finish the *iltizam* practice and established direct financial and economic relations between the central

[17] İnalcık, "Adaletnameler," 76.

government and its subjects. Nadir Özbek, criticized this approach by highlighting that the practice of tax farming did not instantly end with the new regime. Instead, the *iltizam* practice was transformed and taken into the vision of the modern governance.[18] Özbek showed that the tax farming practice continued after the Tanzimat regime, with a shift from large *mültezim*s to smaller ones after the Tanzimat era.

In this sense, the modernization of the office of naib offers a different strategy used by the central administration to change the quality of the tax farming. Instead of a total eradication of the financial relationship between the kadıs and naibs, the central government made both parties salaried officers, which meant that the tax farming contracts of the kadıs would be directly paid from the central treasury, with no financial relationship between the naibs.[19] The new bureaucracy did not end the tax farming practice, instead made the state one of the parties.

Starting from the modernization attempts of the early Tanzimat government, the study ends with the establishment of the *Nizamiye* courts with the *Vilayet Nizamnamesi* of 1864. With the introduction of *Nizamiye* courts into the legal system, the Islamic law courts lost their practical judiciary responsibility in most parts. Although the naibs of the previous regime continued to dominate the Nizamiye courts with their experience in legal practice, their place in the new legal bureaucracy changed. In the new system, the naibs did not act as the sole judicial power but as a part of the bureaucratic system. I argue that the meaning of the office transformed significantly after the establishment of *Nizamiye* courts.

[18] Özbek, *İmparatorluğun Bedeli*, 47.
[19] Akiba, "Kadılık Teşkilatında Tanzimat'ın Uygulanması: 1840 Tarihli Talimname-i Hükkam," 15.

In Chapter 2, a historical framework of the office of naib is taken into question with a general picture of the 19th-century Ottoman legal history. This chapter highlights that the spread of tax farming practices in the judiciary domain cannot be solely seen as corruption. Instead, the practice can be read in the context of the decentralization process of the 17th and 18th centuries. Thus, this office cannot be exclusively seen as a reform-needed, corrupted institution but as a non-centric legal and administrative office that played an important role during the pre-Tanzimat era.

Secondly, this chapter questions the Tanzimat regime's choice to 'reform' the office of naib instead of reviving the kadıhood. It is argued that the Ottoman government had certain legalistic concerns, together with practical limitations while transforming the office of naib. This caused a natural downfall of the kadıhood. Since the system encouraged kadıs to leave the judiciary power to the naibs, the kadıhood was turned into a nominal title. This transformation is taken into account by highlighting the differences between the offices of kadı and naib in the legal discourse of Ottoman legal theory.

Chapter 3 analyzes the role of Ottoman naibs in local political structures. It is argued that during the Tanzimat era, the Ottoman judges were active local politicians who participated in the coalition against the center or the other local actors. The newly established Tanzimat government created new forms of local politics and transformed the existing local networks. The naibs actively participated in local politics as part of these local networks. The chapter argues that the naibs should be seen as a considerable part of the local networks, whose agencies were mostly overlooked under the *ayan*s, *eşraf*s, and provincial governors like *vali*s, *kaymakam*s, and *kaza müdürü*s. This analysis also forces us to rearticulate the argument that the Ottoman local judges did not have considerable political and judicial power and

mostly acted as notaries in their cities.[20] The chapter shows that the Ottoman naibs continued to keep an essential degree of the judiciary and administrative capacity that managed to challenge both central and provincial actors still in the Tanzimat era.

Chapter 4 makes an analysis of a new form of relationship between the state and the naibs, the practice of dismissal (*a'zl*). Before the Tanzimat era, the government had limited power of surveillance and control over the judiciary class. The judges did not have a legal responsibility to submit their decisions to the approval of the center, and their decisions were taken as final due to the lack of the institution of appeal in both Islamic and Ottoman legal systems. With the foundation of *Meclis-i Vâlâ-yı Ahkâm-ı Adliyye* (Supreme Council of Judicial Ordinances) in 1838, Ottoman legality had a court of cassation for the first time. This pre-Tanzimat institution became the supreme court of the Ottoman judiciary system after the Imperial Penal Code of 1840, which gave the newly established *muhassıllık meclisleri* the adjudication power but required them to send their decision to the center for approval. It is argued that this new one-way relationship increased the control capacity of the central government in the judiciary domain. The government had the ability to dismiss the judges, mostly with abstract and unclear reasons. I claim that this power increased the central state's effectiveness in the judiciary domain, a field previously controlled by the *ulema*.

In a data analysis in Chapter 4, the number of the dismissed naibs by the center was specified as one hundred eighteen in a twenty-six-year period between 1839 to 1864. This number was six times higher than the previous twenty years period, between 1815 to 1837, in which only twenty naibs were dismissed. The analysis included the reasons for the judge's dismissals. The most frequent reasons

[20] Ekinci, "İslâm Hukukunda Mahkeme Kararlarının Kontrolü," 965.

for the dismissal were identified as impropriety, corruption, and the oppressing the people.

This data has been taken from the available documents in Ottoman State Archives. The data does not aim to show every dismissed naib during the period. The aim of this analysis is to indicate the major trends in certain periods through the available documents. It is likely that the actual number of dismissed judges was much higher than the given number in the analysis. I have encountered micro-cases involving cases of dismissed naibs who were not included in my analysis since the document did not appear in my research.[21] In other instances, I saw documents of previously dismissed naibs, but could not find the correspondence that caused their dismissals. In these cases, I did not include the names of these naibs.

This thesis covers a micro-level analysis of the modernization of pre-modern legal institutions in a particular focus to the office of naib. It is argued with the establishment of modern state institutions, the central government increased its relative power in the legal domain. This 'efficiency' of the central government in the judiciary domain managed to establish a certain degree of control in relation to the office of naib. By paying attention to this specific modernization story, it is possible to see the different aspects of the Ottoman modernization narrative. This study aims to highlight the major characteristics of the modernization and bureaucratization in the legal domain during the Tanzimat era.

[21] In this example, the dismissed naib of Palu, Hüseyin Hamid Efendi, was not included in my data set. Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 51–52.

CHAPTER 2

OTTOMAN JUDGES IN THE 19TH CENTURY

2.1 Ottoman legal structure during the Classical Era

The Ottoman legal system was established upon the Islamic legal theory and its institutions. Since its foundation from the 8th century onwards, this legal system has not only varied in terms of different legal opinions but has also interacted with different political and social cultures, resulting in further changes. No legal system can be seen as a static and unified set of rules and regulations that were created centuries ago, let alone Islamic law, but every legal system carries different features. The Ottoman Islamic law was one of the representations of Islamic law with its particularities and nuances. Not only in the Islamicate geography but even in different periods of Ottoman history, some of these features were highlighted more than others.

A legal system consists of various legal theories, opinions, regulations, and conditions establishing a complex set of institutions. In the case of Ottoman law, many scholars see religious and secular law, *shari'a* and *kanun*, in a competing nature. The idea was that the political power was keen to establish more authority in the legal domain with the enforcement of secular laws. In some cases, this so-called legal tradition is seen as a continuation of the socio-political culture carried from Central Asia.[22] However, one should remember that the very nature of Islamic legal theory is open, or even in some cases, welcome to these 'secular' interventions. Not only the famous example of the Hanafi school of law, but almost all schools, in one

[22] İnalcık, "Osmanlı Hukukuna Giriş: Örfi-Sultani Hukuk ve Fatih' in Kanunları."

way or another, give room for political power, which is known as *siyasa*. This room does not imply that *siyasa* is the opposite of the *shari'a* but a part of the legal system.

The Ottoman legal system cannot be fully understood without putting it into its place in Islamic legal history. In her analysis of Ottoman legal pluralism, Karen Barkey claims, "the fact that the *shari'a* (religious law) never dominated as a single source of law was very important for the imperial state and society."[23] On the other hand, the shari'a cannot be seen as a religious law, or a set of regulations given by dogmas but as a whole legal system that includes both religious and secular law. This story continues during the 19th century, in different parts of the Islamic world, or the example of this study, in the Ottoman Empire. Moreover, the foundation of the secular Turkish Republic does not inherently support the assumption that the Ottoman legal system was secularized step-by-step during the 19th century.[24] This is why the Ottoman legal system cannot be fully understood without understanding the Islamic legal system itself.

The pillar of the Islamic jurisdiction as the sole authority in the court was *kadı*. A kadı was essentially considered a legal and bureaucratic representative of the Sultanic power. According to Islamic law, the head of the state had the power to give a person the title of kadı. In early Islamic societies, the head of the jurisdiction was the Caliph himself. The kadı was responsible for the execution of the Caliph's decisions or making new decisions by the authority of the Caliph. During this early period, these judges were members of the first Islamic society, *sahaba*, companions of the Prophet, who witnessed the Prophet's legal mind and ideal. Islamic law was blossomed by the actions of the Prophet, who transmitted and explained the Qur'anic

[23] Barkey, "Aspect of Legal Pluralism in the Ottoman Empire," 87.
[24] Kırmızı, "19. Yüzyılı Laiksizleştirmek: Osmanlı-Türk Laikleşme Anlatısının Sorunları."

verses and led the application of this system in socio-political life. Thus, the job of a kadı was to find legal solutions in which God would be pleased.

Early judges of Islamic law, caliphs, *wali*s, or *kadı*s, were searching for the Prophet's sunnah.[25] The sunnah was not just the most pious and religious way of living but direct legal evidence that had the authority to explain or, in some cases, overrule the Qur'anic commands.[26] Qur'an stayed as the supreme source of the ruling, and it was a complete text with the majority consensus of the first Islamic community. The problem was that Qur'an was neither a sizable book nor had a precise language for a legal structure. The importance of the sunnah came with this ability to explain the Qur'anic commands and establish new rulings in cases that the Holy Book silenced.

Since the legal system was based on the Prophet's model, all available and valid legal evidence Qur'an, hadith, ra'y (discretionary opinion), or later qiyas (analogy) was to project the way the God established through the Prophet. Even in the cases that ra'y overruled the Qur'an and hadith, the primary notion was to catch the exact will of God (*muradullah*), as in the example of Caliph' Umar's permanent abrogation of the Islamic rule of cutting the hand of a thief in time of famine. The importance of producing and acquiring legal evidence paved the way for deeper legal specialization in the Islamic legal context. The legal specialization ended up with the empowerment of ulama in the application of Islamic law and the exclusion of the Caliph in legal manners, highlighted by the Mihna controversy of the 9th century.[27]

The ulama managed to keep their autonomy from the political authority since the second century of Islam. The kadıs were educated in madrasas controlled by the

[25] Hallaq, *The Origins and Evolution of Islamic Law*, 52.
[26] Brown, *Misquoting Muhammad*, 156.
[27] Zaman, *Religion and Politics under the Early 'Abbāsids*, 106.

ulama with generous sources of pious endowments. The Sultan's authority in delegating a person as a kadı was already limited by the religious and legal capacities of the appointee.[28] The power of removal of a kadı by the political power was also stipulated with several prerequisites. A rule of kadı could not be revoked or changed by another kadı or the Sultan.[29] The ulama reserved the monopoly of legal power in theory.

However, this theoretical power of the Muslim legalists does not mean that they kept the sole legal authority throughout the whole history of Islam. Several times, the political leaders established more control in the field with different instruments. Guy Burak pointed out one of these breaking points as the change and transformation of the legal and religious establishments and institutions during the post-Mongol era.[30] In the long history of the Ottoman dynasty, the power dynamics were changeable and depended on the political, economic, and social contexts. In his famous study, Baki Tezcan highlighted the growing institutional and bureaucratic role of ulama and other political actors that limited the power of the Sultan starting from the late 16th century.[31] This analysis indicates that the role of ulama was less powerful and less independent in the first three centuries of the Ottoman Empire than in the following period.

Although power dynamics change between the different actors constantly and cannot be defined in a static and unchangeable character, the theoretical power of ulama in the legal domain should not be overlooked. This power of ulama did not come with the Qur'anic or Prophetic message. The profession was invented during the formation of Islamic law in the first two centuries of Islam. The ulama created

[28] Atar, "Kadı."
[29] Hallaq, *The Origins and Evolution of Islamic Law*, 82.
[30] Burak, *The Second Formation of Islamic Law*, 213.
[31] Tezcan, *The Second Ottoman Empire*, 191–227.

legality over their independence and autonomy in the socio-political context. The preservation of this legality is critical and worth mentioning though it cannot represent the whole picture. No historical or socio-political contexts could be understood only by examining law. The law mostly shows expectations and does not mean that all rules are applied in every aspect of life. On the other hand, all legal systems have close relations within their existing societies. A legal construction in which legal jurisdiction was distinct and protected over the political authority that lasted for thousands of years should be considered noteworthy to understand the roots and elements of the socio-political institutions and society.

The ulama played an important role not just in the legal domain but also in the administration of the Empire. The kadıs were educated and graduated from Süleymaniye Madrasa in Istanbul.[32] Madrasa students who could not manage to further their studies in the capital did not have a chance to become kadıs if their madrasa had a temporary or permanent privilege.[33] This way, judges' education, and qualities were kept to a standard. Moreover, central ulama was able to control the employment process from a single institution as long as they managed to keep its control.

The leading legal institution of the state was the so-called sharia courts. These courts were the primary legal mediators in the Empire that acted in civil and criminal cases without distinction. There was no cassation procedure as in classical Islamic legal theory, and the court decisions were final. Until the foundation of *Meclis-i Vâlâ-yı Ahkâm-ı Adliyye* (Supreme Council of Judicial Ordinances), there was no

[32] Before the establishment of Süleymaniye Madrasa in the 16th century, Sahn-ı Seman, established by Mehmed II became the highest madrasa that educated kadis. Atar, "Kadı."
[33] Atar.

court of appeal in the Ottoman legal system.[34] However, this gap was usually filled by *Divan-ı Hümayun* (Imperial council) and *eyalet divanları* (provincial councils).

Besides being the Empire's highest court, *Divan-ı Hümayun* could also overview certain court decisions and sometimes change them. Though this institution manage to create some accountability in the juristic system, these divans cannot be seen as appellate courts in the modern sense. Firstly, these *divan*s did not constantly monitor the court decisions. A court decision could only be carried to a divan if one of the parties had enough social network to bring the case to these institutions. Secondly, these *divan*s did not carry institutional power in the legal process.[35] Their juristic power came from the Sultan's authority. *Divan-ı Hümayun* did not have the power of jurisdiction separate from the jurists who initiated the legal hearings. Thirdly, they could not change or revoke the interpretation of the kadı, but could make a new hearing of a case if an apparent mistake was made in the jurisdiction process.

Apart from Islamic law courts, there were three other autonomous legal institutions. One of them was non-Muslim courts which regulated personal matters (*ahval-i şahsiyye*) between parties from the same religion. These non-Muslim courts were not unique to the Ottoman Empire, but a premise given to *ahl-al kitab* non-Muslims by Islamic law.[36] The courts did not have a monopoly on violence, instead solved disputes mostly in civil cases like marriage, divorce, and inheritance according to their canonic law. These courts could not make administrative or bureaucratic decisions. The head of the Islamic state, by the authority of *shari'a*,

[34] Ekinci, "İslâm Hukukunda Mahkeme Kararlarının Kontrolü," 964.
[35] Mumcu, *Divan-ı Hümayun*, 90.
[36] Al-Mawardi, *The Ordinances of Government (Al-Aḥkām al-Sulṭāniyyah w'al-Wilāyāt al-Dīniyya)*, 162.

accepted their rulings when both parties were from the same religion, and the verdict was made according to the canonic law of the religious community.

The non-Muslim courts were not allowed to make any judication when both parties were not from the same religion. When one of the parties was a Muslim, the case would automatically fall under the power of shari'a courts. Moreover, non-Muslims were not forced to solve disputes in their religious courts. A non-muslim was allowed to appeal to shari'a courts regardless of the parties of a case. The decision of non-muslim courts could only be valid if all parties accepted the verdicts and did not apply to a sharia court. For instance, Zarinebaf highlights that Greek Orthodox and Jewish women were eager to take their cases of divorce and inheritance to shari'a courts since Islamic law was more flexible in divorce and provided larger shares in inheritance for women.[37] Thus, their legal authority heavily merged with religious belonging of a society.

A third legal institution was the consulate courts which acted as a legal mediator between two parties under the citizenship of a capitulated country.[38] These privileged courts started with the Consulate of France, which regulated the disputes between French merchants based in Istanbul. During the 17th and 18th centuries, their number increased due to new capitulations to several other states. The authority of these consulate courts depended on the agreements made by the Ottoman government and the capitulated country. These capitulations usually covered the field of civil law and trade disputes between two parties from the same citizenship.[39]

Barkey indicates this fact by pointing out that the Ottoman legal pluralism was "not an uncoordinated and unbound set of laws emanating from different

[37] Zarinebaf, *Crime and Punishment in Istanbul*, 147–48.
[38] Ekinci, *Osmanlı Mahkemeleri*, 118.
[39] Ekinci, 99.

communities; it was a carefully choreographed legal pluralism coordinated by the center."[40] Apart from the existence of non-Muslim community courts, all Ottoman citizens had to follow the legal procedures that they were required to. As mentioned above, the legal autonomy of these community courts was strictly limited to civil cases and could only be valid if both parties accepted the verdict of their community courts. Community courts did not have a legal power in terms of criminal cases as well.

Thus, one should realize this complicated legal structure of the late Ottoman Empire was not actually a legal 'pluralism' in terms of many different courts' having converging legal capacities, but different courts' having limited authorities similar to the modern legal systems. This fact is also valid for shari'a since the political ruler can limit some aspects of the legal authority of the kadı because the kadı is actually a legal representative of the political authority.[41] Thus, a shari'a court did not have the legal authority to make a verdict in cases of public interest like murder since the Manual of *Eyalet* Assemblies of 1840 (*Eyalet Meclisleri Talimatnamesi*) gives this power to local assemblies.[42] This case can be seen similarly for the *Nizamiye* courts later established in the 1860s.[43]

[40] Barkey, "Aspect of Legal Pluralism in the Ottoman Empire," 84.
[41] Ekinci, *Osmanlı Mahkemeleri*, 88.
[42] Çadırcı, "Osmanlı İmparatorluğu'nda Eyalet ve Sancaklarda Meclislerin Oluşturulması (1840-1864)," 281.
[43] According to Hallaq, the legal culture of Islam was focused on the judge himself, while in the Western cultures, the courtroom was itself a being that represented the legal power, and less depended on the judge. In terms of local *meclis*es in the Late Ottoman Period, the kadı or naib himself was considered a member of the assembly and he acted as the overtaker of the cases which were required to be seen by local assemblies. Nizamiye courts represent a different phase of the transformation of legal culture from the judge to courtroom. Though the kadıs and naibs usually acted the head of Nizamiye courts, their existence did not define the legal power of these courts. Hallaq, *The Origins and Evolution of Islamic Law*, 59.

2.2 The practice of tax farming in the Ottoman legal system

Two major actors of the Ottoman legal system were kadı and naib. They co-existed and led the system as the main components of the Ottoman legal system while they were distinctively different. A scholar of Ottoman History can encounter the title of naib and kadı in various cities and towns, acting in similar manners with similar power. On the other hand, these two terms were not replaceable, and naibs were not created to replace kadıs in terms of legal power.

A *kadı naibi* is a title in Islamic law addressing a deputy of kadi.[44] The term *naib* was born during the early Islamic community due to the legal and administrative needs in rural and suburban areas, which were only partially accessible for kadıs. While kadı represented the legal and political authority in cities, he would delegate naibs to the towns and villages far from the urban areas where legal services were more needed. Kadıs, during this period, did not leave the power to naibs, on the other hand, and periodically visited these places under naibs to control, resolve issues and remind his existence.

In the legal theory of Islamic law, a naib does not have the power of jurisdiction without kadı's authority. Naibs' verdicts and rulings were supposed to be controlled by the kadıs. As opposed to a kadı's assertive legal power, rulings of naibs could be discharged or changed by kadıs.[45] On the other hand, a naib was only liable against the kadı which he was legally responsible to. A different kadı from a different city could not discharge and overrule another naib's decision. There was a clear hierarchy between kadı and naib regarding legal power and authority. The political

[44] The term *naib* is not unique for jurisdiction in Islamic political history. *Naib* (nomen agentis from *n-w-b*) means 'deputy'. All official deputies of different positions are called *naib* in Islamic political culture. In Ottoman tradition, since they dominantly existed in legal domain, the term naib was directly referred to kadı naibs. Naibs were also known as *khalifa*s in the early years of Islam. Hallaq, *The Origins and Evolution off Islamic Law*, 80.
[45] Hallaq, 80.

authority could not choose or assign someone as a naib to any kadı without the approval of kadıs. Their employments was usually left to kadıs on the condition that kadıs carried a legal responsibility for the naib's verdicts.

Starting from the late 16th century, the legal power in the Ottoman Empire began to shift from kadıs to naibs because many kadıs started to sell their offices to naibs in a system that can be seen as identical to the tax farming. The practice of tax farming, or commonly known as *iltizam* in Ottoman bureaucracy, was a tax collection method in which the political authority, that monopolized the right of taxation, sold this right to a third party for an advanced payment. It is widely agreed that the tax farming practice in the Ottoman Empire was not common until the reign of Mehmed II.[46] The system expanded through the 16th and 17th centuries due to the rising military expanses of the central Ottoman army. The tax farming created a cash income at the hand of the central government without making any investment on the tax collection bureaucracy, which mostly became the concern of the *mültezim*(s), the person(s) who bought the right of tax collection from the central government.

During the 16th and 17th centuries, the term of tax farming contracts was mostly in between three to twelve years.[47] However, by the late 17th century to the Tanzimat era, the iltizams were extended lifelong for the mültezims, which was called *malikâne*.[48] In this system, the mültezims would make an advanced payment (*muaccele*) for the right of the tax collection and an agreed sum of taxes per year. Though the tax farming provided a cash payment for the central treasury with no logistic and bureaucratic expenses for the taxation procedures, it decreased the political authority of the central government in the malikânes. Moreover, the

[46] Göçek, "Mültezim".
[47] Genç, "İltizam".
[48] Genç, "Malikâne".

mültezim's might have caused a burden under the taxpayers since the investor's essential aim was to profit. Most of the mültezims were located in the capital, especially after the 18th century, and they left the tax collection process to another party, rather through a different contract or an agent.[49]

The practice of tax farming in the legal domain was not an actual tax farming since the kadıs did not have the authority of taxation by themselves. The kadıs had the right of collecting some taxes for themselves which was given as a privilege by the government in exchange of their legal services. Apart from that, the essential economy was based on the court fees that were received from the applicants. The system, on the other hand, was very similar to the tax farming practice, apart from the fact that the kadıs did not farm out their posts for a lifetime as in the examples of malikâne, but for a limited term.

Before explaining the details of iltizam in the Ottoman legal system, it is essential to understand the complicated legal bureaucracy and hierarchy in the Ottoman Empire. There are two titles for Ottoman kadıs called *mevleviyet,* and *mansıb* or *kaza kadılığı*. *Mevleviyet* refers to the judgeship position in important cities of the Empire. There are thirty-five *mevleviyet* positions under four different levels. The highest level was the office of Istanbul, which is followed by Haremeyn, which is Mecca and Medina judgeships. Below Haremeyn, there were *bilad-ı hamse* (five cities) judgeships: Edirne, Bursa, Damascus, Filibe, and Cairo. The third level was *mahreç mevleviyets*, which refers to the judgeship positions in Galata, Eyüp, Üsküdar, Aleppo, Jerusalem, Salonica, Sofia, Izmir, Crete, and Trikala. There were sixteen other cities under devriyye mevleviyets: Adana, Antep, Baghdad, Belgrade,

[49] Genç.

Beirut, Bosnia, Çankırı, Diyarbakır, Erzurum, Konya, Kütahya, Muş, Ruse, Sivas, Trablus and Van.[50]

All the other judgeships in the Empire were under the title of *mansıb*, or kaza kadılıkları. These judgeships are categorized into three branches: Rumeli, Anadolu and Mısır. These three branches were also divided into several different sub-branches. While there were nine sub-branches (*sitte*, *ûlâ*, *karibe-i ûlâ*, *saniye*, *salise*, *inebahtı*, *eğri*, *çelebi*, *çanad*) in Rumeli judgeships, there were ten other sub-branches (*saniye*, *salise*, *rabia*, *hamise*, *sadise*, *sabia*, *samine*, *tasia*, *ibtida*) for Anadolu judgeships. Apart from these two groups, there were also six ranks in Mısır judgeships: *sitte, musul, salise, rabia, hamise,* and *hadise*. Two groups of judgeships, *arpalık* or *maişet* courts, were not a part of the judiciary hierarchy but were created to be distributed to higher-level judiciary bureaucrats as an additional source of income. As in many other judgeships, the holders of *arpalık*s farmed out their posts to the naibs.

These ranks were essential for ilmiye members since it primarily defined the possible outcome of their career paths and the amount of money they would receive from the posts. A judge's starting title differed depending on their career path. For example, müderrises of Sahn-ı Seman and Suleymaniye madrasas started from *mahreç mevleviyet* kadıhoods while the other müderisses started from *devriyye mevleviyet* level. A standard candidate was supposed to start from the lowest level of the hierarchy, which was Çanad for Rumelia and İbtida for Anatolia. When a judge finished his term in his class of judgeship, he waited for another position at one higher level.

[50] The hierarchy was taken from Fahri Unan's entry in *TDV İslam Ansiklopedisi* in its last defined form in the 17th century. Unan, "Mevleviyet."

Since there are only thirty-five possible positions at the level of mevleviyet, kadıs of this level had to wait for years until a judgeship of their level was available. There were lesser offices in the higher tiers of the bureaucratic scheme, which caused the kadıs to wait for many years to be appointed in a higher level kadıhood position.[51] Since they had no regular economic income from the state and generated revenues from their legal services, the wait meant no income until the next appointment. Kadıs were appointed essentially by *kadıasker*s of Anatolia and Rumelia. Only the highest-level judgeships, known as *yüz ellilik* kadıhoods, were selected by the sadrazam from the candidates offered by *kadıasker*s.[52]

With the influx of upper class bureaucrats in various domains, Ottomans started to use a system known as *tevcihat*, starting from the 16th century, in which every state official held a post only for a year and then passed it to another higher bureaucrat.[53] The idea was to keep everybody busy and with money since the number of military, bureaucratic, and judiciary elites with no posts was much higher than those with positions. Kadı posts were also a part of this system due to the high numbers of kadıs circulating in the legal bureaucracy. A state report prepared at the age of Selim III indicated that there were approximately 5000-6000 kadis waiting to be appointed while there were only 1000 judgeship positions in the whole Empire.[54] The solution for this problem was separating the rank (*paye*) from the office titles. After finishing their term in one level, kadıs received the title of a higher office even though another kadı occupied it. In this way, these 'unemployed kadıs' started to be appointed at lower levels regardless of their title.[55]

[51] Uzunçarşılı, *Osmanlı devletinin ilmiye teşkilâtı*, 84.
[52] Uzunçarşılı, 84.
[53] Akyıldız, *Osmanlı Bürokrasisi ve Modernleşme*, 24.
[54] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 45.
[55] Unan, "Mevleviyet."

For most of the kadıs who had lower ranks of kadı posts, it was neither profitable nor prestigious to fulfill their positions in reality. Since these posts were given for a couple of years, it was logistically and financially irrational for kadıs to assume their roles especially in small cities and towns which did not generate high economic income. Instead, it was more logical for a kadı to farm out their posts to receive the total sum they could get from them without logistic and bureaucratic expenses. In this way, the naibs were receiving the right to collect the court incomes and leveraging political and administrative power in their domain. For *kadıs,* these posts meant an economic income with almost no effort since they did not have to carry bureaucratic and logistic burdens.

There were two kinds of naibs circulating in the system in practice. The first group, *bab naib*s, or subordinate naibs, acted as assistants to kadı. The actual kadı of the town employed subordinate naibs as their assistants, who mostly led a sub-court system called the court of *bâb*. The second group of naibs, substitute naibs, acted as the primary judges of the town since kadıs did not assume their posts but left them to naibs. These two categories did not exist in the Islamic law since the office of naib was not seen as a substitute to the kadıhood, but only as supporting office. Thus, these categories appeared in the Ottoman legal context following the practice.

Apart from substitute judges, subordinate judges also received their positions by making a payment to their kadıs, which made their economic relationship similar to substitute naibs.[56] The kadıs, in some cases, tried to expand their profits by creating new *bâb* courts to sell them to subordinate naibs. The difference between the substitute and subordinate naibs, thus, essentially was their legal power. According to the Islamic law, the naibs were dependent on their kadıs in the legal authority, and

[56] İnalcık, "Adaletnameler," 76.

their decision could be revoked by the kadıs. Since substitute judges did not have any kadıs in their provinces, their decisions were accepted as final initially. It is likely that the practice of tax farming the legal offices to substitute judges followed the practice of subordinate judges. In this sense, both substitute and subordinate judges had the same job descriptions under the Islamic legal theory. Their differences came from the practical differences between the substitute and subordinate judges.

In theory, it was forbidden to appoint naibs among the locals.[57] However, it seems that the ulama did not strictly follow this rule.[58] One of the biggest incentives for the kadıs to sell their positions to the naibs was that it did not require any investment. Those who personally went to their stations had to cover the logistic burdens and needed to employ a group of literates in the court bureaucracy. When they left their station to the naibs, the norm was the one-fifth basis, which meant that 20% of the total income of the office would be left to the office holder. If non-locals would take the offices, the financial risk would be even higher since they were required to make an advance and monthly payments to the office holder.

Moreover, being an acting judge required specific know-how in the cities and provinces for which the judge was responsible. Apart from their legal authority, they also acted a part of local administration and played a crucial role in the tax collection. They were also responsible for infrastructure and army provision. All these responsibilities brought the requirement of local networks, which would be harder to leverage in the short term. Instead, the local ulama, who already had these local networks and could establish specific networks with the capital, had more chances to hold the offices.

[57] İnalcık, "Adaletnameler", 77.
[58] Feyzioğlu and Kılıç, "Tanzimat Arefesinde Kadılık-Naiblik Kurumu", 35.

Though there are no certain numbers in this regard, it would be expected for the local ulama to have more share in the tax farmings. Some primary documents support the argument about local ulama's effectiveness in local judgeships. This practice can be dated even to the second half of the sixteenth century, from a *mühimme* record in which a *mehayif müfettişi,* inspector judges who were sent from the center to provinces, reported that in Bosnia, the kadıs appointed naibs among locals.[59] It should be highlighted that these naibs were subordinate judges, working under an existing kadı. However, this example still shows that the naibs with local origins existed at least from the 16th century. Even though they were subordinate judges, their financial relationships with the kadı was similar to the substitute ones in terms of tax farming.

Another example can be given from Trabzon, in which only three naibs shared the position for sixty years between 1790-1850.[60] It would be less expected for these naibs to be non-locals of Trabzon since they spent long terms in the city. In the 19th century, many primary documents also indicate that even during the Tanzimat period, the local ulama kept their impact on local judgeships. For example, the judge of Eğin in today's Erzincan was a local ulama who had his education in Eğin and Amasya.[61] The naib of Devrek in 1853 was also a local of the town.[62] The naib of Erzincan in 1858, Hazik Efendi, was addressed in another document as Hazik Efendi of Erzincan.[63] In another example, the naib of Palu, Hüseyin Hamid Efendi, who served for four years was also a local.[64]

[59] Yıldırım et al., *7 Numaralı Mühimme Defteri (972-976 / 1567-1569)*, 254–55.
[60] Kayar, "Osmanlı Yargı Teşkilatı'nda Naib", 201.
[61] Kaya, *Erzincanlı Son Devir Uleması*, 227; BOA, *A.}MKT*, 105/63.
[62] BOA, *A.}MKT.UM*, 138/51
[63] BOA, A.}MKT.MHM, 23/4.
[64] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 52.

This pattern cannot mean that all the offices of naib were shared among the local ulama. However, it can show that the tax farming in judiciary offices gave local ulama a chance to leverage political and economic power in their regions. Especially for the large cities, if kadıs did not take the job, it would be more expected for the central ulema to be the desired candidates for the offices since the generated incomes were larger. On the other hand, the number of small judgeships was much higher than the larger ones, though their economic power was more limited. Regardless, a better understanding of the role of the local ulama in the naibship before the Tanzimat can only be understood with further research.

The practice of tax farming became a norm in the system during the 17th and 18th centuries.[65] Many kadıs started selling their posts to naibs instead of assuming the position. This system was almost identical to the iltizam in other domains of the Empire. Some authors relate this tendency to the *tevcihat* system since kadıs had a limited time in their posts, and financially, it was more profitable to leave the position to a local ulama member by eliminating logistic and operational costs. Though the impact of the system cannot be overlooked, the growing numbers and rising importance of the naibs should also be read simultaneously with the decentralist tendencies in the central bureaucracy during the late 16th century.

The spread of the iltizam in the legal structure shows that the decentralization in the Ottoman state structure was not only a financial but also a bureaucratic and institutional process that included the legal domain. An apparent weakness of this structure was the unknown quality of the *naib*s. Kadıs were supposed to be taken in a serious education cycle and years in the *mülazemet* which made them qualified enough to be assigned as judges. In contrast, kadıs were free to delegate anybody as

[65] Akiba, "Farming out Judicial Offices in the Ottoman Empire, c. 1750– 1839."

their deputies. As early as the 16th century, the central government attempted to control and eliminate the practice of iltizam in the judiciary domain.[66] In several cases, the central government received complaints about unqualified naibs.[67]

The iltizam in the judiciary domain does not necessarily imply a 'corruption' in the legal system but rather a power shift from the center to local actors. A madrasa student usually started his education in a local madrasa in the capital or other parts of the Empire. After finishing their first education, those pursuing legal professions had to attend Sahn-ı Seman or Sahn-ı Süleymaniye madrasas and receive their *icazet* (diploma). This *icazet* indicated the certificate holder had the legal knowledge to become a *kadı* or *müderris*. Due to the higher number of people expecting for the position, most of these students had to wait in a list of candidates, depending on the career path they wanted to follow, a müderris or a kadı.[68]

In order to receive their official appointments, candidates had to pass a system called *mülazemet* in which every candidate had to spend a period of 'internship' under a higher-level ulama like şeyhülislam, high-level kadıs, and müderrises. This period was not only an official requirement to be accepted as judges but also an opportunity for young scholars to establish a personal network in the capital.[69] Thus, the system relied more on the candidate's relationships than their skills and knowledge. It was the members of upper-level ulama who had the decision to choose their *mülazım*s which would later become *kadı*s and *müderris*es.[70]

[66] İnalcık, "Adaletnameler," 76.
[67] Yurdakul and Aydin, "Şeyhülislamlık Kurumunun Tarihçesi, Kaynaklar ve İlgili Literatür," 137.
[68] According to Uzunçarşılı, this list of candidates was created during the age of Şeyhülislam Ebussuud Efendi. Before his time, the author argues, there was no order in appoinments of müderrises and kadıs, usually ran with personal networks. Uzunçarşılı, *Osmanlı devletinin ilmiye teşkilâtı,* 55.
[69] İpşirli, "Mülâzemet."
[70] Evsen, "Osmanlı İlmiye Teşkilâtında Mülazemet Sistemi (18. Yüzyıl Örneği)," 20–38.

Moreover, there was also a 'privileged' group in the system, ulemazades, the sons of higher ulama, who could be appointed *müderris*es before the age of fifteen.

Ottoman legal institutions, in this sense, were heavily centralized. Students who were part of local education circles had considerably less chance of finding a place in this bureaucracy if they did not have the network and money. On the other hand, a madrasa student had to spend years in Istanbul madrasas and under the offices of higher ulama primarily located in Istanbul to become a judge, making them more Istanbul-based and less likely to leave the capital with the financial and political networks they hold. The central bureaucracy was more related to the personal network of a candidate rather than merit.

To sum up, naibs were not necessarily unqualified judges who bought their position with money. While some of these naibs were educated in local madrasas, others were kadı candidates on the appointment waitlist.[71] Thus, these naibs mainly consisted of people who could not find a place in the central bureaucracy. In this sense, the expansion of *iltizam* in the legal domain gave non-central ulama members a chance to leverage political and economic power without necessarily spending years in the capital. A local ulama could manage to cultivate more political power in the 'peripheral' judgeship positions of the Empire, with the right use of social and economic networks. The inexistence of a kadı from the center also meant fewer interventions in local politics by the central government for local political actors.

Kadıs were appointed for short terms, while naibs might have occupied their posts much longer with extensions. In contrast, it was less likely for the two groups to establish direct contact since many kadıs were residents in the capital. Instead,

[71] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 45.

there were intermediary institutions who run the networks between the kadıs and the naibs, which were muhzırs and sarrafs. Muhzırs were employed at the office of kazaskers, who acted as *kapıkethüdası*s, agents of the mültezims. They were the main ones responsible for the sales of the kadı offices. Muhzırs were not paid officers but received their payments from these sales interactions, apart from *müjde*s they received from kadıs in return for informing them of their appointments. Muhzırs was the only officially recognized group who acted as agents between kadıs and naibs as early as the late 16th century.[72] Sometimes, muhzırs bought the offices from the office holders and sold them to naibs by adding a profit for themselves. Akiba relates this practice to a possible transaction between kadıs and muhzırs on the future-appointments of the kadıs, which were announced much earlier then the beginning of the position. He underlines that some kadıs might have preferred to secure their payments years earlier than their appointment times by leaving their positions to muhzırs.[73]

The second group in this network was sarrafs as the capital provider. Naibs received credits from these sarrafs, with a particular interest rate, and sarrafs made payments to kadıs. Thus, naibs' essential financial burden was not against the kadıs but the sarrafs. For example, an Armenian sarraf, Beylikçi oğlu Agop, gave loans to at least three different naibs from different cities of the Empire. One of these naibs, Ahmed Remzi Efendi, was at the post in Menlik, a town in Serez, while another one, Hacı Davud Efendi, was the naib of Ordu.[74] The third one, Süleyman İzzet Efendi, was acting as the judge of Samakov, Bulgaria.[75] All of these three naibs who lived in different locations of the Empire took loans from the same moneylender, who was

[72] Yurdakul, *Osmanlı İlmiye Merkez Teşkilâtı'nda Reform, 1826-1876*, 111.
[73] Akiba, "Farming out Judicial Offices in the Ottoman Empire, c. 1750– 1839", 21.
[74] BOA, *A.}MKT.DV*, 75/72; BOA, *A.}MKT.UM*, 259/50.
[75] BOA, *A.}MKT.DV*, 2/6.

providing credits for these naibs, acting as their intermediaries in the capital. Agop was more than an intermediatory between naibs and kadıs but someone who provided loans for many local politicians. Another Armenian sarraf, Mıgırdıç, gave loans to the naib of Alanya, a naib in Manisa, Sobuca, and another naib from Diyarbakır.[76] Another famous sarraf who had an extensive network of naibs was Zanbeoğlu Yorgi, who worked with different naibs from Izmit, Sivas, Gelibolu, and Nif.[77]

The existence of the sarrafs in the tax farming practices in the Ottoman legal structure sometimes caused criticisms from the statesmen and members of the ilmiye.[78] However, their role was critical in the system due to their networks and capital. Apart from sarrafs and muhzırs, other intermediaries from different backgrounds used this system as a profit-making mechanism.[79] The offices could be sold more than one times to different parties since they reached a naib. People with enough capital and network could profit from the naib offices.

Not everyone could become a naib in his town. Naibs needed a strong network of *muhzır*s and *sarraf*s in the center with the necessary trust. This relationship of trust was the main incentive for sarraf to provide a naib loan. Naibs had no direct financial relationship with kadıs but were indebted to sarrafs. Thus, naibs needed to reach a certain level of *know-how* with several prestigious guarantors who introduced them to this network of muhzırs and sarrafs. This network and trust can be seen as the most significant capital for a local ulama to become a naib.

In the broadest sense of the term, naibs were financial investors. These investments were not based on a free market-based economy. Due to the nature of

[76] BOA, *A.}MKT.DV*,.9/60; BOA, *A.}MKT.DV*, 206/53; BOA, *AE.SMHD.II*, 19/1140.
[77] BOA, *A.}MKT.DV*,152/96; BOA, *MVL*, 504/82; BOA, *MVL*, 471/32; BOA, *MVL*, 472/28.
[78] Akiba, "Farming out Judicial Offices in the Ottoman Empire, c. 1750– 1839." 23.
[79] Akiba, 21-22.

the field, the central government regulated and controlled the fees that judges could receive. Islamic law had lower court fees and did not require additional legal consultancy. In this way, the legal system was kept more open to applicants, encouraging legal solutions over customary ones. Thus, a naib could only hope for an increasing need for his legal services to have larger profits within the limits of the law. In practice, however, most naibs went outside these regulated fees and incomes for financial reasons by demanding more court fees and claiming larger tax shares.

The economic value of the office depended on the office's location. The larger populations meant more legal transactions and tax shares, bringing more income to their naibs. In his recent research, Jun Akiba enlightened some aspects of the economic aspect of these contracts. For example, a small town like Köstendil could be worth 180 *guruş* monthly, apart from an advanced payment which was paid every six months, the naibs of larger towns like Keşan paid 500 *guruş* monthly and 900 advanced installments.[80] Akiba highlights that since the advance installments called *harc-ı bâb* were paid mostly every six months, which suggests the naib were appointed for six months but could extend their terms by renewing their *harc-ı bâb*s.[81]

The amounts that were paid by the naibs were decided beforehand by the parties. Though the offices might have generated a significant income, the investment included serious risk. The offices did not have a predetermined income apart from their taxation rights, and an overpaid office could bankrupt its owner. It is

[80] Akiba compares the yielded incomes of kadıs with the monthly income of a skilled worker in İstanbul, which was around 10 *guruş*. This suggests that even the smallest towns generated a significant income, which made them even more significant economic sources. Akiba, "Farming out Judicial Offices in the Ottoman Empire, c. 1750– 1839," 16.
[81] Akiba, 18–19.

possible to document some conflicts that occurred between naibs and sarrafs regarding unpaid loans, especially in the post-Tanzimat period.[82]

Besides its financial aspect, being a naib in your town brought leverage in local politics. The naibs were delegated to act on behalf of *kadı,* and they had all the legal authority that a kadı had. The central government's relationship with a naib was similar to a kadı. Thus, the economic commitment to receive a judge post in a town generated considerable influence. Especially in pre-modern Ottoman legal institutions, local elites had to cooperate with the judge because it was almost impossible to overrule the decision of a court. A naib would have all the legal and political power that a kadı did in his town, including administrative capacities such as supervising tax collections and military preparations. This power made naibs critical political actors in their stations, a phenomenon that will be analyzed in Chapter 3.

2.3 Change and reform in the judiciary domain in the 19th century

In the first quarter of the 19th century, the general premises of the Ottoman legal system was similar to this picture. Ulama had legal and bureaucratic autonomy. The education and employment of the judges were kept at the hand of the ulama. In economic terms, previous tax privileges and waqf sources continued. One distinctive feature of the 19th-century legal structure was the high number of kadıs in the system.[83] This feature did not start in this period but reached its peak on the eve of the 19th century. Due to the high number of kadıs waiting for appointments, many

[82] Some examples of such conflicts could be seen BOA, *A.}MKT*, 34/17; BOA, *A.}MKT*. 47/24; BOA, *A.}MKT.UM*, 420/39; BOA, *A.}MKT.UM*, 479/16.
[83] Beyazıt, "Tanzimat Devri Şeyhülislâmlarından Meşrebzâde Arif Efendi ve Kadılık Kurumundaki İstihdam Sorunu."

kadıs were waiting for years without posts. This wait in the appointment list meant no sufficient economic income for the majority of the members of the ulama.

A crucial change in the system starting from the early 19th century was the establishment of merchant courts (*ticaret mahkemeleri*). Though they did not appear instantly, the legal arbitration between foreign and local merchants started to be solved in quasi-court-like assemblies, which were constituted both by local and foreign experts as early as 1800. The assumption was that the foreign traders were ignorant of Islamic commercial law and needed a legal prediction and safety to securely invest in the Ottoman markets without being forced to be acknowledged in local laws and regulations. These assemblies, thus, can be seen as a result of the integration of the Ottoman markets into the global economy.

Wael Hallaq relates this sort of a partially colonialist pressure to establish a western-like legal establishment with the fact "European colonialism could not truly dominate Muslim lands during the nineteenth century without first dismantling the economic structures, and these structures depended on Sharʿī regulations, laws, and values to a significant extent."[84] On the other hand, the colonialist project was not necessarily completely against the total structure of the Islamic law, especially in terms of criminal and civil law, for cases in which all parties were Muslims. In the case of India, for example, for criminal and civil law, Muslim population was free to follow Islamic law even though the *kadi* courts were officially abolished by the late 18th century.[85] This 'toleration' was not limited to the Islamic law itself, but to all ancient legal knowledge of India for a certain period of time. During the early period of British colonization of India, colonial admiral Warren Hastings was collecting

[84] Hallaq, *The Impossible State*, 147.
[85] Zaman, *The Ulama in Contemporary Islam*, 21.

primary sources regarding the legal history of the country to create a syncretic legal system.[86]

Another distinctive importance of the 19th-century legal domain was the growing importance of the consulate courts. The legal capacity of these courts was defined by the mutual agreements between the Ottomans and the foreign governments. Throughout the 19th century, with the changes in global politics, some consulate courts claimed larger legal authority, for example, criminal cases, which created a dispute over the legal power and limitations of these courts became an essential topic between consulates and the Ottoman government.[87]

In this period, the Ottoman legal system was composed of four primary legal institutions: the shari'a courts, non-Muslim courts, consulate courts and merchants courts. Some historians read this system as a form of legal pluralism, or forum-shopping[88] since there were several courts in the system for a litigant to apply. However, one needs to realize that this was not a common feature of the system. There were some privileged groups like Ottoman citizens who carried a dual citizenship of countries who had special agreements with the Ottoman government, mainly non-Muslims, had the option of applying to the consulate courts. The system, on the other hand, was limited for Ottoman Muslims to shari'a courts.

Apart from these institutions, *Divan-ı Hümayun* (Imperial Council) and *eyalet divanları* (provincial councils) also had the power of jurisdiction. However, these councils were not solely created for legal purposes. *Divan-ı Hümayun* was an imperial council in which all the high-level political decisions were discussed. The council itself did not give the verdicts, but it was the kadıasker of Rumelia who saw

[86] Cohn, "Law and the Colonial State in India," 21.
[87] Ekinci, *Osmanlı Mahkemeleri*, 122–24.
[88] Rubin, *Ottoman Nizamiye Courts*, 63.

the legal case. Divan-ı Hümayun mostly saw high-level political cases that required the central government's serious attention, including cases about non-Muslims and brigandage cases.[89]

Under Selim III's reign, Ottoman political rule showed its 'structural' concerns over the autonomy of the judiciary branch for the first time. Before this period, there were several references to 'the problems' regarding the *kadi*s and sharia courts in the *adaletname*s and *nasihatname*s of the 17th and 18th centuries, but these concerns mainly were fixed upon 'isolated incidents' and 'unqualified judges.' No complaints regarding the judiciary system could be seen in the reform agenda at that period. In this set of mind, the exact solution was to give kadi and naib posts to qualified members of *ilmiyye*. No criticism of the legal structure was seen in the reformist mindset at that period. *Adaletname*s of the 17th and 18th centuries touched the problems in the judiciary field as discrete and rare. The solution was giving the position to qualified members[90] or simply warning legal authorities not to demand extra fees other than the legal ones.[91]

Under the reform movements of Selim III known as *Nizam-ı Cedid* (the New Order), for the first time, the central government wanted to implement structural reforms in the legal domain. The young Sultan's şeyhülislam Hamidizade Mustafa Efendi led these early reform attempts. Hamidizade Mustafa Efendi was from an ulama family. His father, Mehmed Hamid, was a kadı of Istanbul who died in 1767 while expecting to be the Kazasker of Anadolu. Both his grandfather and great-grandfather were famous scholars and şeyhülislams of their times. With this privileged ulama family, Mustafa Efendi managed to become a *saray hocası* in his

[89] Yurdakul, *Osmanlı İlmiye Merkez Teşkilatı'nda Reform*, 119.
[90] Akdağ, *Türkiye'nin iktisadî ve içtimaî tarihi*, 216.
[91] Feyzioğlu, *Tanzimat Döneminde Kadılık Kurumu ve Şer'i Mahkemelerde Düzenlemeler*, 28.

early ages during the reign of Abdulhamid I. According to İpşirli, his charisma in the palace resulted from his Nakshibendi identity, which influenced the people of the palace from the late 18th century to the 19th century.[92]

After the death of Abdülhamid I, Selim III cleared out most bureaucrats and politicians of his father's court but spared Hamidizade, probably knowing him during his years as a şehzade. Mustafa Efendi found a chance to rise to the title of şeyhülislam in 1789, during the first year of the reign of Selim III. Mustafa Efendi was not only seen as a 'reformist' among ulama elites but also seemed to have competition with the established ulama. One of the first attempts in the judiciary was to abolish the practice of iltizam in the judiciary.[93] Many kadıs were forced to take their kadı posts, which sent away some of the opposites of the reform movement in ilmiye.

The following attempts were to reform *Sahn-ı Seman* madrasas which were under the control of the board of trustees for a long time.[94] The reformist *şeyhülislam* appointed müderrises to these madrasas, which had the authority to accept or remove students from the madrasa. These appointed müderrises with extraordinary powers overruled the power of trustees.[95] Moreover, the political administration had a chance to intervene in the education and employment of the madrasa students. This policy would give the government more power in the human resources of the Ottoman legal network.

The first attempt to increase control over the legal structure was not successful. Hamidizade lost his position due to complaints from ulama, jurists, and madrasa students from all over the Empire and never got a chance to return to

[92] İpşirli, "Hamîdîzâde Mustafa Efendi."
[93] Feyzioğlu, *Tanzimat Döneminde Kadılık Kurumu ve Şer'i Mahkemelerde Düzenlemeler*, 29.
[94] İpşirli, "Hamîdîzâde Mustafa Efendi."
[95] İpşirli.

Istanbul. However, these policies continued. With an edict in 1792, Selim III reminded *kadi*s and *naib*s of his authority to dismiss them from their posts according to Islamic law. A series of other orders regarding the jurisdiction came after this edict. Although the attempts to control *Sahn-ı Seman* were crushed by the *ilmiyye* members, the Sultan ruled for an obligatory 'entrance exam' through meşihat which aimed to evaluate the qualification of *kadi* candidates before their appointments.[96]

The reform attempts in the judiciary during this era continued with a set of fermans. Hamidizade's policy to remove the iltizam practice in the judge posts was reinforced in 1799. With a ferman, Selim III banned for mevleviyet and kaza kadıs to farm out their posts. Those assigned to their posts were supposed to claim the position in practice too. Arpalık posts and kadıs who were not available to have these journeys were exempted from this rule, but only with the approval of şeyhülislam.[97]

An essential feature of the reform attempts during the reign of Selim III was their ineffectiveness. Ulama's active and passive resistance was successful in terms of preventing a structural change in the system. Neither ulama in the center would be happy to leave the capital, nor would the local bureaucrats and naibs like to share power in their towns. During the reign of Selim III, several complaints were sent to Istanbul about kadıs intervening in local politics. The government warned the kadıs to act only by legal means and not to get involved in local politics.[98] Kadı, in theory, was not only responsible for legal issues but also execution and administration as a representative of the Sultan. However, in a politically diverse system, with this order sent to kadıs, the Ottoman government accepted the limits of central authority and redefined the kadıhood, which was excluded from his executive powers.

[96] Feyzioğlu, 34.
[97] Yurdakul, *Osmanlı İlmiye Merkez Teşkilâtı'nda Reform, 1826-1876*, 140.
[98] Yurdakul, 140.

Similar concerns and discourses continued during the reign of Mahmud II regarding the judiciary domain. One constant problem of the center was the court fees. In several cases, the government warned kadıs and naibs who were not following the laws about court fees and overcharging applicants. Starting in 1815, the Sultan enacted several decrees, warning the ilmiye class about the corrupt and unqualified judges throughout the Empire. The Sultan reminded the judges to follow laws and not to demand more money from applicants.

The state started to receive complaints regarding the judiciary domain from different parts of the Empire in this period. For example, in one case, the naib of Karnobat, in modern Bulgaria, was blamed for demanding more money for the burial registration. When asked about this complaint, the naib responded that no cash was required for burial registrations.[99] In another case, the naib of Bayburd, the voyvoda, and the head of the registry office (*nüfus nazırı*) were dismissed with the accusation of demanding more money from the public.[100] However, such complaints were not a widespread practice in this period. Moreover, the state was keen to integrate naibs into the system, not exclude them by dismissals.

In this period, instead of trying to send kadıs to their judge posts, the state changed its strategy and started to invest in the bureaucratization of naibs. Since the iltizam contracts were made privately between two parties, the state generally had poor knowledge about naibs, while kadıs were registered, evaluated, and listed by the Meşihat. In a hatt-ı hümayun from 1834, it was stated that although the majority of the ulama was highly respected and pious, their names were harmed by the wrongdoings of a few naibs.[101] The document underlined that for a while, the legal

[99] BOA. *C. ADL*, 60/3612.
[100] BOA. *HAT*, 1245/48322.
[101] BOA. *HAT*, 464/22744.

domain in kazas was at the hands of naibs whose situations were not known well by the center. Naibs had to be examined and evaluated by the central legal institutions to be accepted as legitimate, which would make the state sure about their qualities to be the head of the judiciary in their kazas.

Mahmud II's policy to integrate naibs into the state structure was finalized in 1838 with a penal code for ilmiye, specifically for judges. This penal code was the first in the Ottoman Empire, officially called a penal code (*ceza kanunnamesi*), enacted two years before the Imperial Penal Code of 1840. This text was a codified version of the state's reform policies taken in the last fifty years between 1790 to 1838. One policy change, as mentioned above, is the state's willingness to work with naib instead of replacing them with kadıs. The code was regulated in terms of the appointments of judges, court procedures, and court fees for legal services. This penal code did not carry a radical transformation in judicial practices but codified the legal responsibilities and limits of the judges formally.

The code established a new procedure for the examination and evaluation of judges. Ilmiye members wanting to work as judges were to be examined in Istanbul regarding their knowledge of Arabic and fıqh and categorized in their knowledge level. Judges would be assigned to their position according to their understanding of the law. Those who could not pass the exam would be returned to madrasas. This examination included active naibs working as judges in the different parts of the Empire.[102]

The code regulated the sale of the *arpalık* position of kadıs as well. Kadıs could not sell their positions to naibs for more than the fees registered in Meşihat. By

[102] Çadırcı, "Tanzimat'ın İlanı Sıralarında Osmanlı İmparatorluğunda Kadılık Kurumu ve 1838 Tarihli 'Tarik-i İlmiyye'ye Dair Ceza Kanunname'si,'" 145.

controlling the *iltizam* prices in judicial appointments, the state aimed to make naibs financially more comfortable. Naibs paying less to kadıs for having the judgeship positions would not have the financial burden to create more resources. The code included that if a naib pays more than the registered price, both parties, including the intermediaries like sarrafs and kapıkethüdası, would face trial for bribery.[103]

Another concern of the center was the judges under the influence of local authorities. The code indicated that ayans and local administrators are not authorized to dismiss naibs from their positions. Those not following the Penal Code for Judges would be investigated by the legal authorities and punished accordingly. Judges could not demand more money than the legal service fees (one *para* for every *guruş*) and take more shares from tax collections other than their rights. Several rules aimed to prevent naibs from receiving more money in courtly procedures or inheritance cases.

The examination process gave political authority more power in appointing judgeships through the hand of *şeyhülislam*. Instead of forcing kadıs to take their positions, the state wanted to control the appointed naibs. However, this policy could not be enforced due to logistic challenges. An addition to this imperial penal code, six months later, present *naib*s were exempted from the examination process since the process required all naibs to travel to Istanbul to take these exams. Naibs, who would take their positions after the code's enactment, would have to take the exams to start their duties.[104]

[103] Çadırcı, 144–45.
[104] Çadırcı, 147.

2.4 From kadı to naib: a new legal bureaucracy

After the Gülhane Edict in 1840, the judiciary was seen as one of the fields in which the state had radical reform policies. If one could depict Tanzimat as a political mega-project with different elements and instruments, this project's primary aim would be establishing the state as a compelling central authority in Ottoman lands. Unlike the decentralized and diversified power dynamics and actors dominating rural politics, this state would be the sole authority in every Empire domain. All local power-holders like ayans, eşrafs, local bureaucrats, and elites were forced to become state actors, if not excluded from the power structure.

The project aimed to extinguish economic and political intermediaries between the center and the public, aiming at reconstructing the Ottoman tax system. Instead of farming or renting the state properties and incomes to local actors, the state sought to operate them with different instruments, taking the profit to the central treasury.[105] In this manner, the judiciary system also became a target of Tanzimat reforms. As explained above, the Ottoman judicial system was economically and politically autonomous and economically self-sufficient until 1840. The state did not have a significant financial relationship with jurists. The system was run by the fees paid by applicants in return for the legal services of judges.

For central authority, the accessibility to the judicial system in every single domain of the Empire was very significant. Firstly, kadıs and naibs represented the sultanic power with their services. Their existences were a tool to legitimize political power and also stretched to every single subject living in the Ottoman power domain. The state desired that all components of the Empire, from different political, economic, and religious statuses, resolved their issues in courts to keep its authority

[105] Özbek, *İmparatorluğun Bedeli*, 22.

strong and uncontested. İslamoğlu highlights that the role of the judge was a crucial element in the system's stability.[106] Apart from legitimizing and spreading the center's power, courts had some other functions that a political structure required. Karen Barkey indicates that local courts played an intermediary role between peasants and political power, redirecting their anger and disappointments to another channel and reducing the frequency of direct contact between the two parties.[107] Last but not least, it would be impossible to prevent the spread of mistrust and disbelief towards the state among subjects when judges, representing the justice and law, did not stick to the regulations regarding court and service fees.

All melted in a pot, for the ideologues of the Tanzimat state, the system was dysfunctional, corrupt, and needed to be restored. For a transformation and reformation in the judiciary system, following the Gülhane Edict, *Talimname-i Hükkam*, the manual of judges, was enforced in 1840. The manual had seven articles, two of which aimed to make structural changes in the Ottoman judiciary system. The first article of the manual took the authority of naib assignments from kadıs and left it to the office of şeyhülislam. According to the article, şeyhülislam would assign naibs to city centers, and those naibs would have the power to select his sub-naibs that would work in kazas. In this newly established system, *kaza naibi* was situated as *kaza kadısı* of the classical Ottoman legal system, and sub-naibs were attached to him. He was free to choose anyone as his naib by taking responsibility for their decisions and rulings.

Though the central government claimed the right of naib appointments from the center, this change did not happen eventually. In contrast to *kadı*s, naibs were not

[106] İslamoğlu-İnan, *State and Peasant in the Ottoman Empire*, 8–9.
[107] Barkey, *Bandits and Bureaucrats*, 104.

appointed for a defined period, and they could be kept in their positions in some cases for years. Thus, the authority of naib appointments did not mean a radical change in the judge cadres. Years after the *Talimname-i Hükkam*, the central government had poor information about the acting naibs, even in the eyalets of Tanzimat. In 1847, the sadaret received an *arzuhal*, concerning the naib of Tire, who was dismissed from his position in rotation. The *arzuhal* indicated that the dismissal and re-appointment of the naib Behçet Efendi to a new post disappointed both the naib and the people of Tire since he was respected in his long-term position. The document was sent to the meşihat. In his response, the şeyhülislam Arif Hikmet wrote that there was no record of a Behçet Efendi in Tire, but there was a Necip Efendi, who was dismissed due to complaints.[108]

With the second article of the manual, judges became salaried officers. According to this system, judges would not generate income from court fees and legal services. Instead, these court fees would be handed over to muhassıls in centers, 1/3 of the total court income would be spent as the court officers' earnings, and the rest would be sent to the central treasury. In this way, the direct financial relationship between the court fees and the profits of judges were broken. The aim was to relieve naibs' financial pressure and keep the legal service fees in the legal merit. Kadıs, who were originally assigned for the judgeship of these cities and towns, became salaried too. Instead of selling their posts to naibs, kadıs would be paid by the center directly. Any economic relationship between kadı and naib would not exist.

Talimname-i Hükkam of 1840 depicted the legal system towards the hand of naib, and kadıs had no legal responsibility. According to Talimname, kadıs become salaried regardless of taking their duties personally or leaving them to naibs. By this,

[108] BOA. *A.}MKT*, 79/15.

one can assume that the manual did not consider the existence of kadıhood in the legal system. Tanzimat project in the legal domain considered naibs, not kadıs, as the acting judges of the modern state.

The new system was very desirable for kadıs and naibs since they had their financial security at the hand of the state. However, the system would only be in force in the pilot cities of the Tanzimat. The rest of the legal system continued to operate as in the pre-Tanzimat period. Thus, the physical existence of kadıhood did not end with this manual and continued to exist until the enactment of Vilayet Nizamnamesi in 1864. Jun Akiba, in this sense, gives the example of Trabzon, which was not a part of Tanzimat until 1847. In response to the complaint about the naib of Trabzon, şeyhülislam responded to the vali that since the assignments of naibs are made among locals, the center had no information about them. Against all persistence of the vali of Trabzon regarding the dismissal of mentioned naib, şeyhülislam kept the intervention until the city was taken into the reform project. Instead, he responded, since Trabzon would be taken to the reforms of Tanzimat soon, the problem could be seen in the future, and 'for now, there is nothing to do by the office.'[109]

This bureaucratic and financial transformation project in adjudication failed together with the rest of the project in 1841. The total economic centralization brought a financial crisis in treasury incomes contrary to expectations. The iltizam practice was reintroduced in tax collections. In the legal field, neither the old system was brought back, nor the new system could survive. The salaries of naibs were cut

[109] "*[E]yalet-i mezkurenin bi'l-cümle elviye ve kazaları ilerüde Tanzimat-ı hayriyyeye idhal olunacağı ifade ve iş 'ar huyurulmuş olup bi-avnillahi te'ala dahil-i Tanzimat oldukta nüvvab ta'yini hususu dahi vakt-i merhununda iktizası vechile tesviye ve tanzim ve icabatı icra olunacağından şimdilik senaverlerine da'ir bir maslahat olmadığı*..." Akiba, "Kadılık Teşkilatında Tanzimat'ın Uygulanması: 1840 Tarihli Talimname-i Hükkam," 30.

down to half by August 1841, then removed in September 1841.[110] Instead of being paid by the center, the court fees were left to judges, as in the pre-Tanzimat era, to take this economic burden from the central treasury's scarce sources. What is more is that naibs, this time, would not be able to take shares from tax collections that they have been taking since the 18th century.[111]

In reality, however, it is most likely that the naibs continued to live on the court fees during this one-year process in which judges became salaried. An example can be seen in the report of Kadıasker Çerkeş Mehmed Efendi, who was sent from Istanbul to follow the reformation process in Anatolia.[112] When he inquired about the salaries of judges in Gebze and Izmit, he was told that naibs continue to live on court fees and no wages are given to them yet, six months after the *Talimname-i Hükkam*. The salaries of these judges were defined and authorized with the attempts of Mehmed Efendi.[113]

On the other hand, the salaries of kadıs continued to be paid directly from the central treasury even after the removal of naib salaries. According to the center, since kadıs were kept in payroll, naibs would not have to make any payments to kadıs and could live on court fees even without the fees taken from taxes like *defter harcı* or *imza harcı*. This practice indicated that the central treasury actually did not bring the tax farming practice to an end, but instead took the iltizam payments of the naibs by making kadıs salaried officers. In return, the central government took the judges' share in tax collection together with establishing more control over the naibship through appointments. In this way, the naibs were preserved in the central

[110] Akiba, 25.
[111] Akiba, 26.
[112] Çakır, *Tanzimat Dönemi Osmanlı Maliyesi*, 101–11.
[113] Akiba, "Kadılık Teşkilatında Tanzimat'ın Uygulanması: 1840 Tarihli Talimname-i Hükkam," 21.

bureaucracy, and no bureaucratic and financial relationship between kadı and naib had to be revived.

Another new practice in Ottoman legality during this period was the introduction of penal codes. The first imperial penal code was introduced in 1840, followed by two others in 1851 and 1855. Ruth A. Miller highlights that the Penal Code of 1840 did not aim to establish new legality in criminal law but was primarily concerned with the bureaucratic transformation:

> The precursor to the 1840 code, for example, a short and pointed text from 1838, concerned itself almost exclusively with bribery and how to bring lawsuits against civil servants. The individual, classical ideas about sin and social mores were not of any interest-instead, from the beginning of the Tanzimat period, the legislation of criminal law was about defining and policing the bureaucracy and its servants. Not much had changed by 1840. First of all, of the thirteen articles that make up the 1840 code, six have to do with state or bureaucratic crime. Second, and more to the point, the 1839 Culhane Edict and the bureaucratic reorganization that it embodied show up with increasing frequency throughout the code.[114]

In this sense, the real transformation regarding the provincial Ottoman judges was not their relationship with criminal law but with the central government. On the other hand, the Penal Code of 1840 gave the newly established provincial assemblies jurisdiction authority in certain cases.[115] However, this change did not create any normative obstacle in the legal power of the naib in this period since they were the primary actors in these assemblies, as members, for jurisdiction.

The state-centric perspective of criminal codification continued with the Penal Code of 1851.[116] Both codes of 1840 and 1851 were seen as the continuation of the classical Ottoman *kanunname* tradition by some scholars.[117] This perspective indicated that the penal codes did not create a different legality apart from the

[114] Miller, *Legislating Authority*, 27.
[115] Candan, "1840 Tarihli Ceza Kanunname-i Hümayunu İncelemesi," 77.
[116] Miller, *Legislating Authority*, 49.
[117] Akgündüz, "1274/1858 Tarihli Osmanlı Ceza Kanunnamesinin Hukuki Kaynakları, Tatbik Şekli ve Men'-i İrtikâb Kanunnamesi."

existing Islamic law umbrella. These codifications regulated the field of discretionary punishments (*ta'zir*) for which the political authority was validated with a certain freedom. This so-called tradition was assumed to be broken with the enactment of the Penal Code of 1858, which was almost a direct adaptation of the *Code Napoleon.* The change in the legality did not decrease the power of the naibs, who were educated by religious institutions, and continued to act as the primary jurists in the Ottoman court system.[118]

Apart from penal code implications, new regulations were also introduced in the legal domain. In 1855, a new manual for naibs (*Nüvvab Hakkında Nizamname*) was enacted. With this manual, the naibship was divided into five different grades as in the kadıhood according to the importance of the cities.[119] Akiba indicates that naibs who had a place in the ilmiye hierarchy were privileged, while those outside the ilmiye circles were forced to retake exams even if they had *tezkire* to be able to make judgeship.[120] Moreover, as in the kadıhood, müderrises, and naibship became related and parallel, encouraging professors as judges. With the manual of 1855, the naibship became institutionalized and separated from the institution of kadıhood.

Akiba and Yurdakul see the manual of 1855 as a breaking point in the Late Ottoman legal history since kadıhood became a 'nominal' position.[121] Naibship, on the other hand, was considered the real judiciary power by redefining and restructuring the institution. Akiba highlights that these reforms were not applied all over the Empire until *Vilayet Nizamnamesi* of 1864 when the reforms spread all over the Empire. However, one should realize that the breaking shift from the kadıhood to

[118] Miller, *Legislating Authority*, 72.
[119] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 48–49.
[120] Akiba, 49.
[121] Yurdakul, *Osmanlı İlmiye Merkez Teşkilâtı'nda Reform, 1826-1876*, 192; Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 50.

naibship did not occur in 1855. As mentioned above, the Manual of Judges of 1840 considered the naib, not the kadı, as acting judiciary power. This shift happened slowly but visibly in many domains of the Empire, which fall under the extent of the Tanzimat project. The reforms of 1855 paved the way for establishing an institutionalized and bureaucratized naibship, which was accepted as the holder of judiciary power in 1840.

The state ideology of the Late Ottoman era accepted the naibs as the state judges while the kadıs became sole title-holders who had no real part in the judiciary process. In the central ilmiye, the kadıs continued to be appointed to different cities and towns as in the previous eras, but these appointments did not generate any legal power or responsibility in the legal domain but only a source of income, directly given by the state during the kadı's time in this nominal post. In the end, the state had to make payments for both kadıs and naibs, directly or indirectly, instead of only paying to the actual judge.

In 1855, another reform attempt regarding the judiciary domain was the foundation of Naib's College (*Mekteb-i Nüvvab*).[122] This project aimed to produce a new class of judges who were educated both in classical and modern law. However, the project did not succeed in creating new human capital for the government. The available data shows that the number of graduates between 1855 to 1864 was less than one hundred. In total, Naib's College gave four hundred forty-seven graduates during sixty years between 1855 to 1914. Moreover, not all of the graduates preferred to work as provincial judges. Instead, some of these graduates were employed in the offices of Istanbul courts.[123]

[122] Akiba, "A New School for Kadis: Education of the Sharia Judges in the Late Ottoman Empire."
[123] Bal, "Tanzimattan Sonra Kadı ve Naip Yetiştirmek Amacıyla Kurulan Okul: Mekteb-i Nüvvâb," 77.

As we have seen above, Selim III's attempt to use kadıs as the judiciary power in practice did not succeed. Starting from the age of Mahmud II, the state accepted naibs as the fundamental force, while kadıs were tolerated and left in their untouched central bureaucracy. Mahmud II's policy continued during the early years of Tanzimat. The reforms in the judiciary that came after 1840 never considered sending kadıs to different parts of the Empire as acting judges but transformed their power into a symbolic one. Jun Akiba sees the reason for this complicated system resulting from the state's unwillingness 'to infringe the vested interests of the kadı title-holders.'[124] On the other hand, the generated value from this nominal kadıship harshly decreased during this period, which started to be left to madrasa students as a sort of scholarship, as in the example of Ahmet Cevdet Paşa.

During his years in the madrasa, Ahmet Cevdet Pasha was assigned as the kadı of Premedi, a small town in Albania, which he saw as a 'scholarship' for his studies. In *Tezakir,* he indicates that as a madrasa student, he was privileged with this post since his classmates and müderrises had to leave Istanbul for half of a year around the month of Ramadan and traveled through towns to provide religious services in times of a year in which religious services were most needed.[125] These services were the primary economic source for these students and even professors for the rest of the year. Ahmet Cevdet Pasha described himself as privileged since he could rely on the money he received as kadı of Premedi and spent his time in Istanbul with his studies. On the other hand, he was not pleased by the kadıhood title, since the income from this job did not bring a considerable amount of money and

[124] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," 50.
[125] Ahmed Cevdet Paşa, *Tezâkir,* 40:7.

was limited to a year. Thus, he left his position before completing his term, and became a muderris.[126]

Hence, the vested interests of kadıs might have been kept in terms of the existence of titles and the institution but lost their economic values. Most kadıs sought to adapt to the new naibship to make a living by acting as naibs in different parts of the Empire while holding the title of kadı. Since kadıhoods lost their economic power at the hands of ulama, the transformation from kadıhood to naibship becomes even more encouraged.

A new approach to understanding this change can be possible from a legalistic perspective. The institution of kadıhood was created and defined during the 8th and 9th centuries, which naturally situated itself in a set of pre-modern institutions. The Ottoman kadıhood was not wholly detached from this institutional foundation and survived in many aspects. One crucial pattern is the kadı's role in the imperial hierarchy. Kadıs were not a part of provincial bureaucracy and hierarchy and directly received their orders from the Sultanic power.

Moreover, the office of kadı did have not only judiciary power but also administrative and bureaucratic duties and powers. The provincial entity of *kaza* (ar. قضاء) is derived from the Arabic word meaning "making a decision," pointing out its foundational connection with kadıs as the highest legal and bureaucratic power. Kadıhood's more extensive administrative and legal power created problems even in the earliest era of Ottoman modernity, during the rule of Selim III. The new Ottoman government saw the governors (*vali*) as the center and provincial contact zone. The

[126] Aykut, *Ahmed Cevdet Paşa (1238-1312/1823-1895): Hayatı, Eserleri, Tarihçiliği, Hakkında Yapılan Araştırma ve Incelemeler*, 17–18.

existence of kadıhood, thus, could create a place for a conflict of power between ulama and civil bureaucracy.

Apart from the modern establishment of the provincial administration, another difference between kadıs and naibs is the limits of their legal authorities. Even though Ottoman naibs had acted on behalf of kadı with all their legal powers, in theory, naibs were responsible to their kadıs in legal decisions. Naibs did not have a decisive legal power like kadıs, which could create a room of power for the central government in the legal domain. *Meclis-i Vâlâ-yı Ahkâm-ı Adliyye* (Supreme Council of Judicial Ordinances), which was established in 1838, also acted as a court of cassation.[127] The Islamic law did not have the mechanisms like appeal and cassation but considered the kadı's verdict as decisive and final.[128] In this sense, the relatively less defined institution of naibship could be seen as an easier target to be transformed into a modern-state legal instrument.

[127] Seyitdanlıoğlu, *Tanzimat Devrinde Meclis-i Vâlâ, 1838-1868*, 118.
[128] Ekinci, "İslâm Hukukunda Mahkeme Kararlarının Kontrolü."

CHAPTER 3

OTTOMAN JUDGES IN LOCAL POLITICS

In Chapter 2, the spread of tax farming practice in the judiciary domain is related to the decentralization of the Ottoman bureaucratic entity in the 17th and 18th centuries. The office of naib appeared as one of the powerful local actors who managed to assume a certain legal and administrative power. Kadıs, essentially members of the central ilmiyye institutions, willingly left their legal capacities in local politics to the mostly local ulama, who had limited reach to the legal and bureaucratic positions in contrast to members of the central ilmiyye.

This chapter analyzes the office of naib as a significant power holder in the local politics of the Ottoman Empire during the Tanzimat era. It argues that the naibs continued to keep their legal and administrative powers during this period. The naibs made political alliances with different local actors for different purposes and did not hesitate to leverage their legal capacities to be active power figures in local politics.

3.1 The politics of jurisdiction: a case study

In September 1849, members of the assembly of Konya witnessed a unique trial. A man named Hasan was accused of abducting a woman from her house and raping her. Hasan was caught in the countryside with the victim. The abducted woman, Mihriye, was a concubine (*cariye*) in the household of İlyas bin Mehmed. During the trial, Hasan allegedly admitted the accusations. After four hearings that lasted around a month in the provincial assembly of Konya, the naib, Şerif Rüştü Efendi, sentenced Hasan to *recm*, stoning to death, for adultery. This verdict was the last known case of recm in Ottoman history.

In his official verdict (*kadı ilamı*), Şerif Rüştü Efendi justified the decision by relying on the fact that the verdict was unavoidable since the defendant legally confessed his crime in four different trials, as required by Islamic law, and he was a *muhsan*.[129] This way, the naib kept his agency in a passive manner and highlighted that the law required punishment. In the verdict, the naib did not mention the word recm itself but wrote, ' the necessity of implying appropriate sentence by shari'a and law.'[130]

After the decision, Mustafa Tosun Paşa, the governor of Konya, sent the verdict to the center for approval. According to the eighth article of the Manual of Provincial Assemblies of 1849, the provincial assemblies were required to send the verdicts to the Meclis-i Vâlâ that necessitated the official approval of the Sultan.[131] There were two letters attached to the official verdict of the judge, one of which was signed by the Governor and the other by the members of the provincial assembly. These two letters showed the support of these two institutions to the naib's decision. These letters were very similar to each other in terms of their contents, and both of them also did not mention the recm by name and said 'the required punishment of the law regarding Hasan.'[132]

The case was unique not only for the *Meclis-i Konya* but also for the authorities in the capital. The punishment of recm and the other sentences that are

[129] "*Merkum Hasan cevabında fi'l-vaki mâh-ı mezburun [Ramazan] dokuzuncu günü gecesi vakt-i mezburda müddei-yi merkumun [İlyas] ümm-ü veledi olan cariye-yi mezbure Mihriye'yi iğfal ve tahrik iderek hanesinden ihraçla firar ve kaza-yı mezbureye varıp badehu Sarıkaya'da mezbure Mihriye'ye zina ettiğini mecalis-i erba'ada lafzı sarih zina ile bi-t'tav ikrar ve işaret edilmekle merkum Hasan muhsan olduğundan…*" BOA, *A.}MKT.UM*, 24/03.
[130] "*[H]akkında iktiza edeb ceza-yı şer'î'nin ve kanunîyenin icab-ı icrası zuhur…*" BOA, *A.}MKT.UM*, 24/03.
[131] Çadırcı, "Osmanlı İmparatorluğu'nda Eyalet ve Sancaklarda Meclislerin Oluşturulması (1840-1864)," 281.
[132] BOA, *A.}MKT.UM*, 24/1. "*Hasan muhsan olduğundan hakkında tertib edecek ahkam-ı kanun-u cezasının…*"; BOA, *A.}MKT*, 228/21/5 "*…[M]erkum hakkında tertip edecek ahkam-ı kanun-u cezanın…*"

known as *hudud* punishments are not commonly seen in Ottoman history. The recm is a specific execution in Islamic law that needs robust evidence in the eyes of the judge. This penalty was specified for adultery cases in which the adulterer or adulteress had sexual intercourse in a legitimate manner (marriage) before the act of adultery, a situation that is known as *ihsan* in Islamic legal terminology.[133] The term muhsan in criminal law mostly directly referred to the punishment of recm.[134] Moreover, at least four trusted Muslim males had to witness the act of adultery clearly during sexual intercourse for the validity of the recm punishment.[135]

These strict conditions are not specific to the sentence of recm, but were derived from the principles of *hadd* punishments, under which the recm is listed. Hadd (pl. hudud) punishments are believed to be given by the revealed law, which literally means in Arabic 'boundaries, limits' that are drawn by God. These boundaries refer to seven crimes: intentional homicide, illicit sexual intercourse, brigandage, consumption of alcohol, accusing someone of illicit sex, theft, and apostasy.[136] As in the Western legal systems, there are also two types of illicit sex (*zina*) in Islamic law. Fornication is not a crime punishable by death, according to *Surat-un-Nur*, verse 2, while adultery is by the example of the Prophet's sunnah.[137]

[133] The term muhsan can be confusing since the adultery means an illicit sex between a married person and a third party in the Western legal discourse. Ihsan, on the other hand, refers almost to virginity, but only in a legitimate way, which means a person who had sexual intercourse without any marriage contract is not considered muhsan. Similarly, a person who had a marriage without no sexual intercourse also is not a muhsan. See Dağcı, "İhsan."
[134] This is how naib's verdict referred to the *recm* without mentioning the name of the punishment. The official verdict highlighted the fact Hasan was a *muhsan* very clearly.
[135] Esen, "Zina."
[136] Brown, "Stoning and Hand Cutting—Understanding the Hudud and the Shariah in Islam," 7.
[137] The Qur'anic verse (24:2), or any other verse in the Qur'an, does not actually make a difference between adultery and fornication. The verse of 24:2 refers to ٱلزَّانِيَةُ وَٱلزَّانِى, (*az-zāniyatu wa az-zānī*) meaning someone had illicit sex. After the execution of *recm* in Prophet's sunnah and the acceptance of the validity of this punishment, legal scholars validated both of the divine sources by relating them to their discourses and historical backgrounds.

From the institutionalization of the legal theory, the principle of hudud punishments in Islamic law was the minimization of execution. This principle is related to the fact that these offenses were considered to be made against the rights of God, and there was no real damage to be compensated since God cannot be harmed. In that sense, legal scholars created opinions that eliminated the possibility of the hudud for several excuses that made these penalties almost inapplicable but valid and accepted in the legal theory.[138] However, deliberately avoiding the hudud punishments did not mean the crimes were not punished. The hudud could only be applicable if the judge does not doubt the validity of the application of the sentence. If the judge doubted the case in any way possible, the crime fell under *ta'zir* instead of hudud. Instead of hudud, ta'zir punishments were discretionary punishments not given by the revealed law but specified by legal scholars.

The practice of recm was even rarer due to the expectation of strict conditions, even among other hadd punishments. For example, the recm required four Muslim males to witness the actual act of sexual intercourse, which is the highest number of expected witnesses among all hadd punishments.[139] Moreover, contrary to the other hadd penalties, in the case of accusation of adultery, if the defendant had not been found guilty by the judge, the witnesses would automatically be responsible for another hudud, *qazf*. This specific crime refers to a false accusation of adultery for a person for which the defendant's clearance from the blame was enough occurrence of the crime.[140] In that sense, the law itself theoretically and practically created boundaries for limiting the practice of recm.

[138] Peters, *Crime and Punishment in Islamic Law*, 54.
[139] In a famous case, when Jewish community brought a man and woman with the accusation of adultery, Muhammad demanded witnesses to 'bear witness to the effect that they have seen his sexual organ in her female organ (penetrated) like a collyrium stick.' *Sunan Abi Dawud* no. 4452.
[140] Aktan, "Kazf."

Apart from the legal theory, historical accounts also show the rarity of recm in practice. In a famous case from the 16th century in Mamluk Cairo, a Shafi judge who had an affair with the wife of a Hanafi judge in the absence of the woman's husband was caught by a neighbor. The Hanafi judge returned to the house, saw the couple in his bed, locked the two lovers into the house, and did not let them leave unless they gave a written confession of their crimes. The couple unwillingly wrote their confession and were sentenced to death by stoning in the court with this confession. However, the Shafi magistrate was aware of the legal side doors and withdrew his confession after the trial, invalidating the punishment. Furious about the scandal, the Sultan of Mamluks, al-Ghuri, demanded the execution of the recm sentence anyway. The Sultan was so committed that he even exiled the ulama, who opposed to the application of the punishment since it was not legally valid. In the end, the Shafi judge and the woman were executed by stoning regardless of the ulama's opposition. A 17th-century historian, Najm al-Din al Ghazzi, related the al-Ghuri's persistence to make the execution by overruling the shariah with the fall of the Mamluk order, which happened only two years after the event.[141]

Mamlukids were not unique in their discontent with the recm application. During the Ottoman Empire's long history, only few applications of stonings were recorded. The most famous story, the stoning of a woman in Istanbul in 1680, created a severe public reaction.[142] A retired Janissary, Abdullah, went to the *kadıasker* Beyazizade Ahmet Efendi, accusing his wife of illicit sex. The woman, Ayşe, was claimed to be seen having an illicit affair with a young Jewish from their neighborhood by four witnesses. After a quick trial, Beyazizade sentenced Ayşe to

[141] Brown, "Stoning and Hand Cutting—Understanding the Hudud and the Shariah in Islam," 19–20.
[142] Menekşe, "Osmanlı'da Zina Cezası Olarak Recm."

death by stoning since she was *muhsana*. The unfortunate woman was executed in Sultanahmet Square only a few days after the verdict. This famous event was narrated by historians of its time, including Fındıklılı Mehmet Ağa, Defterdar Sarı Mehmed Paşa, and Mehmet Râşid Efendi as *vaka-yı recm* (the Stoning Event). Many higher elites, including Sultan Mehmed IV himself, watched the execution of the woman.

Almost all chroniclers of the Ottoman Empire following the recm event agreed that Beyazizade made a wrong decision with political incentives. According to Silahdar Fındıklılı Mehmed Ağa, the lady was innocent and was slandered by her husband and neighbors.[143] The court record published by Menekşe shows that at least one among the four witnesses was likely to be a Janissary. Many of the other twenty-three names who witnessed the well-being of the witnesses were *beşe*s, a title carried mainly by Janissaries.[144] Moreover, the judge of the case, Beyazizade Ahmed Efendi, a prominent scholar of the 17th-century Ottoman intellectual world, seems also acted deliberately in favor of the recm punishment and did not look for any doubts. Apart from his active agency in the vaka-yı recm, he gave three verdicts of amputation for theft out of four known cases during the 17th and 18th centuries.[145]

This short introduction to the concept of recm indicates that Şerif Rüştü Efendi's decision was an exceptional one. The punishment of recm was rare in the Islamic legal theory, around which the law itself created boundaries. In the words of Rudolph Peters, "It is nearly impossible for […] a fornicator to be sentenced, unless he wishes to do so and confesses."[146] At the time, it had been almost two hundred

[143] Karaçay Türkal, "Silahdar Fındıklılı Mehmed Ağa Zeyl-i Fezleke (1065-22 Ca.1106 / 1654-7 Şubat 1695)," 758.
[144] Menekşe, "Osmanlı'da Zina Cezası Olarak Recm," 18.
[145] Menekşe, 17.
[146] Peters, *Crime and Punishment in Islamic Law*, 54.

years since the last application of the recm in Ottoman history. Furthermore, there were no witnesses in the case. The decision was given by the confession of the suspect. As in the example of the Mamlukid scandal, the punishment by confession of the defendant was particularly hard since the defendant could withdraw their confession even during the execution of the sentence, according to the law.

The governor and the assembly's attitudes are also worth mentioning. Instead of looking for other legal solutions, the provincial elites decided to send the verdict of recm to Meclis-i Vâlâ-yı Ahkam-ı Adliyye for approval. When considering the exceptionality of the case, it is hard to assume that the local actors, including the judge himself, expected no trouble. The safest option for the governor was to encourage the naib to find doubts about the verdict or simply discourage the defendant from making a legal confession. This way, the judge had to look for a discretionary punishment already defined by the Imperial Law Code of 1840 instead of insisting on the hadd. However, the provincial assembly and the governor of Konya, Mustafa Tosun Paşa, decided to send the case to Istanbul without pursuing alternative options.

The question that comes to one's mind is about the intention of the naib, governor, and provincial assembly members while insisting on the sentence of recm. Why did all local actors agree on such a politically risky movement instead of playing it safe and not taking the center's attention to a case that concerned a peasant and a slave woman from the countryside? We can only assume the intention by carefully looking at the case's actors to have a better understanding.

Firstly, according to the documents, the case victim, Mihriye binti Abdullah, was a slave woman living in the household of a man called İlyas in Kadınhanı. It is remarkable to find a cariye in this small town of Konya when one considers the high

prices in the slave market during the 19th-century Ottoman Empire. Toledano indicates that slavery was mainly an urban phenomenon with the financial resources of high urban elites during the period.[147] Some geographically focused research showed that slave ownership was not widespread. For instance, in the example of Diyarbakır, there were only 159 slaves, according to the kadı records, during the 18th and 19th centuries.[148]

We do not have to assume the socio-political situation of İlyas, thanks to the *temettuat* records of Kadınhanı.[149] According to the records, the largest landowner of the town was İlyas Ağa, who was also the *kaza hanedanı* and *müdürü*.[150] The term hanedan shows that he comes from a local dynasty in Konya. After the reform in provincial administrations during Tanzimat, it seems this head of the local dynasty continued to be effective in local politics with the title of kaza müdürü (provincial governor) in Kadınhanı. The fact that there were no records in the name of a different İlyas bin Mehmed strengthens the assumption to relate the owner of the slave woman, Mihriye, with kaza müdürü İlyas Ağa.

Strikingly, İlyas Ağa's identity as the town dynasty and provincial governor was not specified in the documents related to the trial. In contrast, he was mentioned as 'an inhabitant of the town of Kadınhanı' with no clue of his socio-economic status.[151] By not referring to his social status, the local authorities might have wanted to mask the political importance of the case. It is also possible to assume that the

[147] Toledano, *The Ottoman Slave Trade and Its Suppression, 1840-1890*, 14.
[148] Güler, "Osmanlı Diyarbekiri'nde Köle ve Cariyeler (18. ve 19. yy.)."
[149] *Temettuat defterleri* are recorded in 1844-45. These records includes names of household males together with their professions, properties and tax records. This record is particularly helpful for this study since the records were kept only four years before the case. Sarıköse and Turhan Sarıköse, *Kadınhanı (1844-1845)*.
[150] BOA, *ML VRD. TMT. d*, 10510/8.
[151] "*Kadınhanı derbendi sükkanından İlyas bin Mehmed nam kimesne*" BOA, *A.}MKT. UM*, 24/1.

judge did not want to intrigue the central government by specifically highlighting one side of the case as a part of local elites.

The agency of the victim, Mihriye, is also not present in the court documents. She was neither the plaintiff -it was his owner İlyas- nor a witness of the case. Mihriye was not asked any questions by the judge and probably was not even present in the courtroom. What could be the reason for her inexistence in the documents, which could have been a strong support for the verdict of the judge? We can relate this to Mihriye being both a woman and a concubine. Women's testimony is not accepted as valid support for hadd punishments. As mentioned above, in cases of adultery, the case required four Muslim males as witnesses for the validity of recm. Thus, the legal existence of Mihriye in the case would not make any more legal justification for the naib.

Apart from her relationship with the household of İlyas, the documents give information about Mihriye's legal status as *ümm-ü veled cariye*. This legal status was carried by slave women who had children from their male owners. Umm-u veled concubine is legally separated from the other forms of slavery in Islamic law. An umm-u veled cannot be sold or given to a third party. This legal status indicates that the concubine will be freed after the death of her owner, regardless of the owner's will.

Another piece of information about Mihriye's background can be found in her father's name, Abdullah. This name is generally recorded as the father of Muslim converts whose fathers are not registered as Muslims. This shows that Mihriye was not born into a Muslim family[152]and was more likely brought from the Caucasus

[152] Islamic law prohibits the enslavement of Muslims. However, legal status of a slave does not change after conversion. Theoretically speaking, a Muslim can be a slave if s/he converted after being enslaved or s/he was born to a Muslim slave family.

since black slaves were mainly used in menial work and as domestic slaves, unlike white slaves in the Ottoman Empire.[153] The main source of white slaves was the Caucasus in this period, which were brought to Istanbul by sea.[154]

It was İlyas Ağa who legally filed the case to the court. Since the victim is not an active party in the court, she could not approve or reject this allegation. What if, one may ask, Hasan did not 'kidnap' or 'rape' Mihriye, but they 'escaped' together from their province? Even if the case was not a case of rape but a consensual sexual relationship between two actors, the legal status would be the same. Mihriye, though she was also a muhsana, could not be subjected to the punishment of recm since the slaves could not be executed by hadd punishments. It means that even if Mihriye had consensual sex with Hasan, she could not have been subjected to the recm punishment. Though this does not mean that she would not be punished, it would have been more likely for İlyas Ağa not to depict the case as a consensual relationship but as a forced one to maintain his respectability and charisma.

When it comes to the defendant Hasan, we have less information. The only factual information about Hasan in the court documents is his father's name and the fact that he lived in Kadınhanı. Still, the temettuat records can establish a better understanding of him. In these records, there is only one person that fits to name Hasan bin Ahmed in Kadınhanı, who was registered as Hasan, son of Bosniak Ahmed. In the *Aşağı* neighborhood of Kadınhanı, in which Hasan bin Ahmed lived, there were three other household heads registered as Bosniaks other than Hasan.[155]

[153] Toledano, *The Ottoman Slave Trade and Its Suppression, 1840-1890*, 281.
[154] Toledano, 32.
[155] The main migration wave from Bosnia to Anatolia is accepted to start after the Congress of Berlin in 1878, in which the administration of Bosnia-Herzegovina is left to the Austro-Hungarian Empire. However, some Bosniaks were forced to migrate to Anatolia during the Serbian revolts in the first half of the 19th century. Emgili, "Bosna-Hersek'ten Türkiye'ye Göç (1878-1934)"; Duran, "Belgradî Raşid'e Göre XIX. Yüzyılda Sırbistan ve Göçlerin Arka Planı," 101–8.

One might assume that Hasan's migrant identity could be one of the reasons for the tension with İlyas Ağa.

Apart from its relevancy to the local politics of a small Central Anatolian town, this case also had some broader resonance in the politics of Tanzimat. This resonance can be found in two critical actors of Konya, who supported and pushed for the verdict of recm. An important agent of this case was the governor of Konya, Mustafa Tosun Paşa, who supported the judge's verdict and sent the case to the Meclis-i Vâlâ for approval, a move that many other governors could have hesitated about. Paşa might have been aware that the verdict of recm would intrigue the center in terms of the local politics of Konya, but this only seems a further motivation for him. He was already a well-known opponent of Mustafa Reşid Paşa, the ideologue of Tanzimat reforms and then-sadrazam of the Empire. The government of Mustafa Reşid Paşa removed him from the governorship of Maraş with the accusation of bribery in 1848.[156] Mustafa Tosun Paşa was assigned to this duty during the government of Mehmed Emin Rauf Paşa, who was known for his opposition to Mustafa Reşid in 1846. In the spring of 1849, he was assigned to the governorship of Konya.

After sending the case to the center, Mustafa Tosun Paşa's political career had some troubles. Some eleven months after the trial, he was removed from his duty in Konya.[157] His successor, Selim Paşa, governor of Kastamonu, was summoned from Istanbul before his journey to Konya. As an introductory note on his agenda, Selim Paşa was given a manual regarding the 'full implementation of Tanzimat in Konya.'[158] This two-page long report mentioned that the local administrators in

[156] BOA, *A}TŞF*, 5/62.
[157] BOA, *A.}TŞF*, 8/22.
[158] BOA, *A.}AMD*, 19/35; Muşmal, "Tanzimat Reformlarının Uygulanması Hakkında Konya Valisi Selim Paşa'ya Verilen Talimât-ı Seniyye."

Konya were not committed to the ideals of Tanzimat, and the cases of abuses were known among kaza müdürleri (township governors) and the members of the provincial assembly.[159] Selim Paşa was sent as a savior who could establish the reform mentality and save the city from the state of misadministration. Three months after his removal, Mustafa Tosun Paşa was put on trial in the Assembly of Konya with the accusation of bribery.[160]

Like Mustafa Tosun Paşa, Şerif Rüştü Efendi, the naib of Konya also had political problems with the Tanzimat government. His name was never given in the documents, but we can reach his identity from his seal in the official verdict (kadı ilamı) and the letter of the Assembly of Konya regarding the case. Ottoman archives give us information regarding the naib of Isparta between 1845-1848, named Sıdkızade Şerif Rüştü Efendi, who was removed from his duty and put into trial with the accusation of bribery.[161] The title, Sıdkızade, is noteworthy since Sıdkızade family was also known as *Bursa Hanedanı*.[162] In *Sicill-i Ahval* records, the short biographical recordings of the Ottoman state officers started to be kept in 1879, we can reach the names of two brothers, Mehmed Kamil Efendi, born in Bursa in 1838/9, and Ahmed Remzi Efendi, born in Konya in 1848/9 whose fathers were given as 'Şerif Rüştü Efendi'.[163] There are two reasons that we can relate the naib of

[159] BOA, *İ.MVL*, 176/5228; Muşmal, 110.
[160] BOA, *İ.MVL*, 189/5725; BOA, *A.}MKT.MVL*, 35/31.
[161] BOA. *A.}MKT*, 108/29; BOA, *MVL*, 21/37.
[162] Sıdkızade family is a well-known and famous family who even had a şeyhülislam under the reign of Mahmud II in 1822, Ahmed Reşid Efendi. The name of the family is likely coming from the father of Ahmed Reşid Efendi, Mehmed Sıdkı Efendi, a famous scholar in the reign of Abdülhamid I, according to İpşirli. In another example, a statesman during the rule of Abdülhamid II, Mustafa Eşref Paşa, was also from Sıdkızade family, who took his early education from his brother Bağdat Kadısı Şerif Rüştü Efendi, who was the naib of Konya during the recm trial. Their father, Ahmed Sıdkı Efendi was a famous scholar during his lifetime, who wrote *Zeriatu'l İmtihan*. He was also known as Seyyid Ahmed Sıdkı Bursevi, that refers to the fact that the family lineage was longed to the Prophet. Similarly, statesman, a member of *Meclis-i Vâlâ* and the minister of Endowments, Bursalı Ali Rıza Efendi and his brother, famous poet Süleyman Nezih Bey were also from Sıdkızade family.İpşirli, "Ahmed Reşid Efendi"; Kahraman, "Mustafa Eşref Paşa"; Erdoğan, "Süleyman Senih"; Arslan, "Bursalı Ali Rızâ Efendi."
[163] BOA, *DH.SAİDd*, 66/159; BOA, *DH.SAİDd*, 47/259.

Isparta, Sıdkızade Şerif Rüştü Efendi, with the naib of Konya, Şerif Rüştü Efendi, who signed the verdict of recm. Firstly, it is apparent from sicill-i ahval records that Mehmed Kamil Efendi, and Ahmed Remzi Efendi are brothers since their father's occupation was given exactly the same. However, in Ahmed Remzi's record, Şerif Rüştü Efendi was titled *Sıdkızade,* while in Mehmed Kamil Efendi's record, it is provided without the family name. Secondly, Mehmed Kamil Efendi was born in Bursa, the hometown of the Sıdkızade family, while Ahmed Remzi Efendi was born in Konya, precisely in the year in which the verdict of recm was given by the naib of Konya, Şerif Rüştü Efendi.

At that point, we can assume that this case became a political alliance of three opponents of Tanzimat in Konya. The political challenges that Mustafa Tosun Paşa and Şerif Rüştü Efendi were facing against the central government seem to increase their incentive to submit the recm case to the center even though the verdict would have increased the attention of the central government. It is also likely that İlyas Ağa's agency, as the hanedan and the largest landowner of the town of Kadınhanı, increased the importance of the case. The Assembly of Konya also sided with these actors by not objecting to the verdict, though it had the legal power according to the *Eyalet Nizamnamesi*.

3.2 The legal and administrative power of the naib in local politics

The active political agency of the naib of Konya should not be seen as a marginal case. In contrast, the naibs constantly acted as political actors allied with or challenged other actors with their legal capacities in local politics. Their role as local political actors became specifically important after the Edict of Tanzimat. The new Ottoman government aimed to strengthen the center's power against the local

political actors, whose roles became prominent during the 17th and 18th centuries. The naibs were treated and seen by the state as one of these local political actors with their juristic and administrative authority. As in the case of Konya, the naibs used this power as local political actors in many instances.

An example of naibs' juristic power could be seen in the case of Konya. The naib Şerif Rüştü outsmarted the center, in a way, by bringing the recm question to the table. The first imperial Ottoman penal law was codified in 1840 and was in force in 1849 when the naib saw the case. The penal code of 1840 does not refer to the punishments of *hadd*, *kısas,* and *diyet* punishments of Islamic law. As in the Ottoman legal tradition, kanunnames are expected to intervene only to the extent of ta'zir penalties. In theory, the political power has some conditional power to temporarily and permanently revoke these punishments. However, the Imperial Penal Code of 1840 does not make any references regarding this issue. Thus, a jurist of Islamic law would be expected to see the Penal Code as a codification of discretionary punishments.[164]

With his legal capacity, Şerif Rüştü ruled that the case fell under the hadd punishments, in which ta'zir would not be available. While doing that, the procedures specified by the modern codifications were followed carefully, and the trial was seen in the provincial assembly as ordered by the Eyalet Nizamnamesi. The nizamname did not specify the fact that the rulings had to be done by the hand of the naib. Instead, the manual gave the jurisdiction to the provincial assemblies in which the naib was only a member. However, in the case of recm, the authorities clearly mentioned that the ruling was made by the naib. This nuance indicates that the

[164] Akgündüz, "1274/1858 Tarihli Osmanlı Ceza Kanunnamesinin Hukuki Kaynakları, Tatbik Şekli ve Men'-i İrtikâb Kanunnamesi," 154.

provincial assemblies did not have, or assume to have, any legal authority to make decisions outside of the Penal Code. This problem was solved with a syncretic adjudication: the case was seen by the naib in the presence of the provincial assembly.

Şerif Rüştü took advantage of the legal gaps and used his juristic power to make the verdict. Sometimes, naibs used their power not to create verdicts. In another penal case in 1851, in the town of Yenipazar in Şumnu (Shumen), a man called Mahzaroğlu Rahim was accused of causing the death of a child named Odabaşıoğlu Mehmet by beating him with a rifle.[165] The defendant claimed he only slapped the boy several times and rejected that he caused the death. Like a prosecutor, the naib examined the body and claimed to have seen no marks of assault. Since there were not any witnesses existing either, Rahim was acquitted. When the case was carried to the Meclis-i Vâlâ, a child claimed to have witnessed Rahim beating Mehmed with the rifle. Later, the Meclis-i Vâlâ summoned the imam, who cleaned the dead boy's body. The imam confirmed that there were two or three marks of assault on the body. When the naib was asked if he did examine the body and saw the scars in Meclis-i Vâlâ, he admitted seeing the scars, but somehow hid them. When the assembly of Şumnu was asked about the child witness, who claimed to see Rahim while beating the victim, the assembly defended the naib indicating that the naib had not known the witness at the time of the court.[166]

The important question regarding the case is what the naib's intention was while hiding the evidence. The proceedings of the case hint to the reader regarding the local political tension. The most important evidence for local tension between

[165] BOA, *A.}MKT.NZD*, 124/6.
[166] BOA, *A.}MKT*, 237/94.

different actors on the basis of the case can be seen by the fact that the case was carried to the Supreme Council for an appeal. During the appeal, two witnesses were included in the case, claiming the defendant's responsibility for the child's death. The naib was accused of protecting the murderer for some reasons which could not be understood by the members of the Meclis-i Vâlâ as well.[167] The naib seems to have intentionally protected the defendant by hiding the scars on the body, as he confessed later. The naib's intention cannot be comprehended clearly from the court documents, but one may assume a socio-economic distinction between the murderer and the child, which impacted the naib's decision for his own political agendas.

The penal cases were not the only domain in which the naibs showed their local authority. In reality, criminal cases rarely occurred, especially in small towns like Kadınhanı and Yenipazar. Apart from their juristic authority, the naibs also had significant administrative power. With this administrative power, these local judges could be critical agents in socio-economic life.

One example can be given in the enforcement of the Land Code of 1858. With the Land Code of 1858, the Ottoman Empire started an empire-wide reformation of land ownership and usage. Together with the Land Code, *Meclis-i Âli Tanzimat* also issued a land registry code (*tapu nizamnamesi*). According to this manual, all previously given land certificates would be invalid, and new certificates would be registered by Registry Office *(Defterhâne*). These new registries, according to the law, would be prepared on the basis of certificates that the local governments would give.[168] A copy of this code was sent to all kadıs and naibs around the Empire

[167] "*... eser-i darbi görmüş iken her ne sebebe mebni ise muahharen ketm etmiş...*" BOA, *A.}MKT,* 237/94.
[168] Taşkesenlioğlu, *Tanzimat Döneminde Bir Reform Meclisi Meclis-i Âli-i Tanzîmât (1854-1861),* 198.

since they would be the sole legal authority in the provinces regarding the enforcement of this new land regime.[169]

The naib had a strategic role in the certification of the lands on the individuals since Defterhane would create the new land certificates according to *ilmuhaber*s, temporal certifications given by the local authorities. This role was even more important in the countryside, in which the central government bureaucrats had less impact. These ilmuhabers had a critical role in the establishment of the new form of land ownership since previous documents regarding the right of land use would be invalid. These documents would be the main evidence for the new regime.

Previous research analyzed the challenges between the peasants and large landholders based on the enforcement of the Land Code. Kenanoğlu indicates that the state aimed to prohibit large landownership during the implication of the Land Code.[170] In some cases, the peasants applied to the courts accusing these large landholders of claiming the ownership of their lands. In some others, the landholders and local elite also used legal reconciliations and applied to the court against the peasants. The author argues that these large landholders were not necessarily favored in the courts, and courts freely rejected their arguments on the basis of law and favored the peasants.[171]

On the other hand, through the Ottoman archive records, we can encounter some cases in which naibs were accused of abusing their legal capacity in the preparations of the ilmühabers. Some of these cases were about the demanding of

[169] BOA, *A.}MKT.UM,* 351/70.
[170] The discussion regarding the reasons and consequences of the Land Code of 1858 is a prominent discussion of the Late Ottoman historiography. While authors like Gabriel Baer, Denise Jorgens and Eugene Rogan claimed the Code targeted to rasp the power of large handholders, while some others, like Haim Gerber, claimed the opposite. Kenanoğlu, "1858 Arazi Kanunnamesi ve Uygulanması"; Aytekin, "Hukuk, Tarih ve Tarihyazımı: 1858 Osmanlı Arazi Kanunnamesi'ne Yönelik Yaklaşımlar."
[171] Kenanoğlu, "1858 Arazi Kanunnamesi ve Uygulanması," 115–16.

documentation fees by the naibs. The center took these complaints seriously and tried to prevent the naibs from demanding any fee for the certificates. In the case of Gelibolu, the officers of Defterhane reported to the center that all the judges in the towns of Gelibolu were demanding money for ilmühabers.[172] The naibs of Kuşadası[173] and Akçabaat[174] were also reported with the same accusation.

Some of the reports, on the other hand, regarding the ilmühabers went beyond the certificate fee complaints. In the *sancak* of Silistre, the officers of Defterhane argued that 'naib efendi' demanded to write *hüccet*s though it was not a part of the new land registry bureaucracy.[175] Moreover, the naib was suspected of deliberately delaying the procedure for some reason.[176] The documents do not indicate any further questioning regarding the naib's intention, but one can assume this delay could be regarded desirable by the ancien regime's landlords. The registration of lands in the name of peasants was not in favor of these landlords since the new certificates would give the peasants legal leverage against them.[177] The judge of İstanköy (Kos) was also warned by the capital for his alleged misconduct regarding the Land Code in 1860.[178]

In another case, a peasant from Bolu, Osman oğlu Hasan, accused the naib of Ereğli of forcefully taking the certificate of his land for himself.[179] This time, the naib was accused of using his legal and administrative power to claim the ownership

[172] BOA, *A.}MKT.MHM*, 238/73.
[173] BOA, *A.}MKT.MHM*, 236/7.
[174] BOA, *A.}MKT.NZD*, 389/34.
[175] BOA, *A.}MKT.MHM*, 198/88.
[176] BOA, *A.}MKT.MHM*, 203/9.
[177] The naib's attitude was not the first problem in Silistre regarding the enforcement of the new land regime. At first, the registry officers illegally sold the lands on which the railroad would be constructed. A few years later, one of the *tapu* officers, Nevi Efendi, was accused of bribery and fled to Istanbul. The naib's discharge seems to be the last phase of the problems in the procedure. BOA, *A.}AMD*, 81/56; BOA, *A.}MKT.UM*, 301/10; BOA, *MVL*, 310/77; BOA, *A.}MKT.UM*, 319/68.
[178] BOA, *A.}MKT.NZD*, 334/71.
[179] BOA, *A.}MKT.DV*, 127/40.

of a peasant's land, like a landlord, and tried to expand his economic influence. It should be noted that these examples can only be reachable because they became legal cases in the eyes of the central government. This should not guide one to assume these cases were marginal and rare. In contrast, the cases that did not become legal cases for the central government are not available for the observation of modern readers.

An essential domain in which judges played an important role was the cases of inheritance which required a practical knowledge of the law and heavily impacted different segments of society in terms of the politics of ownership. This authority brought an influence the politics of property ownership in their legal capacity. In Aksaray, the governor, the naib, and the müftü were accused of forging the death of a man to seize his properties in his hometown.[180] The unfortunate man was living in İstanbul, where he worked as a state officer.

However, the naibs did not always ally with the other local elites or abused their power against the peasants. In some cases, judges used their power to protect the local inhabitants. The naib of Güzelhisar, in 1840, for instance, challenged a *sarraf* named Mihail, who brought soaps produced in the town of İnce in Aydın to Güzelhisar for commercial purposes while there were sixty soap factories in the town. With the complaints of the locals of Güzelhisar, the naib prohibited Sarraf Mihail from selling his products in the town.[181] However, Mihail managed to get his approval by reaching out to the central government. The government indicated that the practice of *inhisar* (monopoly) was removed in the Tanzimat order, and the naib had no legal power to prohibit Mihail from selling his products.

[180] BOA, *A.}MKT.DV*, 24/91.
[181] BOA, *C.İKTS*, 35/1747.

With their legal capacity, some judges managed to cause international tensions. In Nevşehir, the governor of Hasan Hüsnü Bey and the naib Abdullah Efendi created political turmoil between the Ottoman and Habsburg empires. An Austrian merchant named Abraham Popovich, who lived in Nevşehir, had a dispute with the governor Hasan Hüsnü Bey with the accusation of theft. According to his claims, Popovich was arrested and shackled as if he was a murderer (*adeta bir katil gibi prangabend olduğu halde*) and taken to the city center for trial.[182] The Austrian merchant wrote to his household that, apart from all this humiliation, Hüseyin Hüsnü Bey seized a total of fifty-four thousand *ğuruş* for the alleged theft. Soon after, the Embassy of the Austrian-Hungary Empire intervened in the issue, made an investigation, and demanded the trial to be seen in the Meclis-i Vâlâ. The Supreme Court decided that Hüseyin Hüsnü Bey and the naib Abdullah Efendi did not follow the proceedings of imprisonment and adjudication. The trial resulted in the dismissals of the provincial governor, the judge, and the müftü, who were also required to compensate for the damage to the merchant.

3.3 The naib as a local political actor

The active political agency of the late Ottoman naibs can also be followed in their relationship with the other local actors. The naibs were generally prominent figures in local politics through their interaction with the other actors. From the state's perspective, during the early years of Tanzimat, the central government considered naibs as one of the local political actors whose authority overlapped with that of the modern state. The naibs were usually aimed at policies that aimed the other regional actors like valis, müdürs, and eşraf.

[182] BOA, *A.}MKT.MVL*, 68/3.

During the politically dynamic years of the Early Tanzimat period, the naibs were critical actors in local politics. They negotiated, allied, and challenged other actors using their legal and administrative power. In some cases, naibs challenged the different local actors, and in some, they allied with others to resist the government's pressure to establish more state control in their region.

The center's perception of the naibs as local actors can also be seen during the rule of Mahmud II. As mentioned in Chapter 2, the reform policies during this period established a baseline for the Tanzimat reformers. In 1830, the *nazır* and naib of Filibe were accused of causing the death of a non-Muslim family in a house fire. According to the people of Filibe, the tragedy was a result of the oppressions of the nazır of Filibe. The complaints resulted in the dismissal of the naib as well, together with the nazır. The assumption of the center was that, by the reports coming from the town, the naib was working with the nazır.[183]

At the very early stage of Tanzimat reforms, the naib of Bayburd's name was also involved in a political scandal in Erzurum. The people of Bayburd and Erzincan sent written complaints to Istanbul regarding the oppression (*zulüm*) of their *voyvoda*s. The inquiry was started regardless of the governor of Erzurum Osman Nuri Paşa's efforts to defend the voyvodas, stating that the complaints were only provoked by a few parties (*hizip*).[184] The central government pushed the complaints and demanded the hearings of suspects. In the case of Bayburd, other than the voyvoda İsmail Bey, the head of registry (*nüfus nazırı*) and the naib were also involved. As the result of the trial, İsmail Bey agreed to pay a sum of three hundred *kese* akçe to the people, while the head of the registry and the naib were dismissed.

[183] BOA, *HAT*, 755/35687.
[184] BOA, *HAT*, 1245/48322.

According to the documents, the voyvoda, the naib, and the nüfus nazırı were allied and collected more money from the *tevzii*s.[185] Notably, the document openly mentioned the word '*ittifak'* (alliance) regarding their 'cooperation.'

These 'ittifaks' were hardly rare in local politics. During the early years of Tanzimat, many naibs were targeted by the central institutions for their close relations with the other local actors. In 1846, the müdür and naib of the town of Gelibolu were dismissed due to their impropriety (*uygunsuzluk*) at the same time, indicating cooperation between the two figures.[186] In 1847, the müdür and naib of Edremid were also under the accusation of organized corruption.[187] Similarly, in 1854, the müdür and naib of İzmit were dismissed together by the Meclis-i Vâlâ. The müdür, according to the Supreme Council, had lack of skill and success (*adem-i muvaffakat*) for the job, while the naib did not have the merit for the job with his knowledge of law (*umur-u şeriyyede adem-i liyakat*).[188]

Sometimes, these alliances involved numerous actors and constituted city-range elite coalitions. For example, the *kaymakam*, some members of the city council, and the naib of Köstendil were put on trial altogether with accusations of corruption and bribery. In the town of İncesu in Kayseri, the müdür, naib, and all of the members of the provincial assembly were dismissed from their duties, with the complaints of the people of İncesu.[189] In similar cases, the judge of Antalya[190], Premedi[191], and Siverek[192] lost their posts altogether with the governors and members of the city council.

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[185] "*... Bayburd kazası voyvodası İsmail Bey ile kaza-yı mezbur naibi ve nüfus nazırı birbirleriyle ittifak ederek bir sene tevziilerden nefislerine biner kese akçe...*" BOA, *HAT*, 1245/48322.
[186] BOA, *A.}MKT*, 34/3.
[187] BOA, *A.}MKT*, 79/94.
[188] BOA, *MVL*, 278/51.
[189] BOA, *İ.MVL*, 234/8157.
[190] BOA, *A.} MKT.MVL*, 89/41.
[191] BOA, *A.} MKT.MVL*, 133/55.
[192] BOA, *A.}MKT.UM*, 211/46.

A noteworthy case that shows the influence and impact of the naibs in local politics can be seen in Devrek. In 1853, after the dismissal of the müdür Hacı Ali Ağa with the allegation of corruption, the naib of the town, Ahmed Efendi, was appointed as the new müdür. However, the people of Devrek were unhappy about this new appointment, claiming that the naib was a local partner of the müdür in his corruption. The document highlighted that the naib was a local of Devrek and had close relations with Hacı Ali Ağa, indicating a new appointment would be a better option.[193] Though for a short term, the naib's influence managed to appoint himself as the new müdür of the town after the dismissal of the landlord Hacı Ali Ağa.

The naibs not only cooperated with the provincial governors but also with other actors. In the town of İslimye, the naib Emin Efendi and the *muhassıl* Salih Efendi were allied against the factory manager (*Fabrika-yı Hümayun müdürü*) Hüsrev Ağa. The governor of Edirne reported the quarrel to the Supreme Court of Justice, indicating that the problems between the two sides were causing delays in the administration of the factory.[194] In Bolu, the naib Hacı Emin Efendi, this time, was in a coalition with the chief clerk (*mal başkatibi*) Hasan against a member of the provincial assembly, Mustafa Ataullah Efendi. The unfortunate man was said to be dismissed from his position, and Hacı Emin Efendi replaced him in the assembly. The governor of Kastamonu intervened in the situation by reporting the coalition between the judge and the chief clerk to the center. The governor indicated that the naib, the chief clerk, and the people around them became one mouth and one body (*yekdil ve yekvücud olup*) to create false rumors about Mustafa Ataullah.[195]

[193] BOA, *A.}MKT.UM*, 138/51.
[194] BOA, *MVL*, 58/89.
[195] BOA, *A.}MKT.NZD*, 79/91.

One point to highlight is that these political factions and struggles were not only formed by state officials but also by other influential figures in local politics. In the sancak of Hamid, modern Isparta, a group of locals came together, claiming that the previous governor Şahan Ağa and his son and present governor Recep Ağa were indebted to them. They were accused of forcing the naib, müftü, and assembly members to sign a forged debt certificate.[196] These non-state participants of local politics were mostly constituted of local notables, who also sided with the state against the local power-holders through complaints and letters. Though many documents indicate these complaints were sent by the people (*ahali*), the impact of non-state actors cannot be overlooked, which sometimes forced the town judge to sign a forged document against the provincial governor. Through the complaints, the local non-state factions were able to use the government's desire for centralization to replace the positions of their political opponents.

During this period, the naibs played significant roles in the political factions in local politics. It was common to see that the naibs acted for the benefit of a fraction in the local politics, as in the cases of İslimye and Bolu, for several reasons. In some cases, these interests required the undermining of other actors. The political factions were formed and acted to eliminate the opponents, which were sometimes provincial governors, members of the provincial assemblies, or other political figures. In several instances, the factions managed to reach their political targets, while in some cases, the opponents were more successful in mobilizing their personal networks to secure their positions. In the case of Bolu, the coalition of the chief clerk and the naib caused them to lose their positions, while Mustafa Ataullah kept his duty in the assembly of Bolu.

[196] BOA, *A.}MKT*, 225/80/1.

The naibs, in some cases, were powerful enough to challenge the provincial governors. The political tension between the naib of Oltu Mehmed Arif Efendi and the kaymakam of Çıldır Ziya Paşa in 1859 can be given as an example. Both sides sent complaints to the center with accusations of corruption. The government started an investigation, stating that the innocent party would be awarded as a case point.[197] The result of the investigation was in favor of Ziya Paşa[198], and the naib received an official warning from the government.[199] In 1853, the naib of Kızanlık was dismissed for sending two opposite reports about the provincial governor Hüseyin Bey, one was in favor, and the other was against.[200] In another case, in the town of Demirhisar, the alliance of a faction led by the naib and the müderris against the kaza müdürü could not succeed. The investigation regarding the situation of the provincial governor Yusuf Paşazade İzzet Bey concluded that the complaints resulted from the cooperation of the naib and müderris and were baseless.[201]

As in the case of the coalition of the müderris and naib, there were several moments in which the local members of the ilmiyye came together against the other actors. The müftüs, for example, also had political agencies in the local factions and sometimes allied with the naibs against others. In Denizli, the naib and müftü of the town were alleged to cause a considerable political scandal that included the provincial governors of different towns of the city. The governor of Aydın, in the end, had to write to the central government to discipline the judge and the *müftü* to prevent them from circulating rumors about the provincial governors and other actors.[202] In another case, the assembly of Damascus decided the dismissals of the

[197] BOA, *A.}MKT.UM*, 409/97.
[198] BOA, *A.}MKT.UM*, 437/63.
[199] BOA, *A.}MKT.NZD*, 337/86.
[200] BOA, *MVL*, 255/21.
[201] BOA, *C..DH*, 47/2342.
[202] BOA, *MVL*,. 11/21.

naib and the müftü of the town of Ma'arretü'n-nu'man in Idlib in 1846 for their corruption.[203] This example is worth mentioning since it shows the fact that such political factions were not only becoming a concern of the center in the eyalets in which the Tanzimat reforms were enforced but also in different geographies.

These few instances in which the different members of local ulama come together against the other actors should not be seen as a common pattern of Ottoman local politics. Not always did the local ulama work together. In some instances, they also confronted each other. In Sivas, the naibs of the city came together to write a protest regarding Niksarî Mehmed Bey's appointment to the post in Yeniil (presently Kangal). This is a rare example of an alliance of the different town naibs against another one. Moreover, the appointed judge was not even a member of the central ilmiyye but actually from a close town, Niksar.

This alliance should also be read in light of the bureaucratic transformation of the central government regarding the institution of naibship in the Tanzimat period. As mentioned in Chapter 2, one of the earliest changes in the judiciary domain was the centralization of judicial appointments. During the immediate years, some of the judges were replaced by the governments with appointments, while others established private contracts with the kadıs of the old regime. Thus, this sort of tension between different groups of naibs could be understood since their self-interest networks were initially opposite. In this manner, the naibs did not always participate in political coalitions that faced the influence of the central government. The judges of the new regime cooperated with the central bureaucrats of the

[203] BOA, *A.}MKT,* 36/94.

Tanzimat government. The newly appointed judge of Gelibolu, Mehmed Arif Efendi, made a meeting (*müşavere*) with the city's muhassıl before assuming his job.[204]

This chapter examined the role of the Late Ottoman judges in local politics of the Tanzimat era. Through analyzing several case studies, the naibs' impact and influence in local politics are questioned. To sum up, the Late Ottoman judges played an essential role in their legal and administrative power. For this purpose, they invented new strategies and used legal gaps, as in the example of the recm trial, cooperated and allied with other local actors for their interests. Apart from their juridical power, the judges used their administrative impact for different purposes, as in the case of enforcement of the Land Code of 1858. Other than being an active local political figure through his legal and administrative capacity, the naibs played a vital role in the cooperation of different actors. In this sense, they used their powers to eliminate or defend other actors for various purposes.

[204] BOA, *C..DH*, 196/9758.

CHAPTER 4

THE PRACTICE OF ‘AZL IN JUDICIARY DOMAIN DURING THE TANZIMAT PERIOD

The second chapter of the thesis analyzed the changing legal structure of the Late Ottoman state. In this period, it has been seen that the office of naib, a legal institution that did not have any organic bond with the central government, was claimed by the modern state of the Tanzimat period. The government's initial aim was to claim the right to appoint the naibs and eliminate the kadıs from the process. In this manner, the financial relations between the kadıs and naibs were broken, and kadıhood became a nominal position that generated regular economic income without any risks.

This chapter analyzes a further transformation in the legal system, which is the practice of *‘azl* (removal from office) in the judiciary domain between 1840 and 1864. It is argued that the state started to use its right to remove the judges from their offices more frequently and arbitrarily as opposed to the pre-19th century state structure to establish more control over the domain. In this way, the judges were taken under the influence of the government since any unpleasant decision of naibs could cause them to their jobs.

The frequent use of removal in the judiciary domain stretched the Ottoman Islamic law’s principle regarding the judges. The right to remove the judges was originally a limited authority bestowed to the political power in Islamic legal theory. After the Edict of Gülhane, Meclis-i Vâlâ-yı Ahkâm-ı Adliyye, Supreme Council of Judicial Ordinances, a state assembly established in 1838, was utilized as the main monitoring mechanism over the naibs. Meclis-i Vâlâ had the power of cassation,

contrary to the previous periods, and both could regularly monitor the verdicts of judges and change these verdicts when they were considered as misinterpretations or misuse of the law. Thus, Meclis-i Vâlâ became an important mechanism in the bureaucratization and modernization of the Ottoman judges during this period.

4.1 The ‘azl of the judges in the Ottoman Empire before Tanzimat

It is no coincidence that Mohammad Fadel’s very informative chapter on the institution of kadı begins with the following sentence: “Islam, as it is often said, is a religion of law.” [205] In order to understand the importance of the judge properly, firstly, one needs to understand the important role of the law in the essence of the religion of Islam. The institution of kadıhood was established as early as the caliphate of Umar but institutionalized and bureaucratized during the era of Mamluks and Abbasids. The kadıs were the central representatives of Islamic law, both in theory and practice. During the early formation of Islamic law during this period, several books were written concerning the powers and limits of the kadıhood defining a certain character to the position, which constitutes the genre of *edeb-ül kadı*.

In theory, the right to appoint and dismiss the kadıs belonged to the political power, and that is the sole power of the ruler over the judiciary domain.[206] This right is believed to be derived from the Fourth Caliphs' exemplary appointments of kadıs as their representatives. Similarly, the kadıs could be dismissed by the same power. However, the jurists, in the early establishment of the legal system, defined certain principles that aimed to limit the ruler’s power to intervene in the judiciary domain,

[205] Fadel, “Al-Qadi,” 301.
[206] Hallaq, “Can the Shari ’a Be Restored?”

such as injustice, corruption, and incompetency.[207] al-Mawardi, for instance, indicates that the appointing authority has the legal capacity to dismiss a judge whenever he likes, but it is better to rely on a legit reason.[208]

Another limiting factor for the political ruler to intervene in the judiciary domain was the bureaucratization of the office. As early as the caliph Harun al-Rashid, the caliphate delegated his authority to appoint and dismiss the judges to the chief judge, which was also a jurist and judge.[209] Thus, the kadıs were mostly responsible for the chief judge instead of the political authority. In that sense, some scholars like, Wael Hallaq see the self-sufficiency and autonomy of the kadıs as a defining feature of the Islamic jurisdiction.[210]

Apart from the bureaucratic and legal limitations over the right of dismissal, another feature of the pre-modern jurists that relatively protected them from the political ruler's right to dismiss them was the fact that the kadıhood was only one of the means of the jurists in the legal domain. Hallaq argues:

> Today's job-based economy and the concept of expertise have obviously created the notion that securing a career or a professional job is essential for the individual's economic independence. Threatening the job necessarily means threatening independence. But this economic conception did not exist prior to the nineteenth century, be it in the Islamic world or elsewhere. Jobwise, Muslim jurists did not specialize in their field because they routinely performed other tasks, meaning that income from their qāḍīship was merely one of several sources of livelihood. In the first centuries of Islam, qāḍī s and their fellow legists had other "professions," mainly artisanal. Later on, they came to perform a variety of functions in the field of education, including tutoring, teaching, and copying manuscripts, which were always flourishing trades. Some worked as scribes, secretaries, and record keepers, while others were small merchants or, still fewer others, merchants on a larger scale. In other words, the Muslim judge as an economic man did not depend exclusively or even significantly on his income from a judgeship. [211]

[207] Atar, "Kadı."
[208] Al-Mawardi, *The Ordinances of Government (Al-Aḥkām al-Sulṭāniyyah w'al-Wilāyāt al-Dīniyya)*, 78.
[209] Fadel, "Al-Qadi," 307.
[210] Hallaq, "Can the Shari 'a Be Restored?," 1.
[211] Hallaq, *The Impossible State*, 61.

Moreover, the average term of the kadıs was mostly around two to three years. Thus, the dismissal did not become a political threat at the hands of the political power since the job was never designated to be life-long. The frequency of the dismissal became imperative to the job itself.[212]

The theoretical principles regarding appointing and removing judges were similar in the Ottoman Empire. The kadı appointments were made by the hands of kadıaskers, by the delegation of the Sultan. The kadıs were generally appointed once in five years for year-long duties. This made kadıhood, as in Hallaq's argument, only one of the means of living for the members of the central ilmiyye. Apart from their normative title as kadis, kadis could barely spend a quarter of their total career as acting judges and had to explore other professions.

However, the offices of kadıs were important economic resources which brought significant income to the office holders. On the other hand, this income, especially for the kadıs, was limited to their terms. The incomes were much more significant for the naibs since they made an actual investment in the office with the advanced payments to the kadıs. The loss of their offices meant losing these advanced payments, which were usually the worth of six-monthly payments, together with the future profits for the term of office.

Nevertheless, one should realize that even though a naib lost his office due to removal, he could explore new career opportunities in the job market. The offices of naibship were very limited when it is compared to the number of ilmiye members. Most of the ilmiye members could not be employed in the legal structure. In this sense, the career opportunities of the ilmiye members were not limited to the legal offices, and they had to be open to the other markets.

[212] Hallaq, 62.

Another distinction in the example of the Ottoman judiciary was the highly complicated legal hierarchy and bureaucracy. The kadıs were a part of this complex bureaucracy and required to be circulated frequently. This hierarchy defined their status in the legal bureaucracy. The need for dismissal was also infrequent and rare for this short-term occupation.

As analyzed in Chapter 2, as early as the late 16th century, but more often in the 17th and 18th centuries, the naibs became prominent actors in the judiciary domain with the spread of iltizam practice in the field. The naibs, who were originally deputy judges under the kadıs, started to assume the positions as acting judges, carrying the full authority of the kadıs in their absence. The kadıs were, in theory, free to appoint anybody as their deputies and the right for dismissal belonged to the kadı itself as in Islamic law. As in one example, the kadı of Gerger complained about his subordinate naibs. In response, the *Divan-ı Hümayun* wrote to the kadı that the right to remove the naibs belonged to the kadı.[213]

The Ottoman legal bureaucracy had an informal separation between two naibships: the *bab* naibs, or subordinate naibs who acted as assistant judges in large cities, and the substitute naibs, who acted as kadıs and were the highest legal authority in their regions. From the above-mentioned order to the kadı of Gerger, it can be seen that the Ottoman central government left the right of removing subordinate naibs to the kadıs as it was in the Islamic law. However, the process of dismissing substitute naibs was similar to the kadıs. The removing of the judges

[213] "*... mektub gönderüp kazâ-i mezbûrda muhzır olan ... Veli ve ... Abdal nâm kimesnelerden ahâlî-i vilâyet meclis-i şer'a ... "mezbûr yigirmi otuz yıllık nâ'ib ve muhzırlardır. Zarar-ı âmları vardur", deyü ref'olunmaların arz itdüğün ecilden buyurdum ... Nüvvâb ve muhzırların azlu nasbı kuzâta müfevvezdir. Eger bu ma'lûmun ise arz etmene bâ'is nedir, niçün te'addî olanları def' etmezsin? Eger ma'lûmun değil ise ma'lûm idinüp dahi kazâna tâbi' olan eger nâ'iblerdir ve eger muhzırlardır anun gibi re'âyâya te'addî olanları ref' eyleyesin.*" Kayar, "Osmanlı Yargı Teşkilatında Naib," 219; BOA, *A.{DVNSMHM.d,* 5/282.

would be based on the report of the governor, or a neigbouring judge, or the complaints of the inhabitants, and could only be issued by the kadıaskers.[214] The nuance came from the fact that the concept of 'substitute' naib was not recognized in the Islamic legal theory and the term 'naib' meant the subordinate judge, working under kadıs. Thus, the central government's right to dismiss naibs were not recognized in the Islamic legal sources.

The main control mechanism of the Ottoman sultans over the judges was official complaints, as mentioned in the ferman issued in 1775.[215] Since there was no systematic way of appellate until the Tanzimat era, the center had no real technology of control over local judges. Justice and law were tried to be protected with a social contract among local actors. When a naib did not manage to ensure the authority of law, one of the parties could use their nominal power to send a complaint regarding the naib to attract the attention of the center.

Especially when one of the representatives of political power (like vali) sent a complaint about the local judge, the center was more hesitant to make a move and questioned the position with other segments of the society deeply. For example, in 1631, Divan-ı Hümayun conducted an investigation into the complaint of a *müteferrika* regarding the naib of Hayrabolu. A vizier, Kenan Paşa, actually went to the town to see if there were any disturbances regarding the naib. Paşa concluded his investigation in favor of the naib and suggested keeping naib in his office.[216] However, when a *şikayetname* from the people of a town arrived, the center considered this more seriously.

[214] From a *ferman* from 1189/1775, we learn that some ayans and valis were removing the kadıs and naib. With this ferman, the central government highlighted the fact that the authority to remove kadıs and naibs belonged only to the central government. BOA, *AE.SABH.I*, 170/11344.
[215] BOA, *AE.SABH.I*, 170/11344.
[216] BOA, *A.{DVNSMHM.d*, 85/102.

We need to underline that these complaint mechanisms were not frequently used during the 16th to 18th century of the Ottoman Empire for several reasons. Firstly, a complaint was a risky move for the complainer: if the opposition has more power/personal network to defend himself in the eyes of the central government, then his position would be in danger. Secondly, a complaint from locals would take the attention of the center about this one town which could disturb the peace of the local authorities. As it has been seen, in certain cases, Divan-ı Hümayun did not hesitate to send high-ranking officials to personally control the situation in these cities and towns in several cases. As a response to a complaint from the locals of Payas (a town in modern Hatay) regarding the kadis who used naibs for their own interests, the government ordered Anadolu Kadıaskeri to go to the town personally to find a solution in the second half of 17th century.[217]

Since the complaint mechanism had its own disadvantages, the dismissal of naibs was uncommon and rare in the Ottoman judiciary system. Another reason for this pattern is that the local administrators, who had a conflict of interest with the judges, were not authorized to dismiss a local judge during this period. Several reminders during the 18th century were sent to the provinces highlighting that a vali, *kethüda*, or a *mütesellim* had no power to dismiss a naib without the confirmation of central authority, usually şeyhülislam or kadıasker.[218]

Another significant reason for the autonomy of the judges was the lack of technology of continuous control mechanisms over the local judges. Since replacement was not an option in many cases, all the parties in a province were expected to fulfill their premises according to the social contract they were a part of.

[217] BOA, *A.{DVNSMHM.d,* 100/323
[218] BOA, *C.ADL,* 30/1775; BOA, *AE.SABH.I,* 243/16231.

Even in cases where there was a strong suspicion or partial evidence of a judge's malpractice, the control system relied mostly upon neighboring judges and rarely kazaskers but did not go out of the boundaries of the legal domain.

In sum, we can conclude that the political power's authority to dismiss judges was not used as a discipline mechanism over the judiciary domain in Ottoman History before the establishment of the modern state. The theoretical power of the political ruler with regard to a pre-modern legal system was limited and conditional. The dismissal of a judge was rare and required serious inquiry since the central government did not have an instrument to monitor the verdicts of local judges. Although the political ruler could stretch his power, the kadihood was not a job-based profession, and the members of ilmiye could explore different sources of income. Thus, the power of dismissal was not a practical threat against the Ottoman jurists before the Tanzimat era.

4.2 Examining the transformation of law during the modern era

The appearance of the modern states changed the political authorities' relationship with the law in many different regards. One important difference is the legitimization of the modern states by relying on a new socio-political unit called the nation. When the state legitimizes itself as a form of institution that aims to represent the will of the nation, it means the nation itself defines the capacities of the state. Simultaneously, the law lost its divine characteristic during this period. Instead of carrying the will of the god in worldly affairs, the law itself shifted to be recognized as a representation of the national will.[219] Thus, the modern nation-states established a new legality, a

[219] Rousseau, *The Social Contract*, 179.

new theology that did not create its justification by a divine being but by a political construction.[220]

This change in the perception of the law in modernity caused another shift in the legislative branch. Since the law represented the ultimate will of the nation, the laws could be changed and re-created in favor of the nation. This idea is radically different from a perception of the law in which moral indictments are identified by a divine being. In that regard, these choices of the divine being could be rational or subjective. The rationality and utility did not necessarily make any impact on the legitimacy of the law as long as the law represented the will of God.

This transformation in the perception of the law also redefined the political domain's relationship with the judiciary branch during this period. Starting from the 18th century, many European states initiated reform policies in the legal domain. These reforms had both a shift from the pre-modern, decentralized legal structure to a centralized, uniform law and a significant influence on the ideas of Enlightenment.

One prominent example of this transformation can be seen in Prussia by Frederick II. The famous king started a policy program that included the making of "clear, precise, reasonable new laws directed to public happiness collected in a single text to be interpreted literally."[221] This, on the other hand, meant the growing impact of political power on the judiciary branch and contradicted the monarch's profession to follow the separation of powers. In an instance, Frederick II even claimed an evaluation of a miller's case, who claimed to be forced to pay the fees of using the mill when he could not use the mill since the watercourse was changed. As a result,

[220] Schmitt, *Political Theology*, 37–41.
[221] Padoa-Schioppa, *A History of Law in Europe*, 425.

the king, finding the miller innocent, removed and imprisoned the highest magistrate and judges of the kingdom.[222]

In France, the reforms did not rely on the individual initiative of an Enlightened despot, as happened in Prussia and hoped by many ideologues of the Enlightenment, but were brought to the scene by the collective movement of the public. The French Revolution radically changed the political domain's relationship with the law. Firstly, the bureaucratic position of the judiciary was changed drastically:

> The hostility towards the courts of the ancien régime forced the Constituent Assembly – which had abolished venal offices and declared that trials would be free, suppressing the old custom of paying dues to the judges – to accept the principle of judges being elected, which it did beginning in 1792. But a mere seven years later, at the beginning of the Napoleonic era, this reform was revoked and the principle was established whereby judges would be nominated by the government; this procedure was to become common everywhere on the continent and never to be relinquished.[223]

A second central institution that changed the legal establishment in modern Europe was the *Court de Cassation*, which aimed to ensure the uniform application and interpretation of the laws for the exact embodiment of the national will.[224]

In reality, the idea of appeal existed much earlier than the establishment of modern states. Some authors relate the existence of a different level of courts in Europe to the hierarchical structure of feudal politics. According to this perspective, the purpose of these courts was to limit the legal capacity of the feudal lords with a certain appeal mechanism.[225] In the modern era, the appeal courts shifted from a check and balance mechanism to a key institution that guaranteed the central government's authority in the judiciary domain.

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[222] Padoa-Schioppa, 426.
[223] Padoa-Schioppa, 454.
[224] Padoa-Schioppa, 453.
[225] Ekinci, "İslâm Hukukunda Mahkeme Kararlarının Kontrolü," 79–92.

The appellate became one of the distinctive institutions that defined the new legal bureaucracy of the modern state. By taking the example of Frederick II, it seems that the political domain started to establish itself as the overseer of the judiciary before the Court de Cassation. During the course of the 19th century, the appeal became a prominent feature of modern legal systems through the establishment of courts of cassation in different countries. Though it originally advocated for the rule of law and the uniformity of the legal establishment in terms of interpretation of the law, the practical impact of these institutions questioned in the legal domain puzzles the picture:

> Appeal has flourished in regimes that have displayed little or no respect for individual rights or even for the rule of law in any conventional sense. Frequently, moreover, appeal not only increases the arbitrariness and partiality in the legal system but is actually designed to do so. For appeal often culminates in the exercise of a highly particularistic pardoning power, or something like it, rather than a decision on the merits in the narrower sense. Especially where appeal is to the military overlord, patron, or sovereign, it is a process of appealing to favor rather than correcting the favor of the trial judge.[226]

In that sense, appeal courts were received as the judiciary instruments of the state rather than independent legal institutions that created a check and balance system over the low-level courts. An example can be seen in Russia, where the judiciary was reformed into a Westernized form during the 18th and 19th centuries. The reforms encouraged the active involvement of the nobility and Tsarist regime in the adjudication until the Emancipation Reforms in the 1860s.[227] The appeal system relied on personal networks and bribery, and this practice persisted to some extent even after the judicial reforms.[228]

[226] Shapiro, "Appeal," 631.
[227] Wortman, *The Development of a Russian Legal Consciousness*.
[228] Shapiro, "Appeal," 635.

In sum, the relationship between the modern states and the judiciary domain was redefined through two key changes: (1) the political domain overtook the power of appointment and dismissals of the judge in many countries, and (2) the courts of cassation in modern sense became a widespread phenomenon in many different countries. In the case of the Ottoman Empire, the Meclis-i Vâlâ-yı Ahkâm-ı Adliyye (Supreme Council of Judicial Ordinances) was founded in the example of *Conseil d'État* in France in 1838 and then became a legal body which both acted as a legal advisor to the executive branch and had the legal capacity of a 'supreme court.'

4.3 Meclis-i Vâlâ as a legal surveillance mechanism

"The exercise of discipline presupposes a mechanism that coerces by means of observation; an apparatus in which the techniques that make it possible to see induce effects of power, and in which, conversely, the means of coercion make those on whom they are applied clearly visible," says Michel Foucault in his *Discipline and Punish*.[229] In this regard, the technologies of surveillance and monitoring became significant utilities in the hands of modern states to extend their power capacities. In that sense, one of the characteristics of the Tanzimat era was its ability to maximize the power of the executive branch over the legislative.

The transformation began with the foundation of Meclis-i Vâlâ-ı Ahkâm-ı Adliyye (Supreme Council of Judicial Ordinances) in 1838, one year before the Edict of Gülhane as a reform institution.[230] The members of this assembly were mostly high-ranking bureaucrats like ex-ministers and ministers who were selected by the Sultan annually. This assembly was one of the earliest attempts to initiate the

[229] Foucault, *Discipline and Punish*, 171.
[230] Akyıldız, "Meclis-i Vâlâ-yı Ahkâm-ı Adliyye."

Tanzimat project by the lead of Mustafa Reşid Paşa. However, the assembly did not become an effective institution until the Edict of Gülhane since the reform project was shelved by Hüsrev Paşa.[231]

Meclis-i Vâlâ reached its characteristic capacity during the early years of Tanzimat and became a significant institution in the central government. The assembly was merged with *Dar-ı Şura-yı Bâb-ı Âli*, which was founded parallel to Meclis-i Vâlâ as an advisory board to the government.[232] With the reorganization of the institution in 1839, Meclis-i Vâlâ became a combination of the Council of State and the Supreme Court and became both the highest legislative and judiciary organs.[233] In theory, the assembly did not have any independent legal authority other than the Sultan's delegation of some of his powers. In that sense, the Sultan had a right to veto, but this power was rarely used in the history of the institution.

In terms of legal surveillance, the Manual of the Provincial Assemblies (*Eyalet Meclisleri Nizamnamesi*) of 1840 provided the legal basis. With the seventh article of the Manual, the authority of the adjudication was given to the provincial assemblies in public-interest cases. The eighth article, moreover, indicated that the ruling of the provincial assemblies had to be sent to the Meclis-i Vâlâ for approval.

In the legal theory of Islamic law, there is no institution of cassation. The verdicts of kadıs are absolute and cannot be overviewed by another court. However, the decisions of courts could be evaluated only in terms of legal accuracy and could be returned to the kadi.[234] This evaluation could not change the decision if it relied on misinterpretation, which means there should be a factual mistake or a piece of new evidence that is not viewed by the kadı. This principle of Islamic legal theory

[231] Seyitdanlıoğlu, *Tanzimat Devrinde Meclis-i Vâlâ, 1838-1868*, 35–39.
[232] Seyitdanlıoğlu, 36.
[233] Akyıldız, "Meclis-i Vâlâ-yı Ahkâm-ı Adliyye."
[234] Ekinci, "İslâm Hukukunda Mahkeme Kararlarının Kontrolü," 103–4.

has been summarized in one sentence in *Mecelle* by Ahmed Cevdet Paşa: "An interpretation could not be revoked by another one."[235] If an interpretation relies on a set of argumentation and valid evidence, it could only be seen as one of the many interpretations.

Apart from this legal basis, some scholars believe that there were always supreme court-like institutions that *de facto* overviewed the court decisions. Beginning from the Abbasid rule, the *Divan-ı Mezalim* assumed this power to act as the highest judiciary institution in the legal system. In the case of the Ottoman Empire, Divan-ı Hümayun acted like a mezalim court as well. These divans did not theoretically have any legal power other than the sultan's delegation. Thus, it was actually the sultan who had a right to overview the court decision. The divans were delegated institutions that acted on behalf of the Sultan. However, the sultan's power was no more than to overview the verdict in terms of its accuracy.[236]

Hence, we can conclude that the legal capacity of the Meclis-i Vâlâ cannot be compared with the pre-modern institutions of divan. Meclis-i Vâlâ had the juristic power to act as an appeal court starting with the Penal Code of 1840. This institution acted as the highest court in a modern legal system by having the power to supervise and monitor the provincial courts' legal decisions systematically. In some cases, the system did not necessitate an application by one of the parties. This gave the center a legal institution that did not only act as the supreme court but also a monitoring mechanism over the local judges.

[235] "*İçtihad içtihadla nakz olunmaz.*" *Mecelle-i Ahkâm-ı Adliyye*, 20.
[236] Ekinci, "İslâm Hukukunda Mahkeme Kararlarının Kontrolü," 105.

4.4 Practice of dismissal (‘azl) of naibs in the Ottoman Empire

In September of 1849, the naib of Konya gave the verdict regarding Hasan, who kidnapped a slave woman in his home and raped her. The naib indicated that the defendant confessed his crime in four different meetings in the provincial assembly of Konya. Thus, according to Islamic law, Hasan was sentenced to the punishment of recm, stoning to death.

The case was seen in the provincial assembly since the Manual of Provincial Assemblies of 1849 gave the power of adjudication to these assemblies in public interest cases. These cases were not clearly defined but mostly included most forms of criminal cases together with the cases of corruption and bribery. As the head of the provincial assembly, Governor Mustafa Tosun Paşa sent the naib’s verdict to Istanbul since the decision had to be overviewed and approved by the Meclis-i Vâlâ.

The *sadaret* sent the case to the Meclis-i Vâlâ, and the Meclis wrote to the office of şeyhülislam for a legal opinion. The *fetva emini,* an office that prepared the legal opinions of the meşihat, posted his office’s official opinion regarding the case to the Meclis-is Vâlâ in November of 1849.[237] In his memorandum, the fetva emini argued that though the decision was given by the official confession of the defendant, his marital status (i.e. *ihsan*) was not cleared in the court verdict with confession or evidence. Thus, he argued, the decision of recm was not given properly.[238]

The attitude of the meşihat is noteworthy. It is likely that the meşihat was aware of the fact that it would be absurd that a single (and never married) man was sentenced to the penalty of recm in the presence of the assembly of Konya. This sort

[237] In fact, there was an office of müftü in the structure of Meclis-i Vâlâ. It is thought that this office was consulted by the council in certain legal cases, but the actual responsbility of the müftü of Meclis-i Vâlâ is not clear.

[238] The punishment of recm could only be implemented on those who had married before, regardless of the current status of the marriage. This legal status is known as *ihsan*.

of mistake in the trial process would be a serious problem since the most important information for the recm was the marital status of the defendant when the crime is proven with the necessary legal conditions.[239] However, for the jurists, anything that could create even a vague suspicion regarding the crime would be valid enough to revoke the hadd punishment. In the legal principle of Islamic law, the jurists were expected to avoid the hadd punishments, which already carried complicated conditions to be met by any means possible.

The legal opinion of the office of şeyhülislam was sent to Meclis-i Vâla. The Supreme Council saw the case on 18 February 1850. The decision of the council is a remarkable one. According to the council, the naib of Konya, Şerif Rüştü Efendi, was dismissed from his office since he acted intolerant in a case that required extreme caution.[240] Moreover, according to the council, the verdict of recm would inculpate all the naibs of the empire since the case required tolerance and attention.[241] As a result, Meclis-i Vâlâ dismissed the naib, and ordered for a new trial with the new naib that would be appointed.

The decision of Meclis-i Vâlâ should be highlihted both in the political and legal senses. Though the council primarily asked the office of şeyhülislam for a legal opinion, the ultimate decision was not made by relying on this legal opinion. Neither the view of the meşihat was mentioned. The decision of the council was based on political jargon: The verdict of recm would question the credibility of all judges of the empire. Instead of pointing out the legal problems of the case, as it was done by

[239] Four male and Muslim witnesses that saw the act of sexual intercourse clearly, or a clear confession of the defendant in four different hearings.
[240] BOA, *A.}MKT.MVL*, 23/66/1, "*nâib-i mûmâ ileyhin mezkûr i'lâmında min külli'l-vücûh tesâmühü olup bu hususta kemâl-i ihtiyât ve dikkat-i lâzımeden iken bu vechle müsâmaha ve iğmâz-ı ayn ile recm ile hükm etmiş olduğundan kendisinin takriri lazım gelmiş olduğu cevaben iş'âr ve mü'ahharan ve tağrîren mûmâ ileyhin azli dahi icra edilmiş olup*".
[241] BOA, *A.}MKT.MVL*, 23/66/1."*böyle maddede tesâmüh birlle ihtiyâta itinâ olunmaması nüvvâb-ı şer'-i şerîfe töhmet olarak nâib-i mûmâ ileyhin tağrîren ve mücâzâten azli*".

the office of fetva emini, Meclis-i Vâlâ officially convicted the naib for being intolerant.

The naib of Konya was not the first and foremost judge of the period who was dismissed from his post. The dismissal of the naibs became an intrinsic feature of the legal system during the Tanzimat period. The naibs could be dismissed from their duties for a number of reasons, but the two most prominent accusation was bribery and corruption. I argue that this practice was weaponized by the central government against the naibs as a control mechanism in a consistent pattern.

As shown by Cengiz Kırlı, during the early phase of the Tanzimat period, the concepts of bribery and corruption were adopted by the Ottoman state by the Imperial Penal Code of 1840. In his analysis, the author indicated that corruption's blurred and unclear limits became an important political power at the hand of the Tanzimat regime.[242] The blurred limits were closely related to the fact that some of the 'legal' and 'legitimate' means of exploitation of the *Ancien Regime* became criminalized with the new political order. In a pre-modern order of state institutions, the central government had no direct relationship with the local statesmen and elites in most cases. These agents generated their economic income through certain taxation rights and commissions.

In the establishment of modern government, such practices started to be considered corruption. The new regime claimed the whole authority of taxation at the hands of the central government by promising local agents a salary. This transformation was embraced by many actors since, in the new regime, they would not have to create their own salaries and could show less effort for economic income. The real crisis appeared when the Tanzimat order could not succeed in implicating

[242] Kırlı, *Yolsuzluğun Icadı*, 9–18.

this transformation due to insufficient sources in the central treasury. Thus, as in the example of Akif Paşa's trial, some local agents continued the old economic practices. Akif Paşa, during his trial in *Meclis-i Vâlâ,* highlighted the fact that he did not receive any salary.[243]

The naibs became salaried officers like other statesmen with the *Talimname-i Hükkam* of 1840. In the new regime, the naibs would not continue to pay a sum to kadıs for the judgeship position and receive an income with their legal services, but to have a specified amount of money monthly and leave the court incomes to the government. This project was short-lived and revoked with the financial crisis of 1841 since the government could not fund the salaries. As in the old practice, the court fees were left to the naibs with no other direct economic income from the center. However, this time the economic means of the naibs were more limited. They could not have their shares in the collected taxes, which was known as *defter harcı* or *imza harc*ı.[244] Even before the removal of the salary practice, many naibs were not salaried for some six months after the new Talimname.[245]

In this economic environment, the accusation of corruption and bribery had a complicated nature. Many naibs, like other local actors, continued to exploit their old economic rights since their net economic gain decreased. During the first two decades of the Tanzimat, many naibs were dismissed and were put on trial with the accusation of corruption. In several cases, the actual manner of 'malpractice' was not even mentioned in the documents and was labeled only as *rüşvet* (bribery), *yolsuzluk* (corruption), or even in some cases, a more unclear term as *'uygunsuzluk'* (impropriety).

[243] Kırlı, 81–82.
[244] Jun Akiba, "Kadılık Teşkilatında Tanzimat'ın Uygulanması: 1840 Tarihli Talimname-i Hükkam
[245] Coşkun Çakır, 101-111

One of the first scholars who realized the growing dismissal pattern was Ruth A. Miller. In her analysis of the criminal courts, she realized that around 40% of jurists were dismissed between 1891 and 1908, while the number was only 5% between 1854 and 1876. It is needed to be highlighted that the author's analysis seems to cover the 'criminal courts' (*ceza mahkemeleri*), which were established under the name of *Meclis-i Tahkik* in 1854.[246] With the enactment of *Vilayet Nizamnamesi* in 1864, which also coincides with the official foundation of *Nizamiye* courts, the criminal courts were officially established together with *bidayet* and *istinaf* courts.

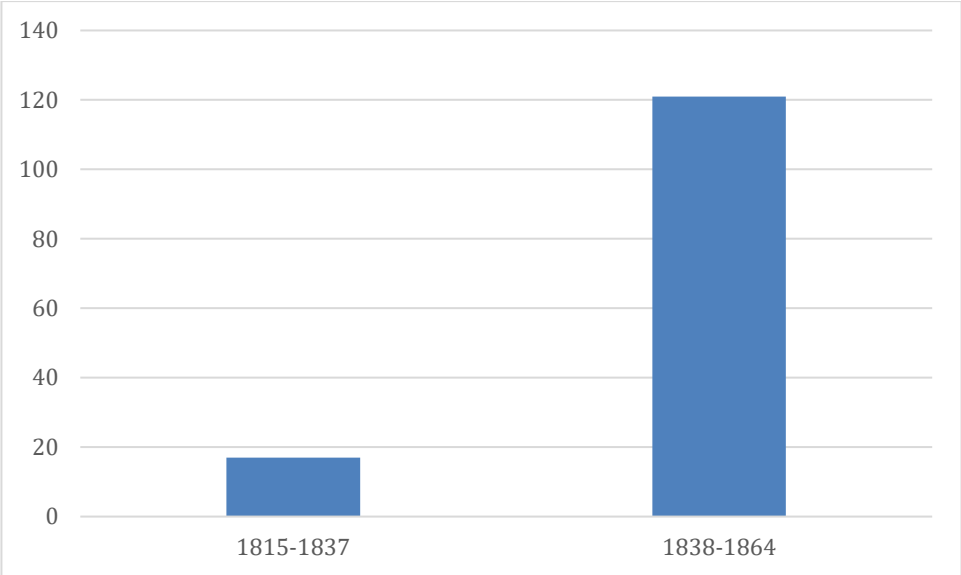
Another scholar who highlighted the state's new perspective toward judicial officers after the Tanzimat era was Avi Rubin. In the fourth chapter of his *Ottoman Nizamiye courts*, the author evaluates the new bureaucratic accountability of the judicial personnel.[247] Rubin also relates this pattern to the growing bureaucracy of the Ottoman government. Rubin's analysis covers only the period after the foundation of Nizamiye courts. This study aims to contribute to Miller's and Rubin's perspectives from an analysis of the pre-Nizamiye courts period, in which the naibs maintained the highest judicial office.

For the purpose of this study, I have analyzed judge dismissal cases between 1848-1864. In this sixteen years period, I specified one hundred eighteen judges who were removed from their posts with different accusations. For this analysis, I only used the cases in which the dismissals can be clearly seen. The cases in which the naibs were investigated, complained and put on trial are not included if a clear

[246] Kenanoğlu, "Nizâmiye Mahkemeleri."
[247] Rubin, *Ottoman Nizamiye Courts*, 113–32.

decision of ‘azl is unavailable. All the documents are located in Ottoman State Archives.

Table 1. The Number of Dismissed Naibs between 1815-1838 and 1839-1864



The dismissal cases between 1815 and 1837 are also analyzed for a suitable comparison. In my analysis, I encountered sixteenth cases of dismissals of naibs and a kadı. Table 1 shows the difference of the dismissed naibs in given periods with a comparative perspective. However, this data cannot depict the whole picture and should be evaluated carefully for a number of reasons. Firstly, the Ottoman central register services worked considerably differently during the pre-Tanzimat era than during the Tanzimat era. Thus, the actual number of dismissed naibs may have been higher in reality and did not appear in the available records.

Secondly, the data could not be collected systematically due to the lack of a collective record of the appointments of the naibs during the pre-Tanzimat era. The naibs were primarily appointed by the kadıs with a private letter known as *mürasele*. In theory, these appointments had to be approved by the kadıaskers. Though some of the appointment records were available in *ruznamçe* and *kısmet-i askeriye* records

they can hardly constitute a collective bureaucratic register body.[248] Even during the Tanzimat period, the appointment records of the meşihat office were not proper enough to resemble the acting judges in towns.[249] Thus, with the available records, it seems challenging to create a data set about the town judges even until the late Tanzimat period, from when several books of appointment records are available.[250]

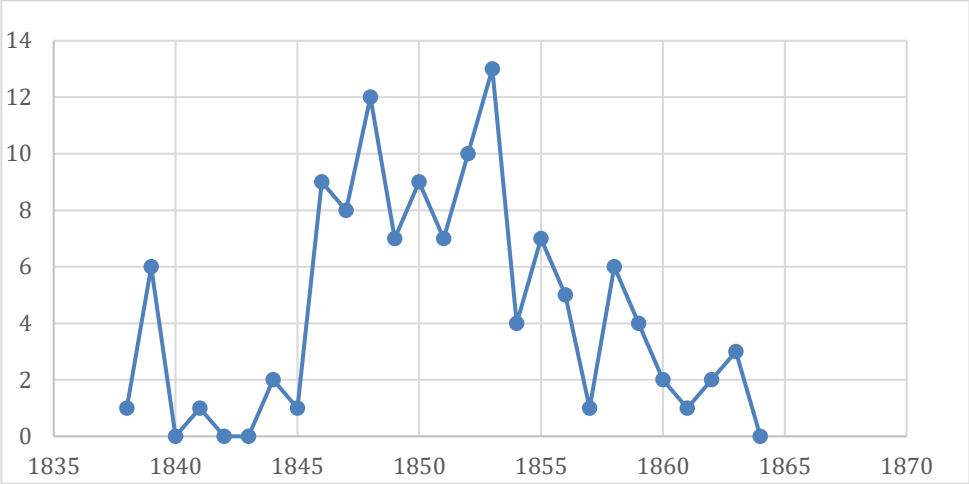
The numbers cannot indicate that the dismissal cases were fewer before the Tanzimat era solely. On the other hand, the central Ottoman bureaucracy before the Tanzimat era had limited control over the periphery. Moreover, the legal structure before the establishment of the Supreme Council of Judicial Ordinances did not have a bureaucratic and systematic appellate system as in the Tanzimat era, both practically and theoretically. Indeed, Divan-ı Hümayun and *eyalet divanları* sometimes acted as de facto supreme courts. However, they did not have a corporate identity, and their legal capacity was dependent on the Sultan. Moreover, these divans did not make constant monitoring and surveillance over the court decisions. They were authorized to inquire about the court decisions in cases of complaints from the parties of the cases. This could create a sort of check and balance system in the judiciary system, but it can hardly be seen as the appellate system in a modern sense.

In sum, it would be unlikely for the pre-Tanzimat Ottoman state to have the amount of control that the Tanzimat government managed to establish. Not only in terms of the institutions and capacity, but also in terms of total government mentality

[248] Kayar, "Osmanlı Yargı Teşkilatında Naib," 198.
[249] BOA, *A.}MKT*, 79/15. In one example from 1847, the office of *meşihat* received a letter from the people of Tire, who sent a protest regarding the dismissal of the town naib and express their gratitude regarding the judge. The *meşihat* responded that their records did not include the naib with the given name, but a different naib was recorded, who was dismissed previously.
[250] It seems the earliest available records of the naib appointments available in the Ottoman State Archives starts from late 1860s. Apart from the appointments, a profile and short biography of the naibs were also recorded. BOA, *İSTM.MŞH.DFT1*.

two periods of the empire were essentially different. Thus, though the comparison of the dismissal numbers cannot show the exact numbers and government ratio of the two periods, it can be seen as a support to the general argument regarding the growing state control over the Ottoman judges during the Tanzimat era.

Table 2. The Number of Dismissed Naibs between 1839 and 1864



The number of dismissed naibs between 1839 and 1864 can be seen in Table 2. According to the table, I could only encounter no dismissal cases in four years in these sixteen years. Whereas in at least three years, more than ten naibs were dismissed. The largest number of dismissals was seen in 1853, with thirteen. The data indicates that the dismissal practice began significantly with six naibs in 1839. However, I could only state four dismissed naibs in the following six years. This shows that the practice did not become a norm in the judiciary bureaucracy right after the Tanzimat. The substantial rise in the numbers can be identified between 1846 and 1853. Seventy-five of one hundred eighteen naibs were dismissed in these seven years, which makes slightly more than 60% of the total naibs. During seven years, the average dismissal number was 10,7, while the average of the twenty-six years was 4,6 annually.

The relatively higher dismissal numbers between 1846 and 1853 could be related to the agency of Arif Hikmet Efendi, who was in the office of şeyhülislam

between 1846-1854. Arif Hikmet Efendi is a significant member of the ulema during the early Tanzimat period. However, there are several problems relating high dismissal numbers in the given period solely to the agency of Arif Hikmet Efendi. Firstly, Arif Hikmet Efendi was not known as a keen supporter of the Tanzimat reforms. On the contrary, he was dismissed from the post in 1854 for not intervening in the *softa* uprising against the sadrazam Mustafa Reşid Paşa.[251] He also seems to have political problems with Mehmet Emin Âli Paşa, who is known as a pupil of Mustafa Reşid Paşa.[252]

Secondly, a vast majority of the dismissals were proceeded by the hand of the Meclis-i Vâlâ. Ottoman State Archives shows the drafts of the reports that were sent to the meşihat, which demanded the removal of certain naibs. Rarely the office of şeyhülislam sent demands for investigation regarding the naibs. In most cases, the office's role was not much more than to approve the dismissal decisions by the Supreme Council. In some cases, the council did not even ask the office's opinion, and instead demanded a new appointment.[253]

Table 3 shows the reasons for the judge's dismissals. Among one hundred eighteen judges who were dismissed in these sixteen years, forty naibs were removed due to 'impropriety', while twelve judges lost their jobs for alleged corruption and bribery. Ten judges were dismissed for 'oppressing the people' (*halka zulüm*). Six naibs were dismissed with the complaints of the people, while another six were removed for reasons related to local politics. Twelve other naibs lost their position for other reasons. In total, thirty of these one hundred eighteen naibs dismissal reasons are unspecified and unknown.

[251] Aydın, "Şeyhülislâm Ahmed Ârif Hikmet Beyefendi," 247.
[252] Bilge, "Şeyhülislam Ârif Hikmet Bey."
[253] BOA, *A.}MKT*, 143/6.

Table 3. The Reasons for Judge Dismissals between 1848 and 1864

Impropriety	27
Corruption and bribery	14
Local politics	6
Complaints of the locals	6
Oppressing the people	10
Malpractice	5
Other	23
Unspecified	27
Total	118

The impropriety, or *uygunsuzluk* is an unclear word and needs further analysis. When we evaluate the reasons for dismissals for impropriety, they mostly point out illegal and unlawful actions. In the document that dismissed the naib of Ferecik, for instance, impropriety is explained as preparing fake judicial reports.[254] In some cases, the actual, alleged practice is not mentioned. For example, in 1847, the vali of Harput demanded the dismissal of the naib of Eğin for his 'improper actions' (*uygunsuz hareketle*r), while the correspondence had no detailed explanation about these actions.[255]

Miller's explanation of the pattern of dismissal in his analysis of the criminal courts is related to bureaucratization. The author argues that with the new self-conscious bureaucracy, any irregularities were perceived as a threat to the bureaucracy's self-definition and existence.[256] However, the number of dismissed

[254] BOA, *A.}MKT.MVL*, 54/81. "*sahte mahzar tertip ve temhir etmek gibi uygunsuzluklar*…"
[255] BOA, *A.}MKT*, 105/63.
[256] Miller, *Legislating Authority*, 74.

judges was considerably dropped between 1854 to 1876. In this study, however, it is seen that the dismissal pattern was already started in the 1840s.

The difference in the numbers resulted from the use of two different data sets. This analysis covers the dismissed provincial naibs, while Miller takes the members of criminal courts. It should be noted that the criminal courts did not start to play a significant role in Ottoman legality right after their foundation. They became a fundamental part of the system, especially after the foundation of Nizamiye courts in 1864. Before that, the line between the Islamic law courts and assemblies was unclear. I argue that comparing the two studies can give a clearer picture of the bureaucratization of the Ottoman judiciary during the Tanzimat era.

In this analysis, out of forty-two 'impropriety cases,' the word impropriety is clearly mentioned in twenty-seven of them. The rest fifteen cases are included by the author though the documents did not mention the word impropriety itself. It seems that impropriety mostly meant illegal and unlawful actions and was separated from corruption and bribery. In my categorization, I included the dismissal reasons, which did not create a direct economic benefit for the alleged judge in the category of impropriety though the word is not mentioned in the document. These cases can be given as conscripting men who are needed in their households (*muîn̂li*), collecting more tax, 'illegal actions,' and abuse of power.[257] Thus, impropriety includes all types of irregularities that cannot be defined as corruption.

Naibs who were dismissed, according to the complaints of the local inhabitants, are directly mentioned in the documents. The general problem with the concept of complaints in this period is that it generally masks the inner political dynamics. The sending of a complaint to the center required a social and political

[257] BOA, *A.}MKT.MVL,* 65/90; BOA, *A.}MKT.NZD,* 79/91; BOA, *A.}MKT.UM,* 499/17.

network. It is hard to assume that the lower and upper classes in a town or city had enough power to reach the center without this web of network.

The complaint letters seem to be sent to the office of meşihat, since no documents of these six cases were available in the Ottoman State Archives. As in the case of the naib of Erdek, and Keşan, the available documents indicated that the complaints were sent to the meşihat.[258] Sometimes, the identity of the complainant was important enough to highlight. The naib of Berat in Albania was dismissed from his duty with the complaints of the Greek Orthodox Patriarch of the city.[259]

Not all complaints resulted in the dismissal of the naibs. In several cases, the central government conducted inquiries regarding the complainee. The naib of Mudurnu Mehmed Raşid was one of these names. After the complaints reached the center, the central government started an investigation.[260] Similarly, after a complaint was received regarding the local government of Premedi, the investigation regarding the city judge was continuing still after the dismissal of the provincial governor.[261] This attitude of the center in this period could be related to the şeyhülislam's hesitancy regarding the complaints. Şeyhülislam Arif Hikmet Efendi warned the government that it would be inappropriate to dismiss a judge solely relying on the complaints received from the 'locals' and pointed out that an investigation of the local administration would be needed.[262]

The judges were also aware of the threat of complaints. The naib of Bilecik informed the government that some factions were in preparations to remove him from his post. The judge argued that he was forced to give a verdict against the

[258] BOA, *HR.MKT,* 36/54; BOA, *A.}MKT.NZD,* 137/21.
[259] BOA, *HR.MKT,* 34/44.
[260] BOA, *A.}MKT.UM,* 123/65.
[261] BOA. *A.}MKT.UM,* 523/52.
[262] BOA, *A.}MKT.MHM,* 2/35.

previous naib, and the people of the town were provoked against him.[263] This is an important example that shows the political dimension of the complaints that were supposed to be sent by the 'locals.' On the other hand, this should not convince one that the locals had no political agency and could not mobilize against a naib without the provocation of a political faction. It could only point out that these instances should be read carefully in accordance with local politics. Secondly, it is important to note that the naib Mehmed Emin Efendi was aware of the transformation of the dismissal into a political power against the judiciary. Though the practice points out a form of modernization, it also seems to be turned into leverage by the other local actors against the naibs.

Apart from the complaints of the locals, some naibs were directly removed from their posts as a result of local politics. In these cases, naibs were depicted and perceived as 'local agents' by the government and acted as the other influential local figures. In Kepsut, the naib of the town İsmail Efendi was fired for pressing false charges against the kaza müdürü.[264] The naib of Silistre was also dismissed from his post with the same allegation against the kaymakam.[265] The judge of Kızanlık was in a complicated position. He was dismissed for sending two different letters regarding the provincial governor: one was in favor, and the other was against.[266] Another naib in Edirne, on the other hand, was accused of preparing false documents to get the kaymakam removed.[267]

Not all naibs were dismissed for impropriety, corruption, or as a result of local politics. Some naibs, like the naib of Konya Şerif Rüştü Efendi, were dismissed

[263] BOA, *A.}MKT.UM*, 34/46.
[264] BOA, *A.}AMD*, 7/18.
[265] BOA, *A.}MKT.NZD.* 335/18.
[266] BOA, *MVL*, 255/21.
[267] BOA, *A.}MKT.MVL*, 51/35.

for their legal decisions and opinions. However, the central government's decision to remove the naib for ruling a recm punishment does not indicate a pattern of 'secularization' in the legal domain. The naibs were also questioned for 'avoiding' the hadd punishments. In the island of Crete, four Greek bandits were put on trial for killing a Muslim man with his son and stealing their goods. After the trial, the wife of the murdered man compromised with the murderers with certain blood money, legally known as *diyet*, freeing the murderers to be executed.

The case was carried to the Supreme Council for approval and was sent to the office of şeyhülislam. The fetva emini indicated that the naib made a wrong decision in approving the case with the blood money. According to his legal opinion, the case could not be seen as a simple murder since the case involved the stealing of the stuff of victims. This meant that the murderers could not be freed with the blood money and had to be executed for *hırâbe*, brigandage. The meşihat suggested the naib should be investigated for his 'wrong decision.'[268]

As the case shows, the state's major concern was not the role of Islamic law in the penal and judicial system. For the central institutions, Islamic law still had its complete relevancy and legitimacy with all of its instruments. This meant that not applying the hadd when it was relevant was as problematic as the misapplication of hudud punishment, like in the decision of recm. The state was not concerned with the application of the rulings of Islamic law but was seriously disturbed by the incompatibility of these rulings with the central government's legal mentality. It is possible to see both rulings as legitimate as their opposite opinions. Both the naibs in Konya and Crete made careful strategic moves in the judiciary process. The judge in Crete was most likely aware of the fact that brigandage punishment could not be

[268] BOA, *A.}DVN*, 15/32.

pardoned as a murder case. However, the judge simply chose to see the case as a 'murder case.'

Another comparison can highlight the 'inconsistent' attitudes of the center. The naib of Muğla was taken into an inquiry for taking a non-Muslim-born child under his protection, claiming the boy converted to Islam of his own will.[269] Such a suspicion would be an expected action since the government was struggling with the allegations of 'forcefully' converting non-Muslims to Islam in the diplomatic arena. Selim Deringil highlighted in his detailed analysis that "conversion to Islam, although an auspicious act religiously, became politically inconvenient" during the Tanzimat era.[270]

However, the removal of the naib in Nish puzzles this picture. The naib Osman Hulusi Efendi was removed from his position by the Şeyhülislam Arif Hikmet Efendi for not conducting the proper conversion ceremony for a Christian who wanted to become Muslim.[271] Moreover, this case happened only two years after the famous 'apostasy crisis' between England-France and Ottoman Empire after the execution of an Armenian who re-converted to Christianity after embracing Islam.[272] This case also indicates a sort of 'resistance' raised by the meşihat against the de facto ban on conversions after the crisis of 1844.

The growing number of removed naibs, and the widespread application of removals on the judges also caused absurdity. In a political crisis in Hacıbektaş, or Mucur, the center received two opposing demands from the town regarding the naib. One of these letters demanded the dismissal of the judge, while the second one asked the government to keep the naib in his duty. In response, the sadaret wrote to the

[269] BOA, *HR.MKT*, 39/17.
[270] Deringil, *Conversion and Apostasy in the Late Ottoman Empire*, 39.
[271] BOA, *A.}MKT*, 86/42.
[272] Deringil, 25.

governorship of Konya to ask which one of these letters should be taken into action.[273]

Another point that needs to be noted is the fact that some of these one hundred eighteen naibs who were removed from their posts might have been removed due to rotational purposes. Especially some of the thirty 'unspecified' removals could be executed in relation to the incumbency. However, not all naibs were facing the removals for this reason. The naibs could be kept in their office when the government was happy about them, and the naibs had positive references from their stations.[274] Thus, even though a naib has been taken from his station with no apparent reason, it still would point out a deliberate decision taken by the central government.

Lastly, we should mention that the practice of dismissal does not point out an overall change in the cadres of judges of the empire. Since the madrasas already lost their function and the newly-born *Mekteb-i Nüvvab* only gave 25-30 graduate judges annually, the government mostly had to rely on the naibs of the pre-Tanzimat era. In this sense, the increasing number of the dismissed judges did not aim to change the personnel in the judiciary field altogether but to ensure a control mechanism over them. Many naibs who lost their positions due to accusations of corruption or bribery found themselves in even higher roles in the legal hierarchy in their local towns.

For example, the aforementioned naib of Eğin, Ömer Feyzi Efendi, who was dismissed in 1848 due to corruption, was appointed as the mufti of Eğin again in 1852. According to a short biography of Ömer Feyzi Efendi from a collection of biographies of the Late Ottoman ulama of Erzincan, he 'resigned' from his post two

[273] BOA, *A.}MKT.UM,* 90/10.
[274] BOA, *MVL,* 648/75; BOA, *HR.TO,* 556/1; BOA, *A.}MKT.UM,* 420/45.

years later and spent two years studying *ilm* in Amasya.[275] It should be noted that this short biography has no reference to Ömer Feyzi Efendi's first and previous judgeship in the town. The text mentions that he was also on duty between 1856-1863 and 1866-1873. Consequently, Ömer Feyzi Efendi was appointed to high legal positions in Eğin at least four times, with several 'gap years.'

The rotation in official posts was not a Tanzimat invention. However, the previous practice was necessary to appoint all the kadıs to positions in a regular order due to the excessive numbers of candidates at the center waiting for appointments. After the establishment of the Tanzimat order in the judiciary domain, the nature of the rotation in the judiciary structure was transformed into a mechanism of control. The naibs were appointed for a certain period of time though their terms could be renewed.

The political tension in the change of the judge of Palu could show the state's agenda about the rotation policy. The naib of town, Hüseyin Hamid Efendi, was removed from his duty on the basis that he was a 'local' and spent four years as a naib. He was replaced by another local of the town named Ali Rıza Efendi. The locals, administrators, and city council asked for Hüseyin Hamid Efendi to continue in his position and was unhappy about the new naib, who did not even have the necessary certificate to be a naib, a new requirement brought with the Tanzimat order. The new naib was removed due to the complaints of the locals, but just before the re-appointment of Hüseyin Hamid Efendi, another naib from Istanbul was appointed.[276] This situation shows that Istanbul desired to produce all the holders of legal positions from the center but did not have the human capital. Hence, the

[275] Kaya, *Erzincanlı Son Devir Uleması*, 127.
[276] Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period", 52.

circulation of local candidates had to be kept, but in circulation, to establish a sort of modern bureaucratization in the legal field by the hand of the central government.

CHAPTER 5

CONCLUSION

The thesis made an evaluation of the office of naib during the Tanzimat era. The thesis is formed around three main arguments: (1) the spread and the rise of the office of naib is a result of the decentralization in the Ottoman administration during the 17th and 18th centuries, (2) the naibs leveraged significant legal and administrative power and became important actors in the local politics and, lastly, (3) during the Tanzimat era, the central government increased its authority and control over naibs through bureaucratization and modernization. The thesis attempted to make an analysis to indicate that the transformation in the legal domain is a part of the Tanzimat reformation project, which essentially aimed to establish the central government as the sole sovereign in the political realm. The office of naib was one of the many local actors whose autonomy and authority were challenged by the newly established central institutions.

Thus, this thesis can be seen as a case study of the history of Tanzimat in relation to the local actors. The office of naib was one of these local actors in this transformative period. In the pre-Tanzimat structure of the legal domain, the Ottoman judiciary domain had considerable autonomy from the central political power. This autonomy can be seen in the sense that a central institution could not control the legal power of the Ottoman judges. Apart from a partial surveillance power of the Divan-ı Hümayun in this period, the central government had no monitoring power over the judiciary domain until the establishment of the Meclis-i Vâlâ-yı Ahkâm-ı Adliyye.

The judiciary domain kept not only the legal power and capacity but also a certain degree of autonomy from the central government with the spread of tax farming in the legal field. With this practice, the central government lost its sole authority over the appointment and dismissal of the judges. With the monetarization of the office, the local ulama members got a chance to increase their political and economic power through the full administrative and legal authority of the kadıs. In accordance with Islamic law, Ottoman kadıs hold power to appoint and dismiss anybody as their deputies, naibs. Since this was a private contract, the government had weak control over the appointments of the judges. In the inexistence of the kadı, naibs acted as the highest legal powerholders in their cities and towns.

This structure of a somewhat autonomous and self-sufficient judiciary structure started to disappear with the Tanzimat regime. The 'modern' Ottoman state aimed to centralize the judicial domain with different reforms and institutions. In fact, the modernization and bureaucratization attempts of the judiciary started much early than the Edict of Gülhane. From the reign of Abdülhamid I onwards, the central government began to state its disappointment regarding its weak power over the naibs. The first genuine attempt came in the era of Selim III, with the reformist şeyhülislam Hamîdîzâde Mustafa Efendi.[277] The government wanted to end the practice of tax farming in the judiciary, which would push all the appointed kadıs to assume their posts in their stations. This pre-Tanzimat attempt to increase the state control over the naibship proved unsuccessful with the ilmiyye class's resistance. Neither the naibs wanted to leave their sources of profit and power, nor did the kadıs have any interest in assuming the real power of a judge in the Ottoman provinces.

[277] İpşirli, "Hamîdîzâde Mustafa Efendi."

Further attempts to modernize the office of naib came during the reign of Mahmud II. In his last years in power, the passionate Sultan started a reform project about the naibs. This project, as opposed to the previous one, did not aim to end the practice of tax farming. Instead, the government accepted the naibs as the main judiciary force in the Empire, and wanted to increase its information and authority over them. The most radical attempt was to start an examination in which all the naibs of the government would be tested and prove their capability. However, this attempt could not be continued as well since it appeared impossible for the central government to take all the naibs in the Empire to an examination in the capital.

The reform in judiciary was also one of the first agendas of the Tanzimat project. However, this time, the central government seemed to learn from the mistakes of the previous reform attempts. The Tanzimat government initiated a manual regarding the judges of the Empire (Talimname-i Hükkam) in 1840. This manual managed to make two crucial changes in the institution. Firstly, the payments of the kadıs that are generated with tax farming were assumed by the government by making them salaried officers. This meant the government would pay the kadıs a regular salary, with no risk of tax farming contract. This privilege aimed to take over the power of appointment and dismissal of the naibs. With the Talimname, since the direct economic relationship between the kadıs and naibs was ended, the central government took the right to appoint and dismiss the naibs.

Another institutional change in the judiciary domain was the establishment of Meclis-i Vâlâ as the supreme court. With the Imperial Penal Code of 1840, the right of adjudication in public interest cases was given to newly established *muhassıllık meclisleri*, which essentially were transformed into provincial assemblies. After the establishment of these assemblies, the naibs did not lose their legal capacity all of a

sudden but continued to keep a significant power. The decisions regarding the public cases would be sent to Meclis-i Vâlâ for approval.[278] This gave the central government the power of surveillance over the legal decisions of the naibs.

During the Tanzimat era, the government wanted to increase its power and authority in the legal domain by using its power to dismiss naibs. In most cases, the naibs were dismissed with weak legal basis, had no right to defend themselves, and were mainly arbitrary. The modernization of the judiciary gave Meclis-i Vâlâ considerable leverage against the office of naib.

The power of dismissal did not aim to eliminate the previous naibs from the system. The dismissed naibs with different positions continued to be circulated in the legal system. This was mainly because lack of human capital who were eager to work in the provinces. The central government could not manage to create new cadres who would be appointed as provincial judges. In 1855, the government founded the Naibs' College to create a new modern bureaucratic judiciary class.[279] The project could not succeed because most graduates were hesitant to work as provincial judges. Moreover, the number of graduates was not enough to meet the need of the government.[280]

In sum, the relative authority of the political domain expanded during the Tanzimat period with the institutional reform projects of the Tanzimat government. This transformation can also be read parallel to the establishment of the modern state. Following the Hallaq's argument regarding the impossibility of a proper Islamic law under the modern-state structure, we can follow that the Ottoman judiciary system started to lose its bureaucratic and economic autonomy, which was

[278] Candan, "1840 Tarihli Ceza Kanunname-i Hümayunu İncelemesi," 76.
[279] Akiba, "A New School for Kadis: Education of the Sharia Judges in the Late Ottoman Empire."
[280] Bal, "Tanzimattan Sonra Kadı ve Naip Yetiştirmek Amacıyla Kurulan Okul: Mekteb-i Nüvvâb."

a part of the Islamic legal theory, through a top-down bureaucratization agenda. This paradigm can re-establish a different narrative in the Ottoman modernization of the legal domain during the Tanzimat era

APPENDIX:

THE LIST OF DISMISSED NAIBS IN BETWEEN 1839-1862 (H. 1254-1279)

No	Year (h.)	Name	Station	Cause	Title	Source (BOA)
1	1254	?	Bayburd	Corruption	Corruption and bribery	HAT, 1245/48322
2	1255	?	Karahisar-ı Nallı	Unspecified	Unspecified	HAT, 1332/51963
3	1255	?	Balya	Irregularity (*Usulsüzlük*)	Irregularity	TS.MA.e, 1213/26
4	1255	Molla Halil Efendi	?	Oppressing the people	Oppressing the people	C.DH, 58/2855
5	1255	Mehmed Tevfik Efendi	Merzifon	Impropriety	Impropriety	TS.MA.e, 1224/1
6	1255	Yanyalı Mustafa Efendi	Modoniçe	Oppressing the people	Oppressing the people	C.ADL, 65/3884
7	1255	Muhtar Efendi	Erzincan	Oppressing the people	Oppressing the people	C.DH, 18/852
8	1257	Abdurrahman Zeki Efendi	Alaiye	Unspecified	Unspecified	İ.MVL, 28/471
9	1260	?	Tırhala	Irregularity (*Usulsüzlük*)	Irregularity	C.DH, 128/6383
10	1260	Osman İzzi Efendi	Kıbrıs	Taking bribes	Corruption and bribery	A.}DVN, 7/19
11	1261	Sadullah Efendi	Niksar	Oppressing the people	Oppressing the people	C.ADL, 82/5039

12	1262	Şakir Efendi	Kızılcatuz	Impropriety	Impropriety	C.ADL, 37/2242
13	1262	Mücellid İzzet Efendi	Gelibolu	Oppressing the people	Oppressing the people	A.}MKT.MVL, 1/80
14	1262	?	Golos	Corruption	Corruption and bribery	A.}MKT, 24/13
15	1262	Abdullah Hilmi	Akçakızanlık	Being in bad state (*kötü hâl*)	Other	A.}MKT, 28/53
16	1262	Emin Efendi	Rodos	Unspecified	Unspecified	A.}MKT, 45/79
17	1262	İbrahim Efendi	Musul	Impropriety	Impropriety	A.}MKT, 54/85
18	1262	Emin Efendi	Maarratünnuman	Impropriety	Impropriety	A.}MKT, 36/94
19	1263	?	Denizli	Spoiling the people (*halkı ifsad*)	Other	MVL, 6/24
20	1263	?	Alimboz	Impropriety	Impropriety	A.}MKT, 74/97
21	1263	Mehmed Şükrü Efendi	Yabanabad (Kızılcahamam)	Unspecified	Unspecified	A.}MKT, 76/26
22	1263	Edhem Efendi	Malkara	Unspecified	Unspecified	A.}MKT, 76/55
23	1263	?	Yanya	Corruption	Corruption and bribery	A.}MKT, 82/14
24	1263	Osman Hulusi Efendi	Niş-Şehriköy	Not doing the proper ceremony for a Serbian villager who wanted to convert to Islam	Other	A.}MKT, 86/42
25	1263	?	Ayvalık	Corruption	Corruption and bribery	A.}MKT, 62/74
26	1263	Mehmed Niyazi Efendi	Tavas	Not knowing the laws	Other	A.}MKT, 104/10

27	1264	Ömer Feyzi Efendi	Eğin	Impropriety	Impropriety	A.}MKT,105/63
28	1264	Şerif Rüşdü Efendi	Isparta	Impropriety	Impropriety	MVL, 21/6
29	1264	Abdurrahman Efendi	Manastır	Incompatibility (*imtizaçsızlık*)	Other	A.}MKT.MHM, 4/30
30	1264	Süleyman Efendi	Viranşehir	Overtaxation	Corruption and bribery	A.}MKT, 128/97
31	1264	Mehmed Efendi	Kuyucak	Causing the death of a woman by forcing an officer to hit her	Other	MVL, 28/37
32	1264	Said Efendi	İzmid	Unspecified	Unspecified	A.}MKT, 143/6
33	1264	Mehmed Aziz Efendi	Balıkesir	Spoiling the people (*halkı ifsad*)	Other	A.}MKT, 149/83
34	1264	?	Çankırı	Unspecified	Unspecified	A.}MKT.MVL, 10/71
35	1264	İbrahim Efendi	Bozcaada	Impropriety	Impropriety	A.}MKT, 145/79
36	1264	Ahmed Reşid Efendi	Köstendil	Impropriety	Impropriety	A.}MKT.MHM, 7/68
37	1264	Mehmed Said Efendi	Karahisar-ı Şarki	Wrongdoing (*menfi hareket*)	Other	A.}MKT.MHM, 3/39
38	1264	Abdurrahman Zeki Efendi	Maraş	Impropriety	Impropriety	A.}MKT, 144/37
39	1265	?	Ziştovi	Unspecified	Unspecified	A.}MKT, 171/5

40	1265	Sadeddin Efendi	Selanik	Unspecified	Unspecified	A.}MKT, 169/52
41	1265	Eşref Efendi	Kars	Impropriety	Impropriety	MVL, 30/43
42	1265	İsmail Efendi	Kepsud	Giving a false report about the provincial governor	Local politics	A.}MKT, 185/21
43	1265	Mehmed Emin Efendi	Pazarköy	Illegal doings (*kanunsuz işler)*	Malpractice	A.}MKT, 194/100
44	1265	Hulusi Efendi	Çorlu	Unspecified	Unspecified	A.}DVN, 51/98
45	1265	Ömer Efendi	Beypazarı	Neglecting the proper punishment	Other	A.}MKT, 237/94
46	1266	Mustafa Zeki Efendi	Lefkoşa	illicit dealings (*gayri meşru işler*)	Malpractice	A.}MKT.NZD, 1/30
47	1266	Şerif Rüştü Efendi	Konya	Improvidence (*ihtiyatsızlık*)	Other	A.}MKT.MVL, 23/66
48	1266	Mehmed İzzet Efendi	Hacıoğlupazarı	By complaint	Complaint	A.}MKT.NZD, 2/93
49	1266	Alaiyeli Mustafa Asım Efendi	Bayburd	Impropriety	Impropriety	MVL 85/25
50	1266	?	İnalballı / İnallı	Corruption	Corruption and bribery	A.}MKT.MVL, 27/98
51	1266	Ömer Efendi	Koyluhisar	Impropriety	Impropriety	A.}MKT.NZD, 9/30

52	1266	Süleyman Efendi	Yalvaç	Oppressing the people	Oppressing the people	C..ADL, 71/4280
53	1266	Osman Zeki Efendi	Erdek	By complaint	Complaint	A.}DVN. 78/29
54	1266	?	Kedegara	Impropriety	Impropriety	A.}MKT.UM. 29/4
55	1267	Süleyman Refet Efendi	İslimye	Unspecified	Unspecified	A.}MKT.NZD, 25/75
56	1267	Tevfik Efendi	Zağra-i Atik	Oppressing the people	Oppressing the people	A.}MKT.UM, 104/41
57	1267	?	İvranya	Unspecified	Unspecified	MVL, 98/97
58	1267	?	Berkofça	Wrongdoing (yanlış hareket)	Other	A.}MKT.NZD, 35/44
59	1267	?	Sandıklı	Impropriety	Impropriety	A.}MKT.NZD, 39/68
60	1267	?	Varna	Unspecified	Unspecified	MVL, 235/28
61	1267	?	Ürgüb	Oppressing the people	Oppressing the people	MVL, 235/77
62	1268	Şakir Efendi	Berat	By complaint	Complaint	A.}MKT.NZD, 46/26
63	1268	Esad Efendi	Hasköy	Impropriety	Impropriety	A.}MKT.MHM, 40/62
64	1268	Mehmed Tevfik Efendi	Cisr-i Ergene	Unspecified	Unspecified	A.}MKT.MHM, 41/28
65	1268	?	Drama	Unspecified	Unspecified	A.}MKT.MVL, 51/25

66	1268	Yakub Asım Efendi	Edirne	Creating a false complaint about the provincial governor to dismiss	Local politics	A.}AMD, 34/78
67	1268	?	Bayındır	Impropriety	Impropriety	A.}MKT.NZD, 52/94
68	1268	?	Kayseri-İncesu	Unspecified	Unspecified	A.}MKT.MVL, 52/30
69	1268	Ali Zulkadir Efendi	Ferecik	Forging documents for money	Corruption and bribery	MVL, 117/14
70	1268	Tahir Efendi	Zağra-i Atik	Unspecified	Unspecified	A.}MKT.NZD, 57/14
71	1269	Ahmed Zihni Efendi	Erzurum	Wrong decision and the verdict	Other	A.}MKT.NZD, 61/71
72	1269	Enis Efendi	Zağra-i Atik	Oppressing the people	Oppressing the people	A.}MKT.NZD, 64/19
73	1269	Murad Efendi	Girilabad	Impropriety	Impropriety	A.}MKT.NZD, 66/31
74	1269	?	Kızanlık	Giving to reports about the provincial manager one is in favor and the other is against	Local politics	MVL, 255/21
75	1269	Trabzonlu Ahmed Raşid Efendi	Kütayha	Unspecified	Unspecified	A.}MKT.MHM, 54/89

76	1269	Ahmed Edip Efendi	Köprülü	Unspecified	Unspecified	A.}MKT.NZD, 76/87
77	1269	Ahmed Nuri Efendi	Gümüşhacıköy	Greed and bad state (*açgözlülük ve kötü hâl*)	Other	A.}MKT.NZD, 78/13
78	1269	Hacı Emin Efendi	Bolu	Unlawful doing (*kanunsuz hareket*)	Malpractice	A.}MKT.NZD, 79/91
79	1269	Ahmed Efendi	Devrek	Impropriety	Impropriety	A.}MKT.NZD, 85/9
80	1269	?	İvraca	Impropriety	Impropriety	A.}MKT.NZD, 86/45
81	1269	?	Sındırgı	Conscripting the exempt people	Other	A.}MKT.MVL, 65/90
82	1269	?	Bigadiç	Conscripting the exempt people	Other	A.}MKT.MVL, 65/90
83	1269	?	Kepsud	Conscripting the exempt people	Other	A.}MKT.MVL, 65/90
84	1270	Mehmed Emin Efendi	Dimetoka	Impropriety	Impropriety	A.}MKT.NZD, 96/39
85	1270	?	Rumkale	Unspecified	Unspecified	A.}AMD, 45/24
86	1270	?	Antalya	Unspecified	Unspecified	HR.MKT, 84/44
87	1270	?	Yenice-i Karasu	Spoiling the Muslim people against non-Muslims	Other	

						A.}MKT.UM, 163/55
88	1271	?	Nevşehir	Persecuting the Austrian Abraham Popovich	Other	A.}MKT.MVL, 68/3
89	1271	?	Argiri	By complaint of the people	Complaint	A.}MKT.UM, 168/77
90	1271	Davud Efendi	İştib	By complaint of the people	Complaint	A.}MKT.NZD, 121/74
91	1271	?	Alaiye	Unspecified	Unspecified	A.}MKT.NZD, 123/21
92	1271	Tahir Efendi	Keşan	By complaint of the people	Complaint	A.}MKT.NZD, 137/21
93	1271	Sinan Tevfik Efendi	Debre-i Bala	Unspecified	Unspecified	A.}MKT.NZD, 139/92
94	1271	Osman Efendi	Selmanlı	Corruption	Corruption and bribery	A.}MKT.NZD, 157/33
95	1272	Mehmet Adil Efendi	Seydişehir	Impropriety	Impropriety	A.}MKT.MVL, 82/100
96	1272	Mustafa Efendi	Amasya	Overcharging legal fees	Corruption and bribery	A.}MKT.NZD, 179/82
97	1272	Mehmed Tahir Efendi	Kırşehir	Impropriety	Impropriety	MVL, 296/27
98	1272	Mehmed Said Efendi	Kırkkilise	Using fraud in ashar (*aşara fesad karıştırmak*)	Other	A.}MKT.MHM, 88/34

99	1272	Hacı Mehmed Nuri	Yenice ve Foça	Oppressing the people and corruption	Oppressing the people	A.}MKT.NZD, 191/81
100	1273	Ömer Hulusi Efendi	Urfa	False report	Local politics	A.}MKT.NZD, 214/58
101	1274	Ali Rıza Efendi	Biga	Act against the law (*kanuna muhalif hareket*)	Malpractice	A.}MKT.MHM, 103/50
102	1274	Naib Vekili Hafız Hüseyin	Niğde Çamardı Fertek Köyü	Unspecified	Unspecified	A.}MKT.UM, 272/68
103	1274	Nazif Efendi	Tırnova	Forging documents for money	Corruption and bribery	A.}MKT.NZD, 210/24
104	1274	Yusuf Nabi Efendi	Köstendil	Corruption and bribery	Corruption and bribery	A.}MKT.MVL, 89/41
105	1274	?	Tatarpazarı	Unspecified	Unspecified	A.}MKT.MVL, 82/36
106	1274	Şakir Efendi	Antalya	Bribery	Corruption and bribery	A.}MKT.MVL, 94/53
107	1275	Hasan Fehmi Efendi	Limni	Due to problems between provincial manager, both of them dismissed	Local politics	A.}MKT.NZD, 313/60
108	1275	Hazik Efendi	Erzincan	Impropriety	Impropriety	A.}MKT.UM, 331/73
109	1275	Hamid Efendi	Ziştovi	Impropriety	Impropriety	A.}MKT.MHM, 155/22
110	1275	Halil Rüşdü Efendi	Çelebipazarı	Impropriety	Impropriety	A.}MKT.UM, 348/54

111	1276	Ahmed Hamdi Efendi	Silistre	False report regarding the provincial manager & creating false property certificates (*ilmuhaber*s)	Local politics	A.}MKT.MHM, 198/88
112	1276	Hafız Mustafa Efendi	Köprülü	Unspecified	Unspecified	A.}MKT.MHM, 208/5
113	1277	Sabri Bey	Lazistan Maçahel	Disallowing the counting of sheeps and the goats to (*koyun ve keçileri tadad ettirmemek*)	Other	A.}MKT.MVL, 121/26
114	1278	?	Hudeyde	Harming the property of Iranian Seyyid Ali	Other	A.}MKT.UM, 494/36
115	1278	Emin Efendi	Yanbolu	Abuse of power (*görevi kötüye kullanmak*)	Malpractice	A.}MKT.UM, 499/17
116	1279	?	Pazarköy	Corruption	Corruption and bribery	A.}MKT.MHM, 282/37
117	1279	Mustafa Efendi	Uşak	Unspecified	Unspecified	A.}MKT.MHM, 283/90
118	1279	?	Tırhala	Impropriety	Impropriety	MVL, 981/74

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