Murder in the Family: Law, Order, and Criminal Justice in the Nineteenth Century Ottoman Society

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Doctor of Philosophy

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Declaration of Originality

The intellectual content of this dissertation, which has been written by me and for which I take full responsibility, is my own, original work, and it has not been previously or concurrently submitted elsewhere for any other examination or degree of higher education. The sources of all paraphrased and quoted materials, concepts, and ideas are fully cited, and the admissible contributions and assistance of others with respect to the conception of the work as well as to linguistic expression are explicitly acknowledged herein.

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Abstract

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Zehra Şamlıoğlu-Berk, Doctoral Candidate at the Atatürk Institute for Modern Turkish History at Boğaziçi University, 2023

Prof. Dr. Cengiz Kırlı, Dissertation Advisor

This study deals with the murders committed within the family in the Ottoman provinces in the second half of the nineteenth century. Based on Ottoman archive documents, it focuses on the conflicts of various family members with each other and various reckonings both within the nuclear and extended family, from a socio-legal point of view and without any regional restrictions. The study claims that the ties that held the family together were extremely sensitive and fragile and that the family had both compassion and brutality in itself, with various paradoxes. The fact that we were able to obtain detailed information about the Ottoman provincial family and the word-for-word statements of family members from their mouths was a result of the judicial reforms that took place in the second half of the nineteenth century. Since this study, which presents a multi-layered portrait of the Ottoman provincial family through the nizamiye court records, is shaped on various family anomalies, the portrait presented is far from the claim of a full-scale family portrait. This study also tries to understand and make sense of ordinary people's mentality regarding their roles in both the domestic and public spheres. The way ordinary people customize the events in their minds, and the sub-judicial solutions they develop constitute the main axis of this study. Finally, this study reveals how the two courts operate in murder cases that fall into the common domain of both sharia and nizamiye courts in the new judicial order.

109.466 words

Özet

Ailede Cinayet: On Dokuzuncu Yüzyıl Osmanlı Toplumunda Kanun, Düzen ve Ceza Yargılaması

Zehra Şamlıoğlu-Berk, Doktora Adayı, 2023
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Prof. Dr. Cengiz Kırlı, Tez Danışmanı

Bu çalışma on dokuzuncu yüzyıl ikinci yarısında Osmanlı taşrasında aile içerisinde işlenen cinayetleri ele almaktadır. Osmanlı arşiv belgelerine dayanarak herhangi bir bölgesel kısıtlama olmadan hem çekirdek hem de geniş aile içerisinde çeşitli aile üyelerinin birbirleriyle olan çekişmelerine, aile içerisindeki çeşitli hesaplara ve hesaplaşmalara sosyo-legal bir bakış açısıyla odaklanmaktadır. Çalışma, aileyi bir arada tutan bağların son derece hassas ve kırılgan olduğu ve ailenin sahip olduğu çeşitli paradokslarla, içerisinde hem şefkat hem de çeşitli vahşilikler barındırdığı iddiasındadır. Osmanlı taşra ailesine dair detaylı bilgi elde edebilmemiz ve aile bireylerinin kendi ağızlarından kelimesi kelimesine duyduğumuz ifadeleri on dokuzuncu yüzyılın ikinci yarısında gerçekleşen adli reformların bir sonucuydu. Nizamiye mahkemesi kayıtları üzerinden Osmanlı taşra ailesine dair çok katmanlı bir portre sunan bu çalışma, aileye dair çeşitli anomaliler ve dava tutanakları üzerine şekillendiği için; sunulan bu portre tam ölçekli bir aile portresi iddiasından uzaktır. Bu çalışma aynı zamanda sıradan insanların hem hane içi hem de kamusal alandaki rollerine dair düşünce yapılarını anlama ve anlamlandırma çabasındadır. Sıradan insanların olayları zihinlerinde kişiselleştirme biçimleri ve geliştirdikleri yargı altı çözümler bu çalışmanın ana eksenini oluşturmaktadır. Son olarak bu çalışma yeni adli düzende hem şeri hem de *nizamiye* mahkemelerin ortak alanına düşen cinayet davalarında bu iki mahkemenin nasıl işlediğini ortaya koymaktadır.

109.466 kelime

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Abbreviations and Acronyms

A.} MKT. MHM.	Sadaret Mühimme Kalemi Evrakı
A.} MKT.MVL.	Sadaret Meclis-i Vala Evrakı
BEO.	Bab-ı Ali Evrak Odası
BOA	Başkanlık Osmanlı Arşivleri (Ottoman Archives for the Ministry)
CJO	Council of Judicial Ordinances (*Divan-ı Ahkam-ı Adliye*)
DH. EUM.MTK.	Dahiliye Muhaberat ve Tensikat Müdiriyeti
DH. HMŞ.	Dahiliye Hukuk Müşavirliği
DH. İD.	Dahiliye İdare
DH.MKT.	Dahiliye Mektubi Kalemi
DH.SYS.	Dahiliye Siyasi Kısım
HR.HMŞ.İŞO.	Hariciye Nezareti İstişare Odası
HR.SFR. 04.	Hariciye Nezareti Paris Sefareti
HR. SYS.	Hariciye Nezareti Siyasi
HR.UHM.	Hariciye Nezareti Umur-ı Hukukiye-i Muhtalita Müdüriyeti
İ..AZN.	İrade Adliye ve Mezahib Nezareti
İ..DA..	İrade Divan-ı Ahkam-ı Adliye
İ..DH.	İrade Dahiliye
İ..MVL.	İrade Meclis-i Vala
MVL.	Meclis-i Vala
SCJO.	Supreme Council of Judicial Ordinances (*Meclis-i Vala*)
ŞD.	Şura-yı Devlet
TFR-I-KV.	Teftişat-ı Rumeli Evrakı – Kosova Evrakı
Y.EE.	Yıldız Esas Evrakı
Y.PRK.AZN.	Yıldız Adliye ve Mezahib Nezareti Maruzatı

A Note on Transliteration

All translations in the dissertation are mine unless stated otherwise. I used the simplest form of Latinization in the translation of Ottoman Turkish phrases and terms. In some footnotes, I did not translate the original sentences into English. These sentences are indicated in italic fonts in the footnotes.

To remain faithful to the original document in the statements in the court records, I did not correct the grammar or change the words in the quotations. The occasional deficiencies in the English translation of these quotations are due to the deficiencies in the Turkish spoken language of the speakers at the court.

I wrote the dates in the archive documents as a Gregorian calendar, using the date translation guide of the Turkish Historical Society. I have specified the places currently within the borders of Turkey with their contemporary names. But for other places, I used English equivalents.

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It is an incredible source of happiness for me to see that this dissertation has ended by surviving through the rather devious roads of the Ottoman archives. The process of witnessing some of the life stories of my long-dead subjects, the murders they committed, and their pain and ambitions were mentally exhausting at times. However, it is pleasing for me that the question that I asked on my first day at the archive, what I am doing in this cold and empty building, has evolved to this level. I would like to thank the people and institutions whose assistance, guidance, and support were a milestone in completing this dissertation.

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1

Introduction

> *Şimdiki usûl-i adliyyece müstantiklerin müddeiumumilerin ve sair her sınıf memurin ve zâbıta-i adliyenin vezâifi o kadar mükemmel olarak tayin olunmuştur ki, böyle orta yerde davacısı bulunmayan en müthiş cinayetlerin dahi davacısı adâlet-i seniyye olarak, mücrimlerin meydana çıkarılması için zâbıta-i adliyye ve tahkikat memurları ve müstantikler ve müddeiumumiler bezl-i mâ-hasal-ı iktidâr ederler.*
> *Bundan evvel ise memurin zabıta ve adliyyenin mükellefiyeti bu derecelerde olmadığından, işte böyle Öreke Taşı cinayeti kadar mühim olan şeyler dahi sanki bir kazâ-yı âsmâni imişler gibi, yalnız bir jurnal edilmekle iktifa edilir ve artık tahkikatın arkası da bırakılırdı*
>
> -Ahmet Mithat Efendi, *Esrar-ı Cinayat*

This dissertation is about murders committed in Ottoman families living in the provinces in the second half of the nineteenth century, and it focuses on domestic disputes and violence. It aims to analyze intra-familial relations through the murders committed by various family members. This study problematizes family through law and society and adopts a sociolegal

history approach related to Ottoman provincial families. Law and society are not two separate entities, and they influence each other in complex ways. Legal ideas can reveal the values and beliefs of a society, and they can help us to understand how people think about and interact with each other.[1] The socio-legal approach seeks to go beyond a purely doctrinal analysis of legal rules and institutions and considers the broader social, cultural, economic, and political context in which law operates.

In this study, I examine the murders committed in the family through the court records without any city or region limitation. Although there are many documents on domestic violence and murders in the archive, due to the legal dimension of the study, I used court records that show minutes of the court process, that is, every stage of the case.

In this study, I define the family as individuals who live together and are in a relationship due to blood and kinship ties. In this context, subjects such as marriage and marriage patterns, family relations, the position of women in the family, juvenile delinquents, honor killings, disputes on the property, and murder of parents, networking, domestic violence are within the scope of this study. Since the data source of this study is court records of murder cases, this study does not provide a large-scale analysis of Ottoman families and households. In addition, this study focuses on the realization of dispute resolution. In this context, it makes certain arguments and suggestions around the concepts and reasons that constitute violence and murder in the family and provides information to provide a historical ethnographic view. However, the in-depth analysis of these concepts and their anthropological dimension are beyond the scope of this study. In other words, although court records open a window on concepts such as honor, domestic violence, networking, and kinship relations, an in-depth analysis of these concepts requires different research.

Drawing on the court records, my first aim is to analyze intra-familial murder cases. With these cases, I aim to depict a picture of the Ottoman family living in the provinces. This picture, however, is a multilayered one. So, I aim to develop an intelligible framework related to family relations,

1 See Roger Cotterell, "Why Must Legal Ideas Be Interpreted Sociologically?" *Journal of Law and Society* 25, No. 2 (1998): 176

especially by giving agency to women and children. Acts and intentions of murderous family members enable a favorable ground to understand the sensitivities, desires, mentalities, and predicaments related to family life and marriages in the Ottoman provinces. This brings me to my second aim.

My second aim is to comprehend the mentality of ordinary people in the Ottoman provinces in their domestic and public roles. Although several studies have been conducted on the families in Ottoman society through literary sources, printed media, and *sicil* registers, we still have incomplete and fragmentary knowledge of Ottoman provinces and families living there. The only available source to hear people's voices directly and see their living conditions is the *nizamiye* court records. But the data gathered through these records also do not provide a full-scale portrait of domestic life in the Ottoman provinces. The documents give a picture of times of anomaly regarding the status of men, women, and children in the family and community and the ties that bound them together. In addition, since these were statements given before the court, it is necessary to consider some restrictions brought by the physical environment.

It is important to note that the entire village canvas should be kept in mind when thinking about rural criminality since they were interwoven into the intricate fabric of rural life.[2] The way ordinary people personalized the events in their minds and their sub-jurisdiction solutions were generally fed with revenge, honor, or violence due to their subjective sense of justice. In this sense, as Cathy Frierson points out, "the strong link between morality and legality in the village, the importance of family and community as the peasant's immediate universe, and the function of labor in defining concepts of property, damage, and injury"[3] constituted a basis for any wrongdoing in the peasant mindset.

The actual words of witnesses and defendants in the court provide a unique avenue to probe into the provincial mindset. What was told in the testimonies of witnesses or defendants also enables us to obtain unexpected information about intra-familial relations and society at large. In their

2 Cathy Frierson, "Crime and Punishment in the Russian Village: Rural Concepts of Criminality at the End of the Nineteenth Century," *Slavic Review* 46, No. 1e (1987): 57

3 Cathy Frierson, "Crime and Punishment," 57

narratives, they gave place to related or unrelated details through which one can learn more about familial or social ties. These narratives take pictures of a particular event from many angles.

Although the house was featured as a crime scene in this study, this does not mean that the conflicts within the household were independent of the street and the community. Family matters almost always have the character of breaking through the walls of the family into the public domain and becoming a community matter, especially in cases related to women's affairs. One can see this reflection, especially in the issue of honor. When a man's honor, one of the mainstays of his existence in the public sphere, was damaged, he re-established his prestige in the public sphere and eliminated the threat by committing murder. Since a private matter became a community matter, men acted according to what the community demanded. In this context, the concept of separate spheres was controversial, and examining domestic violence and murders did not require thinking only in the context of private space.

On the contrary, these two areas were highly intertwined. In addition, if we look at it from a judicial perspective, the fact that murder cases, which remain in the field of personal law according to sharia, were seen as a threat to public order according to the state and were handled in the *nizamiye* courts is another indicator of the transitivity of these two fields. The state intervened to protect the public order, not the family itself and punished the criminals, and this brings me to the third aim of this study.

My third aim is to understand the function of the new court order in the second half of the nineteenth century and to figure out how sharia and *nizamiye* courts operated for the murder cases that fell to the scope of both courts. So, throughout this study, I will answer questions like how the new penal codes affected the perception of justice of ordinary people and how they negotiated the possible punishments to be given. I use penal codes, nizamiye court records, sharia court records, and criminal statistics to present a comprehensive picture of people's legal framework and mentality. We must understand the institutional capacity well so that legal interpretation will

become more meaningful.[4] The court was more than a place of trial. It provided the opportunity to follow both judicial processes and socio-cultural situations. So, to understand and observe the regulations in the legal system or the impact of the new laws in the nineteenth century, it is necessary to analyze the judicial practices, petitions, fatwas, court registers, or imperial orders. In this way, we can understand the judicial reforms, their applications, and the impact they created. Moreover, exploring homicide cases without understanding and explaining the trial procedures would be insufficient.

Regarding legal studies, the discussions in the literature generally revolve around the concepts of secularization and westernization/modernization. Instead of these concepts, I prefer to name the Ottoman judicial process in the nineteenth century as a trial of administrative state centralization, professionalization, and standardization.[5] This process was one in which both the state and the public took an active role and mostly proceeded by trial, error, and correction methods. Ultimately, the new judicial system the empire experienced, as Avi Rubin points out, was not two separate legal systems and the sharia courts and the *nizamiye* courts were two overlapping and at times interrelated segments of a single judicial system"[6]

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4 Cass R. Sunstein and Adrian Vermeule, "Interpretations and Institutions," *101 Michigan Law Review* (2003): 888

5 See Avi Rubin, *Ottoman Rule of Law and the Modern Political Trial: The Yildiz Case* (New York: Syracuse University Press, 2018); Kent Schull, *Prisons in the Late Ottoman Empire: Microcosms of Modernity* (Edinburg: Edinburg University Press, 2014)
According to Anver Emon, this process was also a resistance of the empire to European pressure. State elites challenged various legal demands by presenting their enactments. But in doing so, Islamic law was somehow put into a European mold, and the various views of the various schools of fiqh, which is the hallmark of Islamic law, and the transitions and exchanges between them were reduced by the codification process. In other words, when Islamic law was reduced to a text-based law, its time-keeping and flexibility features were interrupted. Therefore, this structural transformation and standardization in Islamic law should be questioned and further considered. See, Anver Emon, "Conceiving Islamic Law in a Pluralist Society: History, Politics and Multicultural Jurisprudence," *Singapore Journal of Legal Studies* (2006): 348

6 Avi Rubin, *Ottoman Rule of Law,* 20

Although there are several important studies related to the Ottoman provinces and the people living there, our knowledge in this regard is still limited. Despite the revival in the analyses of literary and fictional works, especially from the second half of the nineteenth century onwards, the Ottoman provinces still need attention, analysis, and further research. Especially in family studies, the literature is mainly shaped by themes such as the family theme in the period novels and the ideal family structure in the writings of the intellectuals of the period.[7] On the other hand, we try to understand and make sense of the structure of the provincial family through estate records or population censuses. Since the change in the judicial system also changed the recording practices in the court, *nizamiye* court registers turned into a mine of information about Ottoman provinces and narratives primarily related to everyday life practices. In this respect, the opportunity offered by the court records to the readers can shake up the perceptions of the Ottoman family structure.

In this study, both the murders, which were discussed in detail, and the data I analyzed from the 218 murder cases, in general, will show that the idea of family in ordinary people's minds and the network of relations in the rural family was far from the concept of the ideal family, which the intellectuals of the period talked about in newspapers and magazines. However, the family portraits may seem quite familiar to the current world of readers. The family information we got from period novels or articles and the ideal family in the eye of the state was a kind of universe of ideals and did not fit into the actual world of the provincial people. Expressing this disconnection and pointing out the moments of reconnection was one of the most challenging aspects of this study.

This study falls into two areas of historiography: legal studies and family history. The various voices in the courtroom of witnesses, defendants, and prosecutors make it necessary to open some layers to discuss these issues and convey a precise meaning. The first layer is the layer of time and narrative and various strategies and tactics developed by the people in the court. The second

7 For example see Tuba Demirci, "Body, Disease and Late Ottoman Literature: Debates on Ottoman Muslim Family in the Tanzimat Period," (Ph.D. Dissertation, Bilkent University, 2008)

is the layer of the Ottoman legal system in general, and the third layer is related to the family and the conflict zones in the family.

§ 1.1. *Presenting* the Past and Revisiting the Narrative

The data we have for the present is as tricky and easy to interpret as the data we have for the past. So, both the past and the present are an equal distance to our intellectual capacity. Historiography or historical knowledge has always been closely connected with these visions of historical time. The very act of historiography is a product of deductions made from these speculations about time and the experience of memory.[8] The relationship of most historians with history and time is like a pendulum most of the time. They start searching from the present and go back to the past. Then, to write what they have discovered, they start from the past and try to arrive at the present. However, this chronological order in searching and writing history is also a constraint for a historian. History is full of events whose chronology tells little about their relationship to one another.

It is without a doubt that the way people perceive time profoundly affects the way they perceive the world, live in it, and narrate it. When I say presenting the past here, I am talking about both *presenting* the past to the readers and turning the past time into the present.

The timing of the narrative about the past is perceived differently by many historiographical schools. According to Walter Benjamin, history is the constant reconstruction of the past, and history's concern is our view of the past.[9] Past retroactively produces itself in the present. For Benjamin, this past carries a temporal index with itself, and this temporal index harbors the secret agreement between the past and present. Thus, in the voices we give ear to, we also hear the voices of the ones that have long been gone. The time Benjamin perceives in pieces or images is a spanner in modernity's linear narrative. He turns back the time of history that flows from the past towards

8 Paul Ricoeur, *Hafıza, Tarih, Unutuş* (İstanbul: Metis Yayınları, 2012), 182

9 Walter Benjamin, "Theses on the Philosophy of History," in Illuminations: Walter Benjamin Essays and Reflections, ed. Hannah Arendt (New York: Schocken Books, 1969), 254

the future. He turns it back; he stops it and narrates it in fragments. Then repeats the process. He thus "brushes history against the grain."[10]

In recent years, rather than the traditional narrative form in which the history of the power holder was written, historians have turned their attention to the lives, feelings, and thoughts of ordinary people and plain facts. If we are to make a temporalization for history from below, I think it is more effective to do it by considering the time in circles and spirals rather than creating a chronological narrative. Singular stories can only be revealed by stopping the chronological flow of history, and their value can only be understood when this flow of history stops.

Court records are among the primary sources of history from below, and storytelling is in the nature of the courtroom. It is precisely through these stories that we gain knowledge from various angles of what was happening within the family/household and society. Besides questioning whether these stories were true or false, it is essential to see how the narrator put them into context, what they aimed with what they told, and their perspective on the event and people. The stories told in the courtroom varied considerably. As we will see in this study, the courtroom and the singular stories here were stories where historical time stopped and was told by the narrators, sometimes in zigzags, sometimes in circles, and sometimes in spirals to get the best out of their court experience.

There are some handicaps in constructing a historical narrative through court records since the judicial archive is a material that is quite different from other written texts and challenging to understand and give meaning to. It includes "rough traces of lives that never asked to be told in the way they were."[11] Court registers can present an array of pictures related to the problems of ordinary people. With petitions or court registers, people stood before the state as simple citizens.

The registers of sharia courts contain the summaries of cases tried in the courts. So rather than the voice of litigants or defendants, the reader is face to face with the qadi or naib's ability to summarize the event and looks at the

10 Ibid., 256-257

11 Arlette Farge, *The Allure of the Archives* (New Heaven and London: Yale University Press, 2013), 25

cases through their eyes. Unlike the sharia court records, witness testimonies in the *nizamiye* courts were *verbatim* accounts of what was said during the investigation.[12] Thus, they provide useful raw data. The interrogation protocols (*istintakname*) attached to many *nizamiye* court records are pretty valuable in this sense. The *nizamiye* court registers reflect the gathered evidence through interrogations, which were sometimes aided by the police or interrogation committees. These records are especially invaluable regarding any analysis of Ottoman provinces. They are the most detailed source for writing the web of relations within the Ottoman provincial family and the domestic dynamics. With their vast amount of information, court records tell us about what kind of problems occurred in marriages, spouses' personal choices, the reasons for intra-familial disputes, etc.

Studies on population and title deed registries generally focus on quantitative data about the family. Moreover, since the people living in the provinces, especially the villagers, did not leave written documents behind in the form of diaries, personal notes, or letters to their intimates, court records stand out as the most efficient way to hear from these people in the most natural way. But we should also take into consideration the context that these documents produced. As Ruiz points out, "Any legalistic analysis of familial relationships needs to be balanced against the fact that local customs, domestic practices, and competing social values may have made 'reality' different than what appeared on the written court record."[13]

As I mentioned above court narrative was a historical narrative in itself. The fact that litigants and defendants told the plot in their way and gave a historical background was an indicator of their historiography.[14] In this historiography, a linear narrative was minimal. The answers or confessions that came in bits and pieces with the interrogator's questions were shaped according to another context in the narrative of the appeal court. So here, it

12 Milan Petrov, "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868," (Comparative Studies in Society and History, Vol. 46, No. 4, 2004), 735

13 Mario Ruiz, "Intimate Disputes, Illicit Violence: Gender, Law and the State in Colonial Egypt, 1849-1923," (Ph.D. Dissertation, University of Michigan, 2004), 13

14 Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (California: Stanford University Press, 1987), 4

is possible to talk about a narrative within narrative and history within history. In this narrative palimpsest, on the one hand, the culprits or witnesses or victims told the story from their perspective. On the other hand, the courts at various levels narrated these interrogations according to their standpoint or the state's perspective.

The ordinary people in the courtroom were storytellers in their own right, seeking various narrative strategies to get the best out of their court experience. The state was creating its narrative and writing summaries of events based on what it heard in the court. At the forefront of the state's narrative was the language of law and the procedures and principles of the trial. The time of the state was clockwise. In its narrative, the state was mastering the time "to secure a standard single and homogenous measure. . . capable of reducing the different, co-existing temporalities lived by diverse groups within different domains of the social formation by acknowledging a distance between each."[15] However, the time in the narratives of ordinary people was circular and zigzag in form. In the formation of this narrative, which proceeded in the form of questions and answers, this narrative was in flashes since the witnesses did not immediately give the desired/expected answer from them. So, in the narratives of ordinary people, it was possible to find traces of Benjamin's understanding of history. Their narratives were mostly like "to seize hold of a memory as it flashes up at a moment of danger."[16] For them, articulating what had happened in the past did not mean recognizing it as it really was[17] but communicating it according to their memory.

The hearings were sometimes monologic and sometimes repetitive. The defenders generally answered/reflected on the questions of the questioner. They also engaged in dialogue but generally avoided conversation in situations such as escaping from crime or denial. But these moments of lack of communication between the interrogators and defendants or witnesses

15 Harry Harootunian, *Shadowing History: National Narratives and the Persistence of the Everyday (*New York University Published Online, 2010), 190

16 Benjamin, "Theses," 255

17 Ibid., 255

also present a genuine dialogue in the Bakhtinian sense.[18] However, as Ginzburg points out, "the conflicting characters who speak in these texts were not on an equal footing."[19] So, these interrogations were products of an unbalanced relationship between the defendant and the questioner, and due to this inequality, the pressure applied by the questioner was usually successful. Confronting witnesses and defendants, intimidation with punishment, or public shame were typical strategies to reach the truth about the murders.

From the ordinary people's side, there was another fundamental issue in murder narratives: making do. Individuals from rural families tried all kinds of ways of making do. In these ways of "making do," people acted within a strategy and tactic relationship.[20] The tactics were the arts of the weak.[21] They manipulated and had their way of doing things. In this sense, the litigants and defendants diverted the courts by acting within it. The ordinary rural people who knew little or nothing about the court procedures or laws or had some ideas from second-hand experiences tried to manipulate the courts and judges to turn these court trials into opportunities. The things they narrated at the time of the incident were tactical in character and reflected the many ways of operation of the victory of the weak over the strong. They may have seemed ignorant of the law or the judicial system, but they had clever tricks and knew how to get away with things very well.

The people in court had strategies to present themselves in the best way. If they were sitting in the defendant's chair and there was a possibility of being punished, they were trying to avoid this possible punishment as much as

18 Carlo Ginzburg, *Clues, Myths, and the Historical Method* (Maryland: The Johns Hopkins University Press, 1989), 160

19 Ibid., 160

20 Michel de Certeau calls "a 'strategy' the calculus of force-relationships which becomes possible when a subject of will and power (a proprietor, an enterprise, a city, a scientific institution) can be isolated from an 'environment'." p. xix. On the other hand, a tactic is "a calculated action determined by the absence of a proper locus. . . The space of a tactic is the space of the other. Thus, it must play on and with a terrain imposed on it and organized by the law of a foreign power." *The Practice of Everyday Life (*Berkeley and Los Angeles: University of California Press, 2002), 32

21 Ibid., 37

possible through the discourse of “I do not know.” To circumvent this "I do not know" tactic commonly used by defendants, the interrogation officers used interrogation strategies such as asking sequential, trivial, and repetitive questions. And this tactic generally worked on cornering criminals and getting confessions. [22] If the people were litigants, they tried to ensure the other party was punished by various insistence and evidence-making mechanisms.

Those who spoke in court gave countless relevant or irrelevant details to the question asked. So, one can see the most profound information about the patterns of daily life in these narratives. For example, while a murderer was describing what they did after committing murder, they depicted a detailed picture of what they saw while, i.e. walking on the road, staying in a particular room, or passing by a field. In these pictures, a certain Mehmet from the neighboring village was repairing the roof of his house while Alexi was hoeing his garden. These details were multiplied when those whose names were mentioned in the statements were also called to testify. These narratives also presented a cinematic universe to the court audience and the reader. However, since these details keep the reader busy and deviate from the main subject, working on the archive was slippery, and conveying this narrative without changing it was challenging for the historian. In the final analysis, however, there is no such thing as a simple or definite story. If the archive is to serve as a practical social laboratory, it can only do so with scattered details.[23]

§ 1.2. *Ordered and Adjudged*

At the beginning of the eighteenth century, a deep crisis occurred in the justice system in Europe, which had been developing since the Renaissance. Accordingly, the query system was designed to provide more effective crime and crime control. The new system and the growth of the judicial apparatus centralized and strengthened judicial authority. But at the same time,

22 Avi Rubin, *Ottoman Rule of Law,* 96. Also see Milen Petrov, Everyday Forms of Compliance,” 746-754

23 Arlette Farge, *The Allure, 22*

gathering evidence forced the judicial system to cooperate with the general population.[24] In other words, the new judicial structure not only meant following the people more closely and controlling them but also meant that the people directly contributed to the process.

Different national contexts adopted various penal policies and policing changes starting from the eighteenth century. According to Emsley, the French Revolution provided an opportunity to implement enlightenment ideas. The Enlightenment taught people that they were responsible for their behaviors, success, or failure.[25] There was a reform movement in the legal realm almost everywhere during the nineteenth century. Time was moving differently, and everyone was trying to keep up. It was a situation mostly related to the change in the human mind. Duncan Kennedy names the legal, institutional change as the globalization of law and legal thought.[26] So, it would be misleading to take an approach that these reforms occurred first in Europe and then elsewhere. The passage to modernity had a global nature.[27]

The legal reforms of the nineteenth century were taking place based on various motivations and forms. The United States, Britain, and British colonies resisted codification. The English, French, Dutch, Germans, and Belgians exported their legal thoughts to their colonies.[28] Due to the ongoing

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24 Tommaso Astarita, *Village Justice: Community, Family, and Popular Culture in Early Modern Italy* (Baltimore: The Johns Hopkins University Press, 1999), 140

25 Clive Emsley *Crime, Police, and Penal Policy European Experiences 1750-1940* (New York: Oxford University Press, 2007)

26 Ducan Kennedy, "Three Globalisations of Law and Legal Thought: 1850-2000," in *The New Law and Economic Development: A Critical Appraisal* eds. David M. Trubek and Alvaro Santos (Cambridge: Cambridge University Press, 2006), 19-73.

27 Omri Paz, *Who Killed Panayot? Reforming Ottoman Legal Culture in the 19th Century* (Oxon and New York: Routledge, 2021), 15

Duncan Kennedy offers three globalization moves; the first was the rise of classical legal thought from 1850 to 1914, and "what was globalized was a mode of legal consciousness." The second globalization from 1900–1968 was a reconstruction process and critique of the first globalization and the emergence of the social in the legal thought. The third globalization occurred from 1945 to 2000 with a focus on human and property rights. Duncan Kennedy, "Three Globalisations," 22-25

28 Ibid., 28

legal debates in Russia since 1835, the Russian state elite set out to educate and enlighten "the ignorant people." They named this initiative as emancipation movement. The elites of Russia convinced that the primary cause of rural crime and disorder was the absence of enlightened, paternal supervision, favored a means of tutelage from above, and favored strict supervision and punishment where necessary.[29]

Codification studies were carried out in Latin America during the nineteenth century. Latin American codes included other legal sources such as Spanish and Portuguese laws. In Japan, Meiji reformers codified civil, criminal, commercial, and procedural law in the 1890s.[30] The export and import of classical legal thought were also related to engaging with Western trade. The Ottoman Empire, Japan, Egypt, Thailand, and Iran could be shown as an example in this regard.[31]

Criminal law codification was a way of ensuring citizens' freedom against the arbitrary decisions of rulers. The judges' discretionary powers produced problems for the standard and rational minds of state elites. In imposing punishment, they did not want to give any place to the judge's personal judgment. The new legal codes of the nineteenth century prepared the nations and empires to enable standardization in trials and punishments. According to Peters, "this visible and qualitative correspondence between crime and punishment disappeared and was replaced by a quantitative one in the new criminal laws."[32] Thus, the penalties were made uniform and included imprisonment to rehabilitate the culprits to meet the need for human resources in the new world system.

29 Stephen Frank *Crime, Cultural Conflict, and Justice in Rural Russia: 1856-1914* (Berkeley, California: University of California Press, 1999), 14

30 For more details, see Avi Rubin, *Ottoman Rule of Law,* 33-34; Also see "Modernity as a Code: The Ottoman Empire and the Global Movement of Codification," *Journal of the Economic and Social History of the Orient* 59 (2016)

31 Ibid.,

32 Rudolph Peters, "'For His Correction and as a Deterrent Example For Others': Mehmet Ali's First Criminal Legislation (1829-1830)," *Islamic Law and Society* 6, No.2 (1999b): 174

Timothy Shakesheff names 1800 to 1860 an era of criminal law reform in England.[33] This period had two distinct types of criminal administration: the first was eighteenth-century criminal law, which wanted to implement "deference, obedience, and fear," and the other was the nineteenth-century system, which sought "compensation, accessibility, and availability" for everyone.[34] Thus, while a person who committed theft at the beginning of the century could be tried with the death penalty or exile when the calendars showed the 1850s, they would be sentenced to a year in prison for the same crime.[35]

The Russian example was quite remarkable in terms of dual judicial culture. It was thought to be a synthesis to ensure a social agreement in Russia. The reformers saw the *volost* court as a temporary solution for rural justice.[36] After educating the peasants on the principles of formal legality, they hoped to do a review in five or ten years. To meet this end, they needed more information related to the peasants. Therefore, in 1873, seven volumes of data appeared gathered freshly from the village for anyone interested in popular justice, volost court, or rural culture.[37] In this vast data, they tried to find an answer to whether the volost court was a viable institution.

Some of the questions they asked were as follows: what was the level of development in the legal consciousness of peasants? Did they ever have such a consciousness? Was it possible to detect an act of law among the peasants? If so, what shaped the understanding of justice among the peasants? How was the relationship between the official and customary law? Did the peasants develop a sense related to the principles of the official decree, and did they

33 Timothy Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire, 1800 to 1860* (Suffolk: The Boydell Press, 2003)

34 Ibid., 73-74

35 Ibid.

36 *Volost* courts were established in rural Russia as a part of the emancipation movement of 1861. They functioned as a local authority over peasants' administrative and judicial affairs. Jane Burbank, "Insult and Punishment in Rural Courts: The Elaboration of Civility in Late Imperial Russia," *Etudes Rurales*, No. 149/150 (1999): 147-148

37 Cathy Frierson, *Peasant Icons: Representations of Rural People in Late Nineteenth-Century Russia* (New York and Oxford: Oxford University Press, 1993), 63

show respect for it?[38] These questions posed by the reformers were so valuable and striking to see the judicial transformation process. The answers the peasants gave to the questions were even more striking. When the reform commissioners asked the peasants who served in the volost court or how they reached a decision, they rarely referred to the constitution or the judicial system. Instead, they gave answers like "according to man," "according to the conscience," "according to fairness," "according to the circumstances," or "so that no one will be insulted."[39] These answers implied to the reformers that the peasants lacked legal consciousness. However, transcripts of the trials suggested that peasants were rational judges in reaching decisions in the volost courts. While making a decision, the peasant judges were thinking of the economic condition of the peasants and the village.[40]

Deeply affected by the French Revolution, Germans emphasized the psychological aspects behind a committed crime, especially after the second half of the nineteenth century. Significantly, the discussions on the psychopathological reasons behind arson cases never ended, and a growing tendency occurred to attribute all kinds of mental disorders or diseases to asocial individuals, criminals, and others living outside of society.[41] Thus, two different realities emerged. In one, the villagers stated that they committed their crimes for revenge, while in the other, experts noted that it was an idiocy and a treatable disease.[42]

In both Egypt and the Ottoman case, the legal reform process was accomplished upon the ruler's request, not as a result of public demand as in the case of Europe.[43] But the Ottoman legal tradition eased the transition into a new legal system. I will discuss the Ottoman legal thought and process in more detail below.

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38 Ibid., 64

39 Ibid.

40 Ibid, 65-68

41 See, Regina Schulte in *The Village in Court: Arson, Infanticide and Poaching in the Court Records of Upper Bavaria (1848-1910)* (New York: University of Cambridge Press, 1994)

42 Ibid., 61

43 Rudolph Peters, "For His Correction", 174

1.2.1. "Putting New Questions to Old Material"

Islamic legal tradition had certain norms that set a general framework for criminal justice and leaves a space for the ruler to regulate penal matters. The ruler used the *tazir* authority to create a legitimate space for himself within Islamic law. Sharia rules basically regulated the relationship between God and its creatures. Imperial *kanuns* were the set of rules promulgated in a proper manner with the sharia and by considering custom.[44] Accordingly, to prevent malice and eliminate cruelty and evil on earth, it was necessary to apply heavy punishments within the limits of religion, and the necessary authority in this regard was to be used by the rulers and judges. In this regard, as Schull points out, the ruler acted as both a caliph and a sovereign, bridging the divide between secular and sacred.[45]

The idea of justice remained a central issue of all arguments about how to govern the Ottoman Empire. The state elites were on the same page that they needed to institute "justice for all" throughout the Empire. The problem was that they were not on the same side about the answer. Should they stay within the realms of sharia, should they apply to the Western examples, or should they find a solution through the sultanic *kanunname* tradition? In the end, with the help of Islamic state tradition, they came up with the idea of combining these three alternatives. They did not dismiss sharia or directly apply the best possible Western example. They acted within the norms of sharia law, and by using the *tazir* authority of the sultan, they promulgated the 1858 penal law.

Islamic law is made up of interpretation of verses, hadith, and sunnah tradition, and so it is hard to reach a standardization valid for all times. Functionality has always remained at the forefront of the application of Islamic law. Therefore, Islamic scholars tended to produce resolutions rather

44 For example, in Dede Cöngi's famous *siyasetname,* it is stated that the application of *siyaset* is a necessity of sharia. As a result, it is claimed that the decisions of the *siyaset* are not independent of the sharia. And the key determinant here is the public welfare, that is to say, enabling justice. See Abdullah Sabit Tuna, "Osmanlı Siyasetname Geleneği İçinde Dede Cöngi'nin Yeri ve Eserinin Tahlili," (Yüksek Lisans Tezi, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü, 2011), 41

45 Kent Schull, *Prisons in the Late Ottoman Empire,* 21

than reconcile the law according to the needs. This functionality was best reflected in the fatwa practices. Giving a fatwa was a dynamic practice because it was given according to individual demand and application details.[46] While some fatwas have philosophical elements, some were just given to meet the basic needs of social life. The leading guide here was the principle of discrete justice for everybody, whose objective was to provide a social entitlement.[47]

Islamic legal tradition had certain norms that set a general framework for criminal justice and left a space for the ruler to regulate penal matters. Sharia rules regulate the relationship between God and its creatures. *Kanuns* were primarily used to regulate the relationship between the state and the individual, i.e., the public law. Tanzimat was a period of re-regulating the state and individual relationship, and creating a penal code was the best option rather than consulting the sharia law.[48] Besides, sharia law would not have much to say about the state-individual relationship. Advice literature was an essential source, and it was already in use. Moreover, there was a perfect reference point in the Muslim tradition according to which "what the believers consider right is right with God *(mâ ra'âku 'l-muminün hasanan fa-huwa 'ind Allâh hasarı)*; What is proper according to common usage is like what is legal according to the holy law."[49] This understanding eased the way for any new regulation.

All the judicial problems were resolved within Hanafi fiqh and customary law. The preference for Hanafi school as the basis of fiqh was not without reason for the Ottomans. The reasoning was one of the principles of the

46 Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000), 19

47 Leslie Peirce, *Ahlak Oyunları, Osmanlı'da Ayntab Mahkemesi ve Toplumsal Cinsiyet: 1540-1541* (İstanbul: Tarih Vakfı, 2005), 148

48 Rather than reforming qadiship within itself, the reformers decided to apply a new justice system. According to Jun Akiba, the reason behind this decision was the government's unwillingness to touch the vested interest of qadis, since the reformation of qadiship meant the dismissal of many people from *ulema*. Jun Akiba, "Kadılık Teşkilatında Tanzimatın Uygulanması: 1849 Tarihli Ta'limname-i Hükkam," *The Journal of Ottoman Studies* XXIX, (2005): 50

49 Uriel Heyd, *Studies in Old Ottoman Criminal Law (*London: Oxford University Press. 1973), 182

Hanafi tradition, and it was open to interaction with other systems of law.[50] It also allowed the ruler more space to control the judicial system than the other madhhabs and was relatively less equivocal. However, in places where the population adhered to other madhhabs, the centrally appointed Hanafi judge worked with the deputies that belonged to the locally prominent schools of law. However, the Hanafi norms still prevailed related to procedural matters. Thus, they both honored the other madhhabs and could achieve the authority of Hanafi doctrines. [51]

But what was the chief object of Ottoman penal codes in the nineteenth century? How should we evaluate the legal changes? Although the provinces were a significant concern for the Empire, the Ottoman reformers did not have the idea of educating or enlightening the people through legal regulations as in the case of Russia.[52] Therefore, reaching a cultural or civilized maturity of the people and educating them about this was not primarily on the state's agenda. They did not have any intention or perception of creating an ideal villager. The state wanted to control its subjects and enable a standardized administrative and legal system throughout the empire. The state tried to make its presence felt in the provinces and the whole empire. Rather than introducing the people to a new high culture, the moments in

50 Also, Hanafi school, was the most thoroughgoing regarding homicide. For the crimes committed against life, earlier Hanafi scholars defined three categories, but later Hanafi doctrine explained five types of murder. (1) deliberate (*'amd*); (2) quasi-deliberate (*shabah 'amd*); (3) accidental (*khata'*); (4) equivalent to accidental and (5) indirect (*bi sabab*). For example, Maliki school did not accept quasi-deliberate murder. See, Muhammed Amannullah, "Just Retribution and Its Alternatives in Hanafi Fiqh," (Ph.D. Dissertation, University of Utah, 1997), 263

51 Engin D. Akarlı, "The Ruler and Law Making in the Ottoman Empire," in *Law and Empire Ideas, Practices, Actors,* eds. Jeroen Duindam, Jill Diana Harries, Caroline Humfress and Hurvitz Nimrod (Leiden: Brill, 2013), 96

52 But this does not mean there was no educational mobilization in the Ottoman Empire. Although their aim was not to create an ideal villager, the state schools, teacher training schools, missionary schools, and tribal schools opened in many parts of the Empire were an indicator of the importance given to education. Also in the Hamidian period, education was seen as a tool for establishing public morality, and a morale campaign was launched through education. See Benjamin Fortna, *Imperial Classroom: Islam, the State and Education in the Late Ottoman Empire* (Oxford: Oxford University Press, 2002), 203-205

which the people were introduced to the state again and again and confronted the state were more important. Moreover, with the penal codes, the state wanted to re-arrange the changing relations between the center and periphery and reach a standard that could be applied to every corner of the empire. The variations and circumstances in the adjudicatory procedures in different regions were an obstacle in this regard.

While the state elites of the Ottoman Empire tried to strengthen the central state through various reform initiatives on the one side, everyday life stories developed related to the applications of the state's desires in the encounters between the state and its subjects. The state was telling its subject that they were officially equal without any religious distinction and were to be judged in the new courts it established. With the new legal system, the state apparatus is directly involved in the relationship between the victim and offender by taking the punishment into its hands. However, the whole process of judicial reforms also enabled the empowerment of ordinary subjects in front of the state due to the laws that secured their rights.[53] Moreover, the state was also on the stage with new criminal definitions and penalties, and people were there with the stories of enabling justice on their own or those who seek justice in courts.

The court system throughout the Ottoman Empire can be taken as an alternative site where the state and people directly met. It is also likely that local courts did not always provide suitable grounds as a site to appeal to Istanbul, but they were there as a mediator to convey the voices and troubles of local people. Local courts provided recourse for local people against those who abused livelihood and privileges.[54]

Zouhair Ghazzal's voluminous book on Ottoman legal system questions the textuality of the court records and criticizes the historiography based on sijils.[55] According to him, the sharia court records are evaluated in two

53 Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası* (İstanbul: Arı Sanat Yayınları 2017), 268

54 Karen Barkey, *Bandits and Bureaucrats: The Ottoman Route to State Centralisation* (Ithaca and London: Cornell University Press, 1994), 103

55 Zouhair Ghazzal, *The Grammars of Adjudication: The Economics of Judicial Decision Making in Fin-de-Siècle Ottoman Beirut and Damascus* (Beyrouth: IFPO, 2007)

extremes: the first is that since the sijils are in the summary form, they can only have limited use, and the second is that for some researchers, they are an invaluable source for social history. However, Ghazzal suggests a third way that pays attention to the court documents' textuality and discursive function. Ghazzal evaluates the sharia records as performance and claims that there is no external reality other than the language constructed in these court texts.[56] Ghazzal also says that although they have a lot in common, sultanic legislation offers a different world from sharia law.[57] But studies in recent years make us rethink the relationship between these edicts and sharia as they are applied in court.

Dror Zevi suggests the concept of a compatible system instead of a dual system for the co-existence of sultanic jurisdiction and sharia law.[58] He points out that the law was developed within the framework of Islamic borders. Ze'vi regards *kanun* and sharia as parts of an integrated system. If we accept these two elements (law and sharia) as closely related, he says, instead of seeing the differences between them as competing legal concepts, we will see them as laws that have evolved from the same legal and social field. I conceptualize Zevi's seminal perspective as a justice league in this study. The state was trying to provide justice through the double vision of the sharia and the penal code. In addition, he argues that what is fundamentally influential in lawmaking reflects the period's cultural, economic, political, and social principles.

However, Ze'vi's assessment of the nineteenth century is different. He says we cannot see the previous linear development between law and sharia in the 1858 penal code. He does not propose the concept of a compatible system, which he referred to for the pre-nineteenth-century code of laws, here. According to him, sharia and law were rival systems in the nineteenth century.[59] I find Ze'vi's assessment of the nineteenth century hasty. As we see the operation of the *nizamiye* courts, it is possible to say that these two systems are not rivals but compatible and complementary to each other,

56 Ibid., 328-329

57 Ibid., 610-611

58 Dror Ze'vi, "Changes in Legal-Sexual Discourses: Sex Crimes in the Ottoman Empire," *Continuity and Change* 16, No.2 (2001)

59 Ibid.

especially in the third quarter of the nineteenth century. This does not mean that there were no disagreements between the two courts. And, of course, the last word in the punishment to be given always belonged to the sultan.

Studies carried out in recent years have carried discussions on the Ottoman legal tradition beyond the paradigms of westernization, secularization, and modernization. Omri Paz's Ph.D. dissertation entitled "Crime, Criminals, and the Ottoman State: Anatolia between the late 1830s and the late 1860s" examines the shifts in Ottoman criminal procedures in the Anatolian provinces before the creation of the new *nizamiye* court system, the modern police, and a reformed prison system.[60] Paz claims that the new central government laid the foundation of a "nanny state," which was a socially responsible, caring state that was thinking of protecting weaker groups in society. Moreover, according to Paz, criminal procedures, which changed from dispute resolution to punitive measures, deeply affected the social order and community life. Paz also claims that the legal reforms can no longer be explained with arguments like the transition from traditional, religious, or eastern to modern, secular, and western. Moreover, the fact that sharia and the new French-based laws existed side by side does not necessarily suggest a dual legal system. According to him, reforms can just be explained with a transition from a reactive system to an active one.

Avi Rubin's work on the *nizamiye* courts put all the scattered knowledge of the new judicial system into a broad, systematic, and inspiring perspective.[61] In fact, his work on *nizamiye* courts is one of the most important studies that came to mind.[62] Rubin's well-organized and well-researched study provides an eagle-eye exploration of the court system and sheds light on the idea of legal transformation and the establishment and

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

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

62 For the first preliminary work written on the *nizamiye* courts, see also Sedat Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu: Nizamiye Mahkemelerinin Kuruluşu ve İşleyişi 1840-1876* (Eskişehir: T.C. Anadolu Üniversitesi Yayınları, 2004)

operation of the nizamiye courts.[63] One of the main emphases in this study, which I also strongly agree with, is the need to move beyond the secular vs. sharia courts dichotomy. According to him, sharia and *nizamiye* courts complement each other. Rubin stresses the uniqueness of Ottoman modernity and points out the selectivity of legal borrowing, which makes comparing French and Ottoman laws meaningless. The new codes were of hybrid structure, combining French legal texts and Islamic law.

Although some of the duties of sharia courts decreased over time, it would be a hasty definition to read this process as secularization because the demands of both the state and the people regarding the sharia courts did not end until the last days of the empire.[64] In addition, when we reduce the developments and changes in the judicial system to the paradigm of secularization or modernization, a narrative spiral emerges where the state was active, the public was passive and waiting for the orders of the state; where Europe was active, and the Ottoman Empire was passive and waiting for the developments to come from Europe. However, the process was more complicated and layered than that. Liberating the concepts such as citizenship, jurisdiction, justice, the state, equality before the law, the individual, human rights, public space, private space, etc., from the pressure of European thought and history and questioning the structure of global historical time that operates as "first in Europe, then elsewhere" would be eye-opening for Ottoman legal studies.[65] From this point of view Ottoman Empire should not be analyzed as the product of modernity but as embodying modernity in itself. As I mentioned above, in the years of judicial reform in

63 For the operation of *nizamiye* courts also see Ebru Aykut-Türker, "Alternative Claims on Justice and Law: Rural Arson and Poison Murder in the 19th Century Ottoman Empire," (Ph.D. Dissertation, Boğaziçi University, 2011)

64 From the beginning, the Ottoman judicial reform process also included reorganizing the sharia court. This, in turn, affected the hierarchy of the ulama and the daily activities of the sharia courts. See, Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies: State, Province and the West. Vol. 1*, eds. Colin Imber and Keiko Kiyotaki (London and New York: I. B. Tauris, 2005), 43

65 Dipesh Chakrabarty, *Provincializing Europe: A Postcolonial Thought and Historical Difference (*Princeton: Princeton University Press, 2000)

the Ottoman Empire, reforms were made in many countries to adapt to the changing world order. The Ottoman Empire was articulated to this global environment.

Moreover, murder cases falling into a gray area will show that the state benefited from both trial forms. But in the end, the sovereign had the last word. Sovereign was the one that decided on exception, and he was both inside and outside the juridical order.[66] In this respect, there were cases where he acted like a *muslihun* and gave the will to ask for pardon from the heirs who demanded retaliation, changed the death penalty to hard labor, reduced the prison sentence, and gave the decision of (*siyaseten)* capital punishment for the well being of society.

The establishment of the Ministry of Justice (*Adliye Nezareti*) in the second half of the nineteenth century was a part of the administrative standardization initiatives of the state. Fatmagül Demirel's book on the establishment and operation of the Ministry of Justice provides an essential contribution to Ottoman legal history.[67] Demirel analyzes the structure, function, and social role of the judicial organization of the Ministry of Justice. Demirel closely examines the transformation of the judicial system until the recent years of the Empire and looks at the intermediary institutions that contributed to this transformation. Demirel defines the establishment of the Ministry of Justice and the reduced powers of sharia courts as a process leading to a single legal system. According to Demirel, the Ministry of Justice gave the Ottoman legal organization a Western institutional identity.

The two sides of the coin related to the impact of reforms in practice did not always depict the same picture. So, it is necessary to understand to what extent reform and reality overlap. The relationship between the state and society was not pyramid-like, where the state stayed at the top. As Joel Migdal points out, this relationship was more like a web of mélange where the state

66 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life (*Stanford: Stanford University Press, 1998), 15-16

67 Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri (1876-1914)* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2007)

and the society directly interact.[68] The state's desire to affect numerous aspects of life to create centralized policies and a well-integrated community put it in direct relation with society. In this process, they did not stay as separate units, one waiting for the other to change or transform it. Instead, in this web of mélange, the transformation occurred on both sides.

The Ottoman government aimed to accomplish administrative state standardization in the reform years. However, this was not an easy task for the ordinary people and the authorities in the provinces. To understand these two worlds and see how the reforms have been implemented, we need to integrate "top-down and bottom-up approaches to historical inquiry to juxtapose reform and reality."[69] Although the reforms carried the intellectual traces of the nineteenth century, they eventually operated as sui generis reforms. Schull emphasizes that although Ottoman state elites adopted some modern practices, the empire's new judicial order, penal codes, and even prisons were unique to the Ottoman empire. In this context, he analyzes the whole process on the axis of continuity. The concepts of continuity and discontinuity are generally discussed for the transition from the Ottoman Empire to the Republic of Turkey. However, Schull sees a similar continuity in the Tanzimat, Hamidian, and Young Turk periods. Treating prisons as a social institution, Schull goes beyond the prison in this context and reveals the link between criminal codes, incarceration, and the courts.[70]

Apart from the studies in the legal area that focus on the court records concerning the state and from the point of it, since the 2000s, the studies based on the sociolegal reading of the court records and especially the interrogations are on the rise, especially to look at the world of ordinary people. These studies also bridge the gap between legal theory and practice. Lesli Pierce's *Morality Tales* (2003), Boğaç Ergene's *Local Court, Provincial Society and Justice* (2003), Iris Agmon's *Family and Court* (2006), Başak Tuğ's *Politics of Honor* (2017), Avi Rubin's *Ottoman Rule of Law and Yıldız Case* (2018), Omri Paz's *Who Killed Panayot* (2021) could be named in this regard.

68 Joel Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another* (Cambridge: Cambridge University Press, 2004)

69 Kent Schull, *Prisons in the Late Ottoman Empire*, 4

70 Ibid.

In addition to the various case studies they deal with, these studies examine the sources and reveal the functioning of the court's institutional structure.

Leslie Peirce's *Morality Tales (Ahlak Oyunları)* is an inspiring resource for sociolegal and provincial family history studies.[71] In this book, Peirce makes a significant methodological contribution to using *sijils.* She skillfully brings together facts and theory, anecdotes and analysis that are difficult for many historical studies, especially those on the family.[72] The state's appointment of a new kadi to Aintab to include Aintab in its legal and administrative system and the increasing workload of the court after the appointed new kadi shows how the state took the correct step to monitor the society. On the other hand, the favor of people from all walks of life to the court, regardless of whether they were men or women, reveals how central it was in society to seek justice and to express this quest before the state.

Başak Tuğ's study *Politics of Honor* greatly contributes to the Ottoman institutional and socio-legal history field by showing the interactions between central and provincial administrations.[73] By melting different archive sources in one pot, Tuğ shows how ordinary people contributed to the function of the judicial system. Tuğ brings various archival sources together like Ottoman imperial council registers for Anatolia (*Anadolu Ahkam Defterleri*), sharia court records of Ankara and Bursa, the fortress registers (*Kal'abend Defterleri*), fatwa collections, and petitions.

Another significant contribution of this study is the center's attempts to regulate moral and sexual order in eighteenth-century Anatolia. It is possible to observe the concrete response of the state's promise of justice to its subjects in the attempts to provide moral and sexual order. Moreover, the ways sexual crimes were handled discursively and the state and subject interactions in this regard also shed light on family studies in the early modern Ottoman period. As we will see in this study, when expressing sexual crimes or offenses, the

71 Leslie Peierce, *Ahlak Oyunları*

72 This conceptualization was used by Stone for family historiography. See Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (New York: Harper and Row Publishers, 1977), 16-17

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

language used by official records and the language preferred by the public showed some differences.

Boğaç Ergene's *Local Court, Provincial Society and Justice in the Ottoman Empire: 1652-1744* provides an early example of the idea of justice in Kastamonu and Çankırı provinces.[74] By examining the practice of law in Ottoman Anatolia in the eighteenth century, Ergene reveals the relationship between the courts and the local people and aims to understand the place of Islamic courts in Ottoman provincial life. Contrary to the common belief that since the courts represent the holy law and the sultan's authority, local communities accept their authority, Ergene demonstrates that the relationship between these two parties was not that unilateral.

Omri Paz's very recent study *Who Killed Panayot? Reforming Ottoman Legal Culture in the 19th Century* tells the story of an opium robbery that turned out to be a diplomatic crisis between Britain and the Ottoman Empire.[75] This study includes a detailed analysis of the police investigation and court trial regarding the theft incident. Interrogation protocols, which the reformed judicial system started to produce, and the responsive British paperwork constitute the primary sources of this study. Through microhistory and sociolegal analysis, this study draws a vivid picture of how the law existed in people's lives and how it affected their lives. It also shows the struggles between different actors. To put it in his own words, Paz uses "inaccuracies, lies, deviations, and reporting methods to uncover the politics behind the scenes of two governments"[76] The culture of lying was embraced by both governments to get the best possible result from the trial. The intense correspondence made for this case partially obscured the truth rather than revealing it.

In addition to studies that bring new archival sources to light, looking at already known sources with new lenses, or, in Robert Darnton's words, "putting new questions into the old material, " develops new perspectives on

74 Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: 1652-1744* (Leiden and Boston: Brill, 2003)

75 Omri Paz, *Who Killed Panayot?*

76 Ibid., 7

Ottoman socio-legal studies, which can always surprise the reader.[77] Yıldız trial was one of the most critical events of the Hamidian Era, and İsmail Hakkı Uzunçarşılı (1888-1977) transcribed almost all judicial correspondence and other archival documents regarding this case. Avi Rubin puts new questions into the old material. He creates a conceptual framework based on the micro-historical perspective that enriches the knowledge of this famous case and sociolegal history.[78] This case and Rubin's perspective are very thought-provoking to see how the central state adopted and implemented the rule of law in Ottoman legal culture. Of course, this does not mean that the rule of law was not abused by the state "as deemed necessary." Reading this famous case from Rubin's perspective offers vivid details, especially for those familiar with local practices. The case differed from ordinary cases in many respects. The most noticeable difference was the performative aspects in this case. Mithat Pasha's legal knowledge and self-defense and his trial of benefiting from minute details in the penal code, the team conducting the trial, and the follow-up of the case by the press made this case a show trial.

§ 1.3. Family *Matters*

Family history in the Ottoman Empire gained a new dimension in recent years, especially with the use of court records. But studies on late Ottoman families still need to proliferate. Two basic approaches come to the fore in studies on the Ottoman family: analysis of family and household using quantitative methods and studies examining family and women's place in Islamic law. As I mentioned above, the sociolegal reading of court records and the "thick description"[79] of these records within the microhistory scope has significantly contributed to family studies in recent years.

One of the most comprehensive studies on family, in general, is the three-volume *Family Encyclopedia* and *Turkish Family in the Process of Socio-*

77 Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History*, (New York: Basic Books, 1999), 4

78 Avi Rubin, *Ottoman Rule of Law*

79 Clifford Geertz, "Thick Description: Toward an Interpretive Theory of Culture," in *The Interpretation of Cultures: Selected Essays*, (New York: Basic Books, 1973)

Cultural Change.[80] In the light of archival documents, İlber Ortaylı's work *Osmanlı Toplumunda Aile* also provides a very general framework for the development of the Ottoman family. Starting from the fifteenth century, Ortaylı evaluates the family's physical environment and daily life and the practices on weddings, fertility, marriage, divorce, and education.[81]

Alan Duben and Cem Behar's study on Istanbul households is a pioneer in late Ottoman family studies. Duben and Behar mainly drew on the quantitative method and focused on household structure, size, and fertility rates based on demographic data.[82] According to the writers, the demographic structure of Istanbul between 1840-1920 was both a harbinger and a symptom of other changes in social and cultural fields.[83] The great political and cultural transformation experienced between these years was also reflected in the rhythm of the family, and the transformation in ordinary houses was revolutionary.

Ottoman historians studying the provinces have a limitation regarding sources in the archives. This limitation of sources related to the countryside makes the court records and especially the interrogations of vital importance. Several distinguished bodies of works focus on the Ottoman family, primarily through both sharia and nizamiye court records. Sharia court records are vital in family historiography, as Islamic family law and its application in the Ottoman Empire include outstanding details about marriage, divorce, the position, duties, obligations, and rights of family members. The engagements with court records, enhanced with sophisticated theoretical analysis of legal

80 *Türk Aile Ansiklopedisi*, C.I, II, III, (Ankara: T.C. Başbakanlık Aile Araştırma Kurumu Yayınları, 1991); Ezel Elverdi and Hakkı Dursun Yıldız eds., *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi,* C.I, II, III *(*Ankara: T.C. Başbakanlık Aile Araştırma Kurumu, 1992)

81 İlber Ortaylı, *Osmanlı Toplumunda Aile* (İstanbul: Kronik Kitap. 2020). Also see Abdullah Bay, *Klasik Osmanlı Ailesi ve Değişim (1829-1923)* (İstanbul: Kriter Yayınları, 2018)

82 Alan Duben and Cem Behar, *İstanbul Haneleri: Evlilik Aile ve Doğurganlık 1880 – 1940* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2014). Also see, Alan Duben *Kent, Aile, Tarih* (İstanbul: İletişim Yayınları); "Turkish Families and Households in Historical Perspective," *Journal of Family History* 10. No.1 (1985)

83 Ibid, 251

history and discursive analysis, put Ottoman family-oriented studies on fruitful ground.

Judith Tucker's gender and Islamic law survey provide essential insights about the family in seventeenth- and eighteenth-century Palestine and Syria.[84] Tucker delves into an Islamic law discourse that directly talks about social rights and roles of men, women, and children developed by the muftis and qadis of the period. Gender roles are clearly defined in Islamic law. The position of men and women in the law is strictly defined, especially regarding family relations and duties (as husband and wife or parents).

To maintain the status quo, the patriarchy, and the family institution, where women obeyed their male relatives, muftis, and kadis of the time, established an "old boys' network" in which they benefited from each other's views. They did not find the state's views on criminal matters binding and even ignored them. Instead, they developed interpretations using the texts of different schools of fiqh to solve the problem most effectively.[85] Islamic law was a lived institution. In this context, the judges in seventeenth- and eighteenth-century Syria and Palestine could modify gendered rights on the axis of their interpretations when they thought it would serve the interests of justice and social harmony.[86] In other words, the law defining the duties and responsibilities of the family and family members was not independent of the wider society. In this respect, Tucker argues, the modern distinction between public/private spheres was inappropriate in this context. The most basic question that comes to mind here is how the interpretive powers of the jurists would be from the moment the family law was codified. As Tucker points out, codifying the Islamic family law would make the rights and duties defined here inevitable and unalterable and limit the powers of muftis and kadis.

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84 Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley and Los Angeles: University of California Press, 1998)
Also see, *Women, Family and Gender in Islamic Law* (New York: Cambridge University Press, 2008); *Women in nineteenth-century Egypt* (Cambridge: Cambridge University Press, 2002)

85 Judith Tucker, *In the House of the Law*, 183-184

86 Ibid., 186

The duties and responsibilities assigned to men and women in the family were also central to power relations. They determined how the property would be accumulated and distributed within the family.[87] Therefore, examining property relations for family historiography provides striking details about familial ties. The work of Beshara Doumani is a vital resource in this field. Doumani historicizes family through property devolution practices (1660–1860). These practices were enacted through family waqf endowments and lawsuits between the kin.[88] According to Doumani, family waqf was "a family charter that governs not only property relations between kin but also the moral-disciplinary order of kinship."[89] In his analysis, Doumani uses both quantitative analyses of lawsuits and qualitative case studies of ordinary people. Although it was thought that the property devolutions in the two neighboring cities under Ottoman rule (Nablus and Tripoli) would be similar, there were systematic and striking differences between the two cities regarding the family, the establishment and continuity of the family, and especially the position of daughters in the family. According to Doumani, the basis of this difference lies in differences in religious institutions and regional economic disparities.

In her well-crafted study, focusing on household, inheritance, and marriage Margaret L. Meriwether analyzes the formation of family, family, and law and the gender roles in the notable families in Ottoman Aleppo in the early modern period.[90] It answers questions such as which family members lived in the same household, who married whom, and how the inheritance distribution was. One of Meriwehther's main points is that the family is not a timeless, static, and unchanging institution. It is misleading to generalize as an Islamic or Middle Eastern family. According to Meriwether, although the generalization of the extended and patriarchal family living in

87 Ibid., 183

88 Beshara Doumani, *Family Life in the Ottoman Mediterranean: A Social History* (Cambridge: Cambridge University Press, 2017); Also see ed. *Family History in the Middle East: Household, Property and Gender* (Albany: State University of New York Press, 2003)

89 Beshara Doumani, *Family Life*, xv

90 Margaret Meriwether, *The Kin Who Counts: Family and Society in Ottoman Aleppo, 1770-1840* (Austin: The University of Texas Press 1999)

the same house regarding the Middle Eastern family was a social ideal, it did not reflect the reality in the Aleppo example. In addition, the central figure holding the family together in the family structure here was the mother rather than the father. So, as Doumani showed in the example of Nablus and Tripoli, the family was a dynamic institution, and family structures varied over time and region in relation to material, social or political changes.

Iris Agmon examines the family as both a social and cultural construct. She analyzes the family's relationship with the judicial order based on the sharia court records in Jaffa and Haifa.[91] Agmon argues that continuity and change were important in the family's construction. Rather than presenting a descriptive portrait of the family, this study sheds light on how the family was recorded in court. Agmon also criticizes the perception that the sharia court and the Muslim family were monolithic, patriarchal, and immutable, emphasizing the dynamic characteristics of the sharia court and that it quickly adapted to changing times. However, in her study, Agmon also claims that as a result of the judicial developments in general, the sharia court turned into a family court status by default.[92] But as we will see in this study, there has been no reduction in the duties of sharia courts regarding criminal law.[93] In this respect, claiming that sharia courts turn into family courts by default is misleading.

Ebru Aykut-Türker's Ph.D. dissertation shows the agency of Ottoman women in the family in the nineteenth century.[94] Through the women who were the perpetrators of crimes like arson and poisoning, she demonstrates that female criminality provides perfect examples of women's agency. Aykut-Türker makes an invaluable contribution to the studies related to the application of legal changes and rural crime in the nineteenth-century Ottoman Empire. She focuses on the legal regulations and institutions on the

91 Iris Agmoni *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (New York: Syracuse University Press, 2006)

92 Ibid., 6

93 Also see Ebru Aykut, "Judicial Reforms, Sharia Law, and the Death Penalty in the Late Ottoman Empire," *Journal of the Ottoman and Turkish Studies Association* 4, No. 1, Crime, Punishment, and Social Control in the Late Ottoman Empire (2017)

94 Ebru Aykut-Türker, "Alternative Claims"

one hand and illustrates the substantial effects of these regulations at the local level on the population in nineteenth-century Rumelia and Anatolia. In her study, Aykut-Türker claims that besides peasant uprisings, intra-peasant disputes also provide historians the opportunity of recovering the voices of subordinates and show their interactions both with authorities and with other peasants.

The study she carried out on the records of the Istanbul qadi court, Leyla Kayhan-Elbirlik, focuses on the way husbands and wives experienced and negotiated marriage, its formation, and its dissolution in terms of sharia principles and social and moral constructions. She describes characteristics that made up the Ottoman family of Istanbul[95], and she has crucial findings especially related to the women regarding marriage and divorce patterns in the Ottoman family in the late eighteenth and early nineteenth century. Accordingly, women regarded the court as a protective mechanism where they could demand some rights.

Western literature is exceptionally rich in family historiography. These studies are written with quantitative methods or based on legal changes and allow hearing the personal voices of family members due to their qualitative and autobiographical features. Lawrence Stone's *The Family, Sex and Marriage in England 1500-1800* is one of the leading studies in this regard, which also turned out to be an excellent inspiration for this dissertation.[96] In this study, Stone provides a general framework for family historiography and reveals the evolution of the family in England since the sixteenth century in terms of marriage, child-rearing, education, and sexual relations.

In family historiography, the situation and experiences of children remain in the background and can even be ignored. In fact, until the 1960s, there was no significant work written in this field. Philip Aries' *Centuries of Childhood* is considered by many to be the beginning of childhood historiography.[97] Although Aries' work is a primary source, recent studies have questioned

95 Leyla Kayhan-Elbirlik, "Negotiating Matrimony: Marriage, Divorce, and Property Allocation Practices in Istanbul 1755-1840," (Ph.D. Disssertation, Harvard University, 2013)

96 Lawrence Stone, *The Family,*

97 Philip Aries, *Centuries of Childhood: A Social History of Family Life* (New York: Alfred A. Knopf, 1962)

Aries' approaches in this area. In particular, Aries' claim that medieval society did not have a childhood idea is one of the hotly debated arguments in childhood historiography. It is possible to see the traces of this claim of Aries in Cüneyd Okay's work titled *Osmanlı Çocuk Hayatında Yenileşmeler*. According to Okay, although children have always existed in social life, the child did not have a particular place in Ottoman society until the Tanzimat and was not perceived as a different entity.[98] However, studies in recent years suggest the opposite.

Colin Heywood has been critical of Aries' work and argues that children and childhood are perceived differently in every society and that childhood should be accepted as a social structure.[99] Accordingly, childhood cannot be considered independently of class, gender, and ethnicity. Although children depend on the adults around them, they directly contribute to shaping the world they live in.[100] These points, emphasized by Heywood, also offer a very functional perspective for studies on Ottoman children's history.

Although various studies on the Ottoman family exist, children are the most silent and ignored figures in this area. Since the child and childhood are generally perceived as dependent on an adult individual, they can be easily overlooked or ignored. Nazan Maksudyan's study of *Orphans and Destitute Children* is one of the significant contributions to the scholarship regarding the historical agency of children in the Ottoman Empire.[101] Studies that give agency to children also offer different perspectives on Ottoman social historiography. In his work on the life of children in Ottoman society and their relations with the community, Yahya Araz emphasizes that contrary to what Aries claims for medieval societies, there was a perception of childhood

98 Cüneyd Okay, *Osmanlı Çocuk Hayatında Yenileşmeler (*İstanbul: Kırkambar Yayınları, 1998), 28

99 Colin Heywood, *Childhood in the Nineteenth Century France: Work, Health and Education Among the 'Classes Populaires'* (Cambridge: Cambridge University Press, 2002)

100 Colin Heywood, *A History of Childhood* (Cambridge: Polity Press, 2018)

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

in the Ottoman Empire before the nineteenth century.[102] According to Araz, there is a continuity in the concepts related to children and childhood (miscarriage, birth control, adoption, slavery, child marriages, etc.) in Ottoman society until the nineteenth-century reforms and the Ottomans discussed childhood and the transition from childhood to adulthood in detail, legally and socially before the nineteenth century.

One of the newest and most comprehensive studies on children and childhood in the Ottoman Empire is *Children and Childhood in the Ottoman Empire*, edited by Gülay Yılmaz and Fruma Zachs. This book brings together many innovative studies on Ottoman studies. It makes a novel contribution to the history of children and childhood in the Ottoman Empire with a long-term perspective. In the period from the fifteenth to the early twentieth centuries, the concept of childhood, family interrelationships, children outside the family environment, children's bodies, and education are among the main themes of this volume.[103] This volume demonstrates that rather than being passive recipients, the children were active agents and contributed to society's shaping.

1.3.1. Ottoman Provincial Families

The subjects of this study are those who were related to each other by blood or marriage. This is also my definition of the family: a basic unit in a society consisting of people related to each other by blood or kinship ties. While depicting the picture of the Ottoman provincial families, I will use four points also suggested by Lawrence Stone and which are interrelated.[104] Biologic and sociological: the relationship between family and society; political: the balance and distribution of power in the family, the struggle for authority between father and children, husband and wife, grandfather, and the rest of the family;

102 Yahya Araz, *16. Yüzyıldan 19. Yüzyıl Başlarına Osmanlı Toplumunda Çocuk Olmak* (İstanbul: Kitap Yayınevi, 2017)

103 Gülay Yılmaz and Fruma Zachs eds., *Children and Childhood in the Ottoman Empire: From the 15th to the 20th Century (*Edinburg: Edinburgh University Press, 2021), 14

104 Lawrence Stone, *The Family*, 18

and economical: marital economy and property transfer by marriage, inheritance distribution.

In this study, the data I obtained about the family and the household and the general framework I drew in light of these data were shaped according to the individual statements in the court. Therefore, the answers of this study to general questions such as how many people were in the household, what size it was, or the economic situation are limited. However, it is possible to find various examples of how the family members thought about and treated each other and how they saw themselves regarding different social interactions. The picture related to the Ottoman family in the provinces also sheds light on the cultural and social change.

The family in the Ottoman provinces served certain ends like authoritarian and economic, social, and sexual. The education level of the family was not very high. Male family members could receive madrasah education, but it was uncommon. Many declared that they were illiterate. In this study, there were murderers and victims from all economic classes. There were families living in one-room houses with privacy walls destroyed, as well as wealthy and educated families living in mansions. In general, the physical setting of the family was districts and villages.

Most of the documents in the archives, especially the court registers, reflect various cases of anomaly. The revolts, felonies, and petty crimes all reflect the moments of disruption in the system. Therefore, the trial of catching glimpses of the everyday life, moral, social, and intellectual world of people via the court registers may also pose interpretive problems. Seeing the individuals in daily life through the cases of anomaly unavoidably depicts a picture of the extraordinary. Therefore, the outcomes I received through the archival documents will be a reflection rather than an absolute representative of age, ethnic, or gender characterizations related to the Ottoman provincial families. So, the murder cases in this study do not typify nineteenth-century Ottoman families, but as Darnton states, "they provide ways of entering into it."[105] In other words, I use murder as a probe to investigate the family and the reality of family in everyday life.

105 Robert Darnton, *The Great Cat Massacre*, 5

The litigants and defendants did not just come to court, confess their crimes, and leave. The strategies developed by these people to avoid criminal charges or punishment offer the reader unexpected details about their lives. When they appeared before the state, the changing judicial order also became binding for family relations in these moments. For example, something not considered a crime a few years ago could now be classified as a crime. Therefore, to understand what people were facing and to measure their reactions to the changing judicial order, it is necessary to understand the attitude of the state sitting on the other side of the table. Some murderers were sure they would not be punished for the murders they committed or spend a few months in prison. However, they could receive the death penalty for the murder they had committed with the thought of serving a few months in jail. Relations within the family fell apart when their statements, which they had adjusted for a few months' imprisonment, yielded no results in court. When things changed in court, they had to give up on others, which damaged family relationships or exposed other damaged relationships in the family.

The reasons behind the family murders were sometimes simple, might seem ordinary, and might not attract the historian's attention. However, I believe that we should take every chance to look at these cases since they are the only means through which we can reach the mindset of ordinary people. Behind these murders were the stories of people, most of whom made a living from farming and whose ordinary lives turned into evil and annihilation.

These people were also challenging the conventional wisdom that the afterlife was more important than this world, that family was sacred and the backbone of society, or that sexual intercourse was only for producing the nation's future generation or ummah rather than for pleasure. In court records, provincial people expressed their most basic desires, their most superficial goals, what angered them, and why they held grudges. It was evident in these statements that people could put their passions and interests above everything else. However, when it came to escaping a possible criminal charge, it is possible to talk about the defendants' submission to fate as common conventional wisdom. It was also an escape strategy from questions. For example, arguments such as "God knows, I don't know" and "God saw it say whatever you want" were widely used.

As the state continued recognizing the family and the citizen, it made arrangements to put the family on the desired moral level. In addition, the intellectual world of the period brought the family to the forefront as the basic building block of the state and society.[106] But here, both sides cared about the family as the institution, not the individuals that made up the family. As I tried to express in the wordplay I used in the chapter title, the family *mattered* for the state and contained many *matters* in itself. For this reason, it is essential to read together the Ottoman legal system and the developments in this realm in the second half of the nineteenth century together with the family.

§ 1.4. Sources

This study is based on the primary sources of the Presidency of State Archives-Ottoman Archive (*Devlet Arşivleri Başkanlığı Osmanlı Arşivi*) (BOA) in İstanbul. Other than BOA documents, several qadi registers, some statistical records that were compiled during the reign of Abdülhamid and that can be found in digital form in the Library of Congress catalog, personal memoirs, Ottoman penal and legal codes, Ottoman periodicals, and the nineteenth century Ottoman Literature were also used. Bucknill and Utidjian's translation of the 1858 penal code is quite an important study in that it shows all the amendments in the penal code according to the years and compares them with the 1810 French penal code.[107]

I compiled the court records, which constitute the primary source of the thesis, from the catalogs of İradeler Meclis-i Vala (İ..MVL.), İradeler Divan-ı

106 See the period magazines *Terakki-i Muhadderât* (1869), *Ayine* (1875), *Aile* (1880), *Hanımlara Mahsus Gazete* (1895). For the thoughts of the women writers of the period on family, see Fatma Aliye, *Levayih-i Hayat* (İstanbul: Turkuvaz Kitap, 2019); Emine Semiye, *Terbiye-i Etfale Ait Üç Hikâye* (İstanbul: Turkuvaz Kitap, 2020), *Mükafat-ı İlahiye* (İstanbul: Turkuvaz Kitap, 2020); Fatih Altuğ ed., *İzdivaçlar İttifaklar ve İhtilaflar* (İstanbul: Turkuvaz Kitap, 2021)

107 John Bucknill and Haig Utidjian, *The Imperial Ottoman Penal Code: A Translation from the Turkish Text with Latest Additions and Amendments together with Annotations and Explanatory Commentaries (*London: Oxford University Press, 1913)

Ahkam-ı Adliye (İ..DA..) and İradeler Adliye ve Mezahip Nezareti (İ..AZN.). Moreover, throughout this study, I also used documents from various files such as Bab-ı Âlî Evrak Odası (BEO.), Meclis-i Vala (MVL) and Dahiliye Mektubi Kalemi (DH.MKT.), Dahiliye Sicil-i Nüfus Tahrirat Kalemi (DH.SN..THR.), Dahiliye Hukuk Müşavirliği (DH.HMŞ.), Dahiliye İdare (DH.İD..), Dahiliye Muhaberat ve Tensikat Müdüriyeti (DH.EUM.MTK.), Dahiliye Hapishaneler Müdüriyeti (DH.MB..HPS.), Hariciye Nezareti İstişare Odası (HR.HMŞ.İŞO.), Hariciye Nezareti Siyasi (HR.SYS.), Hariciye Nezareti Umur-ı Hukukiye-i Muhtalita Müdiriyeti (HR.UHM.), Hariciye Nezareti Mektub-i Kalemi (HR.MKT.), Hariciye Tercüme Odası (HR.TO..), İrade Dahiliye (İ..DH..), İrade Girit (İ..MTZ.GR..), Sadaret Meclis-i Vala Evrakı (A.}MKT.MVL.), Sadaret Bulgaristan (A.}MTZ.(04)), Sadaret Umum Vilayat Evrakı (A.}MKT.UM..), Sadaret Mühimme Kalemi Evrakı (A.}MKT.MHM.), Şura-yı Devlet (ŞD.), Taşra Evrakı Bosna Müfettişliği Evrakı (TŞRBNM.), Yıldız Adliye ve Mezahip Nezareti Maruzatı (Y..PRK.AZN.), Yıldız Tahrirat-ı Ecnebiyye ve Mabeyn Mütercimliği (Y..PRK.TKM.).

There are 218 murder cases in total that I used in this study. These 218 cases are not specially or randomly selected, and the number 218 has no special meaning. As I mentioned before, within the scope of this study, I used the murder files where the whole legal process can be followed, starting from the first interrogation to the sultan's final decree. In this regard, I noted down all the cases I could find from the *İradeler* (İ..MVL., İ..DA.., İ..AZN.) catalog that I mentioned above. In this context, instead of choosing random cases from these catalogs, I read all the catalog summaries from 1850 to 1908. In these catalogs, I detected the murders within the family based on the appellate court records and the sultan's will. In some cases, I determined the murderers and victims from interrogation protocols. As a result of this detailed scan, I identified the 218 murders committed within the family. I analyzed the murder cases I detected with the "five w's and one h" method. I also noted the criminals' punishments according to the sharia law and the penal code. The qualitative and quantitative analysis of these cases shaped the structure and course of this dissertation. So, at the beginning of my research, I did not set out to detect parricide or honor killings. On the contrary, this journey about the family in the archive brought me to these categories.

The sharia status related to these murder cases deserves more explanation regarding this study. In the early years of the promulgation of the penal codes, sharia trials had a central focus in the decisions of the supreme council. In this context, it was possible to see a change in the decrees of the Supreme Council of Judicial Ordinances (SCJO) over the years. Until the provincial regulation of 1864 came into force and the *nizamiye* courts began to operate, the main focus in the (SCJO) decisions was the sharia trial. These documents included a summary of the sharia trial after the information related to the parties of the murder. This summary did not always have information about the reason for the murder or the motives for which it was committed. Especially the decisions written after the establishment of the Council of Judicial Ordinances (CJO) included all the details about the murder in question. Accordingly, the (CJO) documents primarily included when the murder was committed, between whom and who, and then a summary of the proceedings in the regular court. This summary contains details such as the plot that led to the murder, witness statements, and whether the criminal denied the crime. After that, they wrote the summary of the sharia judgment and the sharia punishment, and finally, the reasons for the sentence deemed appropriate according to the penal code.

After the last quarter of the nineteenth century, the format of the files reaching the Council of Judicial Ordinances changed. They did not always send Istanbul all correspondence between the first-instance courts. Only the final record from the highest provincial court and sharia record and sometimes the interrogations reached Istanbul. If there was not any physical destruction in the archival material, these records did not reach Istanbul due to bureaucratic regulations. However, there were also instances of sending all the correspondences between provincial courts to Istanbul. Still, it is hard to determine the criteria in their decisions of sending or not sending. Although the changes in documentation forms, interrogations protocols could not get their share from the regulations. They could not enable a clear format for the questions and answers sections, so arbitrariness existed in different courts and provinces.

Here I should point out that, despite my diligent effort to include intra-familial murder cases in my research as much as possible, there must also be

ones that I missed or were stored in other catalogs. So, this study does not have any claims in terms of covering all the murder cases in the archives. I acknowledge the limitations of such kind of a study. Still, despite these limitations, disputes over a wide range of issues like property, love, or honor that ended with murder illustrate the relationships among family members and the relationship between the individual and the court.

§ 1.5. The Outline of the Study

This study will proceed over seven chapters, including an introduction and conclusion. The sections here were mainly arranged according to the data analysis I obtained from the court records. In this context, I first focused on the Ottoman legal system and the developments in the judicial realm in the nineteenth century. Subsequently, I dealt with the family, which formed the basis of this study, from the establishment phase of it, namely engagement and marriage. After establishing the family union, I first discussed the spouses' relationship with each other in this union. Then I focused on the relationship between children with their parents. In the following chapters, where the wall surrounding the family was broken a little more, I examined the issue of honor and the illegal relations within the family. And finally, I addressed the situation of children who were the quietest subjects of this study.

The first chapter deals with the new court order and the punishments given. This chapter has a detailed narrative related to the function of *nizamiye* courts and their apprehension by ordinary people. In this context, I first examine the operation of the *nizamiye* courts. Then I delve into handling murder cases that fall under the jurisdiction of both *nizamiye* and sharia courts. Regarding the general distribution of punishments such as retaliation, capital punishment, hard labor, and imprisonment, this chapter also examines the forms of punishment widely preferred by the state since the second half of the nineteenth century and provides information on crime statistics.

The second chapter is about setting up a family and maintaining it. This section presents a general framework for the family in the Ottoman provinces

in light of the data I obtained from the archive. But the main focus here is conflicts between family members. This chapter provides data analysis on questions such as who killed whom for what reason, which family member murdered the most, who was the victim of these murders the most, and with what methods these murders were committed. In this chapter, through the court records, I also discuss the incentives and desires of the state regarding marriage, the importance of the family in the eye of the state, and the importance of the marital economy for the continuity of the marriage union and the peaceful life of the family.

In various parts of this work, the violence of husbands or men against women will be presented to the reader. But in this chapter, I will focus on the violence of women against their husbands and the ways that women preferred to escape from marriages that they suffered from. My main aim here is to examine the family dynamics and gender roles, give women agency, and make their voices heard in historiography. The cases in this section will demonstrate that women were also active agents in decisions about their lives and desires.

Chapter three examines the crimes committed against parents (parricide) and other family elders. Although the concept of parricide was included in the French penal code of 1810, it was not included in the 1858 Ottoman penal code. However, although this concept was not included in the early version of the penal code, in the following years, regulations regarding parental murder were introduced to the relevant articles. The parricide cases were a striking illustration of the crisis of authority in the Ottoman family. Abuse, violence, inheritance, and property disputes appear as the leading causes of murders against parents. Parental murders committed for financial reasons were among the most elaborately planned murders I encountered in my archival research. Those who were to commit a murder planned it by considering the possibility of being barred from inheritance and thinking about every detail related to the murder plot.

This chapter contains a detailed review of two parricide cases. The court process of these two murder cases was relatively straightforward, and they revealed vivid details about family relations from the mouths of the family members themselves. These two cases will show that economic interests in

the family were an endless struggle for family members. The first parricide case I will analyze is the murder of Mestan Ağa, the head of the Hızır Baba lodge in Edirne, and his family. This murder was one of the most outrageous murders in this study. The process of interrogations that lasted for months gave the reader the impression of watching a TV series regarding a family tragedy. The other murder case I analyze in detail in this chapter was the murder of Müezzinoğlu Hüseyin from Giresun. Like the murder of Mestan Ağa, this murder, perpetrated by Müezzinoğlu Hüseyin's son, grandson, and son-in-law, was committed to objecting to the inheritance-sharing plans of the family head.

The starting point of the crisis that led to these murders was the second marriage of the fathers. These marriages of fathers were not welcomed by their children due to possible inheritance sharing. Half-blooded family members were the first to be sacrificed in fragile family ties, whether child, mother, or sibling. The danger they posed for the intra-familial relations never ended.

Chapter four aims to go beyond the family walls and examine the issue of honor and the illicit sexual relations among family members. As in the other chapters, in this chapter, I have discussed the crimes committed in the name of honor in light of legal regulations regarding morality and honor. In murders committed to restoring the family's honor, family members exhibited different behaviors to save their honor. However, although the behavior patterns in the murders were diverse, it was possible to see the standard and timeless social honor codes behind these murders. Another dimension revealed by the murders committed in the name of honor was the confessions of indecent acts in court. Sometimes to manipulate the court, because they thought they had nothing left to lose, the defendants or the plaintiffs did not hesitate to tell the details of their sexual relations in their private areas. In this respect, the courtroom was an area where intimate walls were broken for those who testified.

One of the most striking details of this section and the study was illicit sexual relations between family members. These relations came to light due to the murders committed by those in illicit relationships. In other words, these were not recorded cases because anyone suffering from these

relationships applied to the court. In addition, although they were statistically less common than other murder cases, these cases did exist. But they were under the painted veil that surrounded the family. In this chapter, where I attempt to remove this painted veil, the stories of Fatma and Robre, whose detailed analysis I have included, require further reflection on the family structure in the Ottoman provinces and its familiar face.

The last chapter is about children and defining them. In the second half of the nineteenth century, the definition of childhood was a contested area. The age of puberty and marriage, and from what age children involved in crime could be considered criminal, were highly debated topics for the state. In court records, it was possible to see children as both victims and criminals. But in some encounters, predicting where childhood began and ended was pretty challenging.

At a time when the state is closely interested in population policies, one of the subtitles of this section is how both the public and the state handled infanticide and abortion cases. Another fact that this chapter brings to light is the situation and victimization of child husbands. These child husbands, who were married before they reached the age of puberty and about whom we know little, were victims of their wives and the social system that paved the way for their marriage. With their untimely marriages and early departures from this world, these child husbands were the quietest figures of this study.

2

In the Name of Law: Dealing with the Criminal Matters and Punishments

"Under a government of Laws, what is the motto of a good citizen? To obey punctually; to censure freely."

- Jeremy Bentham, *A Fragment of Government*

"Padişahtan korkmak hikmettir. Anadan babadan korkmak hikmettir. Büyüklerden vesairelerden korkmak, sakınmak, utanmak hikmettir. Ve hepsinin başı Allah korkusudur.

- Ahmet Cevdet Paşa, *Ma'ruzat"*

Law works as a force to create a sense of order and legitimacy in diverse social environments. In the Ottoman Empire, like elsewhere, the law had always reflected the political culture and socio-economic atmosphere. "Making sense of Ottoman legal history on its own terms remains a challenge," says Engin D. Akarlı, "partly because modern conceptions of religion in general and Islam in particular as a sectarian force make it difficult to imagine how the imperial nature and the Islamic basis of Ottoman legal

culture could have meshed."[1] For this reason, it is almost always possible to find an exception to the generalizations made or to be made on this issue. Some historians overcome this challenge by using the conceptual dichotomy of secular vs. religious in their analyses and they claim that sharia and law were mutually exclusive.[2] However, as I mentioned in the introductory chapter, many studies conducted in recent years have managed to get the Ottoman legal system out of this dichotomy and have examined the legal system from various aspects.[3]

The legal transformation in the nineteenth century did not come down from the top with the influence of the West. On the contrary, it was a continuation of an accumulation brought by previous centuries. The change in European penal laws in the first half of the nineteenth century was a by-product of the industrial revolution already experienced in parts of Europe. The alleged threat that the unemployed and dangerous working-class individuals posed created a legitimate and necessary ground to make provision for possible social unrest.[4] Ottoman Empire did not have an industrialization experience, so how it developed and applied the new legal system differed from European examples and European paradigms of modernity, so there was no wholesale purchase from Europe. Ottoman bureaucrats did not abrogate Islamic law; they standardized it.[5] In this sense, I evaluate the Ottoman judicial experience and system as idiosyncratic, where things proceeded by a trial-and-error method. In the end, this process brought standardization to the legal system.

To understand the Ottoman judicial experience, this dissertation deals with murder cases tried both in the sharia and the *nizamiye* courts. As we will

1 Engin D. Akarlı, "The Ruler and Law Making" 88

2 Başak Tuğ, "Irz, Namus, Onur, Adalet: 18. Yüzyıl Arzuhal Pratiğinde Irz ve Adalet Sözleşmesi," *Feminist Tahayyül* 3 No.1 (2022): 15

3 See, Leslie Peirce, *Morality Tales*; Başak Tuğ, *Politics of Honor*; Boğaç Ergene, *Local Court, Provincial Society;* Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (New York: State University of New York Press, 1994)

4 Zouhair Ghazzal, *The Textuality of Murder: The Construction of Normative Values in Relation to the Institution of Crime and Punishment in Contemporary Syria* (Institute for Advanced Study School of Social Science Princeton, New Jersey, 2009), 7

5 Ibid., 33

see through murder cases, the Ottoman legal system was not secularized, and sharia law was not disabled. As Khaled Fahmy put it, the idea was to complement sharia institutions and practices, not replace or defeat them.[6]

This chapter will be about the physical environment of the legal process and the penalties given for these domestic murders committed in the countryside. I will briefly deal with the transformation of the legal system and courts. In this regard, I will first analyze the administrative units of this system with a focus on the applications in the provincial courts and the demands of the public. Then I will evaluate the punishments in murder cases committed among the family members between 1850 and 1908.

§ 2.1. Nineteenth-Century Penal Codes

Shortly after the declaration of the Tanzimat edict, a penal code was promulgated in 1840. This penal code was not very comprehensive regarding the crimes and punishments. Still, in its preface, it was clearly stated that all the state's citizens were equal without any exception in terms of sharia and law.[7] This code did not change the traditional forms of punishment and still allowed discretionary corporal punishments and fines. The local qadis still had autonomy in trying and punishing criminals according to their discretionary powers.[8]

1851 New Penal Code (*Kanun-i Cedid*) was prepared to complete the deficiencies of the 1840 penal code. This code had forty-one articles in three

6 Khaled Fahmy, "Justice, Law and Pain in Khedival Egypt," in *Standing Trial: Law and the Person in the Modern Middle East*, ed. Baudouin Dupret (London and New York: I. B. Tauris, 2004), 91-92

7 *"... kaffe-i teba-i Devlet-i Aliyye bila istisna emniyet-i can ve mal ve mahfuziyet-i ırz ve namus, hukuk-u mefruzasına ezser-i nev nail olmuş ve ber-mukteza-yı hürriyet-i şeriyye huzur-I şer ve kanunda ve mevaddı hukukiyede herkesin yeksan-u seyyan olması umur-u tabiiyyeden bulunmuş olmakla..."* Mukaddime, in Ahmet Gökçen, "Tanzimat Dönemi Ceza Kanunları", 127.

8 Kent Schull, "Criminal Codes", 158-159,

sections and a preface but no epilogue.[9] While many of the crimes were included in this code from the 1840 penal code, there were also some additional crime types like crimes against life, honor, and property, such as forgery, abduction of girls, and the making of indecent sexual advances to minors.[10] However, I should stress that these offenses existed before the 1851 penal code so, they did not become a specific crime type but were just re-codified.[11]

The legislators followed two ways in the legislation stages of the 1858 penal code. The first was the codification of practices in Ottoman law, and the other was the adaptation of French law either partially or entirely. Until the second constitutional period, 15 articles were changed, with 19 imperial decrees and some other additions to 25 articles. The general scheme of the code followed that of the French penal code in classifying offenses and in its divisions, but there were many differences in the details.[12] Although they were pragmatic and selective in adapting laws from the French code, nearly one-third of the French law was not included in the new code.

The 1858 penal code was the first to define several penal sanctioning and durations, but it was not a direct translation and adaptation of the 1810 French penal code. According to Tobias Heinzelmann, Ottoman legislation adapted the 1832 revised version of the French penal code. Ottoman Empire was not alone in this regard since the 1832 version also greatly influenced

9 For the full Turkish transcription of all three codes see Ahmet Gökçen, "Tanzimat Dönemi Ceza Kanunları ve Bu Kanunlardaki Ceza Müeyyideleri," (Yüksek Lisans Tezi, Istanbul Üniversitesi, Kamu Hukuku Anabilim Dalı, 1987), 140-158

10 Kent Schull, "Criminal Codes", 159

11 For example, contrary to popular opinion, abducting girls was already a crime, and its punishment varied from castration and bastinado to criminal fine. In the law code of Suleyman II, the ways of abducting were clearly stated. Articles ten, eleven, twelve, and fifteen of the Ottoman Criminal Code of Suleyman the Magnificent specifically indicated the punishments for the abduction of girls. See Uriel Heyd, *Studies,* 97-98

12 Mustafa Şentop, "Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü," *Türkiye Araştırmaları Literatür Dergisi, Türk Hukuk Tarihi* 3. No. 5 (2005): 652-658; John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, xv

other European states rather than the 1810 version.[13] However, the Ottoman penal code did not reference the French code explicitly.

The commission protocol of the 1858 penal code stated three sources for preparing the code. The first one was the Law of Preventing Bribery (*Men-i İrtikâb Kanunnamesi*) promulgated in 1855, previous penal codes of 1840 and 1851, and the additions from the shaykh-al Islam. Without a doubt, the French penal code was also a reference book, but it was not stated in the protocol. Ahmet Cevdet Paşa also did not mention it. His notes reflected the arguments during the preparation of this code one can see a European impact was at play. According to the findings of George Young, 126 articles had borrowings from the French penal code.[14]

The code specifically stated that *kanun* was arranging the *tazir* punishment for which the sharia already gave the authority to the head of the state or those in charge (*ülü'l-emr*), and no harm would come to the rights sharia gave to the individuals. In other words, it was stated that apart from the offenses committed against the government, the state also held the authority to punish crimes committed against a person in line with the sharia and reserving the sharia rights of individuals.[15]

The 1858 penal code had sections dedicated to any crimes committed against physical integrity. The code was subdivided according to crimes committed against the state and crimes committed against individuals. This code anticipated that the state would punish any crime. However, for crimes that violated personal law, it also opened the way of judgment according to

13 Tobias Heinzelmann, "The Ruler's Monologue: The Rhetoric of the Ottoman Penal Code of 1858," *Die Welt des Islams* 54 (2014): 295

14 George Young, Corps de Droit Ottoman, (c. VII, Oxford 1906), 1–54 in Mehmet Gayretli, "1858 Osmanli Ceza Kanununun Kaynağı Üzerindeki Tartişmalar ve Bu Kanuna Ait Bir Taslak Metninin Bir Kismiyla İlgili Değerlendirmeler," (www.e-akademi.org , no.106, 2010), 3

15 *Doğrudan doğruya hükümet aleyhine vuku bulan cerayimin icra-i mücazatı devlete ait olduğu gibi şahıs aleyhinde vuku bulan cerayimin asayiş-i umumiyi ihlal eylemesi ciheti dahi kezalik devlete ait olduğundan tayin ve icrası şer'an emr-i ulülemre ait olan tazirin tayin-i derecatını dahi işbu kanunname mütekeffil ve mutazammın olup ancak her halde şer'an muayyen olan hukuk-u şahsiyeye halel gelmeyecektir.* See, Ahmet Gökçen, "Tanzimat Dönemi Ceza Kanunları," 159

Islamic law. This was openly stated in an imperial decree in 1861 that explains the application of the 1858 penal law.[16] The decree indicated that sharia laws would also be in effect for the crimes committed against individuals because there were two penal aspects of these crimes: *kanuni* (juridical) penalties concerning public law and sharia penalties concerning private law. But this situation was not something that Ottoman society was unfamiliar with. According to Lesli Peirce, the phrase "according to law and sharia" was common in the fifteenth and sixteenth-century law texts. The people knew they lived under two separate jurisdictions, but the two walked side by side.[17]

With the last regulation in 1914, the 1858 penal code remained the penal code of the empire until its end and was entirely abolished in 1926. By then, the Ottoman parliament reissued the code with a modified and expanded

16 "*Şahıslara karşı işlenen cinayetlere terettüp eden cezai hükümlerin iki ciheti olduğunu izaha gerek yoktur: Birincisi, hapis, pranga, kürek ve idam cezaları gibi kanunun belirlediği cezalardır. İkincisi ise, kısas, diyet ve erş (kısmi diyet) gibi şahsa ait olan şer'i cezalardır. Birincisi suçlunun ceza kanunnamesinin ve diğer nizam ve kaidelerin hükümlerine göre sorgulanması ve yargılanması neticesinde, ikincisi ise davacının iddiası üzerine şer'an mürafa'a icra edilerek verilecek şer'i hüküm neticesinde uygulanacaktır.*

Ayrı ayrı mahkemelerde verilen şu iki hükmün yol ve ciheti başka başka olmasıyla, herhangi bir töhmet ve cinayetten dolayı mahkemeye celbolunan şahsın, ilk etapta sorgulaması yapılarak irtikap ettiği fiilin sübut ve tahakkukuna yarayacak her türlü deliller ve senetler meydana konulur. Leh ve aleyhine şahit var ise onlar dahi usulüne uygun olarak yemin ettirildikten sonra dinlenilir. Bu şekilde kanunen gerekli olan soruşturma ve araştırmalar yapılarak kayda ve zapta geçirilir. Sanık şahsın kanunen suçlu olduğu tahakkuk eylediği takdirde cezasına hükm olunmak lazım gelir.

Ancak katl davalarında, maktulün mirasçıları olup da, kısas, diyet ve diğer benzeri şahsi haklar iddiasında bulunurlar ise, onların iddiası üzerine hukuk-u şahsiye davasının şer'i mürafa'aya *havalesiyle, şer'i mahkemeden verilecek şer'i ilam gereğince hareket edilmesi ve şu iki çeşit yargılamanın yekdiğerine karıştırılmaması mühim ve lazımdır.*

Bu konuda şimdiye kadar def'alarca bütün ilgililere gerekli talimat yazılmış iken, yine çoğu yerlerde bu usule riayet olunmayarak ve özellikle katil davalarında kanuni soruşturma yapılmayarak, sadece katil ile maktulün mirasçılarının yapılan şer'i yargılamalarını tazammun eden ilam üzerine bir mazbata yazılıp gönderilmekte ve bu ise mevcut usul ve kaidelere aykırı olduğu cihetle bu tip evrakların çoğu yine mahallerine iade ile türlü zorluklar görülmektedir." 24 January 1861, (Karakoç, Külliyat-ı Kavanin, Dosya No: 10, Metin No: 3584, in Ahmet Akgündüz, *İslam Hukuku ve Osmanlı Tatbikatı Araştırmaları I*, Istanbul: OSAV, 2009), 40-41

17 Leslie Peirce, *Ahlak Oyunları,* 158

form.[18] Thus, this code became the first comprehensive penal code of the empire, and it guaranteed the security of life and property and the propriety in tax collection.[19] The state legally became the guarantor of the personal rights of its citizens without any discrimination. 1858 penal code also eased the way for the establishment of nizamiye courts. Thus, a new understanding of justice, new categories of crime, and an alternative judgment site were created to claim and establish justice.

After the 1858 penal code came into force, the state did not keep the text of the penal code at its own discretion. According to the grand vizier's cover letter, the penal code was printed in 4000 copies and sent to all provincial councils at all levels and other relevant authorities. It was reported that the surplus copies could be sold to those interested in the public.[20] The state's additional printout of the penal code text showed that they thought the new penal code could have an audience other than professionals. As Heinzelmann points out, the Ottoman legislator presented their understanding of order, legal norms, and criminal theory to the knowledge of both those concerned in legal institutions and the reading public.[21]

The Ottoman state made legal arrangements for public order and taxation issues, but the laws governing family relations were not the primary concern of Ottoman reformers.[22] Reform attempts were primarily made for economic and political motives and to enable public order, and family issues mostly were left to traditional Islam and sharia courts. However, family-related cases were tried to be regulated with various regulations until the family decree in 1917 because it was almost impossible for a code of family law to emerge in the Ottoman Empire. It was also not included in the Mecelle, although it was

18 Kent Schull, "Criminal Codes", 163

19 John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, xii

20 Ahmet Akgündüz, "1274/1858 Tarihli Osmanlı Ceza Kanunnamesinin Hukuki Kaynakları, Tatbik Şekli ve Men'-i İrtikâb Kanunnamesi," *Belleten* 51, (1987): 153-192. https://doi.org/10.37879/belleten.1987.153. 1987, 157

21 Tobias Heinzelmann, "The Ruler's Monologue," 294

22 See, Tülay Ercoşkun, "Osmanlı İmparatorluğu'nda 19. Yüzyılda Evlilik ve Nikaha Dair Düzenlemeler," (Doktora Tezi, Ankara Üniversitesi Sosyal Bilimler Enstitüsü, 2010)

a comprehensive compilation of fiqh provisions.[23] The main reason behind this could be the question of which fiqh school would be codified. Jurists could switch between fiqh schools while solving any family issues. A codified family law would significantly limit these transitions and the judges' discretion. Therefore, the codification of family law meant confronting both these schools of fiqh and the family itself. In this respect, it was wise for the Ottoman Empire to make arrangements in every field, not to touch the family law directly, and to go around it with minor legal regulations when necessary. This situation was not unique to the Ottoman Empire. In Muslim countries that promulgate laws on family law, family law was promoted to integrate with Islamic law rather than a separate codified law.

§ 2.2. *Nizamiye* Courts

The codification practices necessitated a new court system that would put the new laws into practice together with the need to look at the cases of foreigners.[24] But, besides this practical need, the state wanted to know more about the society and its citizens, control them, and enable security. With the Provincial law of 1864, a new judicial system was developed to apply it to all provinces in the Ottoman Empire. However, the state's object of using the new judicial system in all regions did not follow a strict path. The centralizing mission of the state in the nineteenth century showed differences in different provinces.

Although the judicial transformation started right after the declaration of the Tanzimat, the year 1864 marked a new beginning for establishing new provinces and a new court order. Strengthening the bureaucracy in the provinces was a leading aim so that the central state would not have to deal with the petty works of the provinces. In this sense, they prepared a *Vilayet Nizamnamesi* and expanded *eyalets* and *sancaks*. Assigning capable governors with broad authority to the central state administration aimed at focusing on more critical state affairs. As a starting point, they united Rusçuk,

23 Merve Tezcanlı, "Re-thinking Mecelle-i Ahkam-i Adliyye: Legal Transformation in the Nineteenth-Century Ottoman Empire," (MA Thesis. Boğaziçi University, 2007), 12

24 Sedat Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu*, 31

Vidin, and Niş and created the Tuna province under the governorship of Mithat Pasha.[25]

According to Cevdet Pasha, they initiated the court reform upon the request of foreign states that demanded the establishment of confiding courts. In this respect, since they decided to form the new courts according to the French example and to keep the legal affairs out of the government's authority in 1868, they established the State Council (*Şura-i Devlet)* and Council of Judicial Ordinances (*Divan-ı Ahkam-ı Adliye).* One-third of the members of both councils were non-Muslim members, and two-thirds the Muslims. Afterward, they established judicial organization with the court of appeal and court of the first instance.[26] Thus, when they reached the end of the 1860s, several penal laws had already been promulgated, and a new court system was established. Thus, the state had new codes and terminologies for its subjects. The extension of the court system was an essential aspect for enabling the people to behave according to the desire of the state leaders rather than the dictates of the local notables. This was a critical step to shift the social control mechanism in favor of the state.[27]

With the establishment of the new courts, the Ottoman state had the chance to monitor and enable security through the double vision of sharia and penal law. However, in applying the new court system, things did not go as they were written on paper. The old habits were hard to give up, and a fundamental change needed some time. The duality created in the legal system became both an opportunity and disadvantage for people to seek justice.[28]

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25 Ahmet Cevdet Paşa, *Ma'ruzat,* 126-127

26 Ibid., 216-217

27 Joel Midgal, *State in Society*, 55

28 At this point I would like to narrate a section from Ahmet Mithat Efendi where he reflects on the application of the new system. He says "*Usul-i cedidede ise davacı kadı dahi olsa huzur-ı mahkemede kadı ile diğerinin hiç farkı olamayarak, gerek avukatlar, gerek müddeiumumiler ve müstantikler vazife-i adliyelerini tamamıyla icra ederler. Bahusus ki muhakemeler aleni olduklarından ve gazeteler dahi tenkidat-ı adliyyelerinde serbest bulunduklarından, hangi memur veya hakim vazifesini hüsn-i ifa etmez ise enzar-ı umumiyye onu derhal görür ve meydana çıkarır koyar*." *Cellat; Esrar-ı Cinayat* (Ankara: Türk Dil Kurumu), 26-27

In the beginning, *nizamiye* courts were established in provinces close to the center. Upon success in the province of Tuna, the new provincial law was applied to all the provinces in the empire by 1867. The new provincial system set with the provincial law did not include Istanbul because it was the empire's center. But applying written law codes took time to be put into practice. Apparently, in terms of punishment, the agenda of the state and the ordinary citizens was not coordinated.

The provincial regulation initiated in Tuna was not just the establishment of new districts or cities. The government went into a new process of reconstruction.[29] They needed new buildings, offices, courts and prisons, new settlements, re-settlements of nomad tribes, and security to strengthen their presence in the provinces. Despite the recent developments, the state struggled to set a place for itself. The state was trying to establish a new judicial order and provincial organization in an environment where it was difficult even to construct new buildings in the provinces. Despite this difficulty, they continued establishing the new towns and districts and operated the *nizamiye* courts.

Although the official date for the establishment of *nizamiye* courts was widely accepted as 1864, the state took a long time to complete the process. After 1864, the state made several regulations about the operation of the new courts. It was in 1879 that the organization of *nizamiye* courts was completed with the law of *Teşkilat-ı Mehakim.* This was also the year for establishing the Ministry of Justice (*Adliye Nezareti).*[30] Thus, when the process finished, *nizamiye* and commercial courts were attached to the Ministry of Justice, sharia courts were attached to the *Meşihat*, community courts were bound to

29 Spreading the new provincial law and judicial order throughout the empire was difficult for the state. Ahmet Cevdet Pasha reports that when they started establishing Kars-ı Zülkadiriye town, the government stayed in a tent even though the locals had approximately six hundred houses and many shops. The government had a few big tents, one serving as a government office; the other two were administrative council and judicature. The ones that received imprisonment were also staying in another tent, and the gendarme remained out. Ahmet Cevdet Paşa*, Ma'ruzat, 199*

30 It was actually founded in 1876 but the related regulations were prepared in 1879. Fatmagül Demirel, *Adliye Nezareti,* 31-32

ecumenical organizations, and the consul courts were attached to the consulates.[31]

Nizamiye courts were formed at three different judicial levels:[32] the court of the first instance (*bidayet mahkemesi*), the court of appeal (*istinaf mahkemesi*), and the court of cassation (*temyiz mahkemesi*). The courts of the first instance were the system's backbone, and they were of three types arranged according to the administrative unit, i.e., the county, provincial district, and provincial centers.[33] The court of appeal operated in provincial centers was *Meclis-i Temyiz-i Hukuk* and *Meclis-i Temyiz-i Cinayet*. They provided the opportunity of requesting a retrial, a cancelation, or a change for a decision issued by the courts of the first instance.[34] The task of the court of cassation was to examine the decisions given by the courts of the first instance and courts of appeal and either reversed the decisions or approved them.[35] As it is clear from this classification, the concept of separation of powers between judicial units was in operation. However, although the division of labor between different judicial units was defined clearly, to what extent they followed the steps in the hierarchical structure is obscure.

When a court record came to the Council of Judicial Ordinances, the *nizamiye* court record and sharia record (*ilam-ı şer'i*) were examined together with the interrogations. According to Ekinci, if there was a sharia record among the records of the *nizamiye* court, it was directly sent to the *fetvahane.* There, *emin-ül fetva* issued his decision behind the same paper. After the verdict of *fetvahane*, the Council of Judicial Ordinances prepared its final record to be sent to the sultan. After the process was completed in the Council of Judicial Ordinances, usually, there were three to five days between the

31 Ibid., 29.

32 But scholars still need to have a joint agreement about the number of sub-courts. According to Ekrem Buğra Ekinci, there were four levels. Fatmagül Demirel claims the new court system had two levels, and Avi Rubin claims it was founded in three judicial levels. Moreover, if we include *Meclis-i Tahkik* in the list, which continued to exist even after 1864, the list gets even more complicated.

33 Avi Rubin, *Ottoman Nizamiye Courts*, 34

34 Fatmagül Demirel, *Adliye Nezareti,* 154-155

35 Ibid., 166

Council of Judicial Ordinances' decision and the official decree of the sultan. Although this was a standard hierarchical route for the lawsuits, not all the cases followed the same path. The archival documents show that the arrival of court records to the related body was not always coordinated. There are cases where the sharia record reached İstanbul before the *nizamiye* court records.

During the trial, some cases were heard quite quickly, but some were concluded over a long time. Especially if the legal or moral dimensions of the murder were severe for the state and if the evidence related to the case was gathered quickly, cases were settled in less than a year, sometimes even within a few months. For example, the case of a father who killed his little son by throwing him into a stream in Prizren in 1868 due to poverty was resolved in 4 months. The case of a mother who killed her newborn baby in Varna in the same year was resolved in a short time, like five months.[36] Likewise, the case of Fatma, who was killed in collaboration with her father and brother on the grounds of adultery in Van in 1863, concluded in 5 months.[37] Among the cases that I examined, the ones that lasted the longest were the cases in which the final decision was made 9-10 years later. The case in which a certain Şerife from Karesi killed her husband and her lover ended after nine years and seven months.[38] One of the apparent reasons why this lawsuit took so long was that the parties could not come to the sharia court for some reason, and the case could not be heard there. The other was the problem of whether Şerife's younger son would claim according to sharia when he came of age. The case was over when his son turned 17 and renounced the sharia case.

As seen in Figure 2.1, despite the detailed bureaucratic processes, the operating speed of the judicial mechanism was actually at remarkable speed.[39] I call it remarkable by considering the difficulties the state was experiencing

36 BOA., İ..DA.. 1-5 /5 May 1868; BOA., İ..MVL. 585-26335 / 20 March 1868

37 BOA., İ..MVL. 498-22536 / 12 December 1863

38 BOA., İ..AZN. 2-16 / 21 November 1892

39 Derviş Pasha would likely object to me in this regard because the stages of the trial process were also seen as an obstacle to the quick implementation of justice, and there were various complaints in this regard. See Ebru Aykut, "Judicial Reforms, Sharia Law, and the Death Penalty," 15

in setting up the new system, the external and internal political struggles of the period, and the logistic condition of the time. Considering that these cases were sent from the provinces and passed through the appeal process in Istanbul and the will of the sultan, this was a considerable work pace. I would also like to note that these numbers refer only to murders committed within the family. Apart from these murders, there were many other murder cases whose numbers we do not know. Therefore, although the trial procedures were more straightforward compared to modern legal systems and the empire's population was small, this was an undeniable speed for a newly established judicial order in the provinces without sufficient personnel.

According to the data, 83 cases out of 218 ended in a year, and a total of 103 were completed in less than two years. Five cases exceeded eight years, the longest of which was ten years. I have determined the durations considering the date of the murder and the time until the sentence was approved, which was stated in the court record. Cases with indefinite trial duration were mainly cases between 1850 and 1860. In cases in this date range, the date of the murder was not routinely mentioned in the record of the appeal court.

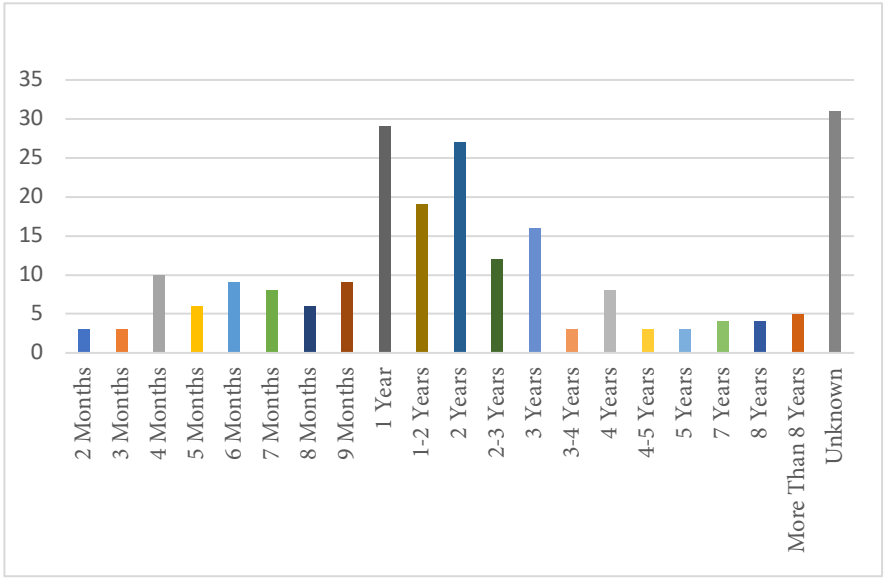

Figure 2.1 Duration of Lawsuits

For the murder file to be appealed and sent to the sultan's will, it was not enough that the decision in the *nizamiye* court was given following the procedure and principles. Likewise, the sharia case had to be dealt with following the procedure. Otherwise, the files were sent back for review.[40]

§ 2.3. In Between Sharia and *Nizamiye* Courts

For centuries, sharia courts were the backbone of the legal system in the Ottoman Empire. Apart from being where the cases were tried, the sharia courts were also a bridge between the central government and provinces.[41] In the sharia courts, openness was a fundamental principle. The trial was open to everyone, and it was tried verbally. The main proof mediums were witness testimonies and taking an oath. For non-Muslim citizens, community courts were responsible for private law cases. However, sharia courts were the only authority responsible for the penal law. So even if all the parties in a case were non-Muslim, the case was taken to the sharia court.

The establishment of *nizamiye* courts did not end sharia courts; these two courts functioned simultaneously for murder cases. The regulations did not change the functioning of the sharia courts regarding the murder cases due to the personal rights of the heirs. In other words, murder cases fell under private and public law. While they continued in their own procedures, *nizamiye* courts became involved in the general judicial process.

In Egypt, which went through a similar process regarding judicial reforms, for the cases that fell within the scope of the sharia court, it was ruled to try the case in both courts. Thus, the case was first seen before the qadi to apply the sharia rules. Then according to the penal law, the council tried the case.[42] Moreover, if the qadi sentenced the defendant to blood money or if he acquitted the defendant due to lack of evidence, or if the victim's heirs pardoned them, then the defendant was tried according to the penal code.[43]

40 For an example case see BOA., İ..DA.. 1-8 / 10 May 1868

41 Leslie Peirce, *Ahlak Oyunları*, 119

42 Rudolph Peters, "Islamic Secular Criminal Law in Nineteenth-Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society* 4 No. 1 (1997): 79

43 Rudolph Peters, Ibid., 80

While dealing with homicide cases, the qadi was supposed to act as a religious judge who, according to the religious norms, sanctioned the taking of a murderer's life. After reviewing the qadi statement and interrogations, the state applied the sentence execution. Egypt was autonomous in applying judicial reforms. However, we do not know whether the dual trial was a rule in Egypt's case or was naturally developed due to people's reactions and habits.

When the 1851 penal code came into force, a summary of the sharia trial was included in the decisions of the Supreme Council of Judicial Ordinances (*Meclis-i Vala*). After that, a little information was given about the murder. In other words, the detailed information about the murder was written according to the sharia trial. Therefore, the sharia judgment was at the forefront of these decisions. In addition, there was no reference to the articles in the penal code in these court orders. After the penal code of 1858, the process began to be different. In particular, the establishment of the Council of Judicial Ordinances (*Divan-ı Ahkam-ı Adliye*) brought the judicial process to a more professional level in a modern sense.

In the decisions of the Council of Judicial Ordinances, after briefly mentioning who committed the murder against whom and for what reason, the evaluation according to the *nizamiye* court was written. Then the details of the sharia verdict were written. Subsequently, according to the penal code, the ruling ended with the desired penalty. After the establishment of the Ministry of Justice, compliance with the regular/legal trial and criminal trial procedures was at the forefront. Although the information about the sharia trial, which we see in the decisions of the Supreme Council, continued in the court orders, its perceptible authority in the previous years began to decline in the following years. Of course, this process proceeded differently and without the same ease in every region. It was always possible to find practical exceptions to the process. So, in the introductory paragraph of an adequately prepared court order, first, the incident was stated, followed by the reason and details related to the murder. The third part contained the summary of the sharia trial, and the last part included the sentence given according to the penal code.

As mentioned earlier, it was a complex process to put the new judicial system into practice, and most of the time, it did not work as planned on paper. There were many reasons behind that. First, there needed to be more educated people for the *nizamiye* courts. Most of the personnel were madrasah graduates, and due to the insufficiency of law school graduates, *naibs* had to work in the *nizamiye* courts.[44]

Following the promulgation of penal laws and the establishment of the *nizamiye* courts in 1868, a law school was opened as a part of the *Mekteb-i Sultani*. This was quite an essential step for modern law education. The school had its first education year in 1874, but due to financial impossibilities, it was closed before producing any graduates. It was in 1879 that they could re-open the school, but they asked the teachers to give lessons without having salaries. As a part of *Tanzimat*'s equalitarian politics, *Mekteb-i Hukuk* would also provide a legal basis for non-Muslims to become a judge in the courts.[45] To standardize law education throughout the empire, they also wanted to open *Mekteb-i Hukuk* in Baghdad, Syria, and Kosovo. The teachers in the Baghdad and Syria schools were to speak both Arabic and Turkish, but they could not accomplish this project due to financial problems.[46]

The failure to achieve the targeted efficiency from *Mekteb-i Hukuk* meant a staff shortage for the newly established courts. So, apart from their primary duty in sharia courts, qadis and *naibs* also worked as members in the initial years of *nizamiye* courts. For example, the civil department chairs of courts of the first instance in provincial districts and counties and the civil department chairs of courts of appeal in central provinces were *naibs*. Within time, law school graduates replaced them.[47] Without the proper knowledge of the new penal law, qadis and *naibs* tried to apply it. In these early years, due to a coincidence, *nizamiye* court records were even written on the same book

44 For the position of *naibs* in the new court order see Jun Akiba, "From Kadı to Naib," 52-54

45 Ali Adem Yörük, "Mekteb-i Hukuk'un Kuruluşu ve Faaliyetleri: 1878-1900," (Yüksek Lisans Tezi, Marmara Üniversitesi, 2008), 23-27

46 Ibid., 37-38

47 Fatmagül Demirel, *Adliye Nezareti,* 87-90

with the sharia court records[48], but afterward, they gave up this decision and used separate register books.

In 1875, "*fetvahane nizamnamesi*" was issued to avoid further intricacies, and the duties and authorities of sharia and *nizamiye* courts were defined. According to it, sharia courts were responsible for private law related to waqf properties, the law of inheritance, and family law (marriage, divorce, allowance).[49] The disputes between Muslims and non-Muslims were still solved in the *nizamiye* courts. However, as I said before, crimes like murder fell into the scope of both courts because they concerned both public and private law. So, from the onset of the *nizamiye* courts to the end of the empire, *nizamiye* and sharia courts were two entwined components of a single judicial system.[50]

Although there was success in Tuna province in the application of *nizamiye* courts, it did not work everywhere, especially in distant regions. For example, in 1871, following the Law of Provincial Administration, Yemen became a province with new administrative mechanisms of centers, sub-provinces, districts, and sub-district levels, and officials were appointed from the Sublime Porte to these units.[51] Despite the need for more information about the exact date of establishment, by 1879, *nizamiye* courts were established in the provincial centers and districts in Yemen. However, shortly after, it became clear that the new system did not operate there as planned due to administrative weakness and resistance from the local people. The inhabitants outside the major urban centers had their way of solving criminal cases.[52] Rather than traveling to take the case to court, they would apply to the nearest faqih or take the law into their own hands to avenge the harm they received. So, because Yemenis were unaccustomed to using courts, the state

48 Sedat Bingöl, *Hırsova Kaza Deavi Meclisi Tutanakları: Nizamiye Mahkemeleri Tutanaklarından Bir Örnek* (Eskişehir Anadolu Üniversitesi Edebiyat Fakültesi Yayınları, 2002), 19

49 Sedat Bingöl, *Nizamiye Mahkemeleri*, 274

50 Avi Rubin, *Ottoman Nizamiye Courts*, 15

51 Hümeyra Bostan, "Institutionalising Justice in a Distant Province: Ottoman Judicial Reform in Yemen (1872-1918)," (MA Thesis, Istanbul Şehir University, 2013), 41

52 Ibid., 57

decided to organize the court system according to their demands. For example, in a criminal case, if it took a long time to bring the suspects to the courts, the old habit of reconciliation was applied according to their customs.[53]

As a result of the distance of local people in Yemen to the courts and the demands and reactions, *nizamiye* courts were abolished, and sharia courts kept operating with the authorization of implementing the penal law in 1889. The flexibility of Ottoman practices thus gave its fruits, and the *nizamiye* courts were re-opened with the agreement of local readers. Thus, the operation of a new legal system under the guise of sharia courts became possible. It is clear that the establishment of *nizamiye* courts showed variations from province to province, and the authorities took the necessary precautions according to the needs and characteristics of provinces. My archival experience suggests that the operation of *nizamiye* courts was more difficult in the eastern provinces, especially with an Arabic population density. However, resistance also occurred in other parts of the Empire.

§ 2.4. Inside the Courtroom

With the new judicial order, the courtroom became the main arena where the family and the state met on a verbatim basis. Undoubtedly, the most striking way for the state to be aware of what was happening in these courts was through these verbatim recorded statements. However, the recording of the statements did not come with the new court order. It was possible to come across query records even before the 1850s, but they were not regular. Since the files from 1850 to 1858 rarely recorded any interrogation, the reason for the murder was complicated to understand. Court orders in this period were also relatively short. It was clear who among the family members killed whom and when, and the details of the sharia trial were written first. In these records, it was possible to see the weighted effect of qadi registers. As of 1858, court records began to be written more appropriately in terms of details. However,

53 Vehbi, "Yemen Kavânîn-i Atîkası ve Cedîdesi", 36-7 in Humeyra Bostan, "Institutionalising Justice, 58

the most comprehensive version we can reconcile with modern legal rules and procedures was the documents recorded after the nizamiye courts became active and the Council of Judicial Ordinances was established.

As I will explain in detail below, the *nizamiye* courts offered the citizens the opportunity to seek rights at various levels and carried out trials. People had to go to these courts as witnesses or defendants. Because these courts were established in different places to varying degrees under provincial law, the new judicial order also triggered mobility among the people. The court road was short for some and long for others, and the encounters and interactions on this road were also diversified.[54] Conversations or encounters on the way to the court could affect the case process. So, we cannot consider the courtroom and judicial decisions independently of the social norms surrounding the court.[55] As we will see in the upcoming cases, legal and non-legal actors influenced the judicial process.

The interrogation protocols (*istintakname*) attached to many *nizamiye* court records were also valuable because the detailed interrogations allowed higher bodies to follow the court procedure. Omri Paz also points out, "The protocols served as the only proof, at any subsequent stage, to the very

54 Nabizade Nazım's *Karabibik*, written on his experiences as a civil servant in the provinces, contains quite striking expressions from the mouth of the villagers about the court road. Karabibik describes the subpoena as "to be summoned to Kaş." To be summoned to Kaş is one of the nightmares of peasants, and it is even worse than being called into the grave. If the merchant had difficulty getting the money back that he loaned, the court would do its duty without delay. However, going to court is even worse than being called from it since it means spending money on the way, in the ins, and staying away from their daily work for days. So rather than going to court, Karabibik prefers to pay his debt which corresponds to a wood load of hundred camels according to the calculation of the merchant. For more, see Nabizade Nazım, *Karabibik ve Diğer Hikayeler* (İstanbul: Dergah Yayınları, 2015), 214

55 Hadi Hosainy, "Ottoman Legal Practice and Non-Judicial Actors in Seventeenth Century Istanbul," in *Law and Legality in the Ottoman Empire and Republic of Turkey*, eds. Kent Schull, M. Safa Saraçoğlu and Robert Zens (Bloomington and Indianapolis: Indiana University Press, 2016), 29

existence of the testimony and to its content."[56] One should remember that we do not know much about the conditions in which these accounts were recorded or how many court members were involved in the process. The interrogation protocols were copied from an initial record, taken with quick handwriting. It was generally the copied, neat version of the protocol presented to the court, but some files also included copies of the initial record. It is also evident from the archival material that there was no rigid body of rules for the clerks to record the statements because while some documents were written in detail and following a rational sequence, some were written as quick notes.

To manipulate and impress the court in the interrogation process, the defendants often adapted the court's language to their everyday life experiences. In this respect, when the interrogators cornered the defendants, a defendant, finding no other exit point, tried to bargain with the state about his punishment. He said, "Sir, I did not throw stones. Even though I cannot agree to the punishment of murder, I am willing for a shackle for one year."[57] As mentioned earlier, at such times, "A very ancient art of 'making do'"[58] would serve the best, and there were a thousand ways of making do especially for the defendants. In this respect, as a last resort, this defendant tried ways to receive a punishment that he regarded as better.

The interrogation protocols were also an invaluable source for following the vernacular speech in a province. Unlike the language of the state and its institutions, the language of ordinary people living in the Balkans or western and central Anatolia was quite similar to today's Turkish. It was also possible to follow people's education or social level through how they spoke or their vocabulary preferences.

As for the language of communication in the courts, Ottoman Turkish was the priority, but the archival documents show that other languages were also used. Through an interpreter, the case was recorded in Ottoman Turkish.

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56 Omri Paz, "Documenting Justice: New Recording Practices and the Establishment of an Activist Criminal Court System in the Ottoman Provinces (1840-late 1860s)," *Islamic Law and Society* 21 (2014): 109

57 BOA, İ..MVL. 561-25234 / 13 October 1866

58 Michel de Certeau, *The Practice of Everyday Life*, 36

Queries could be recorded in Arabic, especially in files from Arab provinces. However, an archival document from 1890[59] indicates that the state had an agenda of creating standardization in the court language. According to the record, a letter was sent to the courts in Ioannina *(Yanya*), informing them that the Greek language was prohibited in the courts. Instead, Ottoman Turkish was to be used in all the court procedures. Upon this letter, the court in Ioannina sent a telegram to the Grand Vizierate and another to the Sultan, informing them that the new order was neither suitable for them nor the justice of the state.[60]

The remarkable point in this document was that the officials of the Ioannina court were trying to explain that the language they spoke was not due to their religion. They emphasized that the Greek language was the language of both Christian and Muslim people in Ioannina, and not only Christian members but also Muslim members did not know Ottoman Turkish. The Ministry of Justice wrote back to this request, and a decision from *Meclis-i Vükela* was issued. Despite the appeal of the Ioannina court that it was hard for them to communicate in Ottoman Turkish and it was hard to enable justice in this way, *Meclis-i Vükela* did not step back. As an answer, they re-stressed that the language of the courts would be Ottoman Turkish. We can also deduce from this document that until 1890 the use of local language in court procedures was available. However, the state wanted Ottoman Turkish to be the official language to strengthen the central authority and create unity within the official affairs.

Witness testimonies were essential to define the guilty party in the sharia trials. If the litigants could not find witnesses to identify the murderer, the retaliation demands were not accepted, and the penalty was given according

59 BOA., İ..DA.. 19-878 /25 February 1890

60 BOA., İ..DA.. 19-878 /25 February 1890

to the penal law.[61] Moreover, in the sharia law, witness accounts of Muslims and non-Muslims and women were not equal.[62]

Nizamiye courts had a different agenda about the witness testimonies. With the new penal codes, Tanzimat granted equal standing for all the subjects before the law. Moreover, even if hearing the witnesses could not determine the criminal, culprits could still be punished according to their involvement in the crime. In other words, the courts did not dismiss the case if the witness could not prove their claims because medical expert testimony or circumstantial evidence could do whatever the witnesses could not.

According to the Criminal Procedure Code of 1879 (*Usul-i Muhakemat-ı Cezaiye Kanunu*), witnesses would be summoned by a bailiff or gendarmerie at the prosecutor's request. People called to the court to testify had to answer the questions. If they didn't respond, they could be forced to respond. Witnesses would be questioned separately by the interrogator, with the court clerk present, and the defendant was not supposed to be present in this interrogation. Witnesses could be questioned at their location if they could not come to testify on the grounds of illness and if they stated this with a medical or medical officer's certificate. Accordingly, if these people were residing in the same place as the interrogator, the interrogator would personally go to their house and carry out the interrogation. If they were from a different town or neighborhood, the mukhtar would carry out the interrogation on the condition that the interrogation officers appointed him. In this case, another option was for the interrogator to request an interrogation from the interrogator of the place where the witness resided. [63]

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61 However, in sharia law, if there are no witnesses or the crime cannot be proven as premeditated murder, the judge may consider the murder case as "involuntary manslaughter" and impose the payment of blood money.

62 But that does not mean women did not use the courts. We know that women actually used the courts, both from the pioneering study of Ronald Jennings and in many subsequent studies. See, Ronald Jennings, *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (New Jersey: Georgia Press, 2011), 137, 148, 158. Also see Leslie Peirce, *Morality Tales;* Ebru Aykut, "Alternative Claims"; Leyla Kayhan-Elbirlik, "Negotiating Matrimony"

63 "1296 (1879) Tarihli Usul-i Muhakemat-ı Cezaiye Kanun-ı Muvakkatı," (*Düstur*, Tertip 1, Cilt 4), 145-146

Witnesses had to swear that they would tell the truth, and at the beginning of the interrogation, they had to indicate their name, fame, age, occupation, and residence. Boys and girls under fifteen could be questioned without oath on the grounds of receiving information. The interrogation text would be read in front of the witnesses. The written text would be signed by the court clerk, the interrogator, and the witness after the witnesses had confirmed the statements in the memorandum. This law also brought format requirements for the papers on which the interrogation texts were written. For example, the protrusion between the lines, the phrases drawn and written on the side, and not approved would be null and void.[64]

Towards the end of the century, as a part of structural regulations, the courts started to use printed citations to the witnesses and suspects to inform them about the day and time of a particular trial. These citations were sent via post to the related person, and it was clearly stated that if they did not arrive at the court on the indicated date and time, they would be brought to the court by force, according to articles 86 and 87. Moreover, if the witness did not appear in court, a cash fine would be given according to article 75. The interesting point here is that the articles referenced in the citation were related to the works and malpractice of officers. The invitation from the court to related witnesses or suspects was regarded as a duty to the state. In other words, the works of a state officer and a witness for a particular court case were put under the same category. They were expected to act in the name of the state; if they did not, they were to pay the necessary fine. Moreover, the printed notification to the interested parties also signs that the state informed its subjects about the new order and laws and acted with printed warnings. It was one of the moments that the citizens, as witnesses or suspects, directly faced the law.

§ 2.5. Punishments

From the eighteenth century onwards, the punishments of the judiciary tended to be mild or moderate compared to the early practices. As time

64 Ibid., 144

progressed, violence in the form of punishment decreased. While regulating personal brutality with laws, states moved away from implementing violence in punishments. In the new understanding of punishment, it was expected that the punishment would be both preventive and, at the same time, would bring the criminal to the right path. In this judicial system, the main goal was not to give less punishment but better punishment.[65] This changing perception of punishment tended to observe the special interests of the central governments and society. Also, the interests of the injured or wronged party were calculated to decide the most appropriate punishment. What kind of judgment would reveal the best interests of these parties? What would it cost if retraining the criminal would be of any use? Or should they correct the guilty with bodily punishments such as torture?[66] And in that case, what would be the probability that the offender would pose a danger again?

In addition to the play of interest I mentioned above, cultural mentalities and sensibilities greatly influenced the changing penal institutions and behavior. Various sensitivities towards violence in society were influential in the new punishments. Sensitivity to violence has led to the gradual withdrawal of violence from daily life and intense sensitivity to the remaining violence.[67] But this did not mean decreased violence or homicides between people during this period, and that crime was eliminated. Regarding violence, here it is also necessary to state the distinction between the city and the countryside. The control mechanism for violence was mainly something that took place in the city. Interpersonal violence was almost indispensable in rural life. However, there were other categories of crime brought about by urbanization. Also, different pictures can emerge when we consider this sensitivity or the discourse about the decline in violence globally.

65 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995), 82

66 Michael Foucault, *"The Birth of Biopolitics: Lectures at College De France 1978-79 (*London and New York: Palgrave Macmillan, 2008), 46

67 Ted Gurr, "Historical Trends in Violent Crime: A Critical Review of the Evidence," *Crime and Justice* 3 (1981): 300

Charles MacFarlane, who visited the Ottoman Empire in the 1820s and 1840s, reports a change in the application of capital punishments both in the eye of the state and society. He notes:

> A few years ago, all the sentences were summarized, and the punishments dreadful. Capital punishments were astonishingly frequent and seemed to be regarded with the utmost indifference by all classes of Mussulmans. It was not often that you could go by the gate of the Seraglio without seeing a ghastly exhibition of bleeding heads (. . .) As executions became rare - and they became rarer every year - the Turks began to consider them with emotion and even with horror; the old indifference to the sight of blood departed from them: they spoke with astonishment of the frequent executions they had been in the habit of witnessing a few years ago.[68]

Regarding the execution of an Armenian citizen sentenced to retaliation, MacFarlane notes that during the execution, people moved away from the crime scene and locked themselves in their homes. The executioner fainted after the execution.[69]

The changing attitude towards violence also had a top-down dimension in society. The state elites' changing social and intellectual values were critical. This sensitivity to violence also led to a more humanization of social policies and punishments. In other words, this process in the personal lives of the upper classes was primarily reflected in the penal laws and the implementation of penalties.[70] At this point, I would like to state Sultan Abdülhamid II's thoughts on the death penalty:

> Also, some circumstances deplore me… Be it Islam or Christianity… I sometimes see them executed by hanging in the newspapers. He shouldn't abuse the death penalty like that. I wondered about these

68 Charles MacFarlane, *Turkey and Its Destiny: The Result of Journeys Made in 1847 and 1848 to Examine into the State of That Country, Vol I-II* (London: John Murray, Albemarle Street, 1850), 75-76.

69 Ibid., 76

70 Ted Gurr, "Historical Trends in Violent Crime," 342-343

> criminal matters, murders, and the situation of the murderers. I have inspected… The death penalty is rarely given in England. And the judges (to be a judge) are for life. They cannot be dismissed. Let alone resignation!.. His judicial opinion is the law… In an England prison, when the death sentence is about to be executed, a cannon is fired with a prosecutor and a judge being ready. They (criminals) are executed by hanging. Nobody sees it. Newspapers write… In America, (they are executed) by electricity… There are no executions in Italy. The best law is Italian law… Perpetual hard labor is given… I immediately accepted this principle. Because sometimes the executed person is sinless. In Germany and Austria, the executioner hits the neck with a chopper… France… the guillotine! It's rarely performed there anymore... unless it's a big murder... And no doubt the murderer is convicted! They have already examined it... Murders are more common in countries where the death penalty is imposed a lot... Abuse is not permissible...[71]

Parallel to the quote above, Ahmet Mithat Efendi states in his article titled "*Ceza-i İdam*" that he found the death penalty hideous (*kerih*) and that it was an example of barbarism incompatible with civilization.[72] Ahmet Müthat also argues that the abolition of the death penalty might have been possible in Ottoman lands, despite the sharia law. On the other hand, these arguments related to the death penalty were not unilateral. Some complained that the death penalty could not be applied effectively in the new judicial system.[73]

The relatively low severity of the sentences given was not directly proportional to the criminality rates. Also, when it comes to public security, the death penalty was applied immediately to maintain and increase the stability and centralized power of the state. So, even if the level of violence decreased in the penal sanctions, the duration of imprisonment or hard labor

71 Atıf Hüseyin Bey, *Sultan II. Abdülhamid'in Sürgün Günleri: 1909-1918* (İstanbul: Timaş Yayınları, 2010), 342

72 Ebru Aykut, "İdam Cezası Karşıtı Bir Osmanlı Münevveri: Ahmet Mithat Efendi," in *Günebakan Düşlerimiz: Kamusallık, Gündelik Hayat ve Tecrübe Üzerine Yazılar*, eds. Tülin Ural and Bahadır Vural (İstanbul: İletişim Yayınları, 2021), 128-129

73 Ibid., 126-127

became longer. The new judicial regulations in this context contributed to the rationalization and the bureaucratization of the disciplinary process. But the Ottoman Empire also hung to its old law system. It benefited from the double vision of Islamic law and modern law in criminal proceedings to set public order to protect the central moral values of society and personal honor.

When we think in the framework of the family, the patriarchal family structure was effective both in preparing the penal code and in implementing these laws. As we will see when examining the cases of parricide in the following chapters, even if these cases were premeditated murder, they were evaluated in the context of religious and cultural discourse, and they were contextualized as eliminating the means of one's birth from this world. In this respect, it would be appropriate to consider punishment as a cultural artifact, as Garland also stated.[74]

Moreover, the emphasis on raising children and proper family structure resulted from these changing perceptions. In previous centuries, such a mission was not imposed on children. Now that they guaranteed the nation's future, they had to be carefully raised, cared for, and integrated into society. This concern over children and childhood also gave fruits to penal behavior. This perception was shaped due to worries, hopes, and expectations about the family. As the smallest unit representing society, the family had a central position. In this respect, raising healthy and well-educated children became the primary duty of families. In this environment, the state's share was to support the upbringing of children and their integration into society. The steps taken in this context were the redefinition of the age of puberty, the debates on the age of criminal responsibility, and the reformatories established.

As I mentioned above, despite the division of labor between the two courts, the trials on murder cases were seen together in both sharia and nizamiye courts. Apart from the decision of the sharia court, it was a significant change that the new judicial body tried the murderer with a sentence of between five to fifteen years in hard labor or imprisonment. At this point, we are still determining which court decision was precisely the

74 David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: The University of Chicago Press, 1993), 193

first. But we know they are not physically in separate buildings and that the *naibs* handled both sharia and *nizamiye* court cases. Although this system seems convoluted for issues that fall into a gray area between two courts, such as murder cases, this double-vision system of the state somehow functioned. I will take a closer look at these gray-area judgments and penal decisions below. Before that, I would like to briefly elaborate on the punishments in general in my data sample.

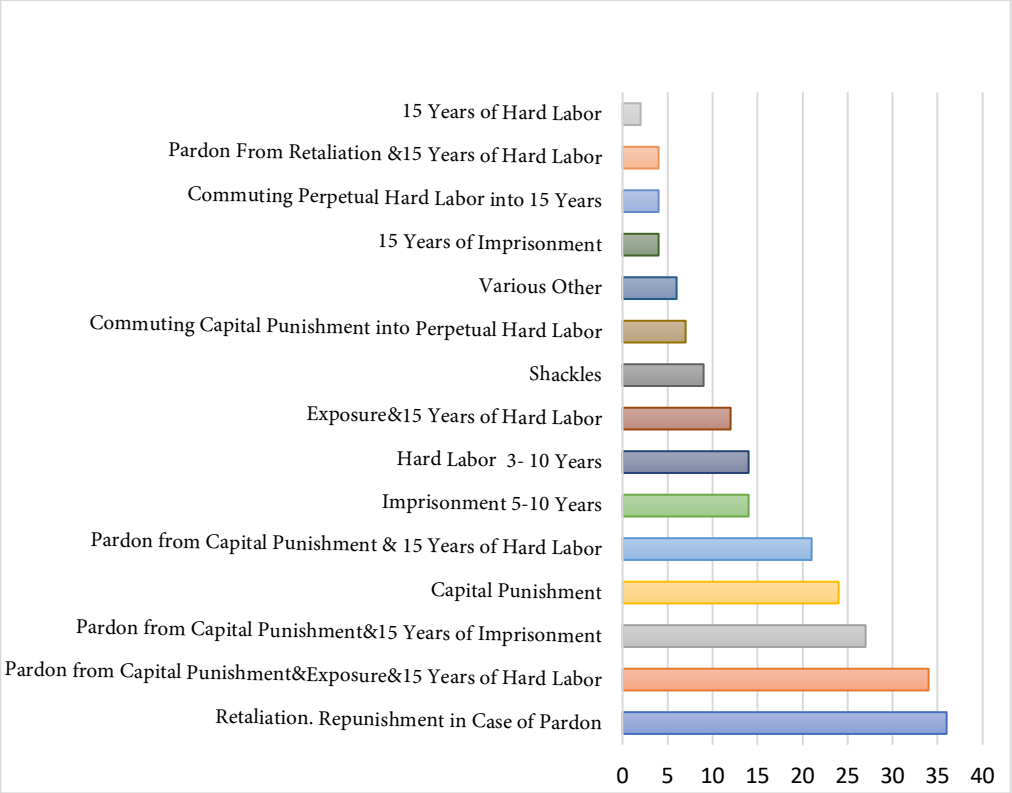

Figure: 2.2 Punishments in General

Retaliation was the punishment most preferred by the heirs for murders committed within the family. In this sentence, the option of re-punishment was always reserved, as pardon could be possible at any moment until execution. According to the data, retaliation was followed by pardons from capital punishment and exposure and 15 years of hard labor or 15 years in prison. The 15-year prison sentences, given after the capital punishment, were mostly given to women, and there was no exposure for women. While there

were men who were not exposed due to their special circumstances, there were also women who were sentenced to hard labor without being exposed. Apart from these commonly given punishments, prison, shackle, and hard labor punishments were also given in various years. Overall, 146 people were tried by death (capital punishment and retaliation) in 218 murder cases. This corresponded overall to a rate of 67%. However, the proportion of those directly sentenced to death and whose death penalty was approved by the sultan was 16%. The fact that 67% of the murders committed within the family were tried with the death penalty indicates the gravity of these murders.

2.5.1. Sharia Sentence or *Nizamiye* Sentence?

Sharia verdicts were binding for crimes violating personal rights, but there were exceptions. Sharia verdicts were given according to some principles. Accordingly, the punishment needed to prevent the crime, compensate for the harm, rehabilitate the criminal, be in balance with the crime, be the same for anyone committing the same crime, and be executed without violating human dignity. Punishment can be tolerated in some exceptional circumstances since its primary aim is not to ruin the criminals but to rehabilitate them.[75] Such punishments in Ottoman Empire can be categorized as fiscal, corporal (capital punishment, amputation, bastinado), liberty binding (imprisonment, exile, leg iron, hard labor, break off the relation), additional punishment (redemption, disinheritance, refusal of witnessing) and moral punishments (reprimand, exposure).

For any murders, sharia law punishments varied between retaliation, blood money, and expiation.[76] But punishment and law come through life

75 Ekrem Buğra Ekinci, *Osmanlı Hukuku: Adalet ve Mülk* (İstanbul: Arı Sanat Yayınları. 2016) 335-337

76 For the crimes committed against life, earlier Hanafi scholars define three categories, but later Hanafi doctrine defines five types of murder. (1) deliberate (*'amd*); (2) quasi-deliberate (*shabah 'amd*); (3) accidental (*khata'*); (4) equivalent to accidental and (5) indirect (*bi sabab*). James N. D. Anderson , "Homicide In Islamic Law," *Bulletin of the School of Oriental and African Studies, University of London* 13 (1951). Also see, Muhammed Amannullah, "Just Retribution", 263. With these classifications in homicide Hanafi school is the most

itself. According to the necessities of the time, new modes of punishment could occur, or some could disappear. Theoretically, when Islamic law came to a dead end, *ta'zir* and *siyaset* took action, and new forms of punishment were practiced. In this regard, imprisonment was not an immediate punishment in the classical application of sharia law, and this was one of the aspects that faced a change in the nineteenth century. Taking individual freedom with penalties like imprisonment or hard labor became widely practiced punishments. In a time when personal freedom was highly esteemed, the application of liberty-binding sentences was quite remarkable because, according to penal reformers, depriving people of their liberty was a way of punishing them equally since the desire for freedom was given equally to every human being.[77] It should be noted that if these punishments were given upon murder trials, the state gave them by using its *tazir* authority. In other words, it could only be issued after the heirs' retaliation or blood money demands.

A similar reconciliation between the sharia and the time requirements could be observed for the penalty of hard labor. The exact day for the practice of hard labor in the Ottoman Empire was unknown. Still, it likely occurred in the sixteenth century when the Ottomans started to progress overseas and needed human power in this sense. It was in constant use in the seventeenth century. This punishment type had an equivalent neither in the *kanun* nor in the sharia law.[78]

In general, for the murder cases the rule was that if the heirs asked for retaliation sharia verdict was applied and both courts agreed on this issue. In case of a pardon from retaliation the criminal was punished according to the penal law. But the state did not always leave the fate of cases to the people. For example, in a case from Idlib dated 17 October 1901[79], a certain Hayro Ağa was murdered, and a certain Nayif, Salih, Mehmet, and Ahmet were put on trial. The sharia and *nizamiye* courts gave their decisions. Still, due to the

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thoroughgoing in this regard. For example, Maliki school do not accept quasi deliberate murder. Of all these murder types, the deliberate or intentional ones involve talion.

77 See, Michel Foucault, *Discipline and Punish*, 232-236; Talal Asad, *Sekülerliğin Biçimleri, 133*

78 Haim Gerber, *State, Society and Law in Islam,* 73

79 BOA., İ..AZN. 44-3 / 17 Ekim 1901

open declaration of the heirs that they did not forgive the criminals of retaliation, the court decided that there was no need for the appellate procedure. However, Istanbul disapproved of this decision, and the sultan stated in his decree that the victim's heirs should forgive the criminals from retaliation.

It should be noted here that the sultan or the court cannot force the person to make peace with the other party but can encourage them to make peace in the role of *muslihun*. In fact, this was a well-known practice, also known as amicable settlement, that had its roots in the Islamic tradition[80] Ebru Aykut also says that this shows the court's involvement in the peace procedure and the adoption and encouragement of the extra-judicial function of the sharia court.[81]

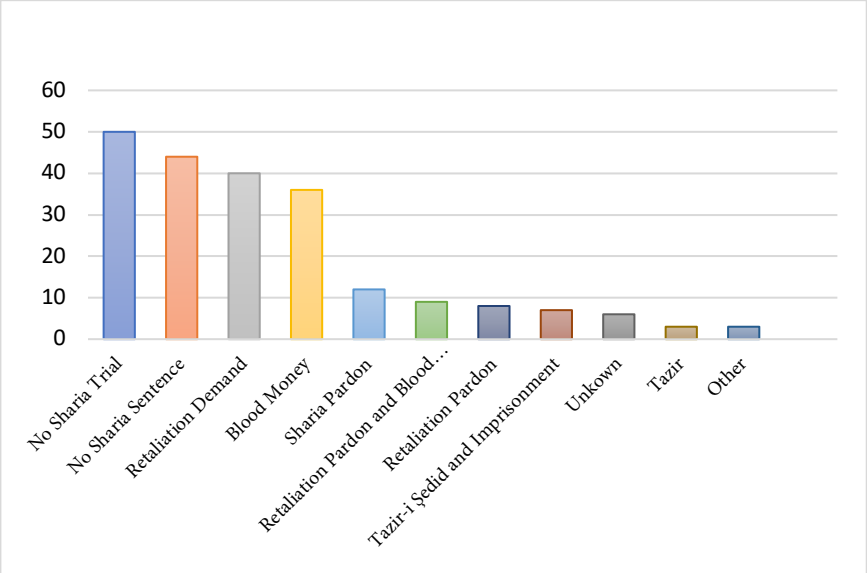

Figure 2.3 Sharia Sentences

Archival documents suggest that even if the *nizamiye* courts started to work more systematically in time, the retaliation or the blood money demand of the heirs continued due to their rights in terms of private law. Therefore, the ratio of sharia punishment to penal law in the final decisions remained considerably. Here, people's religious inclinations also played an important

80 Ebru Aykut, "Judicial Reforms", 17

81 Ibid., 18

role. A trial based on religious norms had a response in people's lives. It was hard to replace it since the religious doctrines constituted an indispensable part of their daily routines whether they were aware of it or not. In addition, it was economically comforting for families to receive blood money if they did not demand retaliation after their losses.

The cases where the qadi did not give any sharia punishment indicate that a) the heirs were incapable of proving the case, and the parties were barred from further arguments or disputes; b) they made an amicable settlement with the defendants or pardoned the defendants and they did not have any sharia demand. When a peace or pardon decision was made between the parties, the plaintiff could not claim any action in the future in terms of personal law.

The data in Figure 2.2, showing that the sharia case was not heard, generally indicates the absence of heirs, the heirs not demanding a sharia lawsuit, not taking an oath, making peace before the trial, the heirs not coming to court, the absence of a substitute if the heir was unable to come, lack of evidence or witnesses and the heir's underage[82]

It is important to note that murder cases were not solely left to the mercy of the heirs to be settled in the private domain. Hadi Hosainy claims that in the absence of a public prosecutor in the early modern Ottoman criminal legal system, executive officers had some financial incentives to initiate lawsuits against suspects. Thus, the sharia courts were informed about murders through the heirs or the executive officers.[83] Moreover, if the victim did not have any heir and no one commenced a suit, the state became the victim's heir and could punish the murderer. In other words, the ruler became the heir of the victim.

The young age of the heir was a reason for the postponement of the case. When the sharia case was adjourned, for this reason, the sentence to be imposed according to the penal code was also suspended. The main issue here was, for example, the possibility of pardoning a criminal sentenced to death

82 For an example of underage see, BOA., İ..DA.. 11-408 / 21 June 1873; BOA., İ..AZN. 2-16 / 21 November 1892; BOA., İ..DA.. 17-722 / 10 November 1875; BOA., İ..DA.. 11-366 / 1 January 1873

83 Hadi Hosainy, "Ottoman Legal Practice," 36

by the heir or the case of the heir demanding blood money when they reached the legal age. Considering that the defendants and plaintiffs in the files here were related to each other, a pardon was always possible.[84] However, the sovereign always reserved the right to make exceptions.

There were also cases in which non-Muslims reacted to the decisions made or to be made by the sharia court. In 1865 a certain Radudi was poisoned in Yenipazar by his wife, and his brothers took the case to court and negotiated for the best possible punishment to ease their pain after their loss.[85] According to the court decision, Radudi's wife, *nizamen,* and *şer'en* were found guilty of premeditated murder. However, there was a striking remark in the appeals of one of his brothers, Kosto, related to the verdict. Kosto said, "I am looking for *(I want)* my deceased brother from Istaneya, by sharia or by law, and I cannot and do not want her to give me goods *(blood money)* for my deceased brother. I would not sell my brother for money. I ask that my case be executed."[86] Kosto considered the blood money as selling his brother, and he expressed this in front of the court without hesitation. We do not know to what extent he was aware of the new penal code, but the sharia trial was inadequate and inappropriate in Kosto's eyes because as we will see in more detail in the next chapter, it was impossible to get a retaliation decision from the sharia court because his brother died due to poisoning. According to Islamic law, even if someone else puts poison in the victim's food, retaliation is invalid because the victim eats it with his hand.

However, in the case of a certain Gülistan, who poisoned her husband in Çorum in 1904[87], there was an unprecedented situation regarding the union of the sharia and the *nizamiye* courts. What is interesting in this case was the execution of the death penalty given by the *nizamiye* court, despite the sharia court's sentence of imprisonment and *tazir*. This is interesting in several ways. First, the norm that the penal law cannot override the decision of the sharia court in legal cases was violated. Secondly, the sharia court sentenced Gulistan to prison. Third, the death penalty given in such offenses was

84 See, BOA., İ..AZN. 2-16 / 21 November 1892

85 BOA., İ..MVL. 542-24344 /8 November 1865

86 BOA., İ..MVL. 542-24344 / 8 November 1865

87 BOA., İ..AZN. 54-30 / 26 January 1904

generally converted to hard labor or imprisonment, but the death penalty was directly executed here. In the same type of poisoning cases, while there were many pardons, the lack of clearing here suggests the aggravated sentences due to increasing security concerns at the beginning of the new century. In addition, despite standardization efforts, there were always exceptions that could confuse the process.[88]

In cases where the guilty party was sentenced to blood money according to the sharia judgment, the *nizamiye* court generally gave pardon from death and sentenced to hard labor/imprisonment for various years. Similarly, in cases where no punishment was given in the sharia trial, or there was no sharia trial, pardon from death and hard labor/imprisonment was given.

In instances where retaliation was given according to the sharia judgment, the *nizamiye* court applied this punishment. However, as I said before, penal law stepped in in cases of pardon from retaliation. In a murder case in Siirt, a certain Kelile was fed up with her husband, and she decided to kill her husband with her lover Murat, whom she hoped to marry.[89] Murat committed the murder with Kelile's help. They murdered while the victim was asleep and took the victim's money. In this case, the sharia court sentenced Murat to pay blood money, and the heirs pardoned him from retaliation. However, according to the penal law, Murat was sentenced to death due to the evidence that the murder was premeditated. It was decided that the blood money that Murat was to pay would also be met from *beytü'l-mal*.

I want to add a side note here. As in this case, there were cases in the court records where blood money sentence was given by the sharia court, and a death penalty was given by the *nizamiye* court. The blood money to be paid for such cases was paid from *beytü'l-mal*. However, with a regulation in 1876, this practice was abandoned, and it was decided to pay the entire blood money from the criminal's estate.[90] However, this practice did not last long, and after a few years, the old method was returned. As Said Nuri Akgündüz said, there

88 For a similar discussion see Ebru Aykut, "Toxic Murders", 130

89 BOA., İ..DA.. 12–450 / 26 September 1873

90 Said Nuri Akgündüz, "Tanzimat Dönemi Osmanlı Ceza Hukuku Uygulaması," (Doktora Tezi, Marmara Üniversitesi Sosyal Bilimler Enstitüsü İlahiyat Anabilim Dalı İslam Hukuku Bilim Dalı, 2010), 103-104

was an effort to relieve the victim's relatives here. However, this situation also evokes the aim of preventing the public from seeking justice in other ways or preventing various sub-judicial solutions, as Akgündüz also mentioned.[91]

In the trial, Kelile also received her punishment according to the penal law, and she was sentenced to five years of imprisonment. In this case, I think that the decision of the *nizamiye* court was more severe because the murder was committed at night, and Kelile had an illegitimate relationship and aided and abetted the murder of her husband in this way. So, public morality was at stake. The Council of Supreme Order considered Kelile's involvement in the murder as a reason to increase the sentence. The heir's pardon and blood money sentence were in no way a substitute for Kelile and Murat's illegitimate relationship. Social honor could only be achieved with Murat's execution.

We do not know how exactly the conflicts of jurisdiction in the *nizamiye* and sharia court decisions were met by the society in the specific cases. However, the possibility of restricting the duties and powers of the sharia judges in the provincial courts became a source of gossip, and the state worried that these rumors would negatively impact the public.[92] According to these rumors, the members elected by the people in the provincial courts would be expelled, and the ministry would appoint new members to replace those dismissed. In addition, these court presidencies were to be taken from the sharia judges, and only the cases such as marriage and alimony would be left to them. Although almost half a century has passed since the new court order was established, even the rumors that the authority of the sharia courts was undermined were disturbing both in the eyes of the public and the state.

2.5.2. Retaliation and Capital Punishment

For the murder cases I examined, it is possible to say that the state preferred imprisonment and hard labor to the death penalty most of the time. Accordingly, out of 218 cases, the number of those sentenced directly to death according to the penal code was 24, while the number of those pardoned from

91 Akgündüz also emphasizes that this practice is at the forefront to ensure public order, especially in regions with a high Arab population. Ibid., 105

92 BOA., İ..DA.. 19–877 / 27 October 1886

a death sentence and sentenced to 15 years in prison was 27. Similarly, the number of those pardoned from a death sentence and sentenced to hard labor in various years was 83. The number of those whose decision of retaliation became final was 37. However, it was stated in the decisions of those who had retaliation that if there were peace between the parties, they would be regulated again according to the penal code. So, it is obscure here whether, in these 37 cases, the execution happened or not. There were 7 cases in which the decree of pardon from retaliation was directly stated, and the sentence was commuted either hard labor or shackles.

The sentences to be given after the pardon from the death sentences were determined according to gender. According to this, when a woman tried for a murder of the same severity was pardoned from the death penalty, she would be imprisoned for 15 years; the men were mostly sentenced to exposure and 15 years of hard labor. However, there were also cases where women received hard labor. Although they were sentenced to hard labor, these criminals were serving their sentences in women's prisons, either because there was no suitable place or because the authorities did not find it practical.

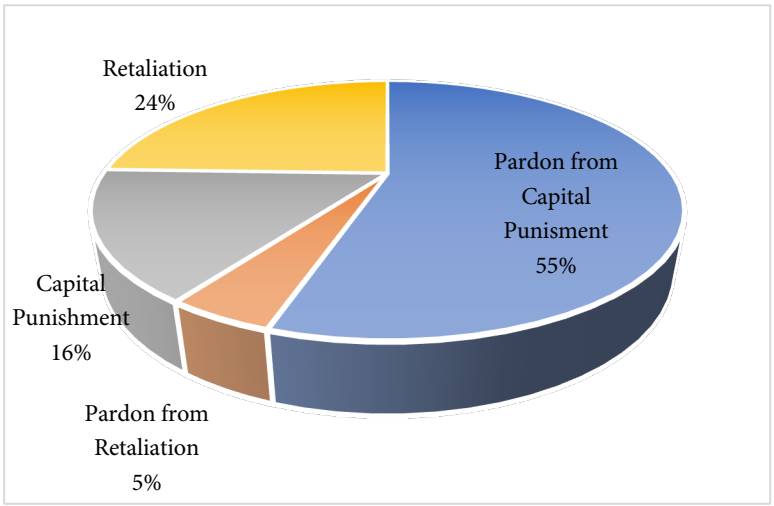

Figure 2.4 Retaliation and Capital Punishment

Those pardoned from death and sentenced to imprisonment or hard labor could be forgiven again during their incarceration. Conditions such as the

criminal's advanced age, having served "enough" imprisonment, their good behavior in prison, or the miserable state of their waiting children were influential in these pardons. However, these pardons were granted in terms of public law, and the right to file a lawsuit against them in terms of personal law remained.[93] In these decisions, it is possible to detect a biopolitical desire in the Foucauldian sense. According to Foucault, "The right of sovereignty was to take life or let live. And then this new right is established: the right to make live and to let die."[94] So, this power mechanism that is supposed to make life live also has the right to let life die. "Making a life live" is a sort of sorting mechanism that decides which life is worth living and which is not, and which life deserves freedom and which does not. As Michael Dillon and Andrew Neal point out "making life is evidently a lethal business."[95]

Although there were many cases where death sentences were pardoned or commuted to hard labor, the social and political situation of the state was also influential in whether the death penalty would be implemented. For example, according to a document in 1866, the state allowed to punish those who dared to murder in the provinces according to the decisions of the provincial courts.[96] Accordingly, there was a demand for the execution of the sentences of the tried criminals to ensure security in internal affairs without waiting for the Istanbul process. They based this demand on an example in Rumelia in previous years. So, whether the murder was committed in a domestic or public area, it was handled as a concern for the public and internal security. Of course, these murders had legal aspects, but the state saw them as a part of public order, and it was decided that their execution should be carried out as soon as possible. However, it was decided to exclude Erzurum, Bosnia, and Tripolitania provinces from this proposed practice. Similarly, in 1870 due to the increase in murders in Shkodra, the Sultan approved the execution of an

93 See, BOA., İ..AZN. 23-6 /19 December 1896; İ..AZN. 19-36 /24 May 1896; İ..AZN. 32-24 / 9 February 1899

94 Michel Foucault, "*Society Must Be Defended*": *Lectures at College De France 1975-76* (New York: Picador. 2003), 254

95 Michael Dillon and Andrew W. Neal. *Foucault on Politics, Security and War (*Palgrave Macmillan: London and New York, 2008), 167

96 BOA., İ..MVL. 553-24825 / 27 May 1866

order where he stated that until the extraordinary situation disappeared and public peace was established, they could execute the capital punishments without Istanbul's approval.[97] These executions were carried out promptly to serve as a lesson for possible criminals.

Retaliation (*kısas*) was a difficult punishment because of the rules that had to be followed, and not all types of murder received a just retaliation. Just retaliation was the severest punishment, and they received it on the condition that someone killed somebody on purpose and premeditatedly. Therefore, the essential requirement for retaliation was the offender's intention, which should be clear and free from doubt. If doubt occurred, the payment of blood money was required.[98] Also, the murder should be the decision of the murderer to receive retaliation. In other words, if the murder was committed through the force of someone else, the murderer was excluded from the retaliation.

In case from Kastamonu from the year 1868,[99] the three suspected murderers did not receive any retaliation despite the heirs' demand, because the court could not identify who was the one that shot a certain Ahmet. According to the court records, İbrahim, İsmail, and another İbrahim decided to attack Ahmet's house at night. Ahmet's wife, Şerife Hatun, and the three criminals were interrogated, and they gave the details related to the murder night more or less the same. Fully armed, they broke into Ahmet's house and ran into the stairs to abduct Şerife. In the meantime, Ahmet answered back to this attack by throwing anything he had around and obstructing them. In this chaos, guns fired, and one of the bullets hit Ahmet and killed him there. The criminals took advantage of this chaotic atmosphere at Ahmet's house, and everybody blamed one another for the murder. Due to the lack of evidence and witness testimonies retaliation demand of the heirs was not met. As a result, the *nizamiye* court gave the final sentence of 15 years of hard labor with exposure.

97 BOA., İ..DH.. 615-42874 / 25 July 1870

98 Muhammad Amanullah, "Just Retribution", 92. For example, according to Hanafi fiqh, killing someone with a stick with one or two strikes did not require retaliation since this type of action might also mean disciplining someone by beating rather than taking their life.

99 BOA., İ..DA.. 2-25 /26 August 1868

All heirs had to demand retaliation, provided it was proven to be a premeditated murder, and they had to be present at the time of execution. There was always the possibility that the heirs would forgive the culprit at the last minute of the execution. Apart from these difficulties in its implementation, there were also wills written by the Sultan for peace between the parties on the issue of retaliation. In other words, for the punishment not to result in retaliation, apart from the difficulties existing in terms of Islamic law, preventive steps could be taken by the state. It is worth remembering that these steps are generally case based.

It is also necessary to dwell on the undeniable number of retaliation penalties demanded for murders committed within the family because these punishments were demanded by the murderer's own blood or marriage relatives, and they were to be executed right in front of them. According to my data, 26 of the 37 retaliation sentences I mentioned above were requested for marriage relatives. Among the marriage relatives, the majority of them were husband and wife killers. Retaliation was demanded for blood relatives in 11 cases, 5 for the murderer-brother, 3 for the murderer-son, and 2 for the murderer-nephew. These rates can be taken as examples showing the fragile structure of marriage union and kinship relations. It was only a matter of time before this fragility turned into hatred and enmity. Also, although we talk about mentality changes in the nineteenth century, for ordinary people, there was no change in terms of private law as promised to them, and their rights as the victim's heir remained indispensable.

2.5.3. Exposure and Hard Labor

Hard labor was both a freedom-restricting and a bodily punishment. After the death penalty, it was the most severe punishment given by the court. According to the data, there were 99 hard labor penalties (out of 218) in various forms and years. Thirty-five of these were pardoned from death and were sentenced to 15 years of hard labor combined with exposure. The 15-year hard labor sentence given without exposure was 30. In 7 cases, a lifelong hard labor penalty was given. There were also nine shackles varying from 15

years to 6 years. As seen in the table below, 45% of the criminals were sentenced to hard labor in the 218 murder cases I identified in my research.

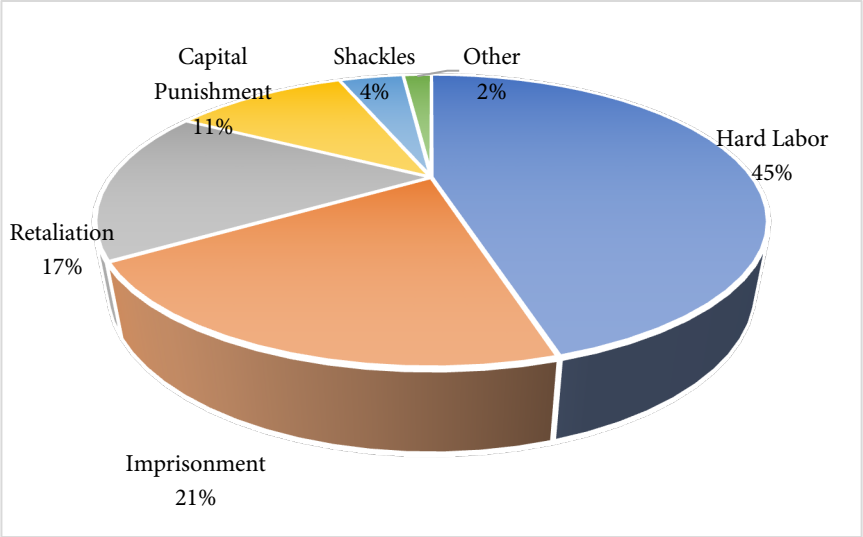

Figure 2.5 Distribution of Frequent Penalties

Exposure and hard labor punishments were mainly applied to men. When a criminal was exposed and sentenced to hard labor, the penalty was hung on him, and he was kept in the square for two hours. An iron and chain were tied to the foot of the person who was sentenced to rowing, and this was adjusted according to the physical structure of the criminal and in a way that would not restrict his movement.[100]

The law of 1840 did not include the penalty for exposure. It was clearly stated in the 1858 penal code. While in the French penal code, exposure was regulated as a punishment applied alone (there were cases where it was used together with another discipline), in the 1858 penal code, it became a disciplinary sanction applied together with hard labor and some prison

100 These details were stated in the article 19 of the 1858 penal code. See, John Bucknill and Haig Utidjian, *The Ottoman Penal Code,* 16

sentences. The French penal code recognized exposure and exile as punishments of the same severity.[101]

Exposing the criminal had both an individual and a social dimension. During the execution of the sentence, the offender was part of society, but he was also excommunicated for a while. Exposing the criminal in a way that allowed the crowd to seek revenge was an important part of this punishment, as the guilty individual would feel ostracized from society and face this intense sense of loss.[102]

Exposure was in the category of shameful punishments in the French penal code, but there was no such category in the Ottoman penal code. The exposure penalty was included in the category of intimidating penalties along with the hard labor penalty.[103] In the draft law, it was stated that exposure would be applied to everyone sentenced to hard labor. However, in the text that came into force, criminals under the age of 18 and over the age of 70 were exempted from exposure.[104]

According to Kılınç, those sentenced to hard labor began not to receive exposure punishment after a certain period. According to a document written in 1881 by the Ministry of Justice and Court of Appeals, Istanbul Court of Appeal, and the Public Prosecutor's Office,[105], it was realized that while those sentenced to hard labor should be exposed, in practice, they were directly executed without being exposed. According to this document, Sadr-ı Esbak Ali Pasha verbally ordered the Police Officer not to expose those sentenced to hard labor. Chief Constable Hüsnü Pasha also verbally communicated this order to the prison officers. In other words, the practice of exposure in the

101 Ahmet Kılınç, "Osmanlı Ceza Hukukunda Yaptırım Olarak Teşhir," (Doktora Tezi, Gazi Üniversitesi, 2013), 361

102 David Nash and Anne Mary Kilday, *Cultures of Shame: Exploring Crime and Morality in Britain 1600-1900* (Hampshire: Palgrave Macmillan, 2010), 70

103 Ibid., 377

104 Ibid., 364. After the Tanzimat, criminals were also exhibited in magazines. For example, the photographs and names of the criminals were displayed in the first 30 issues of the Police Magazine. But there was no female prisoner in this selection. (For more information, see Ahmet Kılınç, "Osmanlı Ceza Hukuku")

105 BOA., Y..EE.. 31-24 / 5 October 1881

law has disappeared with a verbal order.[106] According to my research sample, the last exposure penalty was given in 1878. Hard labor penalties after that were without exposure; most were perpetual hard labor rather than the regularly given 15 years of labor of the previous years. However, there is always the possibility that the archives may surprise us in this regard, and further research is needed to determine the extent to which this order given by the pasha was implemented.

An aggravated sentence was the most apparent reason for sending a prisoner to hard labor rather than stay in prison. According to Neşe Erim, hard labor was generally six months in the eighteenth century. Except for the perpetual hard labor, the hard labor penalties were one year. In the sixteenth century, it could last up to 3 years. In Spain, this sentence is between 3 and 6 years. It took at least one year to become a good rower. Those convicted of murder were sentenced to death or blood money. But if he can't afford to pay blood money, he can take his punishment in hard labor.[107]

The punishment of hard labor was seen among the severe penalties both in the eyes of the state and in the eyes of the people in the classical period. While this punishment was given, there was no discrimination based on religion. When the navy needed rowers, other penalties were commuted to oars. In other words, the personal situation of the prisoner was not always practical. Since it was a severe punishment, it was given by the decision of the Sultan or the *Divan-ı Hümayun*. Qadis also had authority, but they did not use it. Another striking factor was that women and enslaved people were not punished for hard labor. The same practice for women continued after the Tanzimat. With the penal laws that came after the Tanzimat, it was decided how much hard labor would be given to which crime. In this regard, the most comprehensive information was in the 1858 law, but the first legislation was formed in 1840. However, with the end of the use of rowing ships, hard labor prisoners were kept in various hard labor centers, like *Tersâne-i Âmire* dungeon, to be used for various jobs. Although this situation seems like a

106 Ahmet Kılınç, "Osmanlı Ceza Hukuku", 398-399

107 Neşe Erim, "18. Yüzyılda Osmanlı İmparatorluğu'nda Kürek Cezası," *IXth International Congress of Economic and Social History of Turkey*, Türk Tarih Kurumu (2005): 179-188

prison sentence, it was given to more severe crimes than crimes that require imprisonment.

2.5.4. Kasâme

To ensure the continuity of collective life practices and to secure them, the state also imposed responsibilities on the people in criminal sanctions. The most striking example of this was the practice of *kasâme*. It was primarily used for unsolved murders in Islamic law.[108] *Kasâme* means taking an oath. According to Bardakoğlu, "*Kasâme* is the name of the special oaths taken by a limited number of people from the crime scene to expel the criminal charge against them or to make a criminal charge by the relatives of the victim when a murder is committed, and the perpetrator cannot be determined with definitive evidence."[109] *Kasâme's* terms, provisions, and practice varied widely among sects. For example, according to Hanafis, the perpetrator should be unknown for *kasâme*, and according to Maliki, Shafi and Hanbali, a murder case should be filed against a specific person. Whether the legal outcome of the *kasâme* will be blood money or retaliation depends on the type of murder committed, and giving retaliation with a kasâme is also a matter of debate among the jurists.[110]

There were some strict rules for *kasâme* to be enforced, but these rules were changing according to the sects and personal views of leading Islamic scholars. According to Hanafi doctrine, first, there must be signs in the corpse found that the victim died due to murder. The murderer must be unknown, and the victim's relatives must file a lawsuit for their loss. If the victim did not

108 According to Aybars Pamir, kasâme is an institution not of Islamic origin. This institution has also found application in other cultural circles. See, "İslam ve Osmanlı Hukuku'nda Kasame Müessesesi," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 54 No.4 (2005): 349. However, as Rudolph Peters stated, various communities may have produced similar solutions to similar problems, but we cannot talk about legal borrowing in this regard. See, "Murder in Khaybar: Some Thoughts on the Origins of the Qasāma Procedure in Islamic Law," *Islamic Law and Society* 9, No. 2 Evidence in Islamic Law (2002): 163-164

109 Ali Bardakoğlu, 2001, TDV İslam Ansiklopedisi. https://islamansiklopedisi.org.tr/kasame 29.05.2022

110 Ibid.

have relatives, the bailee of *beyt-ül mal* might request a lawsuit. If the heirs accused someone from the community of commuting the murder, the practice of *kasâme* was not possible, and a criminal lawsuit must be initiated. In addition, those questioned, and suspects must take an oath in court that they did not commit the murder and did not know the perpetrator. Accordingly, the number of people called to take the oath in practice was 50, and for a valid oath, these 50 people must be men. The application of *kasâme* was used for all subjects, and there was no religious discrimination.[111] If the corpse was found in the grand mosque, big rivers, or bridges, *beyt-ül mal* should pay the blood money.[112] In other words, the collective responsibility[113] brought by *kasâme* was valid in areas where the state was not responsible. Where the state was responsible, the people did not have any responsibility.

According to archival data, *kasâme* was practiced in the Ottoman Empire for a long time. Although there were discussions about its abolition after the *Tanzimat*, it continued to be applied until the last years of the empire. However, archival documents show that the Ottoman State made its touches to the practice of *kasâme* and shifted its application according to different sects where necessary.[114] In this context, data showed that the *kasâme* procedure was also applied to murders with known perpetrators and committed within the family.

A document dated 1866 stated that the verdict regarding the hearing of Şerife Hatun, a resident of Karahisar-ı Sahib, who was said to have been killed by her sister-in-law, was sent to apply *kasâme* to the incident.[115] According to this, this murder case was first heard in the council of Hüdavendigar, according to sharia and the penal code. The record taken from here was then

111 Eren Paydaş, "Hukuk Sosyolojisi Açısından Kasame Kurumu," in *Mehmet Akf Aydın'a Armağan. Hukuk Araştırmaları Dergisi Özel Sayı* İstanbul: Marmara Üniversitesi (2015): 598-599

112 İbrahim Enes Onat, "18. Asır İstanbul'unda Şeriye Sicillerine Göre Öldürme Suçu," (Yüksek Lisans Tezi, İstanbul Üniversitesi, 2019), 115

113 So, *kasâme* is an exception to the basic principle of individual criminal responsibility in Islamic Law. Pamir, "Kasame Müessesesi," 350-351

114 See Ebru Aykut "Alternative Claims on Justice" for a detailed application of *kasâme* in rural arson cases.

115 BOA., MVL 745-41 / 14 July 1866

sent to the Supreme Council with the interrogations. The Supreme Council requested an opinion from the *fetvahane* on the sharia status of the case. According to the decision, it was stated that the *kasâme* procedure should be applied to it. Thereupon, the Supreme Council returned the file without implementing any final decision. Here, if they had used only the Hanafi fiqh, it would have been impossible for this case with a determined perpetrator to be tried with the *kasâme*. The verdict coming from the *fetvahane* must have been given by considering the comments of other sects. However, it is still quite interesting to apply *kasâme* for a murder committed within the family, the perpetrator of which was known, and where the official authorities also expressed the perpetrator.

Similarly, the body of servant Gorinako was found in front of the door of a woman named Marya in the Gilan district of Cyprus.[116] According to this, while Marya was asleep at night, the deceased servant entered Marya's house and attempted to perform an indecent act (*fiil-i şeni*). Marya battered the victim to protect her chastity. Marya herself admitted that she murdered to defend her honor. When the deceased's heirs did not demand anything from Marya, Marya was released. However, in this note, it was stated that if they do not demand *kasâme* and blood money from Marya's husband for Marya's situation, there would be no subject matter between them and the deceased's heirs in the future.

In this case, even though Marya said that she killed him, the heirs did not approve of this, and in this case, the right to claim kasâme arose for them.
In the case of non-Muslims, although the decision was made according to the Hanafi school, it is impossible to give a clear answer to the question of according to which scholar in the Hanafi sect. Under the current conditions, under the chairmanship of the sheik al-Islam, in line with the general opinion of the notables of the ulema, they act according to what is accepted as *muftābih*. As far as we can see, there was no final judgment here. They ask the *fetvahane*, and in line with the answer, it is said that *kasâme* should be done.[117]

116 BOA., MVL 805 A 26/ 15 October 1866

117 I would like to thank Ali Bardakoğlu for his valuable comments and directions related to *kasâme* practice.

Kasâme practice continued until the last days of the empire.[118] Accordingly, according to record number 512, written by the Grand Vizier Hakkı to the Grand Viziership, it was stated that "in unsolved murder cases, if the place where the murder was committed and no one's property is within the boundaries of the village, the village people should be given blood money (*kasâme*)."[119] In this record, an emphasis was made on the fact that taking compensation through *kasâme* was suitable to sharia judgment and the requirement of time and condition. The fact that *kasâme* was seen as a necessity in 1910 shows how indispensable this system was for the state. In other words, even if a new penal code was introduced and a new judicial order was established, the *kasâme* system remained valid throughout the empire in protecting public order.

Also, it should be considered that when we say *kasâme* in Ottoman law, it may not be the same as in classical Hanafi sources. We know that the Ottoman scholars developed some practices according to time conditions. The application of *kasâme* to arson cases was a striking example. Therefore, it is possible to say that the application of *kasâme* in murder cases was also diverse. The documents in the registers may not be fully understood without revealing what *kasâme* was and how it was applied in this period based on fatwas and records.

In the murders that form the data source of this study, even if the term *kasâme* was not directly used, the people's pursuit and search for the murderer with their own initiative and attempts, especially in cases where it was difficult to determine who the murderer was, evokes that *kasâme* was an internalized practice within the society.

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118 A document dated 24 April 1909 includes the definition of kasâme and its details. Y..EE.. 37-52 / 27 April 1909

119 *… fetva-yı şerifte dahi gösterildiği vecihle o karye ahalisinden kasame suretiyle tazminat ahzı hem hükm-i şer'iye muvafık hem de icabat-ı zaman hal ve zamana mutabık olmağla beraber…"* İstanbul Mahkemese 334 nolu sicil / 19 Ekim 1910
Also see, BEO.3799-284864 /31 August 1910; DH.SYS. 44-1.01 / 24 October 1910; TFR.I..KV.. 31-3068 /21 August 1903

§ 2.6. Chapter Conclusion

In this chapter, I examined the physical environments and methods in which domestic murders were handled. To understand the mentality changes and how the crime and the criminal were comprehended, I tried to elaborate on the basic principles of sharia law and Ottoman legal tradition. Part of my concern was tracking the changes in categories and mentalities.

The primary arguments here were related to the question of against whom the crimes were committed and who owned the bodily rights of people. With the new rules and legal system, the state laid a claim to the body and wanted to punish the criminals according to this claim. So, the fundamental question was, "who was the body's owner?"

Murder cases, which stood in a gray area as they pertained to public and private law, were within the jurisdiction of both the *nizamiye* and sharia courts. Therefore, murder cases had to go through the double vision of the state due to the new judicial order.

The *nizamiye* courts established in the new judicial order were both an opportunity and a trap for the Ottoman subjects. A possible sharia pardon in the minds of the murderers in sharia trials could be blocked by criminal law. Or, when the punishment given by sharia was insufficient for the heirs or the sharia conditions for the sentence they wanted could not be met, they could hope for help from the penal code. The hallmark of the nizamiye courts was that interrogation protocols were recorded verbatim. These protocols allowed the state to get to know its subjects and, even more importantly, the family, to which it attaches great importance.

There was also a change in the sentences given in the new judicial order. In this context, the most common type of punishment was hard labor. It was followed by a death sentence by penal law or by retaliation and imprisonment. The high rate of retaliation demand was quite remarkable when it is thought of in relation to kinship ties. The nature of domestic murders meant to demand more severe punishment for some.

3

Setting the Family

> "What is good for the individual can be destructive to the family; what preserves the family can be harsh *on* both the individual and the tribe to which the family belongs; what promotes the tribe can weaken the family and destroy the individual; and so on upward through the permutations of levels of organization
>
> – E.O. Wilson, *Sociobiology: The New Synthesis*.

Family became a site that must be regulated, rationalized, and disciplined in the nineteenth century to function properly for the good of society. Thus, the states had increasing interference in the private sphere of life, which generally concerned domestic issues. Since the family was regarded as the backbone of public morality, perfection in the family meant perfection in society and a strong state. Thus, the family has increasingly become a part and concern of the public sphere.

The family was not just a unit where men and women worked together to raise children. Instead, it was dynamic and a locus where men and women confronted each other for power struggle and influence. The relations of

power manifested themselves differentially in different familial phases.[1] Family elders could dominate the newlywed couple; the married couple could dominate their children; the husband could dominate his wife; the ex-married couple could dominate the newlywed couple; the grandfather could dominate the whole household.

Although the reforms made during and after the Tanzimat period did not directly address the family, the arrangements made were closely related to it in many ways. In other words, regulating the family was one of the covert purposes of state authorities in the nineteenth century. The administrative transformation aims of the state elites also changed the individual, society, and family. As Ortaylı points out, the modern state of the nineteenth century saw it as a duty to consolidate the family's economic and cultural structure, direct the youth's education, and protect the rights of children and wives.[2]

Since the declaration of Tanzimat, the Ottoman state gradually became more involved in the private sphere of its subjects, especially the family, to consolidate their social power through education, child welfare, and issuing marriage licenses or inheritance regulations. Thus, the traditional patriarchy was gradually replaced by state patriarchy.[3] In this context, the state took an active role in matters such as interfering with customs and traditions so that the subjects of the state would not have trouble getting married; or prevent the victimization of men who went to the military, the state intervened in the situation of their wives or fiancées until they returned from the military.[4] The state also paid special attention to keeping the records of birth, death, and marriage under control. [5]

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1 Dorothee Wierling, "The History of Everyday Life and Gender Relations: On Historical and Historiographical Relationships" in *The History of Everyday Life: Reconstructing Historical Experiences and Ways of Life*, ed. Alf Ludtke (Princeton and New Jersey: Princeton University Press, 1995), 160

2 İlber Ortaylı, *Osmanlı Toplumunda Aile*, 174

3 Kent Schull, *Prisons in the Late Ottoman Empire,* 176

4 See, BOA, DH.MKT. 16-3 / 31 May 1893

5 In Egypt, the state took similar steps related to the family. According to Ruiz the state acted as the head of the family in Egypt, especially in the economic field. As the state seized agricultural land, it began to tell families where and what to produce. Ruiz cites many cases

The state's say over domestic issues was not limited to the institutional aspect of the family, like the mahr, dowry, or wedding expenses. With the new court order, the state was also facing the details regarding the relationships between family members. It was perhaps the first time the state started to have detailed information regarding the conflicts and violence in the family.

To understand family dynamics, alliance strategies of family members, reciprocity, and the effects of economic differentiation on social and personal practices, it is necessary to look at property codes, rules, and structures. Things like land, house, and tools were shaping people's lives, and they were also the main descriptors of their relationships.[6] When we examine the reasons behind the domestic violence in the Ottoman provincial families, two main reasons stand out: monetary issues and honor (*ırz* and *namus*). These two concepts also stand out as the basis of survival for the people living in the countryside. However, what exactly was a crime and what was not sometimes varied depending on the crime's context. For example, while *ırz* and *namus* constituted extenuating circumstances on the condition of murder, monetary issues did not.

In this chapter, based on my archival research, I will analyze the domestic sphere in Ottoman provinces and discuss the marriage patterns, marital economy, and familial disputes. The cases I will evaluate shed light on domestic disputes in rural communities and show how family members voiced their demands, complaints, or experiences, as well as the ideals of the administrative units about the importance of family. These court cases and the testimonies broke the wall of silence surrounding the family. In this regard, I will first discuss the patterns of setting a family. Then I will look inside the family and try to reveal the intra-familial relations through the murders committed. Thus, I will try to answer questions like how people told their family stories, which parts or relationships they emphasized in their past lives, and what the conflicts and silences in their narratives were.

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of murder / injury caused by the controversy over these agricultural products and land issues. Ruiz, "Intimate Disputes, Illicit Violence," 38

6 David Sabean, *Property, Production and Family in Neckarhausen, 1700-1870* (New York: Cambridge University Press, 1997), 18

§ 3.1. Family and Household in the Ottoman Provinces

One of the things to consider when analyzing the family is that today's family ties and concepts differ from that of the past. In this context, it would be inappropriate to look for an intimate and affectionate relationship in the bonds that families develop with their children and the relationships between the couples.

The household formation and society's general functions were closely linked. John Hajnal suggests two household systems for historic Europe: simple and joined household systems.[7] In the simple household systems, marriage occurred at a late age, and when the couple married, they became in charge of their household. Before marriage, they often worked as servants in different homes. In the joint household system, marriages occurred at an early age (under 26 for men and under 21 for women), and the young couple often started to live in a household under the charge of an older couple. In other words, the household's son brought his bride to the existing one, and no new house was set up for the new couple.[8]

In the Ottoman provinces, the typical household pattern was a joint household system. The authority owner within the house was the eldest man in the family, and the inheritance could not be divided until his death. So, the determining principle in household formation in the Ottoman Empire was death rather than marriage.[9] The young couple did not have authority over

7 John Hajnal, "Two Kinds of Pre-Industrial Household System," in *Family Forms in Historic Europe*, eds. Richard Wall, Jean Robin and Peter Laslett (New York: Cambridge University Press, 1983), 69

8 According to Alan Duben Turkish household formation systems resembles that of Hajnal's joint household system. For a detailed statistical analysis (from early nineteenth century to1940s) see "Turkish Families and Households in Historical Perspective," (Journal of Family History. Vol. 10. No.1, 1985), 81; For a comperative perspective also see, Peter Laslett and Richard Wall (eds.) *Household and Family in Past Time: Comparative Studies in the Size and Structure of the Domestic Group over the last Three Centuries in England, France, Serbia, Japan and Colonial North America, with Further Materials from Western Europe* (New York: Cambridge University Press, 1972)

9 Alan Duben, *Kent, Aile, Tarih*, 116

the modes of production. So, the marriage did not have any importance in terms of a change in property rights and did not change the house's structure as a unit of consumption. Since the new couple was not responsible for earning a livelihood, marrying at quite a young age was not a problem. The newly married couple mainly was articulated to an established family order.

The time for splitting the households was an issue of conflict. As I will discuss in the following chapters, disputes in this regard usually occurred between fathers and sons, which also deteriorated their relationships. The father's death was the most crucial factor in the new authority figure's determination, the house's reorganization, and the distribution of inheritance. The archival documents suggest that property issues were one of the dominant issues that shaped the basis of violence within the family. The family's economic position and good reputation were one of the cornerstones of one's identity and self-esteem in the village. So, the possibility of receiving harm from this point was especially unaccepted by the male members of the family.

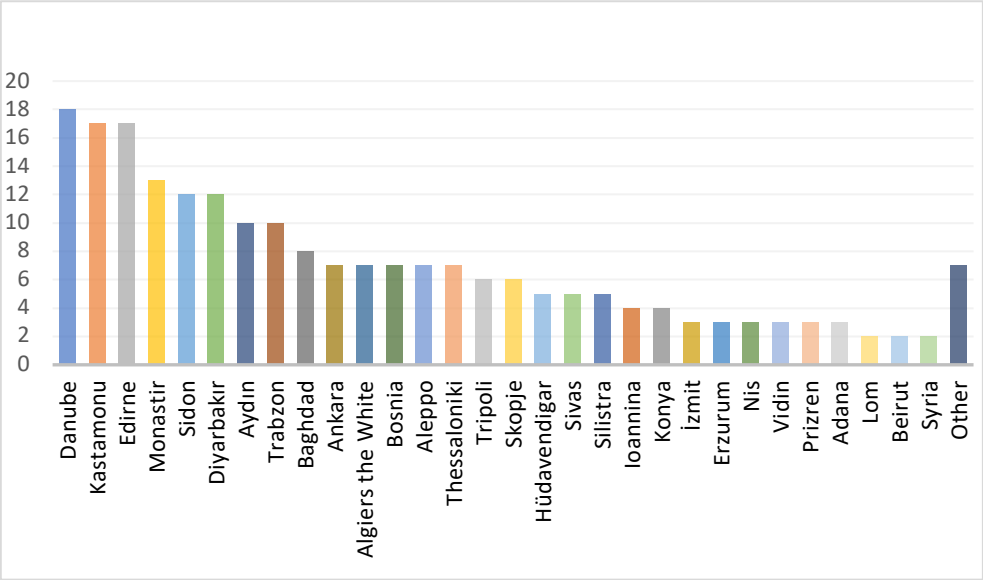

Figure 3.1 Family Murders by Provincces[10]

10 In this chart, due to the space limit, I wrote the cities or districts according to the provinces they were connected to. Since the cities or districts in the organizational chart of the provinces vary according to the years, I established the province connection based on the date of the

The murders committed within the family were never independent of the social or political events of the time. When we look at the murders committed in the family after 1850, we come across striking data in this context. However, I should note that the data in the table below had some limitations. As I mentioned before, murder records have been missing from archive files for some decades. In this context, I could not access the court records, especially regarding the murders committed between 1880-1890 and 1893-1900. In addition, post-1900 records are also relatively few compared to previous years. Considering the frequency of murders in previous years, I do not think that the lack of documents meant no murders in those years.

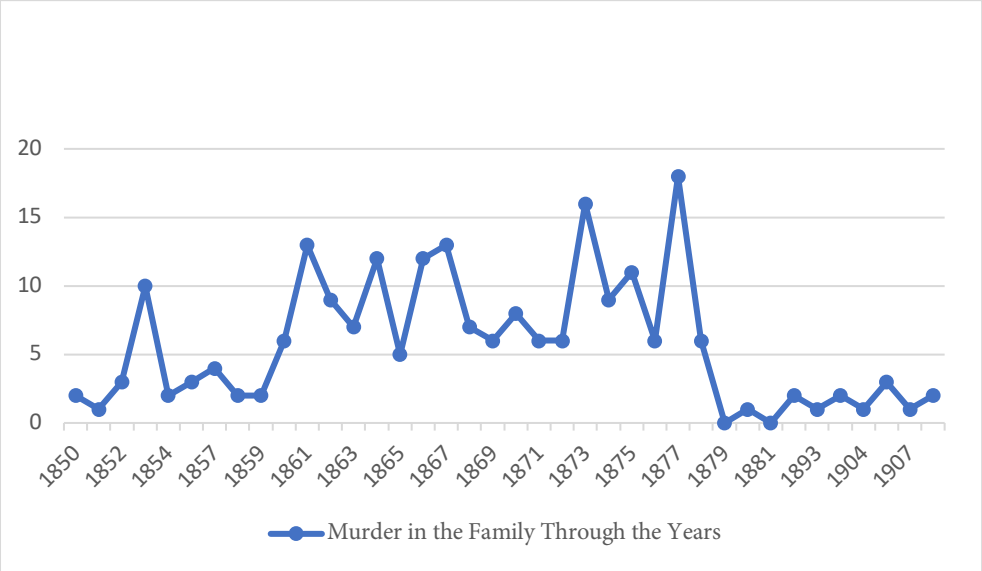

Figure 3.2 Murder in the Family through the Years

According to the data I have, there was a sharp rise in the murders committed in the family in 1853, 1861, 1864, 1866, and 1872 followed by a

murders. The "other" category includes Kosovo, Van, Crete, Yemen, Hejaz, Shkodra, Harput. The Province of Edirne also includes three murder cases from Çatalca. Çatalca was one of the districts (Kaza-i Erbaa) of Edirne. Kaza-i Erbaa was attached to Bab-ı Zabtiye in 1865, and sometimes a county or township was included in this administrative structure, and sometimes it was separated. Since the borders of Kaza-i Erbaa changed over the years, I included Çatalca exceptionally in Edirne. See, Seyfullah Şahin, "Çatalca'nın Sosyo-Ekonomik Durumu: XIX. Yüzyıl Ortaları," (Yüksek Lisans Tezi, İstanbul Üniversitesi, 2015)

steady decline and a second rise in 1877. What happened in the family was not independent of the empire's social, political, and economic events. In this respect, the high number of murders according to the years in the chart coincided with extraordinary circumstances such as war, famine, and drought. However, there were few references to such political, social, or economic events in the court files, except for information about military service.

Pitirim Sorokin states that it is difficult to establish a linear connection between wars and crime rates. According to Sorakin's study of wars in the second half of the nineteenth century, criminality increased in some wars and decreased in others. Here, factors such as whether the war was at home or abroad and whether it was successful or not were the determining factors.[11] However, some contemporary studies claim that, in some cases, the declaration of war suspends the cultural norms for violence and legitimizes violence, thus increasing the rate of violent crime.[12] Ted Gurr, for example, sees war as the most obvious correlate of historical waves of violent crime in Britain and the United States and claims that war legitimizes violence.[13] In addition, a correlation between wars and murder was seen in the models made on the deteriorated economy due to the war.[14]

1853 was the year of the Crimean war, and in the process leading up to the war, the Ottoman Empire was struggling with financial crises. The treasury had gone bankrupt in 1851, and both the bad harvests and the riots in Bosnia had increased government spending.[15] All these expenditures naturally returned to the public as new taxes. The 1860s were years of financial depression and political crises. Uprisings in the Balkans and Lebanon were increasing the state's expenditures significantly. In these years, when revenues were far behind expenses, the state borrowed from Europe at

11 Pitirim Sorokin, *Contemporary Sociological Theories* (New York and London: Harper and Brothers, 1928), 340-344

12 Jonas B. Bunte, Nadine M. Connell and Zachary A. Powell, "War Abroad and Homicides at Home," *Social Forces* 97, No. 4 (2019): 1840-41

13 Ted R. Gurr, "Historical Trends", 344-345

14 Dane Archer and Rosemary Gartner, "Violent Acts and Violent Times: A Comparative Approach to Postwar Homicide Rates," *American Sociological Review* 41, No. 6 (1976): 942

15 Candan Badem, *The Ottoman Crimean War (1853-1856)* (Leiden: Brill. 2010), 293

high-interest rates.[16] 1871-75 was the "period of chaos," as Davison puts it, and the murders in the family also got their share of this chaos. Economically, the empire suffered from an agricultural and treasury crisis blown up by the prolonged war against tribespeople in Yemen. The revolt in Herzegovina in 1875 also further deteriorated the situation.[17]

The drought in 1872 increased the seed prices, but the government did not stop inflicting more taxes. In the same period, Cyprus was in its third season of drought. So, conditions were worsening in Anatolia with the famine of 1873, and the Balkans were also affected since the government forbade the exportation of grains from there. Also, severe winter conditions in the eastern and southern regions, followed by floods of melting snow in the next year, added to the chaos.[18]

So, it is not surprising to see a dramatic increase in murder cases, especially in 1873 and 1877. The Ottoman famines in the 1870s killed thousands of people, especially in Anatolia, and deeply affected the domestic economic and political environment. In the famine of 1873-75, almost 100.000 people lost their lives.[19] As a result of the impact of these famines, the people's daily lives, together with the economic and political crisis of the period, many villagers began to migrate. So, while some villages became overpopulated, some were desolated.[20] The 1875 revolt in Herzegovina

16 Şevket Pamuk, *Türkiye'nin 200 Yıllık İktisadi Tarihi: Büyüme, Kurumlar ve Bölüşüm* (İstanbul: Türkiye İş Bankası Kültür Yayınları, 2015), 115-120

17 Roderic Davison, *Reform in the Ottoman Empire: 1856-1876 (*Princeton and New York: Princeton University Press, 1963), 270

18 Roderic Davison, Ibid., 301-302

19 Özge Ertem, "Considering Famine in the Late Nineteenth Century Ottoman Empire: A Comparative Framework and Overview," *Studies across Disciplines in the Humanities and Social Sciences* 22, Helsinki: Helsinki Collegium for Advanced Studies (2017): 152-153

20 According to Roderic Davison, in a district of Ankara, whose population was 52.000, the population decreased to about 25.000 in 1875; of whom 20.000 were dead and 7.000 were migrated somewhere else. *Reform in the Ottoman Empire,* 303. According to Yahya Araz, another dimension of this famine was that families wanted to give their children up for adoption or as servants. For this purpose, many girls came to Istanbul from the countryside during this period. See, "Rural Girls as Domestic Servants in Late Ottoman Istanbul," in

compounded the burden of the famine of 1873-74 on the treasury due to tension between Muslim landlords and Orthodox peasants, and the year 1875 resulted in a financial collapse for the Empire.

The highest point in the murders committed within the family in Ottoman provinces was reached in 1877. This rate was not a coincidence. The 1877-78 Ottoman-Russian war, which came upon the memories related to the trauma of famine and financial crisis, was one of the most tragic impacts. At the end of the war, as a result of the Berlin Treaty of 1878, signed at the end of the war, Ottoman Empire was deprived of most of its lands in Europe, and it initiated a great wave of migration.[21] After these losses, an increasing interest occurred towards the population on the side of the state, and many regulations were made to manage better what remained after these lost lands.

As for the reasons behind the murders stated in the trials, honor, marital conflicts, and intention of another marriage had the highest rate. In these murders, wives were in the first place as the murderers, and husbands and sons followed them. Husbands had a foremost place among the victims. At this rate, the murders committed by women on their own and in association with their lovers or a helper were effective. However, women also ranked second among the victims, and the murders of fathers followed them. However, I would like to underline once again the limitation of the available data set. The data presented in the graphs are the data of 218 cases, which are the subject of this study, and this is not a sufficient number to make

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Children and Childhood in the Ottoman Empire: From the 15th to the 20th Century, eds. Gülay Yılmaz and Fruma Zachs (Edinburg: Edinburgh University Press, 2021), 200, 204

21 "The former Danube province was divided between Serbia (which took Nis), the Bulgarian principality (made up of five sanjaks such as Ruse, Vidin, Tarnova, Varna, and Sofia), and Romania (which had taken Tulca). Composed of Wallachia and Moldavia, Romania had already gained full independence. A large part of Edirne province became an autonomous province under the name of Eastern Rumelia. Montenegro and Greece acquired parts of Shkodra (Scutari in Albania), Trikala, and Preveza. Russia occupied important regions of the Caucasus. It was estimated that the Ottoman state lost 4.5 million people, including the lands it transferred." Kemal Karpat, *Osmanlı Nüfusu (1830-1914): Demografik ve Sosyal Özellikler* (İstanbul: Tarih Vakfı Yurt Yayınları, 2003), 67

generalizations for Ottoman society. These data may change with the archival studies to be carried out for this period.

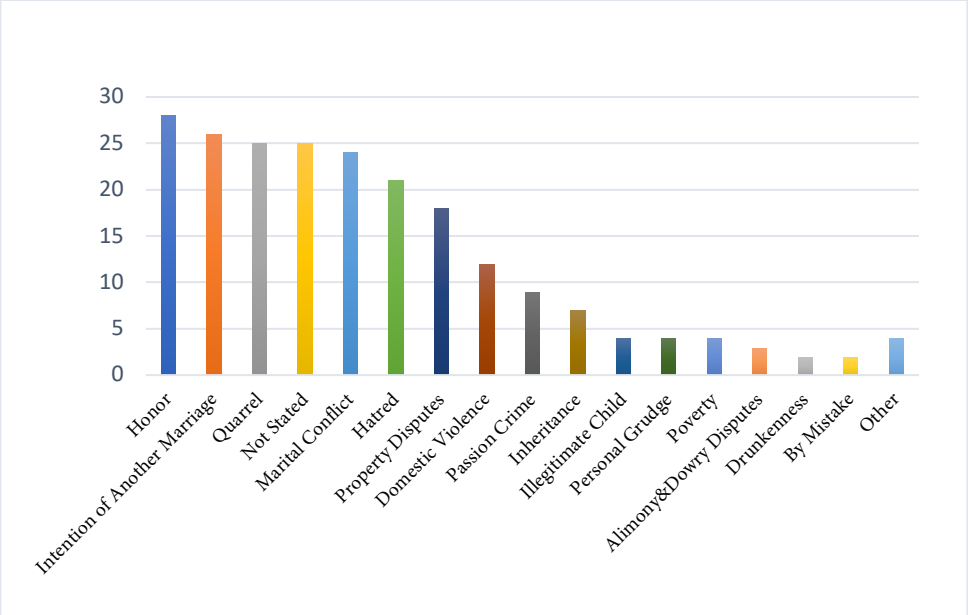

Figure 3.3 Reasons for Murder in the Family

Although the murderer and the victim were known, the reason for the crime was not stated in some files, especially before the *nizamiye* courts were fully operational. Especially in the records after 1864, it was written where, when, and for what reason the murder was committed.

The biggest reason for the murders committed in the family was honor. In this respect, the most prominent victims were women. As we will see in detail in Chapter 5, men were also killed because they were dishonest. The details of the marital conflict were expressed in the court records as the lack of equivalence (*küfuv*) in marriage, the incompatibility between the spouses (*adem-i imtizaç*), and the lack of love. As we will see in detail below, the court attached great importance to these three issues.

The issue of hatred encompassed all members of the family, regardless of the large and nuclear family. Unfortunately, it was not detailed in most recordings what caused the hatred. Only some records showed how long there was hatred between family members. The rate of murders resulting from spontaneous quarrels was also quite considerable. For the murders in this

category, the perpetrators stated that they started to argue with the deceased family member and committed the murder with the tools nearby.

As we will see in detail in this section and later, property disputes were seen in almost every family, regardless of class and status. The amount of property did not matter much in these murders. Sometimes family members could kill each other just for a tree, a ring, or a few sheep. I would like to note that the reasons leading to murder in the family in Ottoman society are not unique to this society. When we look at the literature on this subject, it is quite possible to find partnerships that transcend states and history.[22]

In the murders that I categorize as domestic violence in the graphic, family members directly expressed the violence they experienced. This violence could be physical as well as verbal violence in some cases.

22 For example see John Brackett, *Criminal Justice and Crime in Late Renaissance Florence, 1537-1609* (Cambridge: Cambridge University Press, 2002); Martha Mundy and Richard Saumarez Smith, *Governing, Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (New York: I. B. Tauris, 2007); Maria Agren and Amy Louise Erickson eds. *The Marital Economy in Scandinavia and Britain 1400–1900* (London and New York: Routledge, 2017); Jack Goody, *The Development of the Family and Marriage in Europe* (New York: Cambridge University Press. 1994); Marie Agren, *Domestic Secrets: Women and Property in Sweden, 1600-1857* (Chapel Hill: University of North Carolina Press, 2009

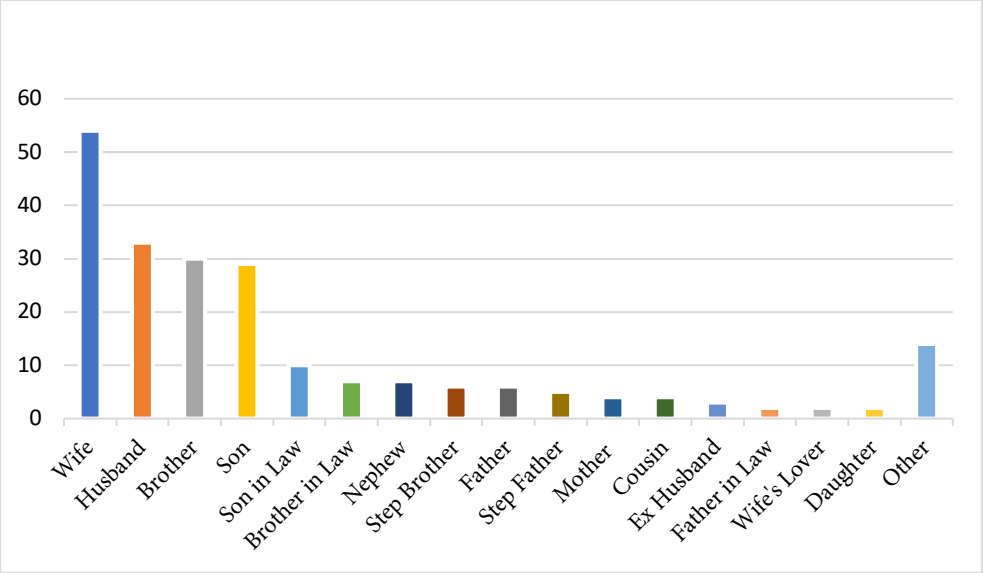

Figure 3.4 The Murderers in the Family

The number of murderous wives was a remarkable result of this research. The number of murderous husbands following murderous wives suggests that the family conflict was mainly between husbands and wives.

Sons took on a kind of duty to their parents and brothers to their other siblings, sometimes to protect themselves, sometimes to protect them, and to keep them within moral limits. Cultural codes caused them to internalize this type of understanding, and it was reproduced over and over within the family. In this respect, the murderer brothers committed these murders against their sisters if honor was at stake. In cases of jealousy, anger, or property, they mostly killed their brothers. Murderer sons, on the other hand, primarily targeted their fathers. As we will see in detail in the next chapter, the most crucial reason for parricide cases was property disputes between fathers and sons.[23]

23 The other category in this graphic has 14 murderers, and it includes sister's husband (2), sister-in-law (1), daughter-in-law (1), stepmother (1), uncle (1), mother-in-law (1), brother of son-in-law (1), fiancée (1), co-wife (1), husband of sister-in-law (1), servant (1), ex-wife (1), concubine (1)

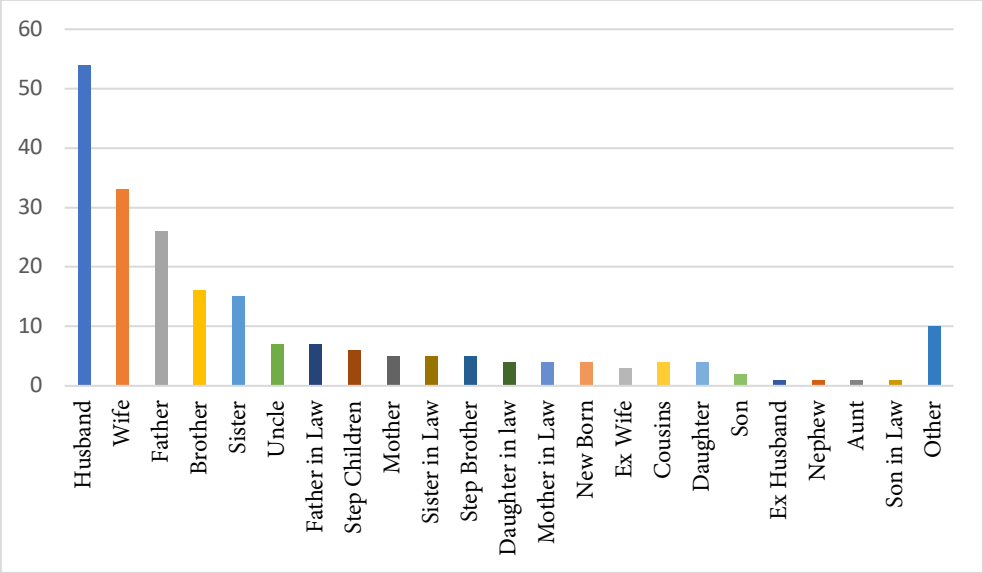

Figure 3.5 Deceased Family Members

Using firearms was the most used method in domestic murders. This was followed by stabbing and strangling. In this table, I have categorized the forms of killing while the victim was asleep separately because the punishment could be heavier in murders committed while the victim was asleep. In addition, killing while sleeping and the tool used gave clues about the relationship between the murderer and the victim.

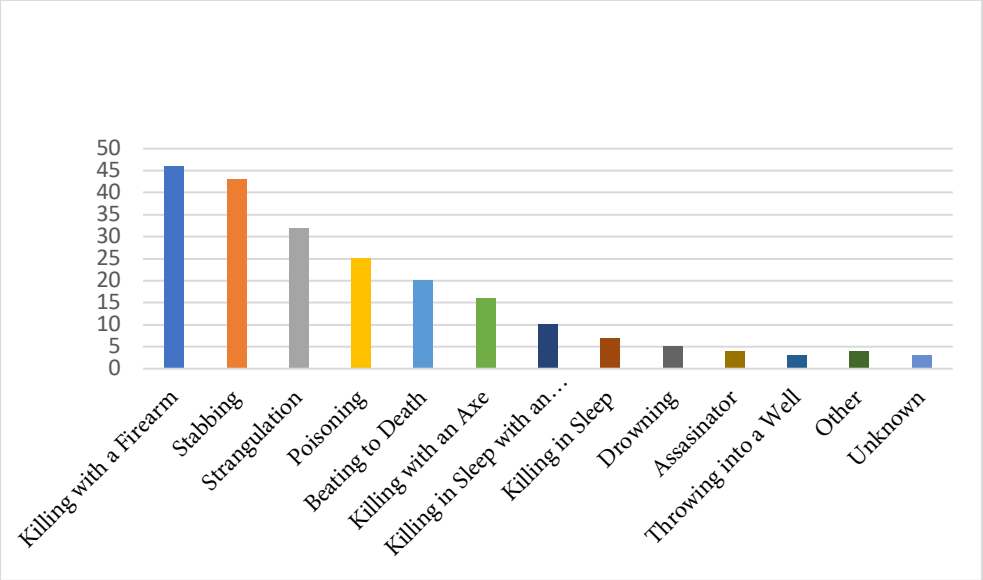

Figure 3.6 Ways of Murdering

While poisoning was a method used mainly by women, stabbing was commonly carried out by various male members of the family. Most of those who murdered with an ax while the victim was asleep were wives. In killing with an ax in general, however, sons were in the first place, and wives were in the second place. In the crime of strangulation, the highest rate belonged to wives and husbands, and this rate was almost equal.

In what follows, I rewind the narrative a bit more. I will look at the marriage and marriage patterns in the Ottoman provinces in detail to better understand the conflicts within the nuclear family, among couples and large families.

§ 3.2. Marriage

Marriage was regarded as a key to social harmony in many societies. For Islamic communities, as Stone pointed out for England, the marriage did not mean a sincere union based on personal choice.[24] People generally tied the knot with motivations such as joining two kin groups, continuing the generation, obeying divine orders, and avoiding prohibitions. The married

24 Stone, *The Family*, 5

status was the ethical norm in the pious Muslim life. Having economic or social advantages with marriage was the extra benefit of marriage.

In Islamic law, marriage is a relationship based on a contract. If the marriage was to be ended, the agreement stated the responsibilities of husbands. Regardless of the wife's monetary sources, the husband must provide support (*nafaqa*) for his wife and their children.[25] As a part of this contractual structure, the practice of *mahr* was regarded as one of the essential aspects of marriage, which was regulated in favor of women. So, it was different from the dower and bride price. *Mahr* stipulated that the woman entered the marriage union with her property. Therefore, it must be directly paid to the bride, not any of her relatives. However, if the girl was outside her legal majority, her guardian was authorized to receive the *mahr* on her behalf on the condition of giving it back to her when she reached her legal majority.[26]

According to Kınalızade[27], the family meant the continuation of the lineage. He defined the duties and responsibilities of family members in this regard. It was the father who managed the family and provided for the family. He saw the mother as necessary for the continuation of the family and the next generation. In the absence of the father, the mother acted as a proxy for the family and maintained the family. Kınalızade disapproved of marrying more than one woman. According to him, multiple marriages took much time and kept people busy, and it was not easy to provide justice between the wives. He also touched on the issue of equivalence (*küfüv*) in marriage.[28] As we will see below, the equivalence in marriage was a highly reflected point in the court trials to explain marital disputes. Since marriage unions constituted the basis of social relations, they had to be arranged to establish and maintain harmony and order in society. That's why the issue of equivalence was

25 Judith Tucker, *In the House of the Law,* 42

26 Ibid., 53

27 Kınalızade Ali Efendi (1510-1571) was one of the famous scholars of Suleyman II era who worked as a judge in several parts of the empire. In his book *Ahlâk-i Âlâi* (Supreme Ethics) he reflects his thoughts on several aspects of philosophy of ethics and elaborates on family ethics, state government and political ethics. See, Kınalızade Ali Çelebi, *Ahlâk-i Âlâi* (İstanbul: Klasik Yayınları, 2007)

28 Ayşe Sıdıka Oktay, "Kınalızade Ali Efendi ve Ahlak-ı Alai," (Doktora Tezi, Marmara Üniversitesi Sosyal Bilimler Enstitüsü, Felsefe ve Din Bilimleri Ana Bilim Dalı, 1998), 277

important. In her analysis of the muftis, Judith Tucker expressed the equivalence in marriage from the eyes of the muftis as follows: A free woman should not marry an enslaved person; a scholarly girl should not marry an illiterate; a daughter of a good family should not marry someone unemployed, sinful, and poor. [29] These main criteria were also at the forefront of court hearings. The interrogators in the courts especially paid attention to these basic features in terms of whether the couple was equal or not.

In the arrangement of marriages, family elders enjoyed the right and responsibilities. But an individual in their legal majority also had the right to choose their spouse. According to Kınalızade, girls should be married off when they reach puberty. This view of Kınalızade had a response in the eye of the public that went beyond the ages. In a society where the sexuality of women was closely linked to the honor of the family, the marriage of girls at a young age was a strategy of security.[30] But, the archival records also suggest a contrary situation mainly shaped by economic factors, where women were not let by their parents to marry at an early age or where women were older than their husbands. Also, according to Stone, in about twenty percent of first marriages in Europe in the seventeenth and eighteenth centuries, women were older than their husbands for five or more years.[31] In these marriages, economical unit was the dominant consideration rather than personal preferences. Although it is impossible to reach exact data related to the marriage age in the Ottoman Empire, the examples I encountered in the archive, where the wives were older than the husbands, suggest that economic factors were the leading priority for the foundations of these marriages.

For the Ottomans, ideally, marriage meant joining the husband's household, setting up a new family there, and having a legal sexual relationship and biological reproduction.[32] In this context, there were various forms of marriage in the Ottoman provinces, such as levirate, *taygeldi,* and *berder*. Levirate marriages meant marrying one's brother's widow. As we will see examples in the following pages, this was a method preferred by family

29 Judith Tucker, *In the House of the Law,* 42

30 Alan Duben, *Kent, Aile, Tarih*, 124

31 Lawrance Stone, *The Family,* 193

32 Alan Duben, Ibid., 166

elders to ensure that the property left to the widow stayed in the family. *Taygeldi* marriage was the marriage of a widowed man and woman and the marriage of their children. In *berder* marriages, the two men to get married exchanged their marriageable sisters.[33] These marriages were generally monogamous, and the standard sample was patrilocal, but they could also be matrilocal and neolocal.

To ensure the continuity of the family institution and not disrupt the social system, the state developed some strategies related to marriages in the nineteenth century. The most crucial motto of the state in this regard was to facilitate and encourage marriage, so it tried to find practical solutions, listened to people regarding their concerns, and acted accordingly. In what follows, I will briefly discuss the state's agenda related to the marriages of its subjects.

3.2.1. State's Say on the Institution of Marriage

The ideal marriage in the eyes of the state was that it should not be of late age and that it should be accessible to everyone with payable bride price or dowry expenses. Above all, it should be within the framework of moral values. In this regard, the state took many steps to facilitate the establishment of the family and to protect the marriage and family establishment. The state was increasingly interfering with marriage and family relations and was trying to regulate family life with various edicts. These regulations include trying to abolish the bride price, interfering with the age of marriage, banning unauthorized marriage, prohibiting traditions that harm marriage, etc.[34] For example, for the *mahr* payments, in an edict of 1863, it was stated that for the classes that were determined as poor, middle-class, and wealthy, 100, 500, and 1000 piasters of bride price were deemed appropriate.[35]

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33 Tuğça Poyraz-Tacoğlu, "Türkiye'de Gerçekleştirilen Geleneksel Evlilik Çeşitlerinin Nedenleri ve Evlilikler Üzerinde Törenin Etkisi," *ODTU Sosyal Bilimler Enstitüsü Sosyal Bilimler Araştırmaları Dergisi* 2 Sayı. 4 (2011): 117-119

34 See, Tülay Ercoşkun, Tülay Ercoşkun, "Evlilik ve Nikaha Dair Düzenlemeler"

35 İlber Ortaylı, "Osmanlı Aile Hukukunda Gelenek," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol.2 (*Ankara: T.C. Başbakanlık Aile Araştırma Kurumu, 1992), 85

Providing alimony, or the husband's taking care of his wife in the marital union, was one of the primary concerns of both the sharia and *nizamiye* courts. The society also had an expectation in this regard. If the gendered roles assigned to the couples were not accomplished, this was a legitimate reason to ask for a divorce or apply to the state to correct the situation. During the trials, this was one of the first questions they asked the spouses. The fact that the women came to the court and demanded their alimony shows that this establishment was taken seriously by the court.[36] The divorce demands of women reflected in the archive documents were generally due to their husbands abandoning them or not providing their alimony. According to Yahya Araz abandoning wives was a common phenomenon throughout the Ottoman Empire due to military, economic and religious reasons.[37] The common point in these documents was not necessarily the request for divorce. The women were demanding either divorce or alimony. In fact, according to Hanafi jurisprudence, the woman abandoned by her husband could not apply to the court for divorce.[38] But there are also court records that say otherwise.

In the marriage contract, husbands can also give their wives one of their talaq rights (*tafwīd'al-talak*). If a man who left the house for the above reasons gave this right to his wife and did not return within a certain time, the woman could use her right of talaq.[39] Kayhan-Elbirlik further states that "One of the designated roles of the qadi was to act as the protector of women in court, in

36 Judith Tucker, *House of the Law*, 75

37 Yahya Araz, "Kadınlar, Toplum ve Hukuk: 16. ve 17. yy Osmanlı Toplumunda Eşleri Tarafından Terk Edilen Kadınlar," *Tarih ve Toplum: Yeni Yaklaşımlar* (2007): 65-66

38 It is not accepted that the missing person is dead unless he has reached the age of natural death. But there are exceptional interpretations in situations such as war. Again, the judge should do his best to find the missing person in this case. According to the Hanbali school, the obituary can be given four years after the disappearance if there is a loss due to a situation such as war. Malikis are more flexible in this regard. The wife's demand is accepted when she declares that her husband has been missing for four years. Mahdi Zahraa, "Legal Personality in Islamic Law," *Brill: Arab Law Quarterly* 10, No. 3 (1995):197-199; also see, Yahya Araz, "Kadınlar ve Hukuk," 69; Amira Sonbol ed. *Women, the Family and Divorce Laws in Islamic History* (New York: Syracuse University Press, 1996)

39 Leyla Kayhan-Elbirlik, "Negotiating Matrimony", 130

particular those who had been abandoned by their husbands without any maintenance."[40] In some situations, the qadi even had a public force to end an unlawful situation harming one of the spouses.[41]

The court was not just a place for divorce and offered other intermediate solutions for marital problems.[42] So, one can say that these women went to court to make a legal demand about their situation and sought their legal rights. Reporting the missing husband's absence could be a step toward the woman's remarriage intention or the distribution of the missing person's assets, if any.[43] As Boğaç Ergene points out, the court was more than a venue of litigation, and "it had the flexibility to satisfy both judicial and social concerns.[44] In this context, women were not in a passive position in the marital union. On the contrary, they were forcing law channels to get their rights.[45]

After the Tanzimat, there were efforts by the state to encourage marriages. In this context, the state was interfering with the marriage customs that had been going on for years. The problems experienced by the people regarding the realization of marriage were evaluated on the state's welfare scale. In other words, according to the state, with the increase in marriages, the population would increase, and the country would become prosperous. Here it was

40 Ibid., 131

41 Ibid., 204

42 The sharia court was a destination not only for Muslim women but also for Christian women. Although the authorities recognized their church, they could apply to the shari'a court as canonical requirements were milder in the qadi court, and there were no strict procedures. See Svetlana Ivanova, "Muslim and Christian Women before the Kadi Court in the Eighteenth Century Rumeli: Marriage Problems, Oriente Moderno," *Oriente Moderno* 18 (79), Nr. 1 (1999): 170-171

43 Fort he legal condition of missing person in Islamic law see, Mahdi Zahraa "Legal Personality", 196-201

44 Boğaç Ergene, "Why Did Ümmü Gülsüm Go to Court? Ottoman Legal Practice between History and Anthropology," *Islamic Law and Society* 17, No.2 (2010): 241

45 For example see: BOA., DH.MKT.1331-93 / 5 July 1880; BOA., DH.MKT.1377-28 / 10 November 1886; BOA, DH.MKT.1558-105 / 29 October 1888; BOA., DH.MKT. 1687-115 /7 January 1890; BOA., DH.MKT. 1934 – 118 / 22 March 1892; BOA., DH.MKT.196-71 / 16 January 1894; BOA., HR.SFR. 04.. 410-16 / 6 June 1898

possible to see the biopolitical desire of the state toward its subjects.[46] The state wanted a qualified and large population. As one of the ways to increase the population, an edict published in 1844 stated that girls and widows could marry with the judges' permission, even if their parents or legal guardians did not permit it.[47] This regulation towards facilitating marriage was a step to undermine the authority of fathers or legal guardians. Also, the 1840 penal code introduced rules on wedding gifts in the section dealing with the bribery issue. Accordingly, the type and amount of gifts, which were customary to be given on occasions such as weddings, would be limited and explained by another law, and violation of this would be prohibited.[48] Moreover, in a will published in 1850 on circumcision and weddings, it was stated what would be considered a gift and a bribe, and also, the groom was asked not to give gifts to the bride and the bride's party, neither large nor small.[49]

The public also had an answer to the problems of wedding expenses. For newly married couples or those who want to marry their children, abduction and elopement were the most practical ways to avoid these costs. However, with the penal code of 1851, the state turned this practice, which was somehow adopted by the public, into a crime encompassing all subjects. In Islamic law, abduction and elopement did not have a criminal counterpart, but *tazir* punishment was given to the parties because they disturbed the public peace. In this respect, it was unexpected for the people that those who committed this crime were sentenced to imprisonment or temporary hard labor. The state had another say in marriage issues by criminalizing abduction and elopement.

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46 Rather than dealing with the individual body, biopolitics deals with cohorts of individuals, namely the population, and how to govern by manipulating the properties of the population – for example, its productivity, its growth rates, and its mortality rates – the project being to promote the population and help it increase its productivity and material well-being. Michel Foucault, "Society Must Be Defended," 249

47 Tülay Ercoşkun, "Evlilik ve Nikaha Dair Düzenlemeler," 73

48 *"Düğünlerde ve bazı cihetlerle dostane ve muhibbâne itası mesnun olan hedâyâ'nın dahi cins ve miktarı başkaca bir kanun ile tebyin ve tahdit olunarak onun tecavüzü bir vakitte caiz olmaya."* Ahmet Gökçen, "Tanzimat Dönemi Ceza Kanunları," 133

49 Tülay Ercoşkun, "Evlilik ve Nikaha Dair Düzenlemeler," 88

The main factors for the girls' elopement were parental opposition to the girl's marriage to the person she wanted and the ill-treatment she experienced in the family.[50] The general attitude towards abduction was that the kidnapped girl should be married to the abductor. In this context, families rarely sought justice for their daughters.[51] There were also court records where I came across the abducted girl seeking justice for herself. In this context, the new court order offered an opportunity for such cases.

After the Tanzimat, the problems experienced in marriage were also included in the inspection reports, which were written to see the practices in the provinces in place. Another measure to facilitate marriages was the *İzdivac ve Tenâküh Maddesi Hakkında İlanname*, which was implemented in 1865 in Nis and Danube provinces by Mithat Pasha. Accordingly, due to the difficulties people faced regarding marriage, girls over 18-20 in villages adopted the elopement option because they could not get married, the young men who abducted them were punished, and many more such evils occurred.[52] So, being deprived of marriage did not only mean a decrease in the population in the eyes of the state. It also encouraged prostitution and illegitimate relations among the people.

In this announcement (*ilanname)*, they included details about the gifts to be given or not given at the weddings, the amount of the mahr, the type and amount of the treats at the wedding, or even the number of towels in the dowry that the girl will prepare. It was also stated that the groom could not cover the bride's decorations, and even if the owner of the wedding were wealthy, the bride's room would not be covered with items such as silver quilts and mattresses.[53] In short, the state was trying to prevent all kinds of showing off and unnecessary expenditures in wedding preparations and weddings.

In a document about taking measures to facilitate marriage and marriage proceedings in the province of Konya,[54] a circular of 11 articles was drafted

50 Gamze İlaslan, "Abduction of Women and Elopement in the Nineteenth Century Ottoman Nizamiye Courts," (MA Thesis, Boğaziçi University, 2015), 40

51 Ibid., 50

52 Tülay Ercoşkun, "Evlilik ve Nikaha Dair Düzenlemeler," 125-126

53 Ibid., 127-131

54 BOA., İ..MVL. 550-24668 / 3 April 1866

and stated that some customs had to be abolished to facilitate the marriage and marriage procedures and avoid unnecessary expenses. In these articles written by prominent people, what was requested from the Sultan was to write an order addressed to the governor so that the people could get rid of poverty and marry quickly. Similarly, in Bosnia in 1864, the facilitation of marriage and the abolition of local customs were on the state's agenda to ensure population growth.[55] In another document from 1870, the state council discussed making the people want to get married in Mersin.[56] Accordingly, most of the people in Mersin did not let their daughters marry until they reached 30 or even 40, and as a result, it was reported that many mischiefs were born from this situation. The common point of all these documents and regulations was that social order and morality would deteriorate in societies where marriage was reduced or absent.

While the state was making plans to encourage marriage, it was also following the practices in the field. In this context, in a document dated 1867, it was stated that good results were achieved with the measures taken to remove the obstacles that made marriage difficult in the Kocaeli district but that there should be no pressure or coercion.[57] Likewise, with the regulation in 1866, many benefits were seen from the warning letters published in Prizren, Skopje, Sofia, and Nis districts. Accordingly, everyone followed these orders quickly, and more than 1000 marriages were held in a year in the town of Kyustendil alone.[58]

The state also had an agenda on the proper age of marriage. Accordingly, late-age marriages were problematic as the ones that occurred before puberty. The practices of parents, who did not allow their daughters to marry until a certain age, became a concern for the state, like the marriages conducted before puberty. For the marriages arranged by the legal guardians before puberty, the minors had the right not to accept the marriage when they

55 BOA., A.}MKT.MHM. 298-53 / 26 April 1864

56 BOA., ŞD. 2115-10 / 30 July 1870

57 BOA. A.}MKT.MHM. 376 – 52 / 11 March 1867

58 Tülay Ercoşkun, "Evlilik ve Nikaha Dair Düzenlemeler," 126

reached puberty.[59] Likewise, taking a bride price other than *mahr* entered the state's intervention area since it prevented some people from getting married or put them in a difficult situation on the eve of marriage.[60]

The new regulations also necessitated recording all kinds of marriage contracts. The prohibition of marriage without permission or record reveals that the state saw marriage as a tool for population control. In this respect, the state saw some marriages as appropriate and some as inappropriate. For example, the state banned marriage to Iranians in 1822. There are also arguments that this ban goes much earlier. This prohibition in 1822 came to the fore again 50 years later, and a regulation was published stating that the ban continued. According to Ercoşkun, the most crucial difference in this arrangement made in 1874 was that the concept of "sect" was not included in the text.[61] In this regulation, it was stated whether marriages made before 1874 would be annulled and that mothers and children would be recognized as Ottoman nationals and responsible for taxes and military service.[62] Moreover, in a document dated 12 March 1885, it was also emphasized that if a marriage occurred and a child was born, they would be considered Ottoman subjects and would be treated accordingly when they were to be enlisted. Strikingly, the prohibition of marrying Iranians, which was insistently emphasized by the state, was violated by the people until the last years of the empire, and the nationality and military service status of the children born from these marriages continued to be a problem.[63]

In short, it is possible to list the problems that Ottoman women and Iranian men think will cause their marriage as follows. 1) The eastern provinces (Baghdad, Mosul, and Basra) were difficult to control because they were far from the center. At the same time, an ancient Shiite threat rose from

59 See, Mahmoud Yazbak, "Minor Marriages and Khiyār al-Bulūgh in Ottoman Palestine: A Note on Women's Strategies in a Patriarchal Society," *Islamic Law and Society* 9, No. 3 (2002): 390

60 İstanbul Mahkemesi 334 nolu sicil. Kayıt no: 481 / 10 Nisan 1910

61 Tülay Ercoşkun, "Evlilik ve Nikaha Dair Düzenlemeler," 144

62 Ibid.

63 See, BOA., DH.MKT. 779-45 / 19 October 1903; Also see BOA., HR.UHM. 8-36 / 18 August 1892; BOA., DH.MKT. 1467-95 /4 December 1887; BOA., HR.HMŞ.İŞO 183-43/ 24 December 1895

here. 2) The state was trying to control the reproductive preferences of its female citizens. 3) Women were the reproducers of ethnic, religious, and national groups. 4) With the marriage ban, the Shiite population was tried to be controlled in these provinces. According to international standards, Ottoman women and children would become Iranian citizens if marriages were allowed. There was also concern that these women would convert to Shia. Therefore, the children they raised would also be Shiites. 5) Due to the inheritance issue, Ottoman women and children had to be considered Ottoman citizens. If the state, which wanted the property to remain under the rule of Ottoman citizens, allowed marriages, a large amount of land could fall into the hands of Iranian citizens after Iranian fathers died.[64]

Marriage bans were not limited to Iranians. Similarly, Ottoman Jews in Thessaloniki were forbidden to marry their daughters to foreigners.[65] In a will written about the Serbs marrying girls from the province of Nis, it was stated that Christian women in this region were also prohibited by law from marrying Serbs.[66] These prohibitions were undoubtedly related to the newly settled citizenship/nationality policies and the aim of raising suitable citizen children for the empire.

Marriage permits were a source of income for the state, as obtaining documents depended on paying a certain amount of fees. Accordingly, the stages of the marriage contract were as follows: 1) The bride and groom received a certificate from the board of alderman, 2) they went to the qadi with the certificate and identified the *mahr-i muaccel* (pre-matrimonial support) and *mahr-i müeccel (alimony)*, 3) The determined *mahr* was written on the permit, 4) The permit was then taken to the imam of the neighborhood, and the wedding act procedure was completed.[67]

64 Karen Kern, *Imperial Citizen: Marriage and Citizenship in the Ottoman Frontier Provinces of Iraq* (New York: Syracuse University Press, 2011), 148-151

65 BOA., İ..MVL. 173 – 5129 /25 June 1850

66 BOA., İ..MVL. 198 – 6185 / 27 February 1851

67 Selim Savaş, "Fetva ve Şeriye Sicillerine Göre Ailenin Teşekkülü ve Dağılması," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol.2.* (Ankara: T.C. Başbakanlık Aile Araştırma Kurumu, 1992), 130

According to the Registry of Population Regulations (*Sicil-i Nüfus Nizamnamesi*) dated 2 September 1881, marriage permission for Muslims had to be obtained from the sharia courts and for non-Muslims from their spiritual leaders. In this context, it was necessary to execute the marriage with these permits and notify the directorate of the registry of population (*sicil-i nüfus müdürlüğü*) directorate within eight days. In another regulation dated 27 June 1900, it was reminded to bring marriage permission from the court before the wedding. The marriage notification to the registry office was stated as fifteen days. There were criminal sanctions for imams who did not abide by this procedure and time frame. So, the duties of the imams were not limited to religious affairs. They were among the signature and seal holders of official investigations and documents and were the natural helpers of qadis. They were responsible for issues such as the order of the neighborhood and the establishment of living decently by following Islamic manners and dress. They also had information about the residents of the district. Municipal procedures such as birth, death, wedding registration, and cleaning were included in their job description. Interestingly, women who needed to be imprisoned and detained were detained in imams' houses. [68] Imams, as multifaceted members of the state, were a figure that should always be consulted in judicial processes. In this context, it is possible to see that their statements were used in many trials to guide the cases. According to Beydilli, as the century came to an end, the duties of imams decreased. Transactions other than funerals and weddings were taken from them and handed over to mukhtars and the board of alderman. With the Law of Family Regulations (*Hukuk-u Aile Nizamnamesi*) that entered into force in 1917, the authority of imams to perform wedding acts ended.[69]

In a record written from Syria to the *meşihat*, the situation of imams who performed wedding acts without permission was asked. According to the sharia court, it was decided that those who completed a wedding act without permission should be judged according to the penal law. However, since there

68 Kemal Beydilli, *Osmanlı Döneminde İmamlar ve Bir İmamın Günlüğü* (İstanbul: Pınar Yayınları, 2018), 18-22. Also see BOA., İ..MVL. 541-24320. Until her sentence was approved, the murderer Leyla was imprisoned in the imam's house for 2 years. 30 October 1865.

69 Ibid., 82-83

was no explicit statement relating to such crimes in the penal law, it was decided that it would be appropriate if the state council regulated this situation. As a result, it was declared that those who committed this crime should be put on trial in the *nizamiye* court and the court committee was to decide on the penalty. In this context, the imposition of a cash penalty or another punishment deemed appropriate by the local court committee for the imams who performed wedding acts without permission.[70]

The striking point here was that even for such a minor issue, the ministry of interior, the state council, *meşihat*, and the ministry of justice came into play. In other words, laws were made, but there was a bottleneck in the gaps that emerged in practice. This shows that the courts did not operate with full power. In the end, all these management units declared that it was the court's duty to decide. But, remarkably, the court was not able to act on its own accord in the first instance.[71]

The ideal marriage patterns were also highly discussed in the printed press. Many newspapers and journals published during the last quarter of the nineteenth century had articles on the importance of family for society and the state. For example, in an article published in the Sabah newspaper in 1894[72], it was stated that marriage had two aims: one was to raise children and social production, and the other was leading a happy life by setting up a house and a family. The proper age of marriage for men and women and having and raising children was also a topic of discussion for the writers. In this respect, it was thought that early marriage was harmful to both mother and child. Immature women were both bad wives and bad mothers.[73]

While the debate about the age of marriage continued in the printed media, almost no one questioned the traditional motherhood and domestic role of women. They were expected to be educated and obedient mothers who

70 BOA., DH.MKT. 1356-80 / 21 July1886

71 The document I referenced here is dated 1886, but there was a correspondence from 1884 on the same issue. See, ŞD. 2485-13 / 18 December 1884

72 "Kadınlara Malumat: İzdivaç" Sabah, No:1889, 13 November 1894, pp. 3-4 in Alan Duben and Cem Behar, *İstanbul Haneleri*, 119. Also see, "Sin-i Teehhül" Sabah, No:1966, 30 January 1895, in Alan Duben and Cem Behar, *İstanbul Haneleri*, 149

73 Alan Duben and Cem Behar, Ibid., 149

raised children for the nation's future.[74] In this context, child health and life became increasingly popular, and the child-centered family and social structure came to the fore.[75] It seems that the state's interest in the family as an institution and its attempts to ensure its continuity and power was dominated by population policies and moral discourses. However, it was doubtful how these issues and ideals, frequently discussed in the center, influenced rural and peasant life.

§ 3.3. Marital Economy

Marriage and family were not only the backbone of society but also at the heart of economic life. When a man and a woman came together for marriage, they laid the foundation of the marital economy. The economy was the power engine of the family, and economic resources were essential to a family's survival.[76] The household both lead the modes of production and consumption. Especially in societies where the production was based on household and dependent on agriculture or regional or local trade, the marital economy was the most visible. The kin, neighbors, and the state all had an interest in this economy.[77]

One of the best ways to understand family relations was negotiations over the property. In this context, one of the number one factors that both hold the family together and cause it to break up was property and property distribution. The property shaped the relations between the nuclear family and the extended family.[78] The murders in this context did not distinguish

74 For example see, Şemsettin Sami, *Kadınlar* 1879

75 For example, see: "Çocuk Bakmak," *Terakki-i Muhadderat*, No:15, 3 October 1869; "Hıfz-ı Sıhhat-i Etfal," *Çocuklara Mahsus Gazete*, No: 37, 7 January 1897; "Kadınlara Malumat: Çocukların Beslenmesi," *Sabah*, No:1840, 25 September 1894

76 See, Martha Mundy and Richard Saumarez Smith, *Governing, Property, Making the Modern Stat*, 107. In their evaluations, Mundy and Smith also state that property ownership and access to property were determiners in shaping family ties.

77 Amy Louise Erickson, "Introduction," in *The Marital Economy in Scandinavia and Britain,* Maria Agren and Amy Louise Erickson eds. (London and New York: Routledge, 2017), 4

78 For the importance of marital transactions in family see Jack Goody, *The Development of the Family and Marriage*, 19-20. According to Goody, property transfers, especially in the form

between the lower and upper classes, the educated and the uneducated, or the wealthy and low-income families. But when I say property here, I am not just talking about large amounts of properties such as houses and land. As I said before injustice or damage to the ownership of a tree, or a chicken was also included in this scope.

Although marriage was, to a great extent economic partnership, it did not mean an egalitarian relationship for the couples, since who was running this economy was mostly a question mark.[79] Therefore, I think it is necessary to bear in mind the following questions that Marie Agren asks in her study: To what extent was the man able to use his wife's personal property as his own? Could the wives complain about their husbands claiming their property for this reason? Was the marital economy some kind of black hole where women's property disappeared?[80] It is thought-provoking how sophisticated ways to protect the property of married women work in practice, and unfortunately, we do not know the answers to these questions clearly. But some murder files give us some ideas in this regard.

According to Islamic law, theoretically, women were supposed to enter a marriage union with a property of their own, and within this union, the woman had certain protection rights. Therefore, marriage theoretically promised women both material and physical comfort and sexual satisfaction. The absence of these was also justifiable for the woman to divorce.

Islamic law regulates the mahr in favor of the woman and brings regulations to prevent her legal guardians, husbands, or brothers from having a claim on this property. Although the bride was transmitted to the husband's care upon marriage, this did not mean that her husband also had power and authority over her material wealth.[81] This gave women leverage in their

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of land, from the woman's family of birth to her family of marriage were problematic for her clan. As we will see examples below, I think a transfer in the opposite direction was also a reason for a deep crisis in the family.

79 Amy Louise Erickson, "Introduction," 4. For a detailed and comparative study of what happens to women in marriage, also see Jack Goody, *The Oriental, the Ancient and the Primitive: Systems of Marriage and the Family in the Pre-industrial Societies of Eurasia* (New York: Cambridge University Press, 1990)

80 Marie Agren, *Domestic Secrets*, 9

81 Leyla Kayhan-Elbirlik, "Negotiating Matrimony," 52

relationship with their husbands and other kin. However, even if the woman entered the marriage union with some property, either due to the *mahr* she received or her wealth, how much of it she managed was a mystery. Moreover, the amount the parties would receive upon the dissolution of this union in cases of death or divorce was as significant as the property brought to the marriage union. In this sense, in Ottoman families, things got particularly complicated in the second marriages and division of inheritance between the second wife and stepchildren.

Property transfer is negotiated before the marriage through *mahr*, bride price, or dowry. However, when the new couple was supposed to live with the family elders, they did not have direct authority on this property. Or they did not use it yet. However, they were firmly attached to the promises made on the eve of the marriage. In this sense, for example, not carrying out a promise regarding the golden bracelets for the bride or taking such a property gift back from the bride after the marriage and using it for another purpose deteriorated the relationships between the spouses and family elders. Therefore, the importance of even a tree or a sheep was great, especially for those with low and limited income living in the provinces.

The marital economy established by the marriage union also determined where and under what conditions the couple would live. In this context, some building types were suitable for accommodating several generations. Large families could live together in rooms or small buildings around the courtyard.[82] But the determining factor here, of course, was the socio-economic situation. There were also crowded families living in makeshift, one-room houses. So, contrary to what was thought, privacy in these houses was limited, especially for the lower classes who made their living by farming in the provinces. Houses were small. Unlike the corridor structure, the rooms could be a passage to another room. In cold weather, family members could sleep near the fire in the house.[83] Unfortunately, the data source of this study gives limited information about the physical conditions that families lived in.

82 İlber Ortaylı, *Osmanlı Toplumunda Aile*, 18-19

83 For example, see the dialogue in the courtroom regarding the house and household privacy: BOA., İ..MVL. 574-25769 / 27 June 1867

In the joint household system, more than one marriage could occur. If one of these couples worked more than the other, conflicts were rising. Although they did not have to provide for their nuclear family, they had to contribute to the household economy either at home or in the field. Moreover, the promises regarding marital property or gifts became a topic of dispute and negotiation when the joint household system was on the verge of separation. Receiving the best possible share from the joint household system was essential to start their household. In this regard, brothers and sisters could get into a bitter struggle, resulting in murder attempts and even deaths.

Religious sources have many details related to the economic rules within society. Of all these, the most detailedly set ones are related to inheritance. The testamentary details of the individuals and the shares that distant relatives could receive are clearly stated.[84] However, although the division of inheritance was detailed in the scripture, people always had a reason and a variety of ways to force them to bend these rules. On the condition of the death of a male partner, since the woman was to receive the inheritance or become the actual authority of her previous property, keeping the property within the family became a significant concern for the family members. This

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S: Böyle evli olan bir adamın avratı elbette yanında bulunmuş ve birlikte yatması lazım gelecektir. Sen bunların yanında yatmaklığa utanmadın mı idi? Nasıl yattın?

C: Bizim köylerce o derecede saygı olmadığından ve Mustafa'nın avratı benim kız karındaşım bulunduğundan onlar kendi yataklarında yatıp ben dahi Mustafa'nın arka tarafında yatağa yattım.

…

S: Senin enişten Mustafa, bu Halil ile sen diğer bir odada yatmış olduğunuzu beyan ediyor. Senin ifadenden cümleniz bir oda içerisinde yatmış olduğunuz anlaşılıyor. Bu bapta enişten mi hilaf söylüyor yoksa sen mi yalan söylersin?

*C: Benim sözüm doğrudur. Üçümüz bir odada yattık. Enişte*min *avratı benim kız karındaşım ve Halil'in baldızıdır. Belki enişte*m *utandığından öyle bir söz söylemiş ise de doğrusu böyledir.*

Document Number 2/5. The statement that there was not much respect in the villages is striking. With the arrival of Halil, the number of people sleeping in the same area increased by one more. Halil slept with Mustafa. That night, Mustafa's mother, Heva, and his sister Emine were also at home. But it is not clear where they slept.

84 Timur Kuran, *The Long Divergence: How Islamic Law Held Back in the Middle East* (New Jersey: Princeton University Press. 2011), 78

was accomplished by marrying the woman to someone else in the family or by the woman's death in some way. In the case I will examine below, we will see how the household members tried to keep the inheritance within the family after the husband's death and their motivations for getting a share of this property.

3.3.1. The Fate of Raziye

The deceased Raziye was the daughter-in-law of a certain Eyüp Efendi, who was the *naib* of the Milas district. Raziye had no heirs besides her mother and a step-uncle. Her husband had already passed away when her murder took place. Unfortunately, we have no information about the age of anyone mentioned in the trial. In one of his interrogations, Eyüp Efendi just uttered, "I am eighty, so I am confused."[85]

According to the record of the supreme court, the cause of death was Raziye's refusal to marry Eyüp Efendi's younger son after the death of her husband. According to this, Eyüp Efendi had Raziye strangled due to the possibility that the property left to Raziye would leave the family. Those who killed Raziye were Eyüp Efendi's servants, Mehmet and Hüseyin, who were also from the large family circle. Hüseyin was the son of Eyüp Efendi's brother's son, and Mehmet was his other daughter-in-law's brother. Eyüp Efendi promised them some goods and fields for this murder.

Eyüp Efendi wanted to marry Raziye to his other son, Abdullah. But Abdullah already had a wife. He was married to the murderer Mehmet's sister. In his first interrogation, he explained the reason for the murder by associating it with this marriage plan: "I have Mehmet's sister, and my father also took this woman. For this, he did this as (a woman will come) over his sister, and also Hüseyin was Mehmet's friend."[86]

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85 BOA., İ..MVL. 528-23720 / 6 November 1865

86 BOA., İ..MVL. 528-23720 / 6 November 1865 *"Bunun için kız karındaşının üzerine alacak deyu bunu yaptı ve Hüseyin dahi Mehmet'in arkadaşı bulunmuştu."*

Under the leadership of Eyüp Efendi, Mehmet and Hüseyin committed the murder. Meanwhile, Abdullah also provided coordination between his father and the murderers. Accordingly, Hüseyin and Mehmet were called to the village from the highland house, which was an hour away from the town, and returned to the highland after committing the murder. The next night, they came to take the body and buried it in a place on the plateau. The government became aware of the incident at least 45 days later. The exact date was a bit complicated, as there were no dates in the interrogations. Eyüp Efendi said in his interrogation that it had been 40 days since she died and added, "I couldn't report (because of) my fear and embarrassment."

During his interrogation, Eyüp Efendi denied the accusations and stated that he was unaware of anything. In this manner, he made various accusations against Raziye.

> A: Many people wanted this woman, and she was an evil woman. Local people used to take her here and there day and night. And even Mehmet and Hüseyin took her here and there with provocation and seduction. She would not sleep with us. (She) was going and coming both day and night.
> Q: Eyüp Efendi, you call this woman a prostitute like that.
> A: Far from it, I would not call her prostitute, but they would come to her.
> Q: Why did you not warn this woman and look after her, although she was your privy and some *namahrams* came and took this woman here and there? And why did you kick off her from your side? How could these servants go and take this woman, even though they are your relatives, and how did they take this woman here and there without your permission, and how did they get into your house so that these men perished this woman?[87]

So, Eyüp Efendi tried to put honor to the fore to cover up the murder, and the court also blamed him for not protecting his daughter-in-law from such kinds of supposed illicit relations. Eyüp Efendi could not develop the honor

87 BOA., İ..MVL. 528-23720 / 6 November 1865

story he built for his defense. Eyüp Efendi's greed for the property of Raziye became evident through the interrogations.

According to the declarations, the basis of the property owned by Raziye and indirectly by Eyüp Efendi was the land Raziye owned before marriage. According to Mehmet's statement, Raziye had a property of 40 thousand piasters and silver. The possibility that this property, which came through marriage and later proliferated, could go out of the family sparked the events. It prompted the family members to set up this murder plot. Although Eyüp Efendi initiated the murder, he and other family members also struggled to keep this property for themselves. The murderers also committed this murder for their pecuniary advantage.

It took two years for this murder case to be decided. I think that *naib* Eyüp Efendi's experiences in court procedures and the law were effective in this process. He first tried to hide the murder and succeeded in doing so for nearly three months. Later in the court, he played the card of honor to claim that the murder was legitimate for him and his family. He also tried to provide the court with a desperate and humble portrait of himself by emphasizing that he was old, afraid, and embarrassed. But the details of the murder came to light with the statements of both his son Abdullah and grandson Osman and the murderers. At the end of the trial, Eyüp Efendi and his son Abdullah received hard labor for five years, and Hüseyin received fifteen years of hard labor after being forgiven for capital punishment.

§ 3.4. Marital Disputes

Marriage in the Ottoman provinces was based on a gendered system where the roles were decided from the beginning of the wedding preparations. With marriage, men would acquire certain rights on the wives, which the jurists also clarified according to time and place.[88] The man, as the provider and the ruler of the family, was responsible for his family's food, shelter, and other needs. In this sense, the man was to supply, the woman was to consume, the man was to give orders, and the woman was to take care of the family and

88 Judith Tucker, *House of the Law,* 42-43

nurture the children by obeying her husband. The children were also at the service of the commands of the father.

The household's needs and the society in marriage were ahead of individual choices. The fact that the male side looked at the strength and working capacity of the future bride and the girls being married to younger men indicated this. Of course, obedience and submission were also important factors.

The extended family had obvious social and economic expectations in early marriages. The centrality of honor and reputation within the community and the expectations placed on men and women within the family shaped these expectations. Early marriages in the joint household system enabled families to control their children's marriage choices. At the same time, it enabled adult control over sexuality.

In cases where gender roles were not fulfilled and the marital economy was interrupted, the environment of conflict and dispute between spouses and the extended family was rising. Marital disputes in the Ottoman provinces were mostly related to violence, incompatibility, property, or honor. In such circumstances, women either returned to their father's homes, demanded divorce and alimony, killed their husbands, or had someone killed to improve their living conditions. When they returned to their father's house, the conflict environment spread to the extended family. If there was nothing to do with their honor, to support the family, the men committed various property crimes, killed the authority that ran the family property, or left the house and their family ultimately. The option to kill their wives was also always available to eliminate the problem. If the problem was rooted in the woman's dishonor, all the family could join hands to correct the situation and save their social reputation and collective honor.

But were there different trial procedures for the same type of murder committed by husbands and wives? In England until 1828, a wife who killed her husband could be charged with petty treason while a husband in a similar position could be guilty of murder.[89] It was common in the courts to raise the issue of "provocation" to minimize the punishment from murder. In this way,

89 Elizabeth Foyster, *Marital Violence: An English Family History 1660-1857* (New York: Cambridge University Press. 2005), 105

the aim was to stand trial against manslaughter (unintentional murder). Similarly, a man received a penalty reduction if he murdered due to his wife's indecency. On the other hand, if a woman killed her husband because of adultery, it was again considered petty treason.[90] Against this unfair evaluation, women were using the nervous illness card. One of the excuses used to avoid conflicts in marriage was the issue of nerves. It was also frequently mentioned in period novels.

In the Ottoman Empire, if men murdered out of honor, it meant punitive reductions and social acceptance for them. But it was difficult for women to find an aspect that would legitimize the issue of murder and reduce their sentence. But at the same time, there was no increase in their punishment for killing their husbands. In fact, in the same kind of murder, while men were given an additional exposure sentence, women were almost entirely exempt from this punishment.

As I mentioned at the beginning of this chapter (see Figure 3.3), wives outnumbered husbands in marital murders according to the data set at hand. The women committed 36 murders of their husbands alone, and 18 of them committed murder with the help of their lovers or someone else. I believe these numbers point to the challenge for women to get a safe exit from the marital union using a divorce. The total number of femicides committed in the family was 81.

90 Ibid., 116

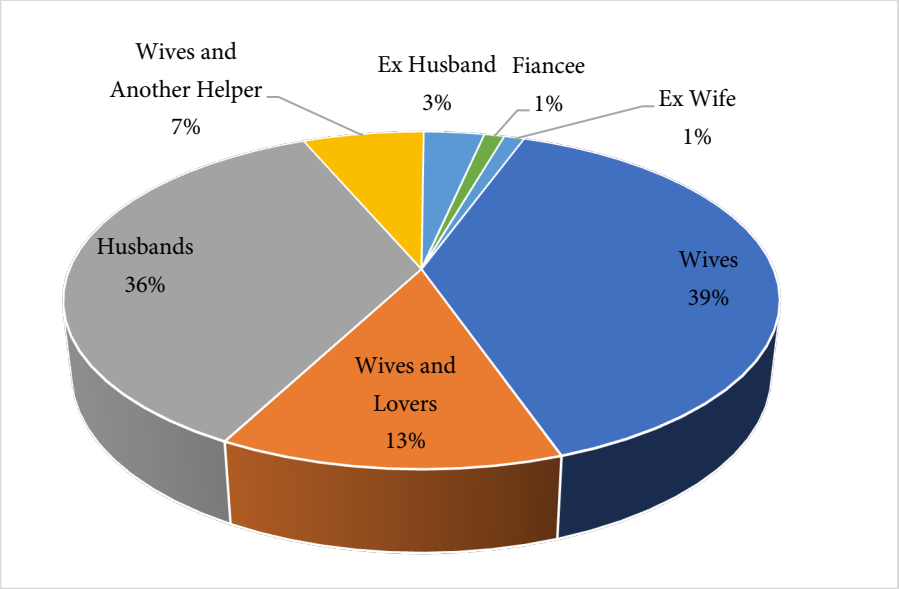

Figure 3.7 Murderous Spouses

Husbands were coming in second place for the murders committed within the family. It was striking in the graphic below that a man killed his wife with the intention of another marriage.[91] Men generally used firearms in the murders they committed. This was followed by stabbing and strangling. Battering and cutting with an axe were also seen. The highest number of murders in the family occurred among the male members of the family. Among the 133 male murders, husbands were killed the most, followed by fathers.

91 BOA., İ..MVL. 457-20502 / 18 November 1861
It was the only wife murder committed for this purpose. According to this, Hralambo strangled his wife while she was asleep. According to the murderous husband's statement, the neighbor girl's mother said kill your wife, I will give you my daughter, and Hralambo killed his wife thereupon.

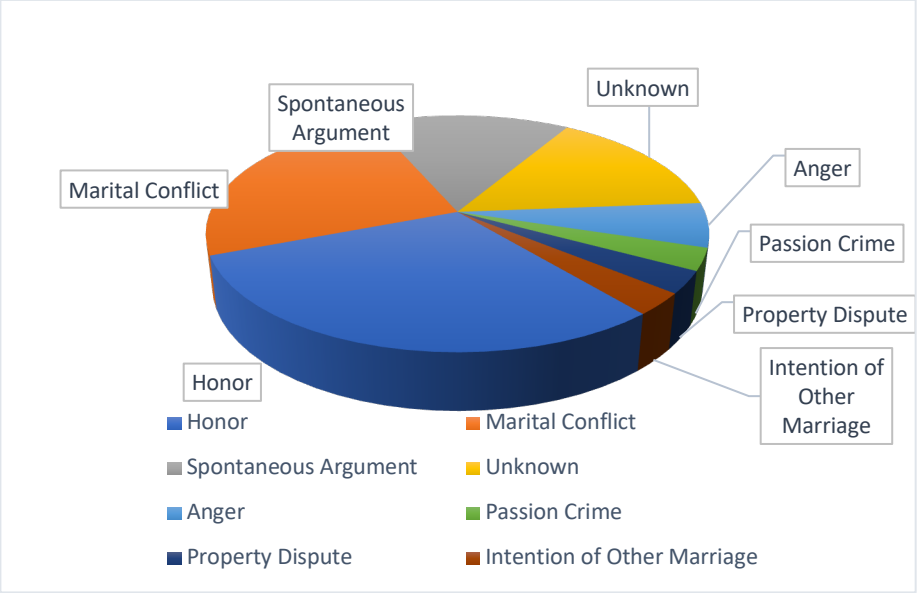

Figure 3.8 Reasons for Murder for Husbands

To deal with an unwanted or defective marriage, legal discourse saw divorce as a remedy in various situations. In this regard, "divorce was the corrective for a "bad" marriage; divorce solved problems of incompatibility; divorce functioned as a form of social control."[92] However, the public response to this approach adopted by the legal discourse was not very positive.[93] One of the ways in which men's collective honor was damaged was that women's left their homes or demanded a court procedure for the fate of their marriage. In addition, when the husbands' intention to remarry with their divorced wives failed, they killed either their ex-wife or one of her family elders. Personal reputation and local definitions related to masculinity were two main factors in these murders committed by husbands.

92 Judith Tucker, *House of the Law,* 79

93 This situation was not unique to Ottoman society. For example, Lawrence Stone emphasizes that in the pre-modern period, England was a society that could neither be separated nor divorced and that death was the only way out to dissolve a marriage. *Road to Divorce: England 1530-1987* (Oxford Scholarship Online, 2011), 2

A certain Istamnuli[94], Ayşe[95], and Nefise[96] were murdered by their husbands upon their claims in court. Istamnuli decided to apply to the court due to the lack of harmony in her marriage. Her husband was not taking care of the house; perpetually, he was drunk and had been beating Istamnuli for two years. When they were in the government office, her husband Anton stabbed Istamnuli with a dagger, and she passed away in a couple of hours. In his interrogation, Anton confessed that he specifically prepared the dagger for the murder of his wife.[97]

Ayşe went to court to claim alimony and a wedding from her divorced husband Ömer, and the court sentenced Ömer to bail. When they returned from the court with their little daughters, Ömer murdered Ayşe and buried her body somewhere on the way. According to the testimony of neighbors, Ömer had the intention of murdering Ayşe if she was to make a claim against him in court.[98] Similarly, Nefise wanted to divorce her seventy-year-old husband, Sait. They were on the way to the head of the district for *muhalea*[99] when Said shot Nefise with a rifle.[100]

These murders suggest the difficulty of divorce for women, despite their rights, if men did not want it. The fact that the situation was reported or to be reported to the official authorities reinforced the anger of the men towards their wives, even if they seemed to agree with the divorce. It should also be noted that the possibility of divorced women marrying someone else also touched the honor of their husbands. For this reason, even if they were able to divorce, their relationship with their ex-wives somehow did not come to an end.[101]

94 BOA., İ..DA.. 10-325 /17 June 1872

95 BOA., İ..DA.. 17-786 / 29 November 1876

96 BOA., İ..DA.. 18-830 / 18 June 1878

97 BOA., İ..DA.. 10-325 17 June 1872

98 BOA., İ..DA.. 17-786 / 29 November 1876

99 A fiqh term which means the termination of marriage with the agreement of the husband and wife. For details see: https://islamansiklopedisi.org.tr/muhalea 21 September 2022

100 BOA., İ..DA.. 18-830 / 18 June 1878

101 For another case see BOA., İ..DA.. 18-814 / 21 August 1877

As I mentioned above, since the marriage union was established on contractual conditions, the responsibilities of the husbands did not end in case of divorce. Under Islamic law, the rights of a man over a woman are replaced by financial responsibilities in case of divorce, especially if they have children. In this sense, the obligation to provide alimony to their wives after their divorce or to pay their *mahr-i müeccel*, if there was any, was another aspect of men's reluctance to divorce.[102] To get rid of alimony, murdering his wife or making negative hints about his wife's honor were among the options preferred by men.

Her second husband murdered Sadberk Hatun in 1867 in Prizren.[103] The court trial proceeded upon the statements of Sadberk's daughter, Gülferi. Sadberk first married Fazlı upon his promise of living in Prizren. But he took her to his village. When Sadberk insisted on living in Prizren, reportedly Fazlı said that he was a poor man and could not afford to live in Prizren. Upon this, they quarreled and went to the sharia court for a divorce. After their divorce, they continued their contact and were about to make peace.

Meanwhile, Fazlı went to military check and escaped from military duty by saying he was married. When Sadberk Hatun learned about this false statement of Fazlı, she went to the government and explained that they were divorced. Upon that, Fazlı was called for his military duty. Subsequently, Sadberk told Fazli that she would save him from military duty if he married her again, and Fazlı accepted, and they remarried. But Sadberk could not prevent the military call, and the officials took Fazlı and set out to join the central army. On the way to the central army, he found a way and escaped. Right after his escape, he came to their house and killed Sadberk in front of her daughter. The murder was revealed by the statements of Sadberk's daughter Gülferi, imam Halil and Fazlı's neighbor, Coptic Şaban. Fazlı's anger towards his wife mainly stemmed from her disobedience and humiliation in front of society by the acts of Sadberk. And Sadberk, frustrated by the failure of promises in her marriage, did not hesitate to use state channels whenever she thought necessary.

102 See, BOA., İ..MVL. 576-25867 / 1 September 1867

103 BOA, İ..MVL. 575-25820 /19 June 1867

Bigamy was not a common phenomenon for provincial families. Still, in cases where it did occur, it was possible to talk about the conflict environment among the co-wives and the dominant spouse changing the balance in the family. In Esime's case, which I will discuss in detail in the next section, for example, Esime's mother, Kezban, was a second wife, and she maltreated her stepson's wife in various ways and made him divorce her. Then Kezban married her stepson Osman to her daughter Esime. According to the interrogations, her husband's first wife died sometime before her stepson, but it is not stated in what form.[104] So, Esime's mother, Kezban, was very active as the female figure who set up and destroyed a family. Of course, we do not know what direction the mother's marriage went as a result of Esime's lawsuit because the father of the deceased Osman was actively involved in the case.

A 70-year-old Petro living in Plevne was accused of killing his wife, Bankiya, with the help of his other wife, Mito.[105] He said he did not remember how he killed his wife since it was long ago. Then the questioner reminded him of his first statement and read him his first answer. Upon that, Petro settled with the response, "My dear, we killed her. What are you asking?" The questioner did not accept this answer and insisted he tell the crime details, but Petro did not seem very helpful. So, the questioner noted in the interrogation that he did not give any answer other than we killed her.

Similarly, Mito did not give much detail about the crime scene but settled with the answer, "First, we got drunk. The woman was already degenerate. My husband also hit his throat with a pocket knife. In the morning, the woman's father picked her up and took and buried her.[106] The couple narrated the incident as the most normal thing in the world without regret. In this intra-family dispute, the husband's two wives were not in a good relationship. In their previous interrogations, Mito confessed that he helped her husband by holding the feet of the deceased Bankiya and Petro did the cutting. Still, the correctness of this statement remained obscure.

This case was quite striking because Petro and Mito were put on trial again after seven years of imprisonment. However, although they did not have

104 BOA., İ..MVL. 576-25852 / 27 August 1867

105 BOA., İ..DA.. 4-74 / 15 April 1869

106 BOA., İ..DA.. 4-74 / Mito's interrogation, 30 September 1868

heirs, this case was heard in both nizamiye and sharia courts. It seems that the reason for the re-trial was that they lost the sharia sentence as a result of time-lapse, but they remained under custody for seven years. When they found the record of *Meclis-i Tahkik,* they re-opened the file, and this time they took a detailed interrogation. The official decree stated that although the penalty for their crime was capital punishment, since their past imprisonment years were quite long and the culprit was above the age of 70, they changed capital punishment into hard labor.[107] In the sharia trial, which was heard in Lofça, it was stated that since the late Bankiya did not have any heirs who would claim blood money from Petro and Mito, the interrogation document would give the necessary information regarding their penalty. Thus, according to the 174th article, Petro and Mito were sentenced to hard labor, but since Mito had been in jail for more than nine years, they decided to release her. But Petro finally received 15 years of hard labor.

3.4.1. Female Violence Against Husbands

The roles attributed to women in the domestic sphere put them in a perceptional position that they were less criminal than men. Especially in the second half of the nineteenth century, intellectuals attributed particular importance to women as they were raising the men and human community and thus the future of the nations. For example, in his booklet on women, Şemseddin Sami noted that a woman was weaker and gentler than a man, had less patience and endurance, more compassion and grief, and although her wisdom and understanding were not as broad and strong as the man's, she was keener and more sympathetic than him.[108] Thus, according to Sami, if the history of the human species was reviewed, even though it was possible to see some corruption caused by women, many cruelties, many evils, and brutal acts committed by men. Also, since women were nearly completely deprived

107 As for the delay in the file it was stated that *"bu misilli vukuatın vakit ve zamanıyla evrakı gönderilmeyerek böyle 9 sene süründürülmesi sıfat-ı hükümete menafi bir şey idüğünden tabirat-ı müessire ile ve saba-yı lazıme icrası tezkir kılınmış ise..."* BOA., İ..DA.. 4-74 /15 April 1869

108 Şemseddin Sami, *Kadınlar* (Ankara: Gündoğan Yayınları, 1996), 13

of education and knowledge, these faults and misdeeds should be excused.[109] He believed that although habits such as pleasure and lust, jealousy, grudge, and anger are high in women, and they sometimes cannot control these emotions, they can be restrained with education. In other words, if women were inclined to misdeeds or crimes, that was because of their lack of education. Other than that, women innately were angel-like figures for him: cute in childhood, attractive in youth, and compassionate in adulthood as mothers.

According to Cesare Lombroso and William Ferrero, nineteenth-century Italian criminologists, "women are an exception among criminals, the natural form of retrogression in women being prostitution and not a crime. The primitive woman was impure rather than criminal."[110] In this regard, he claimed that the number of women as born criminals was less, but this small proportion of women could excess men in perversity and cruelty. Moreover, he noted that most women were led into crime by a third person rather than by their own will.[111] So, regardless of their geography, the intellectuals of the period hesitated to attribute agency to women in matters such as murder. In other words, the murder was expected to be committed according to gender codes.

In nineteenth-century England, women were supposed to have Victorian ideals of good womanhood and were reflected as angel-like figures in the domestic sphere. So, they were also not associated with criminality in the first instance. Towards the end of the century, if women committed any crimes, it was associated with their mental situation, and madness became the primary reason behind these crimes.[112] In the Ottoman Empire, as also Ebru Aykut

109 Ibid., p. 15

110 Cesare Lombroso and William Ferrero, *The Female Offender* (New York: D. Appleton and Company, 1898), 151-152

111 Ibid., 147

112 Victoria Nagy, *Nineteenth-Century Female Poisoners: Three English Women Who Used Arsenic to Kill* (New York and Hampshire: Palgrave Macmillan, 2015), 32; For the changing portrayal of the female domestic murderer both in court trials and literary works in this period also see, Bridget Walsh, *Domestic Murder in Nineteenth Century England: Literary and Cultural Representations* (Surrey: Ashgate, 2014), 123

points out, neither female poisoners nor female criminals did not have a special place in the public agenda;[113] instead, the printed press was busy with giving advice related to a good marriage, family life, and raising healthy children for the nation. Therefore, female criminals did not attract particular attention.

Female violence in the marital union against the husband showed itself generally through either poisoning him or cutting him with an axe while he was sleeping or in an unguarded position. In total, killing with an ax during the day or while the victim was asleep was the second most common method used by women, along with strangulation. Women also took help for the murder of their husbands, especially from their intimate friends or lovers. In these cases, they provided the necessary grounds at home for a smooth murder.

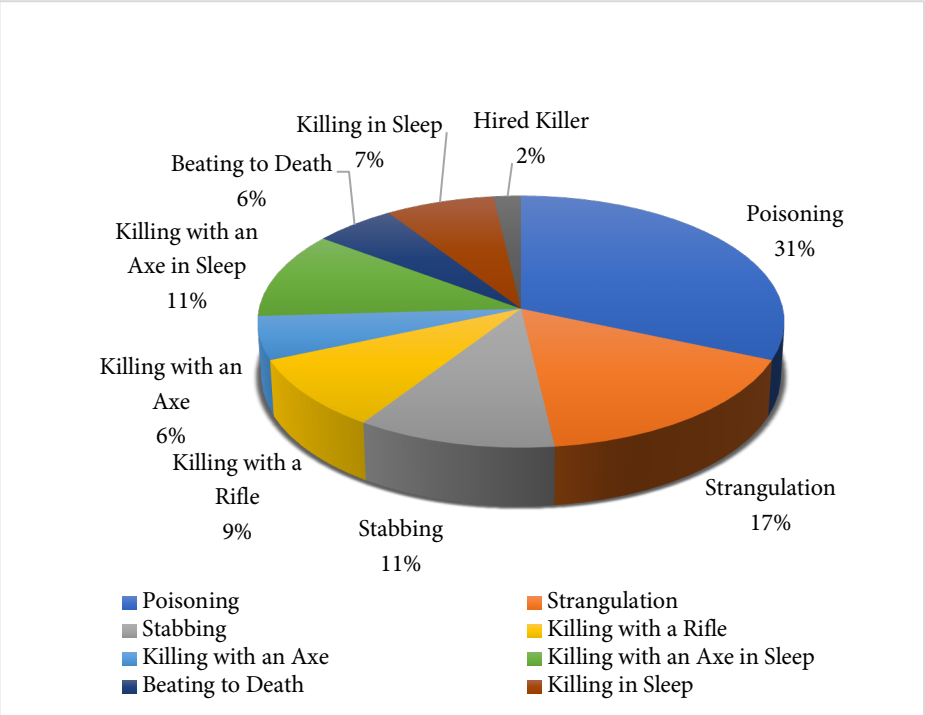

Figure 3.9 Ways of Murdering for Wives

113 Ebru Aykut, "Toxic Murder, Female Poisoners, and the Question of Agency at the Late Ottoman Law Courts, 1840–1908," (Journal of Women's History, Vol. 28, No. 3, 2016), 119

As can be seen from the table, the traditional division of labor had a direct impact on the ways of killing. Wives tended to use the tools that were nearby in the domestic sphere. The choice of poison murder also fits their household duties.[114] In this sense, it was not difficult for them to shift from the role of nurturer to the position of the murderer to end an unwanted or disturbing marriage or to find some relief within the family. Poison murder was both a response to the violence endured at home and a lethal ticket to get out of the marriage and set a new life.

The high rate of poison murders in the second half of the nineteenth century also caught the attention of the state, but the state tended to approach the issue as a whole problem. There was a concern related to the accessibility to the poison rather than singling out women as the perpetrators of poison murder. Also, the rumors that Armenian and Bulgarian gangs would poison the waters in Istanbul reinforced these concerns.[115] However, state attempts to regulate the poison sale were not actualized until 1852 despite some indirect regulations related to health and hygiene. So, poisons could be purchased from any shop or street vendor. With the regulation of the Pharmacy Act in 1852, only those with a medical school license were to sell or prepare medicine or poison. The act was regulated in 1861 to control those practicing medicine further.[116] Also, in 1885, another regulation was issued related to herbalists and drug merchants. However, despite the legal regulation, it was hard to prevent poison sale since some poisons had

114 According to nineteenth-century criminology studies, poison was the most usual method used in murders. See Randa Helfield, "Female Poisoners of the Nineteenth Century: A Study of Gender Bias in the Application of the Law," (Osgoode Hall Law Journal, Vol. 28. No. 1, 1990). However, as Bella Bodo points out we cannot tie poisoning to the nature of women even if it fits to their traditional roles. Bella Bodo, "The Poisoning Women of Tiszazug," *Journal of Family History* 27, No.1 (2002): 42-43

115 Ebru Aykut, Ibid., p. 120

116 Ebru Aykut-Türker, "Alternative Claims on Justice", 234, 244, 247; Also see, Nuran Yıldırım and Gürkan Sert, "Eczacilik Mevzuatimizin Tarihsel Sürecinde Eczane Açma / Eczaci Olma Koşullari ve Hekim - Eczaci İlişkisi (1852-1953)," *Osmanlı Bilimi Araştırmaları* XI, No.1-2 (2009)

legitimate use in daily life. For example, arsenic was used to kill rats and head lice. It was also used as an ingredient in many medicines and cosmetics.[117]

In the 1858 penal law, the articles on poisons were regulated in part two, under the heading "the punishment provided for persons causing abortion, selling adulterated drinks or poisons without surety."[118] According to article 195, druggists who opened shops without a certificate were punished with ten-fifty mecidieh gold pieces and the shops to be closed. The articles on poison sale in the 1858 Ottoman and 1810 French penal codes were quite similar. According to article 196 of the Ottoman penal code, "Those who sell noxious drugs which will injure the public health or adulterated drinks or poisonous substances without surety are imprisoned for from one week to two years and a fine of from one mejidieh gold piece to twenty-five mejidieh gold pieces is taken, and the article whatever it may be, sold by them is seized by the Government."[119] In a similar vein, article 318 in the French penal code stated, "Whoever shall have sold adulterated liquors, containing mixtures prejudicial to health, shall be punished with an imprisonment of from six days to two years, and a fine of from 16 to 500 francs. The adulterated liquors, which shall be found belonging to the vendor or retailer, shall be seized and confiscated."[120]

The difficulty in proving poison murder and the ease of receiving it made it a convenient tool for murder. Since the poisons were generally added to the foods or drinks, in some cases, if the poisonous food was left unattended, some unintended murders also occurred. Moreover, a possible sharia knowledge related to poison murders must also have made it a convenient tool for murder. According to the Hanafi law, if the deceased drank the poison with their hands, the criminal would receive punishment mitigation.

117 Ibid., 239

118 John Bucknill and Haig Utidjian, Ibid., p. 145

119 John Bucknill and Haig Utidjian, Ibid., p. 148

120 https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html 29.11.2020

> *Question:* Zeyd's wife Hind co-operates with Amr in killing the said Zeyd by getting him to drink poison. If they confess voluntarily, for what are they liable?
> *Answer*: If they made him drink with their own hands, they are liable for blood money. If Zeyd drank it himself, they are liable for a severe chastisement and a long imprisonment.[121]

Since the victim somehow drank the poison with his own hands as a voluntary acy, the penalty for the murderer was blood money instead of retaliation.[122] Normally poisoning was a premeditated murder, but the victim's role in its execution changed the punishment parameters according to the sharia law. However, with the 1858 penal law, poison murder was evaluated according to intention and premeditation, and the criminals either received 15 years of hard labor or imprisonment or capital punishment.

Women on trial for murder tended to openly admit the murder they committed and the motivation behind them, and they rarely expressed regret. In this context, women challenged cultural codes where they were portrayed as dependent and weak. Court records show that women could be in a position where they knew what they wanted and challenged and negotiated the domestic authority. This situation sometimes costed their own lives and sometimes led them to murder. In other words, they were active agents in nineteenth-century Ottoman provincial family life.

121 Ebussuud and Düzdağ, *Fetvalar*, no. 755 in Rudolp Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (New York: Cambridge University Press, 2005), 42

122 See, Colin Imber "Why You Should Poison Your Husband: A Note on Liability in Ḥanafi Law in the Ottoman Period," *Islamic Law and Society* 1, No.2 (1994): 211

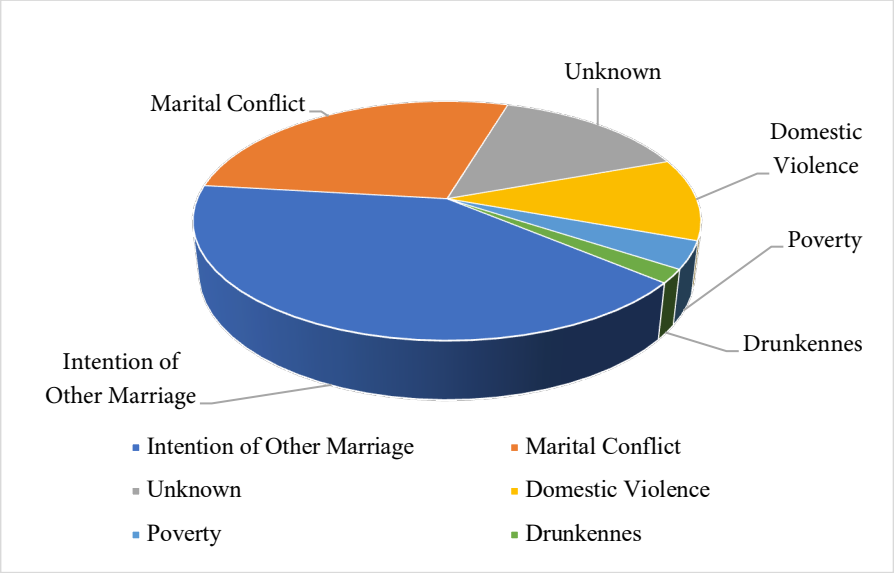

Figure 3.10 Reasons for Murder for Wives

As another way of getting rid of uncomfortable and unwanted marriages in the Ottoman provinces, women committed murder in cooperation with their lovers by arranging the necessary grounds. There was also an attempt where a wealthy woman hired a hitman to murder her husband. But this was a rare occurrence. In Tekfurdağı, a certain Fatma was unhappy with her marriage and husband and wished the death of him to find some relief. Fatma's husband's assets effectively met the costs of this murder. So, Fatma hired the murderers with the property of her husband.[123] Fatma's wish and act on her husband's death was registered as a lack of harmony (*adem-i imtizaç*) in the court record. According to Fatma, her husband was beating her up all the time.

Q: Why was your husband beating you?
A: He was beating me for discipline.
Q: What kind of impudence were you doing, and he was beating you up?
C: He beat me up because I did not know how to cook soup.[124]

123 BOA., İ..MVL. 584-26231 / 5 February 1868

124 BOA., İ..MVL. 584-26231 / 5 February 1868

To accomplish her wish, Fatma agreed with a group of Copts in her neighborhood to kill her husband. The decision was made through a certain Hanife who was visiting Fatma now and then. After hearing Fatma's statement, "I wish someone had murdered him so that I would be freed," Hanife talked to her brother and his friends.[125] These Copts committed the murder as a family. While some provided contact with Fatma, some provided tools for murder. Others worked in connection and communication between the murderers. In this way, each of those who played an active role in the murder process got their share from Fatma. After they committed the murder, they threw away the body into the river. Before this final attempt, they first tried to murder Fatma's husband, Mustafa, at their home. They asked Fatma to put a white sign outside the house, meaning that her husband was at home. When they saw the sign, the murderers arrived home and hid somewhere, but since Mustafa arrived late, they could not succeed. That is to say; this murder did not occur as a result of an instant decision; instead, it was planned quite in detail within a long time.

The Coptic family was nomadic and settled in the district where the murder took place for the winter. There was solidarity among the Copts who arranged the murder. Although many different people were questioned, they succeeded in covering up the findings of the murder and prolonging the process. They were together both as a family and as a Coptic population. The network of relationships of this Coptic group was rather complicated. So, it was challenging for the court to define the relationships of individuals, as many people were mentioned in the incident, and they were in contact with many people around. Also, some of them gave testimonies in the name of others. As a result, the murderer could be enlightened by tracing the money traffic in the middle. For example, Bekir bought some cows for himself; others carried money or bought other stuff. After the murder, even Fatma's father received some gold, but the court did not question this part much. So, another family solidarity existed also in Fatma's own family. The critical point that enabled these solidarities was the prospective property that Fatma would inherit after the death of her husband. It was pretty likely that Fatma was

125 Hanife's visits to Fatma's house and her role in the murder suggest she was the *çaşıt* in this murder. See page 143 related to the *çaşıts*.

thinking of living high off the hog with the money she would have after giving the shares of the murderers. In this respect, I think she had the support of her family. We do not know Fatma's age, but she did not have any children, which was a favorable status for a new marriage.

As a result of the case, retaliation was requested for İbrahim, who committed the murder. Because the murder was committed at the encouragement of Fatma, it was decided that Bekir and Said, who helped the murder, be put on hard labor for seven years after being exposed, and Hanife and Fatma would be imprisoned for five years without exposure due to their particular circumstances.

Cutting with an axe was the second most used way of murder for women. As a readily available tool in the domestic sphere, it was easily reached by women at the time of utmost anger towards their husbands when they were in an unguarded position. Remarkably, women reacted brutally to the violence they endured in their marriages. Although rare, women also resorted to firearms in murders they committed within the family. In contrast, men used firearms as the most common form of killing, followed by stabbing and strangling. Poisoning was the method used the least by men. As I mentioned earlier, this situation manifested the divided family roles within the domestic sphere.

A certain Izlata from Nis claimed that she had committed murder because of the violence she suffered from her husband.[126] Accordingly, she said her husband constantly beat and swore against her due to his distaste and disapproval of her housework. On such a day, according to her statement, she hit her husband's head with an axe during the daytime. However, according to the court order, he killed him in his sleep at night.

The couple had children from previous marriages. According to the information obtained from the sharia record, the man's wife and the mother of the children died, and the court gave the final decision upon the children's statements.

Q: How, when, where, and with what did you hit İpso?

126 BOA., İ..MVL. 515-23228 / 8 September 1864

> A: I have two *** sons from my other husband. He also has children. I was taking care of his children so that he could take care of my children. But he has been beating and cursing me since he married me. He hit (me) last Wednesday night. I got up in the morning and lit the fire. Suddenly he woke up from sleep. He took wood from the fire (saying) "Is the fire burned like this?" He beat me with wood and bellows. I had an ax next to me. I grabbed the ax from where I was sitting and hit him on the head twice. He lay down; I put *** under his head. He pulled his *aba* on. I was scared and screamed. His brother, Istemanko, ran and came. Then the peasant(s) arrived. The government was notified. They took me away.[127]

Upon the requests of heirs, this case ended with a sharia judgment, and Izlata received retaliation. However, we do not know if the retaliation actualized or not. As I said before, in some cases, it was possible to see that the sultan took steps to persuade the heirs to forgive, especially if the perpetrator had children in need of care. The discretionary power of the sultan could show variability in the final decisions.

In both Izlata's and other cases, court records show that there were doubts that women could commit these murders alone. Especially if it was determined that the murder was committed during the daytime, this suspicion became stronger. It was the most acceptable fact that their husbands were asleep for women to commit these murders. If a partner in the murder could not be identified, it was also emphasized from whom the woman took the advice and committed this murder. In other words, as also Ebru Aykut claims the court hesitated to give women agency for the brutal murders and looked for other agents.[128]

Women were not in a passive position, contrary to what was thought in their defense in the courtroom. In addition to their murder confessions, their statements about their illicit relationships and intention to marry their lovers were also striking. According to the details of a murder committed in Kastamonu, Zeliha and Hüseyin had a forbidden relationship for three

127 BOA., İ..MVL. 515-23228 / 8 September 1864

128 Ebru Aykut-Türker, "Alternative Claims," 11; "Toxic Murder, Female Poisoners," 128

months. They had beaten Zeliha's husband to death to get married. Zeliha's deceased husband and brother were aware of this relationship, and Zeliha stated that her husband had beaten her several times for this reason. Zeliha confessed that Hüseyin was her lover. Moreover, it was remarkable that although her brother Hasan and her deceased husband Mustafa were aware of this relationship, they did not have sanctions on Zeliha. As we will see in Chapter 5, although there were serious practices and sanctions, the honor codes of the society were susceptible to bending and stretching.[129]

Regardless of the punishment they would receive, women did not abstain from talking about their extramarital affairs. However, when these statements were asked of the related men, they tended to deny the affairs. This evokes the impression that women took a more courageous stand in court related to their guilts.

3.4.2. The Invisible Hands over Marriages: *Çaşıt*

The intention of another marriage was one of the leading reasons for female crimes against husbands. Unable to receive a divorce or not prefer it, women searched for ways of exiting from the conjugal union. If this exit was to be accomplished by poisoning the husband, such cases usually included an instigator. In this regard, they had some invisible woman helpers who either provided them with the poison or carried out the duty of transmitting data between the women and intended partners or lovers. I want to suggest the term *çaşıt* (spy, gossiper) for these invisible hands that continued to exist in the rural northern cities of Turkey even in the twentieth century. Ebru Aykut prefers to call these instigators Turkish Tofanas.[130] But, I believe that these women did more than provide poison. They also provided the parties with information, suggestions and carried little presents or remembrances. They were also acting as matchmakers in the neighborhoods.

In domestic women's meetings or fountainhead meetings, women told each other about their problems and gave each other advice on how to deal

129 BOA., İ..MVL. 577-25902 /14 September 1867; Also see BOA, İ..DA.. 7-136 / 1 February 1870

130 Tofana was a seventeenth century Italian poisoner. See, "Toxic Murder, Female Poisoners," 114, 131.

with troublesome husbands and relatives. The advice of poisoning the troublesome husband or family member or marrying someone else could be suggestions for a better future. In this regard, they could suggest a male relative or neighbor for a better suitor and make arrangements accordingly. However, the *çaşıts* in the archives were hardly seen in the courtroom. Despite the claims of the defendants as a partner in crime, most of the time, they got over the trials without receiving any punishment or receiving a symbolic one.

The *çaşıts* could sometimes be traced through the attar shop where the poison was obtained. But, this was not traced in every case of poisoning, and attars who might have sold the poison were not questioned. Sometimes, the killer was not even asked where the poison was obtained from. For example, in 1878, 19-year-old Ayşe from Trabzon poisoned her 18-year-old husband, Abdülhamit. Ayşe declared that she poisoned her with the encouragement of a Greek woman, but this could not be proven. The court did not question where and how the poison was obtained, and as a result of the case, Ayşe was pardoned from the death penalty and sentenced to 15 years in prison.[131] In the murder committed by Gülistan, Döndü the *çaşıt*, and a certain Hüseyin, who supplied the poison and wanted to marry Gülistan, were detained during the trial. However, they were released because they had served enough time in prison when Gulistan's death sentence became final.[132] In this case, the prison sentence given to the *çaşıt* and the supplier and the death penalty that Gülistan received were the exceptions for murder cases of this type.

In a court trial from Lom in 1874, an 18-year-old Marya killed her husband.[133] The sentence was given upon Marya's confession in court. According to the court record, a neighbor woman named Pervu advised Marya to poison her husband and be with someone named Vilko. Vilko delivered the rat poison to Marya through Pervu. Thereupon, Marya gave poison to her husband twice. First, she mixed it with milk, but it did not affect him. The second time she mixed it with water. As a result, she squeezed his balls while massaging them to relieve his pain and accelerated the death process of her husband. Although the murderer, Marya, was tried for death,

131 BOA, İ..DA.. 18-826 / 21 March 1878

132 BOA., İ..AZN. 54-30 / 24 January 1904

133 BOA, İ..DA.. 13- 480 / 9 February 1874

the death penalty was converted to 15 years of imprisonment because she was not over 18. As for Pervu, who was a fugitive and who was named as *amire-i gayri mucbire* in the record, she received three years of imprisonment. Unfortunately, this court file did not include interrogation protocols, so we cannot figure out the exact relationship between Vilko, Marya, and Pervu and how Marya was convinced to kill her husband and marry Vilko. However, this mediation suggests a monetary gain for Pervu.

In another case from Bosnia, Istaneya, who was 20 years old, poisoned and killed her husband.[134] The instigator of this crime was again a neighbor woman. The neighbor woman suggested that her husband would not be of use to her and that she could marry someone else if she killed her husband. Istaneya was staying with her parents with her husband. Yelene, the woman allegedly supplying the poison, kept telling her that her husband was sick and mad. This is how Istaneye narrated the incident:

> […] A woman named Yelene told me several times that your husband Radudiye is always sick and crazy. What do you need? I'll marry you to Vaso, the baker. Let your husband die. One day, while I was taking my calf from the field to my house, I saw that Yelene had brought some flour in a bowl of pumpkin. She told me, you see this. Take this, take it home. After five weeks, you can knead and bake a loaf of this flour only and feed it cold to Radudiye.[135]

Istaneya confessed to the murder, stating that she prepared the bread as Yelene told her and poisoned her husband deliberately. According to her statements, she did not have time to talk to Yelene again after the murder. When they interrogated Yelene about the murder, she adamantly refused the claims; on the other hand, the court questioned and confronted Istaneya and Yelene simultaneously. Here, too, Istaneya told Yelene's face about the promise of marriage to Vaso, the baker, and how Yelene described her how to give the poison. However, Yelene reiterated that she was unaware of the incident and was with her daughter in another district.

134 BOA., İ..MVL. 542-24344 / 8 November 1865; Also see, Ebru Aykut "Toxic Murder, Female Poisoners", 126

135 BOA., İ..MVL. 542-24344 / 8 November 1865

Radudi had no one but his two brothers. We do not know his age. Suspecting that their brothers might have been murdered, they sued Istaneye and asked for her punishment of her according to both sharia and the law.[136] In this court case, Vaso, the baker mentioned in the promise of marriage, was unfortunately not questioned. We also do not have information about where Yelene obtained the poison. In the absence of a proper prison, they imprisoned Yelene and Istaneya in the pastor's house for a few days when the trial started. Istaneya was tried by capital punishment but considering that she was deceived and committed the murder, the death penalty was converted to 15 years in prison. Yelene was released because there was no evidence against her. As I said before, generally, these *çaşıts* managed to somehow escape from such cases without receiving punishment. The statement of Istaneya was quite consistent, and Yelene was around Istaneya's district at the time of the murder. But Yelene's denial saved her, as there were no other witnesses.

In 1867, Esime, whose age we do not know, poisoned her husband Osman to death in Yozgat.[137] In this murder, the mother and sister of Ahmet, whom Esime was planning to marry, played an active role as *çaşıt*. This murder was a typical poisoning case, but it was pretty interesting regarding complicated family relationships. We do not know for sure whether the intention of the mother and sister in this venture was to marry Esime to her son/brother. Still, as we will see below, it was evident that they had short-term financial interests in this relationship arrangement.

Esime was Osman's second wife. She had been married for one year and had no children yet. Osman had three children from his previous wife, but he divorced him. This was because, according to the statement of Osman's aunt, Osman's stepmother, who was also Esime's birth mother, was constantly bothering her. In other words, Osman's stepmother divorced his stepson from his wife and married Osman to her daughter. Again, according to the

136 In this respect the brother Kosto stated that "According to the sharia or the law, I am looking for my late brother from (his wife) Istaneya. And I cannot consent and do not want Istaneya to give blood money/goods for my deceased brother. I don't sell my brother for the remedy. Now I would like my case to be executed. BOA., İ..MVL. 542-24344 / 8 November 1865

137 BOA., İ..MVL. 576-25852 / 27 August 1867

statement of Osman's aunt, stepmother Kezban came to the house as a second wife when Osman's natural mother was alive. So, in the house where Kezban went as the second wife, she changed the balances in the household considerably in line with her interests. So, she first beat her co-wife, then her daughter-in-law, and settled in the house with her daughter.

According to Esime's statements, Ahmet brought the poison to her and said that this would not kill her husband but would make him crazy. And after that, her husband would divorce him, and they could marry. Ahmet's mother and sisters acted as intermediaries in this murder plot. According to Esime's statements, Ahmet's mother constantly brought her and Ahmet together in their own homes.[138]

The most basic thing that Esime tried to present as evidence was a bracelet and ring incident. Accordingly, to mark their relationship, Ahmet's sister Döne took some bracelets from Esime and gave her a ring. Esime claimed the ring had been on her for 2-3 months. However, Ahmet's family completely denied the ring incident and interpreted the bracelet differently.

The statements in the court give the impression that what Esime told was not a lie due to the consistencies in her narrative. She insistently tried to explain that the Ahmet, Döne, and Hanife trio provoked her and dragged her into this murder. Although the court attempted to trace the poison traffic, the selling place could not be identified here despite all queries. Likewise, the bracelet and ring could not illuminate the inside of the event as concrete evidence. In the sharia record, *tazir* punishment and prison sentence was deemed appropriate for Esime. According to the penal law, she was sentenced to 15 years in prison. Ahmet, Ahmet's mother and sister, whom Esime accused in the trial, were released due to the lack of evidence.

Archival documents show that practices were developed to cope with the difficulties in marriage, especially among women. The silent web of *çaşıts* was

138 *"S: Bununla sevişmez olduğunuz halde nasıl sana zehir getirip verir? Elbet zaten muhabbet eder idiniz ki birbirinize varmak isteyip böyle bir şey yaptınız.*
C: Efendim ırgatlıkta oğlan beni ben oğlanı gördüğüm cihetle o vakit gönülden birbirimizi sevmiş idik. Sonra anası gelip beni aldattı. Bu cihetle oğlan görüşürdük görüştüklerimizde zehir getireyim çocuk deli olsun seni ben alayım der idi. Sonra getirdi. Öleceğini bilmeyip deli etmek için yedirdim." BOA., İ..MVL. 576-25852 / 27 August 1867

quite effective in arranging better options or suitors for men and women. The issue that these and similar cases raised repeatedly was the attempts to escape marriage without going through a divorce. As I said before, divorce seemed to have a negative social connotation. It seems that it was easier to continue life as a widow whose husband was dead and to remarry rather than to continue life as a divorced widow. And being married did not exclude the possibility of being a potential candidate. They still looked for other options. In this context, it seemed pretty challenging to get ahead of desires.

§ 3.5. Chapter Conclusion

In this chapter, I have discussed the family in the Ottoman provinces in general terms. In this context, I examined the establishment of the family and the marriage union as a preliminary to the following chapters.

During and after the reform process, the state continued to have a say on marriage and family as an institution. At the same time, the family was among the most discussed topics in the literary world of the period. The ideals related to marriage, family, and child-rearing, reflected, and discussed in the printed media and literary works, were part of informal population strategy, the fear of population decrease, and degeneration of society. In the debates in the print media, the family gradually became a metaphor for society. Discussions over the family also mediated the expression of unrest and anger in society, primarily due to political pressure and censorship during the Abdülhamid II period.[139] However, despite these discussions and the state's increasing control, legal regulations directly related to the family did not occur until 1917. But the 1858 penal law shook the family dynamics regarding crime and punishment.

The new judicial order allowed the state to know the family closely. In this context, the state discussed the regulations on marriage (age, prohibition of unnecessary expenses in marriage, etc.) and made regulations in the penal code regarding family members. Despite all the punitive regulations and the steps to facilitate marriage, problems regarding marriage continued. The

139 Alan Duben and Cem Behar, *İstanbul Haneleri*, 207

persistence of these problems was due to people's resistance to abandon some traditions, the political and economic processes the empire went through, and the changing and shrinking borders of the empire.

After the marriage, one of the most critical factors that ensured the strength and continuity of the family was the marital economy. In this context, the property brought to the marriage union and the possibility of this property going out of marriage and family union was the cause of conflict and even murder.

According to my data set, in murders committed within the family, women were at the top of the list of murderers. Another reason this list was so extensive was that they received help from the men they were considering marrying or from someone else when they could not commit the murder themselves. However, the most crucial reason for family murders was the issue of honor. As we will see in detail in the following chapters, the perpetrators of these murders were mainly male family members. One should keep in mind the limitations of this data set, so these ratios may change in light of future studies.

Many of the marital conflicts that emerged because there was no equality in marriage and that love could not be established between couples resulted in murder. The murders committed and perpetrated by women with the intention of another relationship/marriage suggest that the public negatively received a divorce. In this context, the data suggests that it was more favorable for women to be widowed with a dead husband than to be divorced and widowed.

If the wives maltreated by their husbands returned to their family home, the chances of their being a victim of murder increased. They became the perpetrators if they stayed in their marital homes and continued struggling along these conditions. With these murders, women broke the marriage union, but that did not mean they were against the marriage. They were either seeking another marriage or trying to correct the one they were already in. In this regard, they were shaking from the roots of the association of the female body with unconditional love and care for husbands and children.

4

Crimes against Parents

> *'The history of domestic relations cannot be written in the same way as the history of international relations, and any description must be tentative and incomplete.*
>
> – Theodore Zeldin, France 1848-1945

A substantial investment in a patriarchal family supported by a religious and legal framework within the society was a long and general historical trend for many countries. In this patriarchal order, everyone in the family had a particular duty: the father was the provider, and the mother was the nurturer/caregiver. What children needed to do in this equation was to be respectful and obey the rules. As long as this order was followed and complied with, family peace would be provided, and social order and harmony would be permanent. In this order, especially fatherhood had multiple meanings. Other than the biological connotations, it also suggested a sense of a divine characteristic. The law and the moral teachings regarding the relationship between parents and offspring were arranged to maintain and protect the father's authority as the head of the family. Sons who questioned their father's authority and power or sons and daughters who were dissatisfied with their parents' meddling in their private affairs were no strangers to the Ottoman

family. The moments in which these conflicts resulted in murder were not a rare phenomenon.

The act of killing parents is defined as parricide. The term is explicitly also used for the murders of fathers.[1] Although this concept did not have a terminological equivalent in the Ottoman context, it was directly used in the French penal code of 1810. Parricide was generally committed when parents or family elders were considered as an obstacle by children to their independence or prosperity. Primary reasons for parent killing could be property disputes, abuse, violence by parents, insanity, disappointment, selective love towards the children, and parental fault primarily related to property distribution within the family.[2] Most cases of parricide were not isolated or sudden events; rather, they were the result of relationships that deteriorated over time. In general, it was mostly seen in families with children who still live with their parents, regardless of their age, or in those who were in close contact.[3]

The literature on parricide shows a general conflict trend between fathers and sons, especially elder sons. The crime of parricide had a gendered aspect, and it was generally committed by the male members of the family and against other males. In this sense, it is also possible to evaluate parricide cases as a rebellion against authority embellished with honor and masculinity. As Philip Shon points out, "Sons interpret their parents' responses to their requests, demands, and assertions as offenses and view such responses as

1 However, in the literature, the concepts of matricide for the murder of the mother and patricide for the murder of the father are also used. The concept of step parricide is also used to express the murder of stepparents. See Kathleen Heide, *Understanding Parricide: When Sons and Daughters Kill Parents* (New York: Oxford University Press, 2013)

2 Selective love is loving and caring for some children more than others.

3 Katie Barclay, "From Confession to Declaration: Changing Narratives of Parricide in Eighteenth- Century Scotland," in *Parricide and Violence Against Parents throughout History: (De)Constructing Family and Authority?* eds. Marianna Muravyeva and Raisa M. Toivo (London: Palgrave Macmillan. 2018), 102

assaults upon their sense of masculinity, honor, and face."[4] In this sense, parricides are deeply grounded in self-identity and manhood, which is closely related to notions such as being independent and establishing and caring for one's own family.

Individuals marginalized by society or those excluded by authority struggled to regain their dignity using violence. "To be a proper, masculine man, one had to have the courage to defy and deride the authorities."[5] Here, it is also possible to talk about an urge to write a heroic story in the eyes of society. But the line between rebelling against authority and being disgraced and excluded from the community was thin.

In this chapter, I will analyze the murders of the parents and other family elders like uncles. Here, the concept of a parent includes natural parents, stepparents, and in-laws.[6] In this respect, I will first discuss the judicial attitudes towards parricide both in the West and the Ottoman Empire. I will then look at the parricide incidents I found in the archives between the years 1850 to 1908. Then, based on the close reading of the records of two court cases from 1867 and 1868, I will discuss how the property and inheritance issues mainly shaped the relations among the family members. Staying in between oral and written domains, this close reading of the court records will further provide a ground to understand the nature of the crime of parricide. It will also reveal the motives and reasons behind it and how family members and members of society at large and the state reacted to parental murder.

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4 Philip Shon, "Sources of Conflict Between Parents and Their Offspring in Nineteenth-Century American Parricides: An Archival Exploration," *Journal of Forensic Psychology Practice* 9, No.4 (2009): 274

5 Raisa Toivo, "Parricide in Nineteenth-Century Finland: Cultures of Violence and a Crisis of Authority," in *Parricide and Violence Against Parents throughout History: (De)Constructing Family and Authority*, eds. Marianna Murayeva and Raisa M. Toivo (London: Palgrave Macmillan. 2018), 195

6 I am making this definition according to the 1810 French Penal Code definition. Accordingly, it states in Article 299 that: "The murder of fathers or mothers, legitimate, natural, or adoptive, or of any other legitimate ascendant, is denominated *parricide*." https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html (21.11.22)

§ 4.1. Parricide and the Legal Context

Many societies regarded parricide as the most heinous and unacceptable crime against the natural flow of life. So, the criminals were punished most harshly. In the modern period, violence against parents was generally associated with mental disorders. Regarding parricide as a crime against the natural order, authorities tended to search for abnormalities in the criminal. These murders were no longer unfortunate killings for the modern state of mind, so they tried to figure out the biological or inherited reasons behind them. On the other hand, the punishments given for parricide remained harsh as in the previous periods. However, in the case of mental disorders, there were also remissions.

In the modern period, in the transition from an agriculture-dependent economy to an industry-dependent economy, the work patterns created by the industrial revolution in the West changed the dynamics within the family to a great extent. In the case of the Ottoman Empire, however, the lost territories, changing demographic structure, and economic instability could be the most significant impact. However, the importance given to the family by the states also became more visible in this period. In this respect, it was possible to find parricide references in penal codes promulgated in this period.

In Scotland, a parricide act was promulgated in 1594, the extent of which was limited to the murder of fathers and mothers. The murders of "parents by affinity" or grandparents were outside this act's scope. They were regarded as simple homicides.[7] With the legislation in 1661, it became a capital crime in Scots Law to curse or beat parents for those over sixteen, and this act was in force even in the nineteenth century. According to Kilday, despite the legislation, parricide cases were a rare occurrence in courts in Scotland from 1700 to 1850 due to the strong kinship ties and the combined forces of the law

7 Anne Marie Kilday, "Sugar and Spice and All Things Nice?": Violence against Parents in Scotland, 1700–1850," *Journal of Family History* 41, No. 3 (2016): 320

and the Church.[8] Parents were to be respected in Scotland at all costs, and the full wrath of the authorities was upon the culprits in this regard.

Despite cultural notoriety, parricide was not considered a distinct crime in England and Wales. According to Garthine Walker, "parricide was a cultural category despite not having the status of a discrete criminal offense,"[9] and it was such an unimaginable crime for some lawmakers like William Blackstone that they did not even put it under the status of petty treason. This debate was still on the go in the early nineteenth century.[10]

In Russia, domestic violence was criminalized in the Penal Code of 1845, and a special section was devoted to abusing parental authority. These policies became more transparent after the emancipation movement in 1861.[11] According to Muravyeva, "this legislation that the authorities considered the abuse of parents more important and serious than child abuse and prioritized parent protection over child protection, thus revealing their fear of dealing with disobedient and rebellious citizens."[12] The state played its cards to protect family authority, and in this environment, the children did not have a right to proceed legally against their parents. Respect for parents was one of the main building blocks of good behavior and social order. In this context, local *volost* courts mediated the resolution of disputes within the family.

In the 1810 French penal code, parental murder and the murder of the king and anyone from his family were treated similarly.[13] Since the king was

8 Ibid., 328-330

9 Ibid., 273

10 Garthine Walker, "Imagining the Unimaginable: Parricide in Early Modern England and Wales, c.1600–c.1760," *Journal of Family History* 41, No. 3 (2016): 273-74

11 Marianne Muravyeva, "Degeneracy and Abuse: Attitudes to Violence Against Parents in Nineteenth-Century Russia," in *Parricide and Violence Against Parents throughout History: (De)Constructing Family and Authority*, eds. Marianna Muravyeva and Raisa M. Toivo (London: Palgrave Macmillan, 2018), 62

12 Ibid., 62

13 Article 86. An attempt or plot against the life, or against the person of the emperor, is a crime of high treason (*lèse majesté*); this crime is punishable as parricide; and, moreover, infers the confiscation of property.
https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3a.html (21.11.22)

considered the father of all subjects, there was a transition between parental killing and the killing of the king. Parricide, regarded as the most heinous of all crimes, included the murder of legitimate and adaptive parents apart from the natural ones. This mainly was related to promoting the family as a model of society with an emphasis on authority hierarchy. The Penal Code thus severely sanctioned all sacred values, rendering them inviolable, and complemented the Civil Code's mission, which had regulatory provisions regarding the family and formed the basis of paternal authority.[14]

Among the murders committed within the borders of family in the sharia law, murder against the father or mother was the most seriously taken in the Ottoman Empire. Still, it did not have a specific terminology. Described as eliminating the reason or the medium for coming to this world or nascency, the court demanded the highest penalty for this crime. Other than that, the murder of husbands, wives, and children seems to be no different from other murders. In some cases, the murder of a baby (infanticide) was punished even less severely. In this sense, anyone who murdered their father was penalized with capital punishment. But the same sentence was not valid for a reversed situation. Nearly all fiqh schools agreed that a father could not be put to death for killing his child or descendent.[15]

The family was associated with improving society and the individual's afterlife. However, in the environment where new laws were debated in the Ottoman Empire, they did not promulgate a law to protect the family and make crimes against the family more deterrent even though the issue of social morality was on the agenda. The state officials left most of the matters related to family law to the sharia practices, and if any regulation was to be made in this realm, it would be made within the sharia domain. Family law in the hands of sharia law was extensive and fed from many different schools of fiqh. If deemed appropriate by the jurists, transitions could be made between these

14 Blandine Barret-Kriegel, "Regicide and Parricide," in *I, Pierre Riviere, Having Slaughtered My Mother, My Sister and My Brother: A Case of Parricide in the 19th Century*, ed. Michel Foucault (Lincoln and London: University of Nebraska Press. 1975), 220
The case of Pierre Riviere was a remarkable case where parricide and regicide were evaluated in the same category.

15 Rudolp Peters, *Crime and Punishment*, 48

other schools. Therefore, the family was, in a way, entrusted with a more flexible legal structure. In addition, family law was the safety valve of the Islamists against modernization. The legal reforms made at that time caused a lot of controversies. A codification on the family would inflame the discussions even more and prevent other judicial reforms from being implemented.

In this section, before discussing parricide in the 1858 penal code, I would like to return to the criminal code of Sultan Süleyman the Magnificent and see the application there. According to Article 60, "If a youth who is of age beats his father or his mother, [the cadi] shall, after chastising [him], put [him] in prison and a fine of 100 *akçe* shall be collected."[16] Even if it was not widespread, imprisonment was also inflicted as a penalty. As for the murder of parents, the code stated in Article 91 that "If a person kills his father or his mother or another of his relatives, whatever the *sharia* orders shall be done."[17] In this respect, this code was similar to the 1858 penal code related to parental murder.

Islamic law distinguishes between the murder of a child by their father and the murder of parents or elder relatives by a child. Accordingly, a person of either sex who intentionally and unintentionally killed his child or one of his descendants was not punished with the penalty of retaliation but was sentenced to pay blood money or disinheritance. On the other hand, a person who deliberately killed his father, mother, or one of his grandfathers from either side was punished with retaliation.[18] The reason behind this jurisdiction was that children were thought to belong to the father in a manner of ownership, and parents were the reason or medium for a child to find life in this world. The same judicial practice was also valid for the ownership of enslaved people.

In the French penal code, while the murder of the mother and father was equated with killing the king, in the 1858 Ottoman penal code, there was not a specific regulation related to parricide until 1911. The murders were

16 Uriel Heyd, *Studies in Old Ottoman Criminal Law,* 110

17 Ibid., 119

18 İbrahim Enes Onat, "18. Asırda Öldürme Suçu," 74. Also see, Muhammad Amanullah, "Just Retribution," 98-101

evaluated according to the intention of the criminal, according to Article 170. Accordingly, if the murder was premeditated capital punishment was given. However, capital punishment could be turned into hard labor for fifteen years, depending on the gender and age of the murderer or the reason for the murder. That is to say, depending on how the murder was committed and the reason for the murder parricide, criminals either received capital punishment or hard labor. Although there was no specific reference to parricide or parental murder, it was possible to come across expressions such as "eliminating the reason for coming to life" in the official court records. In this regard, we can talk about some aggravating factors in the penalties for parricide cases.

The arrangement in the penal law for the murder of parents or other family elders was made in 1911. While in the version of the law before 1911, the punishment was intended for premeditated murder in general, the phrase "family elders" was included with the change in 1911. Accordingly, it was stated that "the person who premeditatedly kills an individual or willfully kills one of his ancestors of either sex even though without premeditation is to put to death"[19]

Similarly, article 179 was also repealed in 1911, and it was stated in the new version that "those who beat or wound one of their ancestors of either sex are punished in manner following."[20] Thus, combined with the amendment in article 170, any violence against family elders of either sex officially fell under the authority of the *nizamiye* court jurisdiction. As Schull states, this was a remarkable example of the CUP "consolidating more power over the family within the hands of the state rather than leaving it in the hands of Islamic courts."[21]

Although the penal code did not reference parricide when it was promulgated, it was widely and explicitly stated in the holy books. In the

19 John Bucknill and Haig Utidjian, Ibid., p. 125. Likewise, in 1911, an arrangement was made to Article 174. Accordingly, the people who were the target of the murder were explicitly identified. Significantly, the article mentioned the members of the national assembly in the first place related to attempted murder.

20 Ibid., 134

21 Kent Schull, *Prisons in the Late Ottoman Empire*, 34

Qoran, more than twenty verses refer to respect and tenderness towards parents.[22] These verses underline the children's obedience and care for their families and emphasize the necessity of observing the rights of parents to achieve salvation in the afterlife. Thereby, the optimal behaviors towards the parents were deeply related to the social and cultural norms supported by various religious references. In this context, negative behaviors or violence towards parents were seen as deviance and madness and a means of divine testing for parents.

Although the religious references included both parents as the symbol of optimal respect, fathers had the most significant authority in the family through the social and cultural norms. Since fathers' power was deeply rooted in these institutions, it was hard to change. In this respect, households were a kind of replica of a kingdom grounded in God's will; fathers were the ruler of the house, and the rest were the subjects to be governed. Children did not have any disciplinary power toward their parents.

In a patriarchal society like the Ottoman Empire, despite the rising emphasis on family as a social model and the French and Russian examples in front of them, Ottoman reformers did not recognize parricide as a separate concept in the 1858 penal law. This is one of the remarkable examples of the fact that there was no wholesale legal purchase from the West, and Islam was not abrogated from the jurisdiction but was adapted into the imperial context according to the rapidly changing demands. Moreover, Burak Onaran addresses the question of why parricide was not mentioned in the penal code by quoting Cevdet Pasha.[23] According to this, the issue of the assassination of the sultan was also discussed in the penal code draft, but this part was left

22 For example, see: "For your Lord has decreed that you worship none but Him. And honor your parents. If one or both of them reach old age in your care, never say to them ˹even˺ 'ugh,' nor yell at them. Rather, address them respectfully." Al-Isra /23
"Say, ˹O Prophet, "Come! Let me recite to you what your Lord has forbidden to you: do not associate others with Him ˹in worship˺. ˹Do not fail to˺ honor your parents. Do not kill your children for fear of poverty. We provide for you and for them. Do not come near indecencies, openly or secretly. Do not take a ˹human˺ life—made sacred by Allah—except with ˹legal˺ right.1 This is what He has commanded you, so perhaps you will understand." Al-An'am/151

23 Burak Onaran, "Kuleli Vakası Hakkında "Başka" Bir Araştırma," *Tarih ve Toplum ve Yeni Yaklaşımlar*, Sayı 5 (2007): 21

incomplete in the penal code after the Tanzimat Council member Şevket Pasha warned that the assassination of the sultan should not occur to anyone and it would not be appropriate to write it in the code and announce it to everyone.[24] From this point of view, it can be thought that initially, the legislators did not want to write anything about the murder of parents in a similar way or to bring it to people's minds.[25]

As I mentioned above, parricide was an unimaginable crime in early modern England. Accordingly, legislators thought that no child would do such a thing to their parents. In this respect, the association of parricide with mental illness was used as one of the leading explanatory reasons. It could be possible that Ottoman legislators went through a similar thought process. However, it is thought-provoking that parental murder was mentioned in the criminal code of Sultan Süleyman the Magnificent, and it was not in the initial version of the 1858 penal code as a result of various concerns.

§ 4.2. Parricide in the Ottoman Empire

Like many murder cases in the West, the parricide cases were widely covered in the press, and it did not neglect to include the horrible details of the murders to influence the public. The trials had an entertaining aspect for the people, so it was possible to follow the public face of these cases. But it is almost impossible for us to access such data, especially for the Ottoman provinces. The only available data comes from the court records.

The authority fathers had within the family was primarily meant to control the property and income of the house. The father alone could decide how much and which child would benefit from the property he owned. In

24 *". . . Ancak hükümdar hakkında sû-i kasd edenler idam olunmak lazım gelir. Cezâ kanunnâme-i hümayûnunun layihası da bu yolda yapılmış idi ve fakir bu işin me'mur-i mahsûsu olup madde be-madde bu lâyihayı havâss-ı vükela komisyonunda kırâat ile verilen karar üzerine tashih ederdim. (…) Meclis-i Tanzimat azasından merhum Şevket Paşa 'Padişah hakkında sû-i kasd kimsenin hatırına gelmemelidir. Bunu kanuna yazıp ilan etmek münasip olmaz' demekle kanunda hükümdarana mahsus olan maddeler tayy-ettirilmiş idi."* Cevdet Paşa, Tezakir, cilt 13-20 (Ankara: Ttk Basımevi, 1986), 83 in Burak Onaran "Kuleli Vakası," 20.

25 Garthine Walker, "Imagining the Unimaginable," 273, 275

this respect, he exercised his authority over his family, and while he could exclude some of his children, he could love and grant more to the others. This role of the father as the provider and safe box of the family also became the main reason for his murder. In other words, the provider and protective role of the father, in contrast to the nurturer role of the mother who fed and raised the children, also became like the father's death warrant, especially in the hands of sons. As seen in the table below, the murders of parents and other elders in the Ottoman provinces were committed mainly by sons and sons-in-law. Also, the rate of fathers among the deceased family members outweighed.

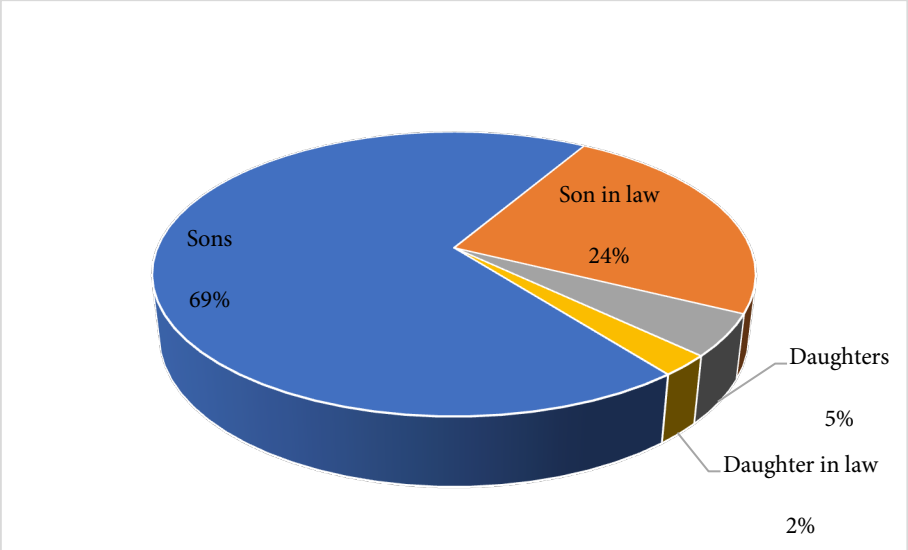

Figure 4.1 Parricide Murderers

The transition from childhood to adulthood is one of the critical turning points in an individual's life.[26] In this period, working in prolonged and seemingly endless chores as a cheap labor force for the family and the inability to gain a unique place in society were the leading causes of conflict for boys, especially with their fathers. Boys needed financial independence in

26 Arlette Farge and Michel Foucault call these turnig points as "conflicts at the threshold." Conflicts "at the threshold of adulthood, at the threshold of the house; at the threshold between dependence and independence." See, *Disorderly Families*: *Infamous Letters from the Bastille Archives* (Minneapolis: University of Minnesota Press, 2016), 130

adulthood to move from being single to family owners, fathers, and husbands. At this juncture, fathers' putting financial obstacles in front of sons, the son's inability to complete this transition period, and his continuing dependence on the family became a struggle of honor for them.

A social demand in the Ottoman Empire for children to be married when they reached puberty and even before it was a reality. In this context, it is an essential question of how and to what extent, and in which way the perception of masculinity developed in children who were married early. As I will mention from time to time in this chapter, the information I have obtained from the court records makes me think that individuals who were married at an early age and started their own family within the extended family and lived with them vacillated between the new role they took in this patriarchal structure and the childhood they had just left behind.

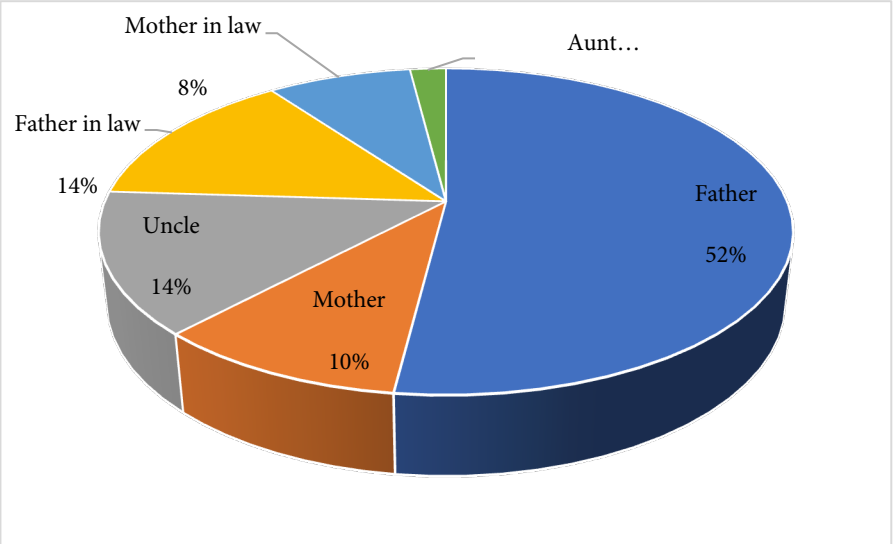

Figure 4.2 Murdered Family Elders

Among the murder cases that fell within the scope of this study, there were 49 murder cases towards the family elders, and overall, it constituted a place of %22,47. In other words, one out of every five people killed their parents or family elder. Of course, this rate would change positively or negatively with new studies to be carried out.

Adult sons, rather than adolescents, generally committed these murders. As seen in this table, the highest rate of murders against family elders belonged to fathers. For the adult sons, the main reason for the murder was the inheritance and property disputes, whereas, for the adolescents, experiencing violence and abuse from the father were the main reasons.[27]

As the chart above shows, fathers and uncles, in other words, the male authorities in the family, were targeted the most. In these murders, the number of the ones committed premeditatedly was high. Most of these murders were planned and executed because of an ongoing conflict within the family. Depending on the family/parents, the inability to acquire economic independence greatly hindered men and manhood in supporting and providing for their own lives and families. So, these murders were mainly a result of a masculinity crisis. The father's death meant defining a new authority within the family, which provided the opportunity, especially for the sons, to redefine their place in the wider society. Therefore, the aim of these murders was not only to receive financial gain but also to obtain a social status.[28]

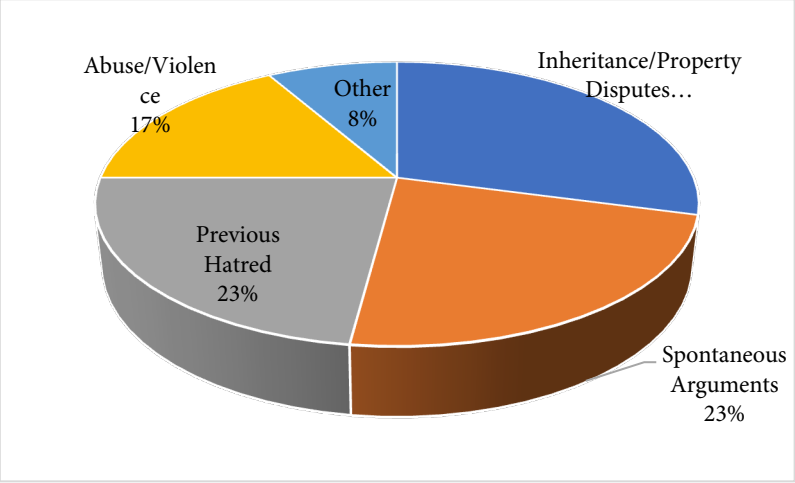

Figure 4.3 Reasons for Parricides

27 For a comperative perspective see, Peter Boag, "Gender and the Historicity of Parricide: A Case Study from the Nineteenth-Century North American West," in *Parricide and Violence Against Parents throughout History: (De)Constructing Family and Authority,* eds. Marianna Muravyeva and Raisa M. Toivo (London: Palgrave Macmillan, 2018)

28 Beshara Doumani, *Family Life,* 73

According to the archival data, the main factor behind the parricides was inheritance and property disputes, followed by previous hatred, spontaneous arguments, abuse, and violence toward the children. In this respect, fathers were mainly killed by their sons due to property disputes. The rate of matricide was quite low, as well as the crimes committed by the daughters against their parents.[29] For the murders of fathers/mothers-in-law, their involvement or intervention in their children's marriages and property disputes stood out as the primary reason. Other than the property disputes, the causes of anger and resentment towards fathers could be listed as fathers' intention of remarriage, immoral behaviors, and bad habits both in the family circle and outside.

Regarding violence against parents, explanations related to the human psyche or morality became one of the first points to look at in court procedures, especially in the west.[30] The murders against the parents were among the unbelievable murders that were met with surprise at the court. For this reason, the possibility of a mental illness behind these murders was always considered. Moreover, especially towards the end of the century, the family's inherited anomalies were also considered while evaluating the murder cases. Criminologists and doctors focused on the possibility of insanity and degeneration in cases where the criminals had no regrets or had no need to hide the murder.

In some murders committed in the Ottoman provinces, a report on the mental status of the murderer was sometimes requested. Although some court cases included forensic reports,[31] they were generally only a few lines of

29 For the murders committed by the daughters, see BOA., İ..MVL. 575-25820 / 15 June 1867 and BOA., İ..DA.. 18-796 / 17 January 1877. For the murders against mothers, see, BOA., İ..DA.. 12-434 / 22 August 1873 and BOA, İ..MVL. 544-24469 / 22 December 1865

30 Marianne Muravyeva, "Degeneracy and Abuse," 58

31 Forensic medicine started to develop in the Ottoman Empire in the second half of the nineteenth century, mainly through the newly opened medical schools (like *Tıbhane-i Amire* (1827), *Cerrahane-i Amire* (1836), *Mekteb-i Tıbbiye-i Şahane* (1839)) and foreign physicians who came to these schools as teachers. In previous periods, the government did not positively respond to autopsy requests regarding suspicious deaths. However, even though an autopsy

articles that conveyed results. In this respect, the most detailed example I came across in the archive was the report of a particular 20-year-old medical school student, Kevork, who was taken to the asylum for further examination after he killed his father.[32] During Kevork's time at the asylum, they tried to determine whether he was completely sane when he committed the murder. As I mentioned, such a asylum process had no counterpart, especially in the provinces. The mental state of the criminal was influential in the court process, but whether the criminal was sane or not was only assured by a doctor's short report.[33]

After a brief introduction related to the situation of Kevork, the report described the crime and noted Kevork's own words from his police interrogation. The statement continued with Kevork's acceptance to the asylum, examination, and detailed information on his nuclear and extended family condition. Kevork's murder of his father, Haciki, was reminiscent of the court process of the Pierre Riviere case.[34] According to his statements,

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was not performed, as it was understood from the court records, forensic discovery was made in cases such as deliberate injury, accident, and suicide in the classical period. Discovery could be made at the scene of the incident, at the victim's home, at work, and in court, if the injured victim could come to the court. See, Özen Tok, "Kayseri Kadı Sicillerindeki Yaralanma ve Ölüm Vakalarıyla İlgili Keşif Raporları (1650-1660)," *Sosyal Bilimler Enstitüsü Dergisi* Sayı. 22 (2007): 329; Sedat Bingöl "Tanzimat İlkeleri Işığında Osmanlı'da Adli Tebabete Dair Notlar," *Ankara Üniversitesi Dil ve Tarih-Coğrafya Fakültesi Tarih Bölümü Tarih Araştırmaları Dergisi* 26 No. 42 (2007); Khaled Fahmy, "The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth Century Egypt," *Islamic Law and Society*, 6, No.2 (1999)

32 BOA., Y..PRK.AZN. 1-59 / 24 May 1882

33 While the new judicial order strengthened its hand with doctors' opinions, it also imposed sanctions on physicians. Articles 160 and 161 of the 1858 penal code made arrangements. Accordingly, upon the favor or sake of someone, if doctors and surgeons testified against someone else to bar him from public service claiming that he had a disease or illness, even though it was not true, they would be imprisoned for 1 to 3 years. See; See, John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, 117

34 Michel Foucault ed., *I, Pierre Riviere, Having Slaughtered My Mother, My Sister and My Brother: A Case of Parricide in the 19th Century* (Lincoln and London: University of Nebraska Press, 1975)

when a woman Kevork stated to be immorally entered their lives, he first lost his mother and then the household's happiness. After the death of his mother, his father married "this woman" and kicked out all of his children, including Kevork. In the report, Kevork narrated the moment of murder in his own words as follows:

> Since (my mother) was bedridden, my father did not consent to receive proper treatment from the doctors. After my mother's death… my father was engaged to his lover. Instead of helping us, my father would never do his duty, and he would withdraw to his house with his new wife and try to give his wife the landed properties, which were his family's property. These landed properties consist of a few pieces of land and buildings, which were previously bought with the money of my deceased mother and put in my father's name. I fell into a state of despair since the condition of his family would be very bad, and the future would be very desperate when he got them like that. I decided to perish my father to banish this calamity. I was wearing a loose-fitting civilian dress and a straw hat. I kept my hand on the gun's trigger and watched my father get out of the steamer. I approached him and fired the weapon as soon as he got out. Then I threw the gun into the sea. I did not run away and waited for the police to come, knowing I would be caught. I killed my father to avoid him destroying an entire household.[35]

While committing this murder and his statements after the murder, Kevork's position was quite clear. He felt that the "new woman" who had entered his father's life had very clearly taken away his family's happiness. According to Kevork, his father was the symbol of parental neglect and stood as an obstacle to his family's material and moral values. Therefore, he deserved death at all costs. As Constanna Vintila-Ghinulescu points out although parricide is described as the most heinous crime, it was the last resort when power relations in the family cannot be restored.[36] The literature

35 BOA., Y..PRK.AZN. 1-59 / 24 May 1882

36 Constanna Vintila-Ghinulescu, "'You Would Have Them Lock Me Up and Sell Me as Slave': Parents and Children in Long Eighteenth-Century Wallachia" in *Parricide and Violence*

on this matter gives the impression that this situation had a common dimension that transcended borders and time.

Kevork's and his family's dignity and financial misery gave him the necessary grounds and the courage for this murder. The doctors in the report also noted this family story and his stance after the murder. Although the doctors had developed the opinion that Kevork was unconscious during the first examinations, they examined him a few more times to be sure. In the part where the household was analyzed, the bad habits and evil deeds of Kevork's father, both within his family and work environment (among the craftsman), were emphasized.

Even if they did not doubt the veracity of Kevork's statements about his family, the committee emphasized that Kevork's life before the murder was unacceptable. They noted that "(He) was one of the lazy and stupid students in the school of medicine, and he was imprisoned even once for a theft issue." However, in their firm conviction of the murder, they concluded that Kigork committed this murder due to a state of insanity he inherited from his family and his father's notoriety.

The asylum committee's comprehensive scientific report (*mulahaza-i fenniye*) combined the above explanations of Kevork, his physical examination, and extensive research on his family with the details of the murder. In the final committee report, it was stated that:

> Unlike the vulgar criminals, he did not look for a non-passable place and the darkness of the night; instead, he chose a crowded place in the city, and he committed the murder when he would never have any doubt that he would be arrested. It is also noteworthy that when Kigork was caught, he never concealed the murder he perpetrated but confessed the murder and the cause of it openly and even proudly. This impudence disappeared within a few hours, and he gave hesitant answers to the questions he was asked by using some absurd words.

Against Parents throughout History: (De)Constructing Family and Authority, eds. Marianna Muravyeva and Raisa M. Toivo (London: Palgrave Macmillan, 2018), 91

> As for the reasons that led to the murder, no evidence was found in the reasons mentioned above that the malice was deliberate.[37]

In summary, in this report submitted to the prosecutor's office, some professors in the asylum committee stated that Kevork was not responsible for this murder. In contrast, others noted that he was somewhat responsible. Another highlight of this report was that murder of the father was described as the most extreme of all murders, and the term mischief (*fiil-i fesat*) was used for it. The word *fesat* means cruelty, turmoil, and disorder. It is possible to say that it was used here as a concept that expressed the deterioration of the social order and balance, violating the established legal and moral rules. It's also a word with a heavy religious connotation.[38] In this respect, it is remarkable that such an intensely meaningful word was used to express parricide. The murder of the father was at the same level as the disruption of the social, moral, and religious order.

4.2.1. Abuse and Violence

Abuse and violence were reciprocal phenomena for the parricide cases. It was aimed at parents from adult children and from parents to children. Adolescent parricide offenders mostly committed parricide due to the abuse they endured by their parents or parents-in-law. Abuse and violence of adult children towards parents were generally due to economic disputes.

The murderer profile was generally under the age of twenty in the cases stemming from abuse and violence. Most of these criminals immediately confessed in court, unlike the adult ones who tried to trick the court in order not to receive punishment. Also, in these cases, while men mainly used cutlery like axes, women generally used poison in instrumental attacks against parents, or they received help from someone else. In the three murder cases I will briefly mention below, we will see various forms of parental abuse and violence and hear the violence they were exposed to from the mouths of the children. I want to underline that the situation I categorized as violence and

37 BOA., Y..PRK.AZN. 1-59 / 24 May 1882

38 https://islamansiklopedisi.org.tr/fesad, 18 May 2022

abuse here was not a familiar or standard explanatory model for the nineteenth century. In fact, according to Stone, beating children in the sixteenth and seventeenth centuries was a necessary means of education and discipline. The main target in education was the "breaking of the will."[39] So, in a similar vein, abuse and violence by parents were not cases of surprise or empathy in court. However, whatever the reason, the murder of parents was a phenomenon that was difficult to explain and give meaning to.

In a case from Trabzon,[40] 17-year-old Şükrü shot and killed his father with a rifle while his father was asleep at night because his father battered him. He confessed to the murder immediately at his interrogation:

> A: ... my father came there until I got up in the morning and shook 4-5 saplings of olives with my brother and the Circassian. That day, we cut some branches of the olives and shook them until evening. In the morning, because my father could not find me, he beat me severely and fired me. And then he called me with the Circassian, and after having dinner together, he performed the evening prayer and went to sleep in the store there. That night at half past five, I took my father's bullet-filled rifle that was hung in the store and shot my father. At that time, my father turned away, saying ah, I was fired. I ran away from there.
>
> Q: Şakir, how come a son ever kills his father? Maybe your father's enemy tempted you and made you do this. Don't be afraid; tell the truth.
>
> A: No, nobody tempted me. Since my father always cursed and beat me, I killed him with a bullet. This is the truth.[41]

According to Şükrü's statements, his father beat him because he thought he did not work enough in the olive garden. No one else was questioned in this file because Şükrü confessed to the murder. What was striking here was that the interrogator did not believe that Şükrü could commit such a murder alone. However, Şükrü's clear stance on the murder did not pave the way for

39 Lawrence Stone, *The Family,* 170

40 BOA., İ..MVL. 571-25679 / 7 May 1867

41 BOA., İ..MVL. 571-25679 / 30 June 1866

the prolongation of the interrogation. He did not receive any punishment according to the sharia law because his mother forgave Şükrü for retaliation and blood money. According to the penal code, he was pardoned from the death penalty and sentenced to 15 years of hard labor.

In another case from Kerpe, Erin poisoned her father. Erin's trial[42] started with her admission and confession. With the encouragement of her aunt and cousin, she decided to poison her father because her father mistreated her. But she also declared that she did not want to kill him. Her purpose in giving poison was to blind his eyes. She confessed the crime to the priests in her own words, and the case was taken to court. Perhaps her guilt would not have been known if she had not confessed because people thought his father was sick. Considering Erin's situation, the death penalty was converted to fifteen years in prison. Due to his particular situation, he did not receive the punishment for exposure.

Erin put arsenic in her dinner to avenge her physically abused father. According to the testimony of her aunt and cousin, Erin also wanted to marry someone from another village, but her father did not allow it. So, Erin wished to punish her father to get out of the predicament she was in. As a result of the poisoning attempt, his father paid for any intervention he made in his daughter's life with his own life. It is crucial here that female actors carry out all the work. Her aunt advised her to poison her father, and when Erin agreed, she went and bought the poison herself and delivered it to Erin. I think she had previous experience in such a job which also suggests her being a *çaşıt*. There was also a punishment for this aunt and her daughter, but since there was no statement against them except Erin's, their detentions up to that point was considered sufficient.

15-year-old Pandeli from Karamürsel,[43] at the age of 15, killed his father because he was subjected to violence. Pandeli and his father were in Kütahya to work in a bakery. The murder was committed in Kütahya, but since the heirs were in Izmit, a letter was written to explain the situation to Izmit, and a sharia trial was requested with the heirs. Pandeli immediately confessed to

42 BOA, İ..MVL. 575-25820 / 15 June 1867

43 BOA., İ..MVL. 577-25910 / 16 September 1867

the murder, making the case file concise and clear. Correspondence took a long time just because the heirs were in other places.

In his very short interrogation, Pandeli explained the reason for the murder as follows:

Q: Who cut off your father Simon's head?
A: I cut it.
Q: What did you cut with?
A: With a razor.
Q: Did you cut it at night or during the day?
A: I cut during the day.
Q: You are a child; your father is a big man. How did you cut him?
A: He was very sick. He would hurt me a lot. I was tired, so I cut (him).[44]

Pandeli did not give any further information related to the violence he endured. The court focused on whether he committed murder because of a monetary issue, but Pandeli refused the claims and emphasized that he killed him because of the violence he endured. Again, in this case, the interrogator did not consider that a child could kill his father or, more precisely, a child could kill his father because his father was torturing him. Pandeli was pardoned for the retaliation due to his young age and was sentenced to 15 years of hard labor without exposure. It was his sister who forgave Pandeli from retaliation.

Whatever the parents did, there was almost no declaration in the court registers that they deserved a life that ended in murder. On the contrary, it is possible that the court officers questioned the children's attitudes toward their fathers and preferred to believe the fathers' statements rather than the children, even if the fathers were guilty. We will see the most striking and obvious example of this in the incest case, which I will discuss in the next chapter.

44 BOA., İ..MVL. 577-25910 / 16 September 1867

4.2.2. Inheritance and Property Disputes

Deciphering the family's economy and wealth distribution, negotiations over property and inheritance depict a clear portrait of the relationship between different family members. Inheritance directed the flow of resources between generations within the family and it was the main regulator of the distribution of wealth.[45] Inheriting a property or remaining out of it meant staying in life and moving forward or being stuck in social inertia.[46] Inheritance meant social mobility within society, especially for a young man with a family. It provided him with a means to become a provider for his own family and to acquire and secure a place within society.

Here it is necessary to consider the state of manhood in the nineteenth-century Ottoman countryside, men's dependence on their families, and their difficulties in acquiring property.[47] In other words, on the way to parricide, inheritance and property disputes also contained huge masculinity crises within themselves. As Peter Boag reminds "…larger social forces, not just individual action, are culpable of producing parricide."[48]

Young-age marriages constituted some handicaps in the Ottoman family. The daughters-in-law were usually a contribution to the workforce. The children who were married after reaching puberty started a family within the family. Their chances of living in a separate house on an individual budget were meager. Married children were independent and dependent on the large family, and a generation turnover took a long time. Things especially got complicated in the second marriage and the division of inheritance between the second wife and stepchildren. In this respect, individuals joining the family as a stepmother, father, child, or sibling were deemed dangerous to future inheritance sharing. Especially the women claiming the right to the property of their husbands became the number one enemy of the male adult member of the family. Kayhan-Elbirlik points out that the wealth a woman

45 Maria Agren, *Domestic Secrets*, 12

46 Philip Shon, "Existential Boundary Crossings: An Archival Exploration of Identity Projects in Nineteenth-Century American Parricides," *Human Studies* 35, No. 3 (2012): 452

47 Peter Boag, "The Historicity of Parricide," 156, 158

48 Ibid., 163

could bring into marriage also gave her a more secure position and taking property out of the marriage union posits concerns. In this regard, "there is significant emphasis on what is brought into the marriage and taken away at its disintegration by the involved parties."[49] It is clear from the cases I analyzed that the amount of wealth a woman could take or had the possibility of taking put her life and her marriage in danger.

The Ottoman inheritance system was based on Islamic inheritance law. Although any property was inherited according to sharia, the usufructuary rights of demesne and *icaretyn* and *mukataalı* trusts were arranged according to the customary law, and they were subjected to change according to the requirements of the time. In this respect, after the Tanzimat, some regulations were made which could be regarded as contrary to the sharia regarding the inheritance rights of men and women in demesnes.[50]

With an imperial decree in 1847, first-time daughters received inheritance rights from their fathers and came into an equal position with their brothers. After 1847, two more regulations were made regarding inheritance rights. So the sons' privilege in succeeding to their father's land was extended to the daughters.[51] Moreover, the regulation between 1858 – 1867 extended the inheritance owners further. Apart from the daughters, the father and mother of the deceased also received inheritance rights if they did not have any heir. The enlargement of the circle of heirs, as Mundy and Smith point out, shows the sultan's interest in justice and the existence of the empire working for the age of equality.[52] However, this situation was also a precursor to the opening of new conflict areas within the family. The regulation of 1867 (*Tevsi-i İntikal Nizamnamesi*) remained in force until 1913, and in the extended list of inheritors, the new order became as follows:

49 Leyla Kayhan-Elbirlik, "Negotiating Matrimony," 55-56

50 See, Abdurrahman Yazıcı, "Arazi Kanunnamesi (1274/1858) ve İntikal Kanunlarıyla İslam Miras Hukukunun Mukayesesi," *Ekev Akademi Dergisi* 18, Sayı. 60 (2014)

51 Martha Mundy and Richard S. Smith, *Governing Property, 44*

52 Ibid., 45

1. Sons and daughters
2. Grandchildren
3. Father and mother
4. Full brothers and paternal half brothers
5. Full sisters and paternal half sisters
6. Maternal half brother
7. Maternal half sister
8. Spouse[53]

Table 4.1 List of Inheritors

According to this order, if the sons or daughters of the legator died before him or her, their children replaced their position in the order and received the same right as the children of the legator. Also, the gender of the spouse did not affect the distributive share; if there were no inheritors, the surviving inheritor received all the property. Moreover, the parents, full and half-siblings, did not have any priority among them. But this equality did not apply to the maternal half-siblings. Paternal half-siblings were regarded as more privileged in the inheritance order. [54]

Those who were left out of the inheritance or realized the probability of being left out of it strongly desired to get what they thought was their right at all costs. Violating the right to the estate or being excluded from it also had the dimension of honor struggle. When the head of the family passed away, there was also a race for social status besides the material things that those left behind would inherit. Considering the Mestan Ağa case, I will discuss in detail below, being in society as someone who was banned from the inheritance of his notable father was a burden for his murderers, besides the financial losses.

Parricides that were financially motivated were premeditated primarily and executed with a meticulous organization, such as the choice of weapons

53 Sevgi Gül Akyılmaz, "Osmanlı Miras Hukukunda Kadının Statüsü." (Gazi Üniversitesi Hukuk Fakültesi Dergisi, Vol. XI, No. 1-2, 2007), 487-493; Also see, Abdurrahman Yazıcı "Arazi Kanunnamesi", 462-465

54 Ibid., 493

or eluding any intervention from the law enforcers.[55] The male parricide offenders had detailed forethoughts related to the execution of the crime, which also included obfuscating the evidence afterward to get rid of a possible harsh punishment.

In the murders of both Mestan Ağa and Müezzinoğlu Hüseyin, which I will discuss in detail in this section, the murderous sons also had their own families and children whom they were responsible for. In other words, they were also in the position of "provider fathers." They had committed these murders in part to secure their own families financially. The murderous sons in these files saw their father's existence as a threat and killed their fathers, intending to prevent the material damage they could inflict on them as long as they lived.

4.2.2.1. The Murder of Mestan Ağa[56]

Mestan Ağa, who was the sheik, and the trustee of Hızır Baba lodge, was murdered at night in his sleep together with his wife Azime, his thirteen to fourteen-year-old daughters Ayşe and Zekiye, and his eleven years old son Ali.[57] This case was a premeditated murder that included domestic violence, an inheritance dispute, a problematic father-and-son relationship, and slaughter.

Hızır Baba Lodge was a Bektashi lodge whose history went back to the seventeenth century. It was one of the lodges that survived the 1826 events[58] and banned years of Bektashism. Mestan Ağa attended as a sheik to the lodge

55 Philip Shon and Christopher Williams, "An Archival Exploration of 19th Century American Adult Female Offender Parricides," *OMEGA* 67, No. 3 (2013): 258-259

56 BOA., İ..DA.. 2-23/ 18 August 1868

57 It is also possible to evaluate this murder within the scope of familicide. However, due to the scope of this section, I prefer to evaluate it under the title of parricide. See Kathleen Heide, *Understanding Parricide*, 69

58 In 1826, all the Bektashi lodges were closed, some ransacked, and Bektashism was banned in the Ottoman Empire. For a detailed study on this subject, see Fahri Maden, *Bektaşi Tekkelerinin Kapatılması (1826) ve Bektaşiliğin Yasaklı Yılları* (İstanbul: Türk Tarih Kurumu Yayınları, 2014)

in 1832 with his brother Mehmet Halife. As of 1862, Hızır Baba Lodge and waqf of Demirtaş Bey Mosque had an income of 46.423 *kuruş* which was given to Mestan Ağa.[59] After the death of Mehmet Halife, he became the only head of the lodge in 1866, but a family catastrophe was on the way in a year. [60]

Mestan Ağa had eight children total from two different wives (three sons and a daughter from his previous wife and three daughters and a son from the new one), and he was managing a remarkable property according to the conditions of his time. He lived in a mansion with his extended family and had live-in and daily Muslim and non-Muslim servants and guards. In this atmosphere, he had two unhappy sons (Emin and older Ali) from his first wife, and the dispute was mainly between them and Mestan Ağa's new nuclear family. For this murder, the older son of Mestan Ağa, Ali, made the plot, and he was joined by his brother Emin, Ali's brother-in-law Haşim and a certain Halil to execute the murder.

Mestan Ağa's murder was exceptionally well-planned, and it took time for the court to finalize it. Moreover, due to the usual false and deceptive statements of the witnesses, it was difficult to follow the case, which consisted of sixty-four pages of interrogation, a sharia record, two local court records, and the record of the supreme council and sultan's decree. I noted all the information about Mestan Ağa, his household, and villagers in bits and pieces through these interrogations. In this case, the interrogations were first taken in the authorized local court and then in the upper court in the central province. I believe that this was related to the fact that the first instance court could not receive a solution through its investigation and the interrogations. Since the court case of Mestan Ağa was a bit complicated, in what follows, firstly, I will give information about the interrogations in general, then the plot of the murder and related confessions. I will finalize this section with my remarks and inferences related to the case.

The interrogations started with the statement of Ayşe, the daughter-in-law of Mestan Ağa and wife of his son Emin. For a long time, Emin was

59 Fahri Maden, "Alevilik-Bektaşilik'te Hızır İnancı ve Hızır (Hıdır) İsmiyle Anılan Alevi-Bektaşi Tekke, Türbe ve Ocakları," *Alevilik ve Bektaşilik Dergisi* 14 (2016): 134

60 Ibid.

interrogated as the reasonable suspect and the people around at the murder night. In his pages-long interrogations, Emin's answers remained the same, stating that after he let his little brother Ali to his father's room, he went to his own. While he was asleep, he woke up in the middle of the night to noises and realized that there was a fire in his father's room and all the house doors were open on his father's side. He immediately took his rifle and fired it towards his father's room and saw some dark shadows whom he thought to be the murderers. Emin then claimed that he went to his father's room in the first instance and faced the dead bodies of his family members. The surviving little girl was somehow brought to his chamber, but he gave no details in this regard.

Meanwhile, Emin's older brother Ali was said to be in another village, so his testimony was taken some time later. So, the court, for a long time, tried to figure out who were the dark shadows that Emin was talking about and forced him to confess the murder. However, this was the plot of the criminals to keep the court busy. The number one culprit, Emin, pointed out a certain Yevan as a suspect. A previous dispute because of a tree between him and his father made it easy for Emin to support this argument. Various witness statements also confirmed this dispute. Also, Yevan did not give clear answers that he was not guilty.

In this case, the interrogations lasted more than ten days. In the first instance court Emin was one of the prime suspects, but the documents did not have any information on whether he was under arrest. It is clear from the interrogations that the witnesses and suspects were interrogated in front of a council on a one-to-one basis. At times of confrontations, they brought in the person to be faced. Moreover, the interrogations were untimely. It is hard to figure out whether one's interrogation ended or not because even if the witness or suspect signed their statement a couple of testimonies later, they might be called back. We do not know where those people were kept during that interval or whether they all had the chance to talk to each other. But the statements of a certain Biko revealed that he had the opportunity of getting some information about the questionnaire and the council.

Q: You told us all the questions we prepared to ask you without our asking. Where did you get this information, and how did you know we would ask you these questions?
A: I thought you were going to ask, and I answered.
…
Q: Have they ever called you this court and asked you a word?
A: No, they did not call, and they did not ask.
Q: How did you know the words that this council was to ask you and answered immediately? Tell us who ever taught you this.
A: I did not hear from anyone, and nobody taught me. I told you what was in my heart.[61]

So, it is pretty likely that outside the court, people spoke about the court procedure and what they could do to influence the court.

It was not easy to make the suspects confess, especially for premeditated murders. In such cases, the cross-questioner brought the suspects into a narrative in which they gave the details about their lives and whereabouts. In other words, they made them speak randomly. In this narrative, the questioner tried to catch the contradictions and lies of the suspects, and it was with the own words of the suspects that they took the case forward. There were many unrelated and simple questions in this regard, but they served well to catch the false and misleading statements. Expressing the success of the interrogation, the questioner said to a particular suspect, "you even did not tell us, but the interrogation made you say it."[62]

The interrogations always started with name, surname, and occupation questions, even if the interrogee was questioned earlier. As I mentioned in the previous chapters, this was a general court procedure. Also, this was a part of the practice of conducting interrogations by different people on different days. For example, in one of Emin's late interrogations, the questioner asked him about his job, his father's name, and the number of his brothers and sisters. Those questions came when the case was close to the solution. The general attitude of the questioners towards the interrogees seemed relatively

61 BOA., İ..DA.. 2-23 / 18 August 1868, Document No: 3/16

62 BOA., İ..DA.. 2-23 / 18 August 1868

calm throughout this case. It was even possible to detect some fatherly approach toward them. This approach was more common when they ran out of patience. In this regard, words like dear, my son, my child, or deary were put on the records.

THE LOST VOICES IN THE INTERROGATIONS

As I mentioned, Mestan Ağa's elder son Ali was interrogated sometime later. Due to the information that Ali was in another village at the time of the murder, they asked him what he had heard about the incident, and he narrated the story the way Emin did. We do not know whether Ali had any confession or not. Moreover, sometime later in the interrogations, another son named Şuca was revealed who lived and worked in another property of Mestan Ağa, about four distances. This son was entirely outside the events of an inheritance dispute and murder. Besides these sons, Mestan Ağa had a married daughter named Cemile from his previous wife. Quite interestingly, Cemile never appeared in the interrogations. Also, it is pretty thought-provoking that despite the high number of witnesses, as a female voice, we only heard that of Ayşe.[63] There were some women that the interrogees mentioned, but they were not brought to the court. Also, I believe that Ayşe's interrogations took place because of Emin, about whom she was an important data source, and she was a part of the story Emin kept telling.

The court was also silent for Mestan Ağa's new wife, Azime. No one from her family members could speak in her name. The only information related to Azime's existence came from the workers. Reportedly, Azime owned a share of a valuable meadow and some good cows and sheep. She was in a poor relationship with her stepson Emin. Some of the witnesses even narrated Emin's offensive speech toward her. Mestan Ağa's intention of leaving his position in the lodge and waqf to his younger son Ali was also supported by mother Azime, or perhaps it was her idea. She was successful in this regard and could get a property share from his husband despite her stepsons and secured the place of her younger Ali. It remains a big question why Mestan

63 There might be some non-Muslim women were working for Mestan Ağa that I could not figure out due to their names. But the jobs they did suggest that they were men.

Ağa discriminated against his sons. This question also did not find a place in the court's interrogation agenda.

On the murder night, many people were staying in the village room (*köy odası*) of Mestan Ağa. Village rooms were gathering places owned by the prominent families of the village, especially in the Anatolian countryside. These rooms were like guesthouses belonging to the notables of the villages. Their daily workers could stay there. The rooms were also used as a common place to catch up with the villagers and neighbors, to eat something, or to spend the night. They were an important public space for the village men to gather, have fun, or attend religious rituals, and women were not allowed in.[64] In this murder, Mestan Ağa's village room was in a key position for the court. Those who were there on the night of the murder and went in and out of the room during the day were primarily on the list of suspects. In the beginning, they were interrogated quite vigilantly, but after the confessions, they did not come to the fore. We do not know whether they were invited to the room on purpose to distract the court procedure. It is also a mystery what was the plan of the murderers after the incident.

The interrogators mainly focused on the issue of who cut who and how the slaughter took place. Questions like how you killed your father, little sisters, and brother did not occur. In other words, they did not pay much attention to the sociological aspect of the murder. The court was also silent about personal exchanges at the time of the murder. We do not know if everyone was killed in their sleep during the murder, if anyone tried to stand up to the killers, or if any of the victims tried to talk to the killers.

As I mentioned before, the interrogations of this file were conducted in two different courts independently. The interrogation in the central province court was more direct. In the initial interrogation in the first instance court, there were hundreds of questions about the whereabouts of the villagers, suspects, and witnesses. The answers to these questions depicted quite a detailed picture of the villages in question and the daily life there, such as the weddings, wedding traditions, staying in each other house for no reason, day

64 For more information see; Erdi Aksakal, "Türk Kültüründe Eril Mekan Örneği; Köy Odaları," *Folklor/Edebiyat* 25, Sayı.98 (2019)

laborers, and village rooms. However, these details made it difficult to proceed in the actual direction of the case.

Although crime scene investigation was a practice that was applied since the classical period, it seems that, in this case, it was applied by the villagers in their own way rather than by the authorities. It is also clear from the interrogations that there was no medicolegal investigation. One of the murderers said he threw away the knife he used, but this knife never came up during the interrogations. They just focused on Emin's blood-stained shirt, which was one of the primary pieces of evidence of the court. The villagers from Muslim and non-Muslim communities set up a team to follow the traces. No official authority was included in this process. Someone from the village measured size, and according to it, they measured the traces. As a result of their measurement, they figured out that the footprints belonged to someone whose sandal had a hole in the right toe. This sandal was then used in the court as evidence and was shown to the members. Despite the initial focus on these traces, the court lost interest afterward. The villager's initiative to solve a murder that took place in their village, whose perpetrator could not be identified, suggests that although it was not officially stated in the documents, the *kasâme* practice was covertly working in the background.

Moreover, they did not record everything uttered in court. For example, interrogators had some statements stating that you told us this just a while ago, but that did not exist in the record. This means that taking verbatim accounts was theoretically advocated, but there was no strict follow-up in practice.

The interrogations in this file ended all of a sudden. The court attached no final remark to the record. The questioner told Haşim, "Haşim, my son, Halil cut Mestan Ağa, Emin cut the older daughter, and you cut the younger daughter. Ali remains behind. Who cut little Ali?"[65] Haşim uttered, "I do not know who did," and the interrogations ended there. The court seemed satisfied with its answer since they figured out how the murders occurred and who cut who.

65 BOA., İ..DA.. 2-23 / 18 August 1868

THE CONFESSIONS

This murder was a rebellion against Mestan Ağa, his beloveds, and the authority of his stepmother. Mestan Ağa's older sons decided to destroy anybody dear to Mestan Ağa and spent no time taking action. Ali's murder plot worked well to an extent till the confessions. Emin was the only suspect until then, and nobody thought of Ali, and nobody suggested following the traces that went to his village.

The first confession came from the village guard Ömer, who was asked to join the murder team, but we do not know how he decided to confess. Without Ömer's remark, the interrogations would turn around people from three to four villages, and getting a result would get even more complicated. He said:

> I went to the room of the Topçu Mehmet Ağa in Kalze village in the evening when they broke into the house of Mestan Ağa. . . and slaughtered him with his children. Mehmet Ağa took out two small pieces of corn in a bag from his home and said, "Take this bag of corn; let's go to the mill with you." So, I took the corn, and we went to the mill together. We stopped at the mill (for a while). While returning to the village, he said to me, " Do you have sandals? In response, I said I have, but it is desolate. Get your old sandals tonight . . . let's go somewhere tonight, he said. I asked where are we going? He did not say where we were going. He said, "it is none of your business. Take your sandals, and let's go." When I gave a short answer that I would not go to a place I did not know, (he said) we will go to Teke village. There is a job. "What kind of job?" I asked. "A big job," he replied. Does not the big job have a name? I said I wouldn't go unless you told me. They will raid . . . Mestan Ağa in Teke. "You have these five hundred cents," he said. I said I don't need it even if it was five thousand. He said, "They do not need us. They will gather in the garden; you will be my companion. They will do the job. Mestan Ağa's sons Emin and Ali are together in this business. It is not something to be afraid of. Emin will stand at the door. Ali will stop at the door. I will stand on behalf of Emin in Mestan Agha's drawer*, and for Ali, his

> brother-in-law will stand in Ali's drawer*. Ali is a guest in the Sasarlık village; he will come in a nightgown and go away again. He had six thousand kurus wad of money. His sons will also give three thousand kurus. They will distribute these nine thousand kurus to those who enter the house. . . I'll give you a thousand in advance." I said (you) do not tell me such things. I do not understand a business like this. When I said I was afraid of invading and killing, he pulled a face at me and did not say a word.[66]

They complied with this murder plan, which Ömer told them all the details about. It was not in vain that Topçu Mehmet Ağa asked about Ömer's sandals. For days, the court questioned the guests at Mestan Ağa's house on the night of the murder and tried to identify the shadows Emin claimed to have seen at the murder scene that night, but no one thought of Ali. Ali and his team had planned the murder to the smallest detail, and their plans were largely successful. However, the consequences of such an excellent murder plot in the new court order seemed out of their calculations.

After Ömer's confession, he was first faced with Emin's father-in-law Mehmet. Afterward, Emin could not resist anymore and started to give information about the murder first by excluding himself. He stated the reason for the murder as follows:

> Sir, the room that my older brother Ali sleeps in is close to the room where my father sleeps. One night, my father, Mestan Ağa, and our stepmother Azime had a conversation and talked about passing the entailed estate of Hızır Baba lodge on our youngest and stepbrother Ali. A day or two later, my elder brother Ali told me that my father and stepmother were chatting last night. They will transfer this entailed estate to our youngest brother, Ali, and we will remain with nothing. He said he would kill my father. I said it was a shame and that this could not happen. And for five or six days he spoke on this, I said it is a shame again. . . then I said let's go to my father-in-law Topçu Mehmet Ağa and consult him. He is a wise man. Together we went to

66 BOA., İ..DA.. 2-23 / 18 August 1868, Document No: 5/2

his house. [67]

It is striking that Ali decided to murder quite cold-bloodedly. He detected an injustice in his father's property distribution and decided that the best way of fixing it was to get rid of his father and his half-brother and sisters. And worse, he found the men to help him with this atrocity quite quickly in return for some cash. According to his plan, he would come from his village at night to cut his father and return as if nothing had happened. Ali did not make any confessions, however. "No sir, I know nothing about it" was the critical sentence he kept uttering.

The property disputes in Mestan Ağa's family were not just between father and sons. There was also a property issue between Ayşe and her father-in-law. Ayşe, who had been married for two years, had no relationship with anyone in the family except her husband. Although they lived under the same roof, she did not meet with her mother-in-law and her grown-up daughters. She claimed that they did not buy the bracelets promised to her at her wedding. It is not easy to understand why a property owner like Mestan Ağa gave his daughter-in-law deposited jewelry at her wedding. While her stepmother-in-law was a property owner, Ayşe's not receiving the bracelets promised to her fueled the hatred. This situation was also not in accordance with the Shariah rules because Ayşe was deprived of the mahr, which was actually her legal right.

In this tension and fight, Emin tried to decide to murder his father in consultation with his father-in-law, a father figure he acquired through marriage. After the execution, Ali took a drawer from his father's room with some money and gold. As his share, Emin took two golden bracelets, a necklace, and some French gold. In other words, he did not go for cash but took the things his father promised to give his wife as wedding gifts.[68]

THE LOST FATHERHOOD

In this murder and the court procedure, the idea of fatherhood was quite at the forefront. While trying to break the veil of secrecy behind the murder of the father and to understand what was going on, the interrogators

67 BOA., İ..DA.. 2-23 / 18 August 1868 Document No: 5/6

68 BOA., İ..DA.. 2-23 / 18 August 1868 Document No: 5/8

approached witnesses and defendants in a paternal manner. They addressed the witnesses and defendants as my son, my little one, my dear, either because they were bored with prolonged interrogations or because they took such a fatherly attitude because they found them young.

Two sons here dismissed their father from fatherhood due to his intentional inheritance distribution and his neglect of carrying out the promises he gave. Ali's comfort when he decided to kill his father was quite remarkable. He explained this decision to Emin and the others as if it was a very ordinary event. While they were deciding to take their father's life, quite interestingly, Emin went to ask his father-in-law for his opinion. In other words, he needed his father-in-law's opinion before killing his father and the rest of his family. He narrated the talk with his father-in-law as follows:

> My father-in-law asked me what I would like. I replied that my agha Ali would like to have my father killed, and that is why we came. My father-in-law told me this was an inappropriate job. Then my father-in-law came to my brother. My brother Ali said to my father-in-law, "My father, Mestan Ağa, will hand over the entailed estate to my youngest brother Ali; we will be left with nothing. I will kill my father; what do you say?" My father-in-law Mehmet Ağa replied that if a person kills his father, he will not prosper in the world and the hereafter; this is a lousy job. But my brother Ali was not convinced and said, 'I will kill my father. Then my father-in-law said, you know (and) we separated. On the way, my brother Ali told my father-in-law we would do this on the first Tuesday night of Bairam.[69]

Even though they had decided to commit the murder, the fact that Ali and Emin felt the need to get approval from an elder indicated that they had internalized the patriarchal family structure. And what they were trying to do was to try to make up for the deficiencies they saw in this structure. To achieve this, they went from one father to another. The advice they would get was necessary and still invaluable to the patriarchal order they were born into.

69 BOA., İ..DA.. 2-23 / 18 August 1868

THE VERDICT

According to the court decision, the culprits were found guilty of *nizamen* and *şer'en* from committing premeditated murder. Emin and Ali's other brother Şuca did not appear in the last interrogations. But he likely was one of the heirs that defined the fates of criminals according to sharia.

One of the critical points to be underlined here was who killed whom and in what way on the night of the murder. This was a crucial point regarding the amount of punishment to be imposed, a possible pardon by the heirs, or for the calculation of blood money. For example, Haşim murdered Zekiye, and her heirs pardoned him. These heirs could be either two alive children of Mestan Ağa or Zekiye's extended family from her mother's side. Emin murdered the other girl, but he was not forgiven.

Moreover, Islamic law is interested in identifying the harm given to the body parts. Each body part has a price that could be subjected to damage assessment. In this respect, the Hanafi tradition does not separate the offenses committed against property and those committed against one's body. According to Ibn Abidin, "the body parts fall within the domain of exchangeable things."[70] So, as long as the soul remained unharmed in the body, both could be classified as usurpation (*ghasb*), and if there was a *ghasb* upon property, it should be returned to the owner as it is. However, in the case of the body, since the damaged part could not be returned as it was, an equivalent *mal* must be given to the victim. As Ghazzal points out, "In Hanafi literature, the bulk of the chapters on penalties, delicts, usurpation, and punishment address mostly the issue of compensation: its value and by whom and to whom it should be paid."[71]

The court decided the execution of the murderers Ali, Emin, Halil, and Haşim by hanging according to article 170 of the penal code in a suitable place in Edirne. Emin's father-in-law Mehmet Ağa was given five years of hard labor. However, there was a striking remark in the final verdict of the supreme council. Accordingly, Haşim was forgiven by one of the heirs and was to pay blood money for his retaliation. However, it was stated that although article

70 Ibn Abidin, Radd, 6:558, in Zuhair Ghazzal, *The Grammars*, 626

71 Zouhair Ghazzal, *The Grammars*, 620

175 of the penal code said that the penal code could not annul the personal law, since these four people were no different from each other and they acted the same in brutality, Haşim could not be an exception despite the pardon of the heirs. Although the court did not consider the clearing of Haşim, they accepted the blood money, which was decided to be paid from the state's treasury.[72] Murder cases were not solely left to the mercy of the heirs to be settled in the private domain.

After the death of Mestan Ağa and his family, his inheritance was divided among his remaining heirs.[73] As of 1870, a certain Hafize, Münire, and Fatma Hanım became the new trustees of the lodge collectively.[74] According to the archive documents, after the deaths of Hafize and Münire, their sister Fatma took the flag. The zawiya did not pass to any of the heirs of the Mestan Ağa.

4.2.2.2. The Murder of Müezzinoğlu Hüseyin[75]

The deceased Müezzinoğlu Hüseyin was a 70-year-old well-off man who owned lands and gardens. He had a second marriage with a twenty-six-year-old Fatma for four years, but they did not have any children from this marriage. Fatma had a seven-year-old daughter and a five-year-old son from her previous marriage, and they were living in the same house together with Hüseyin's six-year-old grandson, whose father had passed away sometime before. Apart from that, Hüseyin had an elder son named Ahmet and two more eldest daughters. All of them also had children, some of whom were married.

Müezzinoğlu Hüseyin was stabbed to death by his son Ahmet while leaving the house to perform the night prayer and take ablution. Ahmet committed this murder with the help of his son Halil and brother-in-law Ahmet. At the time of the murder, upon hearing the noises, Fatma tried to hit her stepson Ahmet, but they also hit her back and threatened to kill her. After Ahmet killed his father, all of them ran away.

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72 BOA., İ..DA.. 2-23 / 18 August 1868, Document No:1

73 There is a record in *Edirne Şer'iye Sicili*, nr.421-422, H. 1283-1285, Varak 20a

74 BOA., EV.MKT.CHT., 162/118, in Fahri Maden, "Alevilik-Bektaşilik," 134

75 BOA., İ..MVL. 574-25769 / 27 June 1867

Ahmet was involved in some crimes before the murder of his father, and he was not on good terms with him due to his father's marriage and property issues. The broken relationship between father and son was also publicly known. In one such dispute, according to the elders and mukhtar of the village, Müezzinoğlu refused to go to the government despite their insistence and said that he knew that his grandson Halil had come to his house to steal nuts. But if he went to the government, they would immediately imprison him. Since his father was on the run, they would get lonely at home. So, he left his punishment to God and asked for prayer for his son's and grandson's well-being.[76]

The Müezzinoğlu murder was premeditated, and it took place with Ahmet's initiative with the help of his son Halil and brother-in-law Ahmet and the support of his sister Selime. Before they took action, the siblings came together and planned the details of their murder initiative and the possible court trial after the murder. The court file included many interrogation protocols, so one had the chance to look at the incident from the different perspectives of family members and village elders. According to the plaintiffs' claim, Müezzinoğlu Hüseyin intended to marry his six-year-old grandson to his stepdaughter and give them some land. He spoke about this plan in various places and even wanted to go to Giresun and make his intention official. However, his initiative was delayed because he could not find the title deed clerk in his office. According to Hüseyin's brother Yakup, the main reason for this murder was that Hüseyin's stepdaughter would receive a share of Hüseyin's inheritance.

Throughout the trial, the suspects tried any way they could to convince the court. This included swearing at the Quran and giving false testimony. To cope with the false testimonies, the interrogators threatened the defendants and witnesses with extra punishment and made deductions and comments where necessary to direct the interrogation.[77]

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76 BOA., İ..MVL. 574-25769 / 27 June 1867Document No: /2-10

77 See the interrogator's statement in Halil's final interrogation: "…If the people of Giresun sanjak come and testify about you, you think you will get away with saying that they are lying. But this business is judged on you by the nizamiye court. May the sin be on your neck. If you express the truth, you can only be saved if there is a reason to save you, and it becomes

The trial started with the statements of Hüseyin's wife, Fatma. According to her claim, after marrying Müezzinoğlu Hüseyin by the order of God, his son Ahmet got angry with his father because he married a young wife, so he stopped visiting his father. When Ahmet learned about his father's inheritance distribution plans, his anger increased. Ahmet became aware of the incident when his father, Hüseyin, opened this idea to the village headman and elders. Otherwise, there was no conversation between father and son on this matter. This murder occurred fifteen days after the inheritance news was heard in the village.

To verify the accuracy of Fatma's statements and to see if her word could be trusted, the officer asked uncle Yakup and his neighbors whether Fatma was an honorable woman. After everybody said that they knew Fatma well and that she was a righteous woman, her statements became more truthful for the court. However, the court did not apply this attitude towards Fatma to the other women who testified in this case. Since the victim was Fatma's husband, Fatma was also a reasonable suspect before the court. So, the court implicitly considered the possibility of either Fatma's killing her husband or Fatma's condoning or aiding and abetting the murder of her husband.

After Fatma, the grandson Halil was questioned. He started his statements by stating that he was in another district on the day of the incident. As a justification, he mentioned his intention to take his bedridden mother to a hodja for healing. Her mother had been in that district for a month, and Halil was visiting her now and then. The details that Halil gave related to her mother also shed light on his father's intentions to marry a young girl, namely his father's wife, Fatma. Ahmet did not have any interest or expectation for his bedridden wife. Halil's change of district after the murder and his different explanations in his statements kept the interrogation process busy. The roads he passed and the people he saw and talked to were questioned. In this sense, even those he mentioned he saw were also called for interrogation. In the court record, the interrogators even drew a simple map of his route after the murder and the time he spent on the road.[78]

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apparent. Declare whatever the truth is (and) let us write it." BOA, İ..MVL. 574-25769 /27 June 1867, Document No: 2/23

78 BOA, İ..MVL. 574-25769 /27 June 1867, Document No: 2/15

The statements of the family's women were very influential in illuminating Müezzinoğlu's murder. Halil's wife, Gülşan, confessed the details of the murder plan she heard. Gülşan was married to Halil for a year, and they lived in the same house with her father-in-law Ahmet. Since the murder plan took place in this house, Gülşan explained the whole murder plan and the reactions of the siblings as they were.

> Sir, this man will give his property to his wife and children, and even if he came to Giresun for this issue three or five days before his death, they say that he could not find the title deed clerk, and he returned to the village. Somehow, after he came to the town, he told the people around that he would come to Giresun and deed his property on Saturday. And after hearing these words, his son-in-law, Mahmutoğlu Hasan, his other son-in-law, İmamoğlu Ahmet, and his wife Selime, receiving the news four or five nights before his death, came to our house. Mahmutoğlu Hasan told my father-in-law Ahmet, "this man will give his property to his wife; we will stay out like this; let's find a solution." İmamoğlu Ahmet and Selime also came there and pleaded that "Brother, we cannot find a flour soup to eat, but the woman that our father took pours honey on the egg and eats, and now our father is going to give all his property to this woman and her children with the title deeds. He could not do it this time, but he will certainly do it on Saturday. You know it, but we will stay out. There is no other way but to kill this man. I will give you my share from the farm. But you know best. Kill him." And my father-in-law Ahmet said, "Even if you did not plead, I would do this. Who cares? Who will be the plaintiff of this? I would stay in prison for six months and go out again."[79]

It is clear from the witness testimonies that the chief suspect Ahmet also planned to receive the lightest penalty for himself and save the others involved. Also, Ahmet's statements revealed his perception and knowledge of the court and laws strikingly. When planning the murder, they also considered details such as the punishment they would receive or who would

79 BOA., İ..MVL. 574-25769 / 27 June 1867, Document No: 2/7

receive. In this sense, Ahmet was sure that even if the incident were taken to court, they would somehow get out of it. Thanks to this assurance, he acted confidently and plotted a murder plan. According to Gülşan's statements, when he came home after the murder, he said to her:

> Gülşan, we are in trouble now, and I entrusted you to God; I am leaving. We finished with my father and killed him. If they take my son Halil to the government and imprison him, do not starve the boy. I will find a way and let him out in a month or two. If they force you, never say anything. Deny it. If you tell, I will come one night and kill you too.[80]

After Gülşan's statements, aunt Selime declared her as her archenemy. According to Selime, if Gülşan had not been her enemy, she would not have gone to her father's house while her husband and father-in-law were in prison. Gülşan likely suffered from the situation that she was in. In her first statement, she started to speak by saying God damn this family.

When Gülşan was questioned again, a lie was revealed in her statement about who was at home on the evening of the murder plan. More precisely, she said that her previous information included some lies. Upon this, when the court insisted on the truth, she had an epilepsy attack, and his interrogation was delayed. In her later responses, it is possible to see that Gülşan tried to protect her husband, Halil. This shift in her court discourse reinforces the possibility that she was subjected to various influences both within the family and outside during the trial.

In his interrogation, Ahmet immediately confessed to the murder in his first statement. He probably intended primarily to save his son, and he had a plan in mind in this context.

> Sir, why shall I deny? Even if I denied it, I understood that I would not be able to get rid of this business, and since I was aware that subsequently, it would be determined on me, there was no other option but to tell the truth about it. Although I was in this action by yielding to the devil's temptation, I did not kill my father with my

80 BOA., İ..MVL. 574-25769 / 27 June 1867

> hand. It was my companions who killed my father. I did not touch my father, but to prevent my father's wife from yelling, I immediately closed his wife's mouth, threw a duvet over her, and seized her by climbing on top of her. This is all I did. I did not do anything else.[81]

Throughout his interrogation, Ahmet gave extremely cunning and careful false statements. He thought of every detail. He gave many details that would occupy the audience's minds. He arranged his words to get himself and his relatives out of the case. In his statement, the reason for the murder of his father coincided with the reply of his daughter-in-law, uncle, and the people about the property division. But the other details he gave brought another flow to the murder story. He showed the wealth of his father as the reason why the people he named as murderers committed murder. He stated that his father always had a few coins in the chest, and he convinced them by saying that they could take whatever they found in the chest.

Ahmet was making skillful statements in an attempt to evade crime. He used new and missing information together in the details he gave. And in these details, he often pointed to long distances or people who were no longer in that area. When asked, for example, from where he got the knife, he started his narrative by saying when I went to Canik. He knew very well how to win time in court. He was looking for instant salvation by distorting the event and directing the attention to other people. In this way, he was playing with the judicial system. Each name he gave in the court was called for interrogation, and this way, he extended the duration of the trial. On the other hand, when he realized that he had no place to escape or no more story to produce, he restructured his confession to save his son.

> Sir, this is a matter of murder. It is clear that if the heirs want, they will cut my neck tomorrow. Obviously, to save my soul, I would tell the truth in this sense if I had a friend with me, be it, my son. However, since I did it with my hand, I cannot slander anyone and accuse them wrongly. I did this job alone. I have no other partner. The words of my father's wife Fatma and my uncle Yakup (they) were three people,

81 BOA., İ..MVL. 574-25769 / 27 June 1867, Document No: 2/11

we saw, is a total lie. Of course, I need to know if I have a partner with me. I cannot blame anyone for anything. [82]

The interrogation of Müezzinoğlu Hüseyin's daughter, Selime, took place in the later stages. He was in court with the status of the plaintiff. When they asked whom she sued, she said that she did not see it with her own eyes, but according to the rumors, the murder was committed by her brother and his friends. So, she sued them too. In her interrogation, she stressed that she had no disputes with her brother Ahmet, but her husband's statements said otherwise. According to her husband's testimony, there was resentment between the two families due to a marriage arrangement. According to this, his brother Ahmet wanted to marry Selime's daughter to her younger son Mehmet, but Selime and her husband did not give permission. When the court reminded this Selime, she also acknowledged it. So, despite a dispute between the two families, they joined forces when it came to sharing their father's inheritance and getting rid of him.

As seen in this case, the father's second marriage with a young woman deteriorated the relationship between him and his children. Their relationship was severely broken when the father officially decided to give some of his inheritance to his stepchildren. While the siblings were discussing this situation among themselves, they did not feel the need to go and talk with their father. They got the details of the inheritance division through indirect ways and as far as they heard from the people around them. The father's owning and managing all the property and a stranger woman's arrival and becoming a property shareholder also destroyed the communication between him and his adult children. I believe that the inheritance issue's becoming a conversation material among the public was also humiliating and touched their honor.

As we saw in the previous chapter, spouses and children who were later included in the family were perceived as the main threat regarding property ownership and sharing. When this threat joined together with the broken honor of adult children, communication was lost entirely, and they applied violence and murder to cope with it. However, in this case, the perpetrators'

82 BOA., İ..MVL. 574-25769 / 27 June 1867, Document No: 2/21

anger was directed toward their father. They did not include Fatma or her children in the plot. It seems that the children just dismissed their father from the role of fatherhood due to the inheritance division he planned to make or for not fulfilling his financial promises.

The premeditated murders of both Mestan Ağa and Müezzinoğlu Hüseyin were planned in detail, and in the end, not receiving any punishment was one of the most important goals of the perpetrators. However, in the Müezzinoğlu case, the new judicial order ruined all of Ahmet's plans for his punishment and at the end of the trial, Ahmet was sentenced to death by law for murder. The heirs did not claim any retaliation, and Ahmet was sentenced to a blood money according to the sharia verdict. It was likely that Ahmet had calculated this sharia verdict and did not think he would pay for this murder with his own life. His allies in this murder, his son Halil and his brother-in-law, Ahmet, were sentenced to ten years of hard labor after exposure.

§ 4.3. Chapter Conclusion

Parricides in the nineteenth-century Ottoman Empire represented a crisis of authority. Sons were the chief actors in this regard that contested their fathers' power within the family. The ways family structures and relationships negotiated by the family members in their daily lives ended with murder when they could not correctly fix the relationship between them. In this regard, the introduction of a new stepmother to the family and the possibility of ruin in the son's inheritance expectations were the leading reasons that deteriorated the family ties.

The parricide cases also reveal the fragility of the bonds that held the family together. Interest relations within the family were a determining factor in these fragile bonds. Although the murder of parents was accepted as one of the most brutal crimes by religion, society, and the state, and it was known that committing these murders prevented a possible inheritance, these murders were committed at all costs. According to the archival data, property and estate disputes were the leading reasons for the parricide cases. This was followed by violence, anger/argument, and issues of honor. Some murders

were committed by mistake, and their reason was unknown. Sons were the leading murderers with their detailed murder plans.

As with other premeditated murders, in cases of premeditated parricide, the murderers thought they could avoid trial with little or no punishment. Their abilities to obscure the evidence and their thoughts that they could receive pardon according to the sharia were influential in these plans. This was particularly the case with the parricide murders committed on the joint initiative of the siblings.

Mestan Ağa was brutally murdered by his sons in Edirne in 1868 due to their discomfort about inheritance sharing. One year before the murder of Mestan Ağa, Müezzinoğlu Hüseyin was murdered in Giresun in collaboration with his son, grandson, and son-in-law for the same reason. The cases of Müezzinoğlu and Mestan Ağa revealed parent and child and sibling relationships and domestic order with the own words of the family members. These cases also had vivid details of the relationships between the nuclear family, extended family, and society. The property these families owned became an element that both united and separated the family members.

The composition of households was reconfigured, primarily through the inheritance plans. When it comes to financial interests, family members could easily risk getting rid of the ties of kinship that held them together. As Eugen Weber says:

> […] it was need and greed that bound the family. First, how to make ends meet, then how to achieve a degree of security by acquiring capital and bits of land. Children, their numbers, great or small, and their inheritance rights, were a crucial factor in that equation.[83]

83 Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France (1870-1914)* (Stanford and California Stanford University Press, 1976), 176

5

Family Walls: Honor and Illicit Sexual Relations

"Lift not the painted veil which those who live
Call Life: though unreal shapes be pictured there,
And it but mimic all we would believe.
With colors idly spread,-behind, lurk Fear.
And Hope, twin Destinies;, who ever weave
Their shadows, o'er the chasm, sightless and drear."

– Percy Bysshe Shelley

Honor is one of the most complicated concepts to decipher and understand; as the cultural and religious baggage it carries as a word varies from society to society in various historical periods. In Islamic societies and the Mediterranean basin especially, the honor baggage women began to carry after puberty was closely linked to their right to live. The virginity of girls in the Mediterranean basin concerned most brothers and even older brothers, says Germaine Tillion.[1] However, this understanding of honor differed from society to society. For example, for French peasants, getting

1 Germaine Tillion, *My Cousin, My Husband: Clans and Kinship in Mediterranean Societies* (London: Saqi Books. 2007), 113

pregnant before marriage was a fruitful situation for the future rather than dishonor because married or not, women could contribute to house income through practices like wet nursing.[2]

While honor in the West has generally been related to the class system or social status, it has been manifested in many ways. In Muslim societies, it is possible to say that the concept of honor has been expressed with two different words of Arabic origin, both in the classical and modern periods. In this respect, honor can mean eminence or reputation (*şeref*) and *ırz*, a sexual connotation. It is possible to say that in Ottoman archive documents, depending on the context, the words *namus*, *şeref* and *ırz* were used for the phenomenon meaning honor in English. [3] In this study, I will only use the word honor to mean *şeref* and *ırz*.

Honor is ultimately a concept that is more important than life, according to some. Honor can be lost and regained, but some price must be paid to retrieve it. In societies where honor is essential, it is generally an issue that concerns the community's male members. Men have been more privileged than women in how honor codes have been constructed in Muslim societies. In this sense, the personal honor of a woman is closely linked to her sexuality, body, and behaviors, and it is predicated upon patriarchal notions of ownership, which prescribes information on her movements and relationships.[4] In addition, the woman reflects the honor of the community to which she belongs.[5] It is possible to talk about two types of dishonors for man. One is caused by his faults; the other is caused by the faults of others, usually women.[6] In this chapter, I will cover both forms of dishonor and try to go beyond the wall surrounding the family and depict it.

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2 Eugene Weber, *Peasants into Frenchmen*, 177

3 See, Frank Henderson Stewart, *Honor* (Chicago: The University of Chicago Press, 1994), 30-132; Başak Tuğ, *Politics of Honor,* 150-151

4 Purna Sen, "'Crimes of Honor,' Value and Meaning," in '*Honor': Crimes, Paradigms and Violence Against Women,* eds. Lynn Welchman and Sara Hossain (Victoria: Spinifex Press. 2005), 48

5 Frank Henderson Stewart, *Honor*, 107

6 Ibid., 108

Honor was a cluster of ethical rules within society and had a specific meaning for individuals. It was both the value a person attributed to him or herself and the importance of one within the community. As such, honor was one of the fragile sides of the family, and the honor of the body was a jurisdiction fact that necessitated talking in front of the court. Protecting honor was one of the critical points connecting the state and subjects.

Since honor was generally associated with sexual integrity, it had a gendered character. The qualities attributed by society to honorable people differed for women and men. The honor of the women was predominantly sexualized and was related to their sexual reputation, whatever their marital status was. If they were single, the guardian of their honor was their brothers or fathers, and after the marriage, their husbands took this responsibility. Upholding the rights of third parties in honor crimes generally followed the order of male members of the family, society, and the state rather than the victim woman. However, husbands turned to fathers and brothers to correct the lost honor on the condition of unchastity.[7] The perpetrator was generally from the victim's birth family, not the one she was married into. The birth family was responsible in chief to clean the shame since they were the ones who brought her to life and who brought her up. However, honor invested in the control over women was not just related to sexual issues. It also included the management of economic and social resources and property issues.

When the social control mechanism started to take shape on the control of the population, one of the building blocks of the agreement between the state and its citizens was shaped around the idea of honor. Peirce claims that the concept of honor was a kind of social contract between the people and

7 Kerem İlker Bulunur, in his article on honor killings in the sixteenth and seventeenth centuries, argues that murderous brothers were more comfortable in the face of the law than murderous husbands. Accordingly, if the husbands could not prove their claims, they could face the demands of blood money from their wives' families and fines from the region's law enforcement officers. But the same was not valid for the woman's brothers or other male relatives. See "Namus Adına Öldürmek: 16 ve 17. Yüzyıllarda Osmanlı İmparatorluğu'nda Namus Cinayetleri," *Hacettepe Üniversitesi Türkiyat Araştırmaları Dergisi* 31 (2019): 95-96. To what extent this is true for the nineteenth century needs further research, however in this study husbands outnumbered brothers in honor killings.

legal authorities in sixteenth- and seventeenth-century Anatolia.[8] Following Peirce, Tug argues that in the middle of the eighteenth century, this long-standing contract turned into a kind of constitutional contract between the state and the citizen. In the nineteenth century, with the Tanzimat edict, the relationship of legitimacy based on honor became a part of the social contract.[9] So, a reciprocal construction of honor was at stake: the honor of people was equal to the state's honor. This relationship of legitimacy based on honor was enacted in the 1858 Penal Code as penal provisions confirming the sexual discrimination of the law and various legal regulations maintained the legitimacyof regulating the moral order of the society.[10]

The roles of men and women were clearly defined in the moral hierarchy, whose boundaries were drawn within the legal framework by the state. The public was negotiating with this legal framework. People were developing strategies to get out of the situation with the least harm or to enable justice. However, it should be noted that while people were demanding their honor/rights in court, the statements they gave or the cases they complained about were sometimes cases of dishonor that the other party volunteered. In other words, as we will see in the court cases I will discuss in this chapter, the damage to honor did not only occur because of various attacks but also due to the voluntary acts of the complained party. Therefore, we can say that the boundaries of what we call honor in the eyes of individuals were sometimes quite vague and prone to bending. Still, they became sharper in the moments of state and society encounters.

In this chapter, I will examine how the increasing emphasis on family, the discourse of honor, and the legal regulations related to sexuality found a response in people's daily lives and sexual experience and the relations within the family circle. In this respect, firstly, I will analyze the legal changes that came with the 1858 penal law. Then I will focus on honor crimes and court procedures, and finally, I will go beyond the family walls and deal with the illicit sexual relations between the family members. In this respect, I will try

8 Leslie Peirce, "Honor, Reputation, and Reciprocity," *European Journal of Turkish Studies* (Online), 18 (2014)

9 Başak Tuğ, *Politics of Honor*, 146

10 Başak Tuğ, "Irz, Namus, Onur, Adalet," 31; *Politics of Honor,* 34

to answer the following questions: Is it possible to say that the new penal law and *nizamiye* courts in the following years offered better opportunities for the victim in terms of sexual crimes and related crimes to honor? Or in which respect did the new court order make a difference in sexual offenses compared to the past?

§ 5.1. Legal Regulations Regarding Morality and Honor

Honor unavoidably evoked the concept of family, especially the honor of male family members in the nineteenth-century Ottoman Empire. The state's codification of honor was guaranteed as a social value, and this traditional structure was strengthened. And the state did not hesitate to make punitive reductions, when necessary, to protect this structure. Honor thus preserved its privileged position through the law.

What honor meant for the family, administration meant the same for the state.[11] Both acted with the same goal: regulating and controlling the individual's behavior. The state's most effective way to achieve this was by planning the legal system. The process experienced in the judicial field in the nineteenth century was standardizing the general moral understanding, which had no place in written law, with a legal language. The regulations made in the law articles over time were also in this manner. Ultimately, honor was a concept that fit smoothly into the legal system as it was adopted in the Ottoman Empire.

In the early modern and classic periods, while the sultanic laws made distinctions regarding the religious identity, civil status, or gender of the people, the state guaranteed the protection of life, property, and honor of all its citizens with the Tanzimat edict. Accordingly, the state made a political and social contract with all its citizens regarding their biological existence. Thus, both men and women received certain rights regardless of their religious belonging or civil status. The 1858 penal law was valid for anyone living within the empire's borders.

11 Arlette Farge and Michel Foucault, *Disorderly Families,*134

The sexual sphere almost always stood out as an arena of power struggle. Surveillance over morality, sexuality, and reproduction was considered an utmost need to enable efficient control over society. The inclusion of honor and sexual crimes as a legal category in the law legitimized the possible intervention of the state in family and community life. The regulations regarding morality and honor in the 1858 penal law were arranged according to the general category of crimes against the public and public morality. This part of the code had adaptations from the French penal code, but it also carried traces of sharia and Ottoman customary law.

The 1858 penal law used some adaptations of Islamic terminology on sexual crimes. In Islamic law, sexual intercourse is generally considered legal or illegal. Therefore, sexual offenses were combined under the category of adultery. Here, the main factor determining the legality of sexual intercourse was the marriage union or concubine status. Any other heterosexual or homosexual relationship was defined as adultery. The type of adultery was decided based on the case. The fatwas issued were personal in this context. The witness statement and confession of the crime were necessary to prove adultery.

In the laws before 1858, rape was not a separate crime category because it was regulated under adultery (*zina*). The crime of rape was handled for the first time in the 1858 law under the title of violation of honor, and this section included five articles. This section started with the punishment for those who committed the abominable act to a child under eleven years old (article 197), and the article set forth a sentence of not less than six months. Later in 1911, they changed the article and defined the child's age as fifteen.[12]

In the penal law, the term "indecent act by force" was used for rape. Accordingly, article 198 stated that "if a man does the abominable act to a person, that is to say, violates his honor by force he is placed in kyurek temporarily"[13] The article referred to either sex with the use of the word a person. In short, there was no death penalty for rape. The death penalty could only occur if the crime of rape were committed with another offense like murder.

12 John Bucknill and Haig Utidjian, *Ottoman Penal Code,* 149-150

13 Ibid., 150

The state's sensibility towards the use of sexual terminology had many variations. In this respect, instead of the Islamic language of *zina,* the concept of the indecent act (*fiil-i şeni*) was written in several forms in the 1858 penal code and the statistical registers regarding the punishments given. In the statistical table on penal clauses in 1880, the following terms were used regarding sexual crimes: indecent act by force, an indecent act of adultery (*fiil-i şeni-i zina*), a provocation to prostitution, and indecent act in public (*fuhşiyata tahrik ve alenen fiil-i şeni*), violation of honor (*hetk-i ırz*) and seduction of a virgin (*iğfal-i bakire*).[14] Apart from these, I encountered the term indecent act of adultery by force (*cebren fiil-i zina*) in the court documents. These concepts were used interchangeably in the registers.

Elyse Semerdijan also emphasizes the use of various vague terminologies such as "acts of indecency" and "morally repugnant deeds" in court in Ottoman Aleppo, and the euphemism did not give details about the actual act and blurred the legal category.[15] Semerdijan touches on two theories about the use of euphemisms: according to this, family and quarter privacy were very important, so this language was used to hide the horrible details lived inside. The other theory is that using a non-legal concept in terms of law, which Başak Tuğ also agrees, affected the case outcome. By not naming "adultery" as adultery, the legal penalty, one of the worst punishments, was avoided. By calling it with different terminology, they loosened the criteria for prosecution, and thus euphemism allowed flexibility in the judicial process. The criminals were judged by a new criminal category created with euphemisms.[16] So, as also Tuğ suggests that by creating its terminology, "politico-legal praxis created a way to avoid the stringent *sharia* rules on *zina* (fornication and adultery) and regulate the public order on moral terms on its discretion."[17] Tuğ makes this argument according to the use of the two terms in the penal code: violation of honor (*hetk-i 'ırz*) and indecent act (*fi'l-*

14 See, *İstatistik: Mevad-ı cezaiye müteallik, 1296/1880*, https://www.loc.gov/item/2018672545/.

15 Elyse, Semerdjian, *"Off the Straight Path": Illicit Sex, Law, and Community in Ottoman Aleppo* (New York: Syracuse University Press, 2008), 9

16 Ibid., 97-99

17 Başak Tuğ, "Gendered Subjects in Ottoman Constitutional Agreements, ca. 1740-1860," *European Journal of Turkish Studies* (Online) 18 (2014a): 10

i şeni'). But as I mentioned above, it is clear from the registers that there were more than that. A discursive shift and diversification occurred in defining the features and details of indecent acts and how morality and honor were negotiated between Ottoman subjects and state officials multiplied. So, I believe that apart from the desire to make regulations on its discretion through these euphemistic terms and the proliferation of sexual crime categories, the state also wanted to learn and state the details related to the committed sexual crime to sharpen the legal category and give punishment accordingly.

Article 201 of the 1858 penal code concerned the acts of incitement to prostitution of young people of either sex. In this respect, anyone who incited young girls and boys to prostitution and acted contrary to public decency was imprisoned from one month to one year. If one of the parents committed this incitement, they would be jailed for six months to a half year.[18] This article was arranged as habitual debauchery in the French penal code. With the amendment in 1860, it was stated that the right to proceed against a woman for honor belonged to her husband or, if he did not have a husband to her legal guardian. Thus, if a woman committed an indecent act of adultery, she was imprisoned for three months to two years. The same punishment also applied to men who joined the women in the indecent act. However, if her husband forgave the woman and agreed to retake her, this punishment might not be imposed.[19] On the other hand, if a man committed an indecent act in the house where he lived with his wife and his wife made a complaint about it, he was supposed to pay a cash fine of 5 to 100 medjidie gold.[20]

Article 202 was related to the public indecent act (*alenen fiil-i şeni*). With the amendment in 1860, they also added impertinent innuendos to young people of either sex to the article, and punishment from one week to one

18 John Bucknill and Haig Utidjian, *Ottoman Penal Code*, 152

19 Ibid., 153

20 With the amendment in 1911, the penalty for the man who committed this crime was changed from 3 months to 2 years imprisonment and cash fine of 100 Ottoman gold. Ibid.,153-154

month was anticipated. It was also stated that if molesting was done by hand, a penalty of 1 to 3 months would be imposed. [21]

Peirce notes that in the sixteenth-century courts in Ayntab, the judges permitted the plaintiffs to use the court as a site to talk about what passed through.[22] In this respect, this tradition also continued in the nineteenth century. But the victim or witness did not just explain the situation to a judge and wait for the punishment to be given. Since the trial process went through many stages, especially on the condition of murder, the complainants could make their voices heard by more than one official and even by the delegation. In some cases, they gave statements more than once, so they had the chance to address much more officials. These court visits revealed another aspect that was not reflected in the documents. We must remember that these hearings were spoken in the community where they lived, and statements were reproduced and reconstructed repeatedly and found their place in the collective memory.

Despite the application, no statement in the Quran and Sunnah states that an adulterous woman can be killed. In case of adultery a practice called *lian* is required where the husband and wife take mutual oaths and get a divorce.[23] But *lian* is a procedure applied in case of a woman's adultery, not a man's, and this practice offers a way out for the husbands. If husband and wife get a divorce at the end of *lian,* they are entirely forbidden from each other, and the husband still must give her the mahr.

However, social codes took a different approach to the issue of adultery and honor. It was concluded that killing a woman and her lover caught in adultery was permissible for the family's and society's moral survival. In this context, the practice in the Ottoman laws and fatwas acted similarly through the ages, although various regulations were made. In this respect, Ottoman legal practices did not work in an egalitarian manner and made differences between categories of people. Especially in the sexual crimes, there were

21 Ibid., 156. Also see Başak Tuğ, "Female Culpability for Fornication in Ottoman Law and Everyday Life," *International Journal of Middle East Studies* 54 (2022)

22 Leslie Peirce, *Ahlak Oyunları,* 272

23 Kerem İlker Bulunur, "An Honor Killing in Aintab: The Issue of Killing Fornicators in the Ottoman Empire," *Acta Orientalia Academiae Scientiarum Hung* 69, No:3 (2016): 234

distinctions between men and women, married and single, adult and minor, Muslim and non-Muslim, and free and enslaved person.[24] After the Tanzimat, the reformed legal system did not recognize these distinctions but produced new divisions: adult/minors, violent/non-violent, and public and private.[25]

Article 188 of the 1858 penal code stated, "If a person seeing his wife or one of his other *mahrams* while committing the abominable act with an individual kills both of them together, he is likewise excused."[26] This article reminded the centuries-long Islamic tradition related to adulterous women. According to one of the fatwas of Ebussuud Efendi, a husband was permitted to kill his wife on the condition of adultery. But the murder needed to occur during the affair (*hin-i zinada*) to evade punishment.[27] However, although Article 188 looked like a restatement of Ebussud's fatwa, state-citizen relations, which the Tanzimat rearranged, necessitated it to look at the issue from a different perspective. With the Tanzimat edict, the state had a different contract with its citizens regardless of gender or religious identity. Both men and women were citizens, and the state enabled them with certain rights, like protecting the right to life. But the fact that they excused the punishment for the killing of adulterous women suggests that they put her sexuality at the heart of her political identity and her right to live.[28] Here, I should also note that the excuse stated in Article 188 was not a provision that completely abolished criminal liability. In Article 190, there was a definition of an excuse for criminal liability, and a prison sentence of three months to three years was requested for a criminal within this scope.[29]

The new penal system also considered the existence of honor in murder cases. If one of the reasons behind the murder was related to honor, they counted it as an excuse and reduced the penalty accordingly. Thus, by

24 Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500–1900 (*Berkeley, Los Angeles and London: University of California Press, 2006), 53

25 Ibid., 73

26 John Bucknill and Haig Utidjian, *Ottoman Penal Code*, 141

27 Kerem İlker Bulunur, "Honor Killing in Aintab", 236

28 Ruth Miller, *The Limits of Bodily Integrity: Abortion, Adultery and Rape Legislation in Comparative Perspective* (Hampshire: Ashgate Publishing, 2007), 92

29 John Bucknill and Haig Utidjian, *Ottoman Penal Code*, 142

applying penalty reductions or excuses in honor killings, the state implicitly gave a duty to its citizens for the protection and establishment of social morality and collective honor.[30] However, these regulations on sexuality were to restrict especially the female sexuality, not to reject it. As Barbara Engel states for Russian peasant society, society may have been sexually repressive. Still, it was rarely prudish, and there was no such thing as sexual ignorance, as we will see below in various examples.[31]

§ 5.2. Honor Killings for the Sake of Collective Honor

Honor killing meant the murder of a family member for the sake of collective honor. Honor codes and murders were not just about the male individual's control over the female individual's life. These were also about community norms, social policy, and collective decisions.[32] So these murders presupposed an approving audience who would reward the murder with honor.[33] In other words, these murders were often premeditated. In this study, I define honor killings in the broader sense as the murder of a woman by her father, brother, or husband because of suspicion of an extramarital or sexual relationship.

30 For a broader and more detailed discussion on this subject, see Başak Tuğ-Onaran, "1858 Ceza Kanunname-i Hümayunu'nda Irz ve Namus Kavramlarının Kodifikasyonu ve Toplumsal Cinsiyet," *Akdeniz Kadın Çalışmaları ve Toplumsal Cinsiyet Dergisi* 2 (2022)

31 Barbara Engel, "Peasant Morality and Pre-Marital Relations in Late 19th Century Russia," *Journal of Social History* 23, No.4 (1990): 700

32 Purna Sen, "Crimes of Honor", 48

33 Unni Wikan, *In Honor of Fadime: Murder and Shame* (Chicago: The University of Chicago Press, 2008), 3

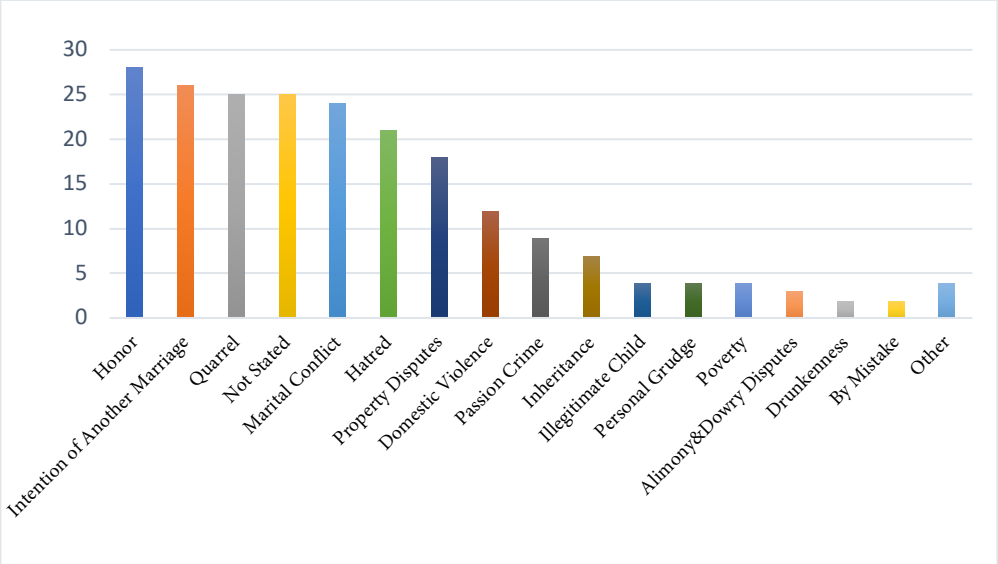

Figure 5.1 Reasons for Murder in the Family

Honor killings within the family comprised up to 28 cases of the 218 domestic murders I examined, and 23 were directed toward women, 3 of which were directed toward fathers. In these cases, husbands were the leading murderers, followed by brothers and brothers-in-law. Although the number of fathers and fathers-in-law was fewer, many took an active role in materializing these murders. The only case that bent the statistic is the murder of a father by his daughter due to his indecent acts with women. The assassin on the list was hired by the stepfather and brothers of a woman.

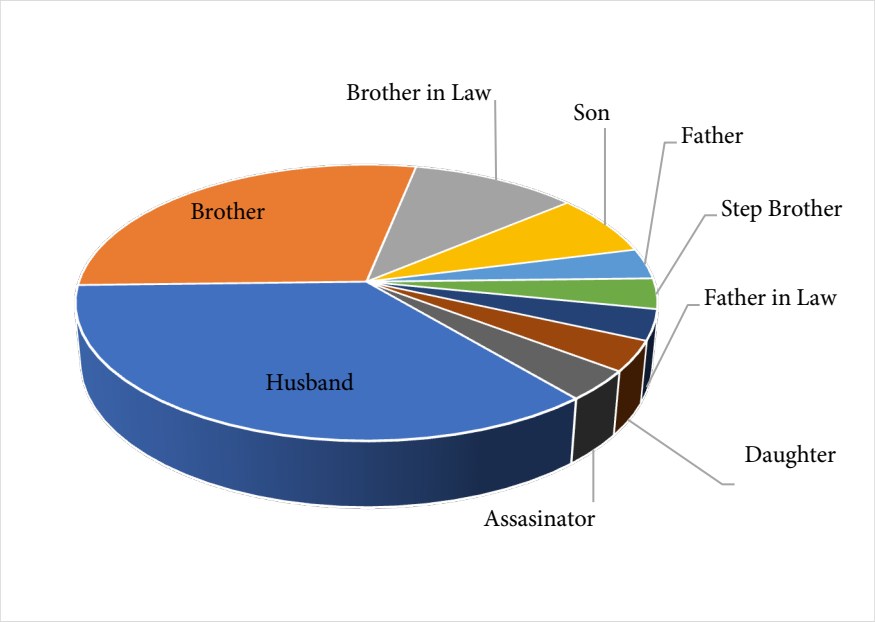

Figure 5.2 Murderers in Honor Crimes

Apart from the honor killings, there were six murders committed on the grounds of passion crime. It is necessary to distinguish honor killings from murders committed out of jealousy or passion. In passion crimes, separation and inability to get the one you love or want to marry are common reasons.[34] Moreover, as Purna Sen points out, crimes of passions tend to be individual violence acts rather than collective punishments.[35] Although passion crime can be considered for penal abatement in modern law[36], this was not the case in the nineteenth-century Ottoman legal system. Even if the primary motive for one of the parties was to get together, to get a loved one, to start a family,

34 Victoria Nourse, "Passion's Progress: Modern Law Reform and the Provocation Defense," *Georgetown Public Law and Legal Theory Research Paper*, No. 12-106 (1997): 1345

35 Purna Sen, "Crimes of Honor", 55

36 See the trial of Madame Caillaux who was acquitted of murder due to the defense's argument of a crime of passion. The jury decided that the murder resulted from intense emotional distress and temporary insanity. Edward Berenson, *The Trial of Madame Caillaux. Berkeley* (Los Angeles, London: University of California Press, 1993). See also the trial of Maria Barbella on passion crime. In her trial, the court considered the elements of emotional distress and potential mitigating factors, and her death penalty was converted into life-long imprisonment. Idanna Pucci, *The Trials of Maria Barbella: The True Story of a 19th Century Crime of Passion* (New York: Four Walls Eight Windows, 1996)

or to save the family, the law and the judiciary investigated whether there was any disloyalty in the relationship. In other words, in the nineteenth century, loyalty was binding for the court rather than separation or inability to reunite, and the law categorized the "wrong" in the relationship as infidelity. Today, this limit has been removed, and the wrong in a couple's relationship has been placed on a broader framework like the physical condition of the house, visiting children, etc.[37]

The murderers in the passion crimes seen in Figure 5.1 were always men. However, although a woman was the cause of the murders in question, it was not always the women who were killed, but also the husbands or fathers of the women. To get the women targeted, men could feel compelled to remove the authority figure that the woman "belonged to" or spoke for her. And all this was happening within the extended family. In this context, society's perception of honor was a paradox: the murders of passion took place among family members, and the woman whom men were passionate about was from the family.

In honor killings, power and control mechanisms were at play rather than jealousy, and the dominance of the collective over the individual was in question. According to Wikan, some issues must be fulfilled for a murder to be called an honor killing. Accordingly, to save the honor of the nuclear or extended family, it was necessary to act with collective responsibility. In addition, the rights of the family had to be above the rights of the individual, and there had to be a common belief that the shame would disappear with the murder of the perpetrator.

Honor killings in the patriarchal family structure were mostly related to women being seen as property. The "guardians" of the woman were the male members of the family, and she had to act as they saw fit. In other words, the woman was not supposed to be an individual who had her desires and could do whatever she wanted. Therefore, the fault she committed was not only her own; it also concerned both her family and society. That is, when the woman sinned, she also tarnished the social reputation of her family. Of course, it was not just sexual intercourse with a stranger that was considered a sin. It was a

37 Victoria Nourse, "Passion's Progress," 1379

woman's attempt to transcend or allegedly transcend the boundaries surrounding her. In this respect, looking at a stranger man could also set an example for this violation or sin in the eyes of society and family. The woman was also the face of the family to the outside world. Whatever she did, it reflected directly on her family.[38] Expressions such as "we lost our face, she put a stain on our face or to save our face, which was presented as the reason for honor killings, were also related to this. The honor was also the face of the family.

Honor killings were beyond religion. There was a possibility that God would forgive a sin committed in terms of honor, but people and society could not forgive. Moreover, the motive for social gain behind honor killings should not be overlooked. The main achievement here was restoring the family's fame and prestige. The market value of the family was also being fixed.[39] A dishonored woman in the family directly impacted the family's ability to do business or the future marriages of single-family members.

Since the state of protecting honor was a factor in reducing the punishment for murders they would receive, in most of these cases, an indecent act was immediately put forward as the reason for murder. In this way, they were demanding the court's help and protection. Moreover, the situations that stand out in these cases, such as the sexual attack on the brother's wife and daughter in laws, evoke the possibility that the woman who came to the house as a bride might have a position of "availability" for the men of the household. Again, we know from other lawsuits that the young girls that fathers wanted to marry sometimes constituted hostility between fathers and sons since the sons could also want to marry the same girl. Therefore, the second marriages of fathers with the young girls of the district shook the domestic balance both economically and sexually. As seen from the cases I discussed below, it is possible to talk about various forms of moral behaviors adopted by people rather than a general morality that dominated the Ottoman countryside for the period I examined. Therefore, the practices that came to the fore for the protection or establishment of honor both within the family and in front of the public varied.

38 Unni Wikan, *In Honor of Fadime*, 54

39 Ibid., 20

Both men and women struggled to find a way out of their desires within the family and community relations network. But male citizens, in particular, often dealt with the matter by their means to restore their dignity, which they thought to be damaged. But this situation created an advantage for women; they could come to the court and ask for their chastity or stolen rights from the state. Through these court hearings, women got the chance to break their silence related to their victimhood. The hearings recorded on a verbatim basis transmitted women's words step by step to the head of the state by passing different bureaucratic levels. Also, speaking in court was a chance to defend and speak up for oneself in front of the public. In this sense, the narrative strategies in the court were public-oriented as much as they were court oriented.[40] In this context, I would like to mention the court experience of Ayşe and her family in the early years of *nizamiye* courts. Although many years passed, Ayşe and his family initiated a court case over the murder of her father and her grievance regarding her abduction. Ayşe boldly asked the state for her father's blood and her honor.[41]

Ayşe's father, Mahmud Efendi, was killed in 1858, but they tried the case in 1866 when the murderer was arrested. The murder case also included the abduction of Ayşe, who was forced to live together with murderer Hüseyin. According to the statement of Hüseyin, he had previously been arrested and had a court hearing but was released afterward. Then the heirs decided to sue him again, and this time, the abducted Ayşe also took action and sued her unmarried husband. At the court, Ayşe talked against her husband very bravely. Here is how Ayşe defended herself and gave the details of her abduction, damaged dignity, death of his father, and her stolen four years in the mountains.

> Q: This Hüseyin says that he married you. Did he marry you? If so, tell the truth.
> A: No, he did not marry me. He made me wander around unmarried.
> …

40 Leslie Peirce, *Ahlak Oyunları*, 269

41 BOA., İ..MVL. 559-25152 /15 September 1866

> A: First, they took me away for twenty-five days. Since they murdered my father, they have been absconders for four years. After four years, they again took me to the mountains by force, and we wandered around in the mountains, in Aydın here and there for four months. Thus, the girls were born out of wedlock. Afterward, they brought me to my hometown…A year later, he was arrested. I am suing (him) now. I want blood instead of my blood. I want my honor too. I press charge against him.[42]

Ayşe made these statements in court on behalf of her seven siblings, including her brothers and mother. Her brothers could be her representatives and claim their sister's honor, but what happened to Ayşe did not discourage her. The new judicial order allowed her to defend herself before the state and have her words recorded as a part of its agreement with its citizens. Although a long time had passed, Ayşe's damaged dignity did not allow her to let go of what was done to her and her father.

As Peirce states, the court registers bring us closer to the woman.[43] The profiles of women we come across through these registers are not passive, repressed figures. There were profiles of women who knew what they wanted, sought their rights, declared their opinions or guilt without hesitation, tried to deceive the court, and even made fun of it. In this respect, there was no restriction for women accessing court and expressing themselves.[44] However, it is also a fact that socially and economically distinguished women did not go to court as frequently as the ones from the lower strata. So, in what circumstances did women testify in court? It seems that the testimonies of

42 BOA., İ..MVL. 559-25152 /15 September 1866

43 Leslie Peirce, *Ahlak Oyunları*, 221

44 Not only Muslim women but also Christian women used the sharia courts. According to Sophia Laiou, it was difficult to make personal and family problems public, and the revelation of guilt and shameful secrets was unpleasant for the woman, her family, and the community to which she belonged. In this case, appealing to the Ottoman court was a convenient place to find a final and quick solution to the problem. See, "Osmanlı Dünyasında Hristiyan Kadınlar: Rum Cemaatinin Şer'iye Mahkemelerinde Açtığı Kişilerarası Davalar ve Aile Davaları (17. ve 18. Yüzyıllar)," in *Osmanlı Döneminde Balkan Kadınları: Toplumsal Cinsiyet, Kültür, Tarih*, eds. Amilaa Buturovic, and İrvin. C. Schick (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2009), 274

those who could state to enlighten the murder in murder cases, or those who participated in or witnessed the murder in some way, were used in court. In this respect, the questions asked of women were not that different from men.

The interrogations also show that both men and women knew about their rights and demanded them within social constraints. This law knowledge was likely acquired through social relations or acquaintances with a previous court or prison experience. As another possibility, the copies of the penal code, which the state printed extra for the public to read, met with the readers.

Sometimes the court was the last resort, especially for the women for whom the family network did not work, to satisfy their desire for justice or to correct their honor. In the various cases I will discuss below, I will deal with both murders committed to restoring personal and family honor and illegitimate relationships reserved within family walls in a social and political environment where honor was given utmost importance. In this regard, the stories of Ayşe, Fatma, and Balaya, whose cases I will examine below, are one of the most striking examples.

5.2.1. "Correcting" the Family Honor: Zade Hatun, Verdehan, and Aynışah

"How can anyone kill their brother or sister? What are the reason and the wisdom of this?"[45] This question was asked upon the murder of a young woman named Aynışah. Her brothers murdered her upon eloping with a certain İdris "for putting their faces on the ground." To correct the family honor, Aynışah's mother also took action and supported his sons in this murder despite the villagers' attempt to make peace between the families. As we will also see in Zade Hatun's case, the importance of marriage in the eyes of society can be observed here in correcting the damaged honor of people.

According to the statement of the mukhtar, when Aynışah eloped with İdris, the imam and the village elders came together. They decided to marry Idris's sister to Aynışah's brother Muhtar to make peace between the two families. Both sides agreed, and they got married. But this was not enough for Aynışah's mother and brothers. They decided to kill her on the first occasion,

45 BOA., İ..MVL. 518-23301 / 7 October 1864

although she was pregnant. According to them, the public shame they experienced could only be elevated through the death of the one who created it. Although the illicit relationship was settled, it was not enough to correct honor, and the persistent damage to the family honor did not give Aynışah the right to live. Besides, she was murdered in the middle of a crowd, and her death turned into a show for her brothers.

Although Aynışah's brother Muhtar did not directly state, it is clear from his statements that he had children. His marriage with İdris' sister was not his first marriage. Here, I would like to point out the fact that there was an apparent relationship between honor and property. When they exchanged the girls of their houses, they received the chance to correct personal and family honor. More importantly, this exchange was also regarded as the best possible way to reestablish the broken bonds between the two families and for the implementation of social justice. It was the elders of the community who came up with this suggestion. By accepting it, the male members of the families regained their honor in front of the public. Still, it did not satisfy the domestic relations and desires, so Aynışah's family decided to handle the case as they wished. In this respect, Aynışah's mother took an active and leading role in her premeditated murder. As Purna Sen underlines and suggests, women were also active agents in this regard and were one of the main features of honor crimes. The role of women in policing and controlling the behavior of other women and their potential to be complicit in the murder was undeniable.[46]

Aynışah's mother's actions and decisions showed that she carried and sustained the patriarchal responsibilities of the family. In this regard, she took a position in the court to protect the family's honor and her sons. In this respect, she stated that she murdered her daughter by hiring a murderer. Although her sons made peace with the other family by taking a girl from them, this trade did not satisfy her:

> Q: Why did you murder your daughter?
> A: My daughter ran away and took Talip's son Idris. My son Muhtar took Idris's sister, and they made peace. She ran away and

46 Purna Sen, "Crimes of Honor," 50

> embarrassed me. I did not make peace. I had her murdered for this reason.[47]

The mother refused the claims that her sons murdered Aynışah. In a similar line to their mother, Yaşar and Muhtar also denied the murder allegation. However, their "honor struggle" did not find an audience in the court since the witness statements changed the flow of the trial. However, before the court trial ended, Yaşar died in the Prizren prison. They pardoned Muhtar in the sharia court in terms of personal law. Muhtar was put on trial with capital punishment, but his sentence was mitigated since they could not determine who exactly fired the gun and killed Aynışah. In the end, Muhtar received fifteen years of hard labor, and his mother was also sentenced to three years in prison.

The other case I will analyze about family honor was from Prizren. The victim Zade Hatun was known as a prostitute by her villagers and family.[48] Although everyone knew this situation, her brother engaged her to a person named Mürsel. Before her marriage, she gave birth to an illegitimate child whose father we did not know.

We need to consider Zade Hatun's story from several angles. First, while the prostitution situation was known to everyone, his brother tried to marry her to give her a settled and decent life. In addition, Mürsel agreed to marry her, although he knew her reputation in public, and she gave birth to an illegitimate child while they were engaged. More importantly, although Zade left him several times, Mürsel tried to bring him back home each time. As it was understood from the interrogation process, Zade was concerned about living her own life: She went to work as a maid in the house of one of the leading gentlemen of the region where she lived. She gave birth to an illegitimate child in an acquaintance's house. She repeatedly escaped from the home of the man he was married to.

According to the narration of the mukhtar, he told Mürsel not to marry Zade since she was a prostitute. But Mürsel did not accept the offer stating that he was a poor man and could not marry another girl after divorcing Zade.

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47 BOA., İ..MVL. 518-23301 / 7 October 1864

48 BOA., İ..DA.. 5-92 / 11 July 1869

In other words, although he knew about her prostitution, Mürsel accepted to live with Zade for his personal needs and the economic burden of divorcing and remarrying. But, interestingly, Mürsel was not questioned in the court even though he was her legal husband. As his wife was killed, he had to be in court as her heir. It was likely that his poverty prevented him from coming to court. At this point, I would like to share the court statement of Zade's brother Selman.

> He (Mürsel) told me he wanted my sister, but she was pregnant, so he didn't want her. I said, if she was pregnant, God should not let me see her in the flesh. If her fiancée wants, I said let it be his. I got up and went to my village. Two weeks later, she gave birth to an illegitimate child (*veled-i zina*) in Ali Bey's house. After that, her fiancée Mürsel took her from Ali Bey's house. She stayed with Mürsel for three or four months and ran away from there too. She started traveling with lechers in other villages. She straggly traveled in this state for a week or two. Again, Mürsel went, found, and took her. However, I do not know where he saw her. She escaped without sitting even for a week in Mürsel's (house). She started wandering around. So someone came to me and said she would go to the town of Ayrecine in the Yakova district, so I got on the road and waited for her. While she was going to Ayrecine village on her own, I took off my pistol, shot, and killed her. Thank you.[49]

Selman narrated the story in his testimony as if he had completed a primary public duty. After the murder, he immediately informed the villagers that he had killed Zade, and the villagers went and took her body. Selman also cared for his sister's burial as if he were doing his social duties. He especially emphasized that before her burial, he made the ritual ablution of the whole body. This emphasis suggests that he saved her from her future sins and cleaned her body. Thus, he also cleansed his honor and was relieved. In this context, putting an end to his statement with the sentence "thank you" reveals his belief that he fulfilled his duty correctly.

49 "*Siz sağ olunuz.*" BOA., İ..DA.. 5-92 / 11 July 1869

In this court case, not everyone named by the witnesses was questioned. Although his name was stated many times, Ali Bey did not appear in court and was not questioned. The statements in court regarding him suggest that he was one of the prominent people in the district. The fact that such a wealthy person involved in the case was not questioned reveals for whom the judicial system worked. This court file was also filled with much missing information, raising questions about the court procedure. For example, we do not know who the father of Zade's illegitimate baby was, what happened to them, why they did not question Ali Bey and Zade's husband Mürsel, or with whom Zade had illicit sexual relations. Although everyone agreed that Zade was a "loose woman," those who had a relationship with her did not appear. Women were at the forefront while the lives of those who lacked dignity were being regulated. On the other hand, the male partners of the crime kept their invisibility in society and the court.

Selman did not receive any punishment in the sharia judgment other than being deprived of Zade's inheritance. However, according to the decision of the *nizamiye* court, it was stated that since he did not see Zade upon the indecent act, he could not be exempt from punishment. But he was forgiven for capital punishment because he committed the crime for his honor and received hard labor for fifteen years.

Zade's court file also included another murder case of a sixteen or eighteen-year-old girl named Verdehan, whom her father murdered due to his claim of prostitution.[50] Council of Judicial Ordinances combined the two cases due to honor, but the arguments and perceptions of the murderers were so different from each other. As I mentioned above, the murder of Zade was a kind of public duty for her brother. If it weren't for her subsequent desertions and adultery, perhaps Zade's marriage would be enough for Salman, and he would not murder her. However, in Verdehan's case, although her father made claims upon her unchastity, he could not tell where, when, or with whom. After the murder, her mother and father buried her in their yard and told everyone that Verdehan had run away. CJO summarized the case through her prostitution, but in her father's interrogation, he did not

50 BOA., İ..DA.. 5-92 / 11 July 1869

give much detail about it. However, the fact that the honor card[51], frequently used for penalty reduction at that time, was not used by the father suggests that the inner side of the incident could be different. Or father Musa did not have any knowledge related to the possible punishment remissions for honor crimes. The father made two other statements in court. In his first statement, he said:

> A: The truth is that I put a rope around her neck and took her life.
> Q: Tell the truth like that. What was the reason why you took her life?
> A: The reason was that she would not stay alone. Since her honor belonged to the Sultan, I killed her. Otherwise, she was my daughter.[52]

This first statement was filled with remarks regarding his fear of government. He wanted to play the card of "The honor belongs to the sultan" to find some legitimacy. This statement was not a common form of expression in court records. There was much reference to the sanctity of honor, but this sentence, which seems to have been taken from the book, suggests that an outside hand touched this statement before the trial.

However, he must not have benefited from this move, as he completely changed this statement in his second interrogation stating that he was not fully aware of himself in the first interrogation and refused the claim of murdering his daughter. According to his second statement, her daughter passed away on her own, but he could not tell anyone out of fear of the government. He also emphasized how one could kill his daughter and tried to convince the court by stating that he forgave her daughter when she stole a thousand piasters from him a few years ago. So, he did not have any reason to kill her.

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51 Arlette Farge and Michel Foucault draw attention to a similar situation in early modern period France. If the husband wanted his wife to be punished, he presented his wife as a public woman. Thus, the situation was no longer just a domestic matter but a moral issue of public concern. Breaking the wall between public and private with honor was always a catching option. *Disorderly Families,* 37-38

52 "*Sebep bu idi ki tek durmazdı. Namusu padişahın olduğu sebepten canını aldım. Yoksa evladım idi."* BOA., İ..DA.. 5-92 / 11 July 1869

The father's statements give the impression that he heard this word from somewhere or that someone whispered it in his ear before going to court. He said in the second interrogation that "my daughter was not exceptionally smart; she stole a thousand *kurush* from me a year or two ago, then I forgave her and took her home; why should I kill her now?"[53] He also added that his daughter committed suicide. Then he buried her in their garden with his wife. Two weeks after the burial, the government became aware of the incident, the grave was opened, and the body was examined. The government said that Verdehan was strangled with a rope, but the father, Musa, again refused, claiming that she had no trace of string around her neck. However, the new practices of the state prevented Musa from obscuring the evidence.

To pave the way for the regulations in the field of forensic medicine and put them into practice, the state introduced some indirect sanctions with the penal code of 1858. Accordingly, if a victim's body was buried without informing the state and without an examination, the perpetrator of this crime was sentenced to imprisonment from one month to one year and a financial penalty.[54] This was a significant article building the criminal trial on clear evidence. Here, the state aimed to seek expert opinion to clarify the cause of death and correctly determine the crime, which paved the way to initiate the forensics process legally. In this way, the state took an important step to make the forensic medicine institution a part of the criminal trial or investigation. Thus, the murder files would now have scientific data and basis. Accordingly, an official had to be summoned to the scene and obtain definitive evidence of

53 BOA., İ..DA.. 5-92 / 11 July 1869

54 See article 176, Bucknill and Utidjian, *Ottoman Penal Code*, 120
Criminal investigation of the deceased body was also practiced in the sharia courts. Qadis went to the crime scene and recorded the examinations done upon the dead body with every detail. There were even cases in which the bones of the deceased were removed from the grave and examined. If there was an unidentified murder, they had to investigate the dead body and crime scene because, according to the sharia law, people living around the crime scene were responsible for the case due to the *kasâme* practice. However, these examinations were not done in the name of forensic medicine. It was after the Tanzimat that it became a professional branch of medicine. See, Özen Tok, "Kayseri Kadı Sicillerindeki Yaralanma ve Ölüm Vakalarıyla İlgili Keşif Raporları: 1650-1660," *Sosyal Bilimler Enstitüsü Dergisi,* Sayı. 22 (2007)

the death. That is, the independent official who came to the crime scene would identify whether the deceased was a victim of murder and, if so, how it happened. The incoming official could initiate the forensics process based on this examination if he thought it was necessary. This was a significant development in preventing suspicious deaths, collecting evidence, and preventing the blackening of the evidence, which were essential for a fair trial.[55] In addition, with the Criminal Procedure Code of 1879 (*Usul-i Muhakemat-ı Cezaiye Kanunu*), which came into force in 1879, the prosecutor would assign one or two doctors and surgeons to suspicious deaths or murders, and they would assess the state of the body and the cause of death.[56]

In the second interrogation, the court repeated Musa's first statements to his face. He mentioned that his daughter was sitting with a shepherd, and she strangled herself when she realized that her act had touched her honor. But there was not much information about this shepherd. We do not know who this shepherd was or his relationship with Verdehan.

The court file did not include any doctor's report examining Verdehan's body. Unfortunately, we cannot clearly understand from the interrogations why this 16-18-year-old girl was murdered. However, the CJO record stated that she committed prostitution here and there, and the authorities also acknowledged her immoral acts (*sû-i ef'al*). So, her father was judged with article 188, which was related to seeing one of the *mahrams* while committing the abominable act.[57]

In this file, the family's handling of the honor issue in court differed from Zade's in terms of both missing and conflicting statements. In Zade's case,

55 Especially after the 1870s, there was a remarkable increase in the involvement of medical doctors and reports in the courts. This was mainly due to the rise in the number of graduates from medical schools. In addition to the *Mekteb-i Tıbbiye-i Şahane*, *Mekteb-i Tıbbiye-i Mülkiye* was opened in 1867 to train doctors for civil health services. Doctors who graduated from this school started working in the Ottoman provinces' municipal councils as responsible for health affairs. See Sedat Bingöl, "Osmanlı Devleti'nde Tanzimattan Sonra Kriminal Kimlik Tespit Yöntemlerine Dair Notlar ve Belgeler," *Belleten*, No. 274 (2011): 41

56 Düstur, (Tertip 1, Cilt 4), 139

57 BOA., İ..DA.. 5-92, / 11 July 1869

acquaintances gave detailed reports about Zade's life and preferences. The interrogations did not include any witness testimonies for Verdehan. Moreover, although Verdehan's mother helped her father in the burial, she did not have interrogation in the *nizamiye* court. But it is clear from the court records that she was present in the sharia judgment and confessed there. They seemed to have unofficially combined sharia and *nizamiye* court judgment during the trial process. According to the law, the mother had to be tried and sentenced in the authorized *nizamiye* court for secretly helping in her daughter's murder and burying her body. It is understood that she also forgave her husband for the blood money in the sharia trial.

When we consider the murders of Zade, Aynışah, and Verdehan, individual and family differences stand out in the approach to honor. Although Selman knew that his sister was engaged in prostitution, he forgave her at some point upon her marriage to Mürsel. Also, although Mürsel knew about Zade's situation, he agreed to marry her in defiance of rumors. In the case of Muhtar and Aynışah, Aynışah's marriage did not help the reinstitution of the broken honor of the family, and her mother instigated her murder. Even if the elders from the community intervened to make peace and they exchanged the girls, Aynışah's family did not accept this agreement made by the society. In the eyes of the public, this agreement and exchange of girls meant that the lost honor was replaced. But personal grudges took precedence over honor. On this occasion, the family of the Aynışah showed that they were the only authority in deciding whom she could or could not marry.

As for Verdehan, rather than the details of her "actual crime," the public awareness specified in the court record related to her "inclination" to prostitution; if we put these cases into a local and regional framework, we can obtain detailed and comparative data on these differences. However, the cities of these cases, Prizren, Bitola, and Skopje, were not far from each other. So, a regional difference does not make much sense in this regard. These different approaches to the issue of honor in such proximity to each other reveal the relativity and flexibility of the concept of honor. The state agreed with its citizens that it would protect their honor, but the citizens decided in which situations and in which manner this would happen. And it was in the hands

of the citizens to bend and break the walls surrounding honor according to their needs and desires.

5.2.2. Talking about the Indecent Acts

Before moving on to illegitimate relationships within the family, I would like to discuss how sexual offenses were handled and expressed by witnesses and defendants in court and what kind of differences existed between the testimonies of men and women in the court. In this regard, in this section, I will focus on two adultery cases from the years 1866 and 1892[58]. These two files were a combination of adultery and murder. I chose them because of the clarity in the expressions and, to some extent, obscenity and because we can hear the same event from both male and female perspectives. In these two files and many files I came across in the archive, the interrogation officers had the accused and witnesses told the smallest detail, regardless of the event. Sometimes, the defendants knew no limits while describing the sexual incidents.

The court prepared the most suitable environment to hear the truth, sometimes by encouraging, sometimes by pressure and violence, sometimes by choosing words with tweezers, and by finding contradictions in statements. However, sometimes, as in Istemenke's case, confessions about adultery came spontaneously during the interrogation, without coercion. This environment created for the statements in court was undoubtedly essential for providing the necessary sentences according to the penal code. But at the same time, these statements served the state's purpose of surveillance and desire to know. Even if what was told did not comply with the general moral codes of the state, the state was recording these statements down to the last detail.

Both Şerife and Istemenke were tried for the murder of their husbands. Şerife was married to Hüseyin, who was older than him, and they had a 10-year-old son.[59] But she had an illicit relationship with Alexi, who had once

58 This is the court trial year in this case. The murder took place ten years ago, in 1882. BOA, İ..AZN. 2-16 / 21 November 1892

59 BOA., İ..AZN. 2-16 / 21 November 1892

worked for them. When the relationship between them was heard, Alexi was sent away by the villagers. Şerife had an intention of converting Alexi to Islam and marrying him. When Şerife's husband caught her in bed with Alexi, she thought that her husband would not keep her alive, and she had her husband killed at the time of the incident. If they had failed, Şerife would probably have been killed, and her husband Semerci Hüseyin would have been punished according to article 190. In that case, he would have received imprisonment from three months to three years because he was going to murder due to adultery and because he would have killed them during the indecent act.

Istemenke was married to a certain Peşo when she was 15 years old.[60] At 25, she decided to poison him due to their severe incompatibility. During their marriage, her husband personally endangered his wife's honor. He tried to sell her to the men he brought home, or he did not object to his wife serving as a servant in someone else's house because he did not provide for the house. However, when his wife got pregnant by her employer, the owner of the house, he took her back. She wanted a divorce from her husband, but her husband did not accept it despite all this. I think social dignity was influential in these decisions. He had no problem with sexual crimes committed in his house that no one had seen or had knowledge about. However, he felt disturbed when everyone knew about his wife's getting pregnant by another man.

The forms of social intervention in these two cases have different consequences. Her request from the people she lived with did not yield any results for Istemenke. Although she explained the situation to the *çorbacıs*,[61], she could not get her husband to divorce her through them. However, villagers in Şerife's case had previously suspected their relationship and removed Alexi from the village. On the day of the murder, he was caught by

60 BOA., İ..MVL. 555-24903/ 21 June 1866. This court case is also examined in Ebru Aykut-Türker's PhD dissertation "Alternative Claims," 265

61 "*Çorbacı*" was the name given to a Christian local power holder in a province. "Many of them had economic, political, and social influence through their multigenerational networks and diverse activities." See, Seçil Uluışık, "Empire, Province, and Power: Chorbadzhi (*Çorbaci*) Networks in the Ottoman Empire, 1790s-1860s," (Ph.D. Dissertation, The University of Arizona, 2018), 40

the villagers and handed over to the government because public morality was in danger.

In the court experience of people, to what extent did sexual confessions from men and women differ? Although it is difficult to answer this question, the available data suggest that a man's statement was more trusted, even if a man and a woman were partners in adultery. What did Istemenke aim by directly confessing the murder and telling all the details about her relationship with Goke? Was she searching for public consent, or did she have nothing to lose from that point on and want everyone responsible for her misery to be judged?

Istemenke began her statement by first describing her trouble with her husband and how he had forced her to have sexual intercourse with other men. In this statement, she stressed that she struggled not to sleep with these men her husband brought in and did not surrender. Then, when she started working at Goke's house, she stated that Goke would take her as a wife, and then they committed adultery. Istemenke said this series of statements, first in front of court officials and then again in court, to Goke's face. In this narrative, Istemenke was trying to act within the circle of law or honor and to express that the situation she was in developed outside herself. But her statements were not sufficient in this regard. In the end, Goke, who was also a *çorbacı*, managed to escape this case without penalty, using his possible influence. Istemenke was sentenced to *tazir-i şedid* (severe punishment) according to sharia law and received 15 years in prison according to the penal law. The condition of the baby in the womb was unclear. This situation suggests whether the validity of the statements made by men in the case of adultery was stronger than women's claims. A certain Emine, who killed her newborn baby in Varna in 1868,[62] was unsuccessful in proving her claim, as the other party denied it, just like Istemenke's case. The fact that the fathers of the babies of these two women were not tried to be determined when there was obvious adultery points out that the codes of honor work differently for women and adulterous children and that these codes can ignore these two groups. In addition, as we will see in the next chapter, in Islamic law, children

62 BOA., İ..MVL. 585-26335 / 20 March 1868

born out of wedlock are not considered to have any lineage with their fathers, even if they are known to the public. The lineage of these babies continues through their mothers.[63]

In Şerife and Alexi's case, Alexi's confession was enough for both to be punished. However, Şerife never confessed to the allegation of adultery and her relationship with Alexi. The testimony of his 10-year-old son was also in a similar direction to hers. In his first interrogation, Alexi admitted his guilt but stated that he was defending himself. He said he had to get money from Hüseyin, so he called him home that morning, saying he would give the money to him at home, and they quarreled about the money issue, and Alexi killed him when Hüseyin was about to kill him. There was no mention of adultery in his statement. However, he gave clues about the relationship between Şerife and him.

> A: I was a goat herder with this Semerci Hüseyin before. Then the neighbors disagreed. They took me and brought me here to the government.
> Q: Why did they bring you to the government at the time?
> A: They caught (us) inside his house because Hussein's wife would not run away from me. I used to make cheese inside the house. They saw me and asked why I would come home. They brought me here. They imprisoned (me) for a week.

We understand from this that Şerife married an older man, and her heart was with Alexi. Later, there were statements from the neighbors that the relationship between them was known from the surrounding. Neighbors even had one-on-one interventions to prevent their relations in this incident. At this point, I would like to narrate the sexual escapade that Alexi and Şerife experienced on the day of the murder from Alexi's words. He says:

> …She saw me there. She told me to come. I said, let's see what it is. We reached the front of the house together. There is a place like a laundry rack. She put the decks there. This woman hugged me. She hugged

63 See Adnan Koşum, "İslam Hukukunda Evlilik Dışı İlişki Sonucu Dünyaya Gelen Çocukların Babalarına Mirasçılığı Sorunu," *Dini Araştırmalar* 9, No. 27 (2007)

> me, saying let's sleep together. I said I would go to reap. She said, "while my husband is in the coffeehouse, let's have some fun." While we were doing that thing, I mean while I was on top of the woman, her husband came. He threw the hookah in his hand at us. He attacked me. I did not see how he cut my hands. I saw my hands with a cut. By that time, I was about to run away. Then, this Şerife told me, "Where you are going, I can't run away from him." She said she was going to drown this man. I lay on the ground. Semerci was also on me. Then the woman fastened a strap around his neck and strangled him, sir. I lost myself.[64]

After the murder was committed, Şerife immediately left the house and went to the field. Therefore, the neighbors who came to suppress Alexi did not see him at home. So, she had the chance to produce her own story. Here is how Şerife narrated the same incident:

> Sir, it was Friday morning prayer time. The adhan was recited. I went to the fountain to get water. I saw this Alexi around the fountain. At that time, this Alexi said, "won't you take out the onion?" I took the water, and he came home with me. We were in the courtyard. I put the bags next to me and said . . . . . let's go together and pick out the onions... While he was talking, my husband Hüseyin (who) had gone to the coffee house came right away. He saw us in the courtyard. He said, "you pimp, why would you even come here?" He threw the hookah in his hand on him. My husband and Alexi came on top of each other. Alexi took my husband in hand. Alexi pulled my husband onto the laundry roof. My husband said, "Şerife, come and save me." I went near; Alex hit me too. He told me, "I will kill you too." He was strangling him with his hand and hitting him. I was afraid, so I went and informed my son Abdulkadir on the roof. I told him to get up quickly and inform the villagers; Alexi was killing his father. I took a basket and immediately went to the wheat field, sir. Then Alex killed my husband.[65]

64 BOA., İ..AZN. 2-16 / 21 November 1892

65 BOA., İ..AZN. 2-16 / 21 November 1892

Throughout her court testimony, Şerife tried every way to present herself as a decent woman. She was trying to clear her name of her sexual escapade that unexpectedly resulted in her husband's murder. In this respect, the narrative she created about the murder and the fact that she acted by this narrative at the time of the murder is remarkable. Without hesitation, Şerife took the necessary materials for the field work and set out for the field. However, due to the traumatic effect of the event, she kept saying that she was sorry for her husband on the way.

In this file, Şerife's 10-year-old son Abdülkadir was a witness. The following statement of Abdulkadir was an indication that he was being manipulated. Because even though her mother denied the adultery part in her statement, she stated that she had spoken to Alexi in the courtyard that morning. Unlike what Abdulkadir said, they did not go out the door with her husband, and Şerife also said that she had informed her son that they were killing his father.

> A: Sir (we), my mother and father slept in one place and one room. My father woke me up. My father told (me) to milk the cow and then go to the wheat field. He said, "I'll have a cup of coffee at the cafe house; I can catch up with you." My father and mother walked out the door together. I used to sleep on the roof. I heard a voice.... so I got off. I looked and couldn't see anything in front of the house because the roof had no door. I saw this Alexi on my father. When I said, “what are you doing? I will go and inform the neighbors in the coffee house,”; my father was not dead then. He gave me a sound; I was relieved. I went to the coffee house and informed. When they came, my father was dead, and even Alexi was above my father. He was clasping him down. So, they found him.

Here, one can find three different expressions from three people who witnessed and experienced the same event. In the first statements, the defendants tried to remove the issue from the axis of adultery. However, both the contradictions in the words and the testimonies of the witnesses necessarily brought the case of adultery into focus, and Alexi's statement was sufficient to prove that adultery was involved.

About ten years after the murder was committed, the case was concluded. According to the final decision, Alexi was sentenced to death under article 174, and Şerife was sentenced to eight years of hard labor under article 175. The latest appeal from Istanbul showed similarities with other court records in expressions such as "an indecent act of adultery," *münasebet-i gayrı meşru*. They noted that the death penalty would be issued if another murder (including a crime) was committed before or after the murder. Because Alexi had another fault, they sentenced him to death instead of fifteen years of hard labor. But this misdemeanor was not mentioned as an indecent act. Likewise, Şerife received a temporary hard labor penalty for helping the murderer. The court's decision was eight years. The indecent act was not mentioned here either.

§ 5.3. Illicit Sexual Relations within the Family

The rumor about illicit sexual relations was as dangerous as the act regarding society's compatibility. Therefore, sexual assault and similar sexual perversities were one of the most striking examples of the co-work of the community and the court in solving a judicial problem and safeguarding collective honor.[66] Society was always on alert regarding sexual morality. It was of great importance for the survival of the society to establish social morality and collective honor by putting one's thread to the market and subjecting it to social condemnation or humiliation if they put the collective honor of society in danger.

As I said before, the cases I deal with in this study had court trials due to murder. In other words, these were not cases where the victim applied to the court of his own free will after the sexual assault. These files show that when it came to honor, it was the honor of the men in the family that took center stage in the court. In other words, although the victim woman was able to express her victimization, her husband, brother, or father's honor outweighed rather than her honor in public.

66 Peirce, *Ahlak Oyunları*, 224

As I mentioned above, the crime of rape was considered together with the crime of adultery instead of being considered a separate crime in Islamic law. Also, there was no holistic approach to this crime between different sects. Malikis and Hanafis defined adultery and rape as a man's sexual intercourse with someone who was not his property.[67] In other words, according to them, sexual rights were evaluated within property rights.[68] In Islamic law, all sects except the Hanafi sect accepted the imposition of the *hadd* punishment for rape. According to the Hanafi sect, if the crime of rape was habitual, then the rapist was punished with capital punishment.[69]

The penal administration of the sexual sphere, in other words, the attitude of the state and the law towards sexual attacks, became more explicit with the 1858 penal code. Thus, with the new court order, both the possible punishment types and the punishments given became evident. Article 199 stated that for the indecent act by force (*cebren fiil-i şeni*) by legal guardians or instructors of the victim, a punishment of hard labor not less than five years was awarded. If this crime was committed against a virgin girl, the criminal also had to pay a cash fine besides the hard labor (article 200).[70] The code's inclusion of such a distinction between married and unmarried women used to exist in the discourse of the previous centuries, but it was not included in the legal codes. Here, it is also possible to observe a common application between the sharia law and *kanun*. With the amendment of 1860 in article 200, if a man deceived a virgin with the promise of marriage and afterward refused to marry her, he was supposed to pay compensation for her loss of virginity and was imprisoned from one week to six months. But for this punishment to be imposed, the man had to confess, or the girl needed to prove her claim.

In sexual crimes between family members, rape came to the fore mainly as a means of revenge. In particular, brothers who were at odds with each

67 Also, in Islamic law, it is possible to talk about a similar approach to prostitution. See Fikret Yılmaz, "Zina ve Fuhuş Arasında Kalanlar: Fahişe, Subaşıya Karşı," *Toplumsal Tarih* 220 (2012): 28-30

68 Belkıs Konan, "Osmanlı Hukukunda Tecavüz Suçu," *OTAM* 29, Sayı 29 (2011): 153

69 Ibid., 155

70 John Bucknill and Haig Utidjian, *Ottoman Penal Code*, 151-152

other posed a potential danger to their wives. Apart from this, fathers-in-law could threaten daughters-in-law in such crimes. These cases show that the so-called danger for women did not just exist in the outer world or her joining the society at large, but it also existed in the domestic sphere and in the family. In other words, the archaic idea supported by both religious and social norms that honorable or noble women were the ones that stayed within the safe walls of the home was proven wrong with these incidents. The danger to honor that was set through the body of women came not just from the stranger men but also the household and kin.

One of the conflicts between fathers and sons was the young girls the fathers married. In this context, young girls, whom fathers saw as candidates for themselves, could also be potential candidates for sons. In such cases, there was generally a conflict before the marriage took place. If the wedding took place, the animosity between them continued to increase. However, as we will see in the case that I will discuss below, sometimes, even if the marriage took place, there could be a relationship between the stepmother and the son.

In 1864, 28-29 years old Yorgi killed his father with a stick and threw him into the lake to continue his relationship with his stepmother.[71] Yorgi had a 2-year-old brother from her stepmother, but they were in a relationship for nearly a year. It is clear from the statements that his father was aware of this relationship, and he even caught Yorgi and Balaya in bed. Thereupon, his father kept beating his wife. Upon the request of Balaya, Yorgi went to his father and asked for forgiveness, and Yorgi promised he would stand away from Balaya. Although he received his father's blessing, when his father kept beating Balaya, Yorgi acted again and committed the murder.

Strikingly, in this case, Balaya and Yorgi never hesitated to talk about the moments when their forbidden relationship resulted in adultery. When Yorgi killed his father and came home, he said that after telling Balaya what he had done, they made love again. What does their voicing this detail and not regretting their experiences tell us? Can we analyze this situation as a challenge to societal values, or should we consider this situation normal?

71 BOA., İ..MVL. 522-23479 /6 December 1864

First, I want to draw attention to the break in the father-son-husband-wife relationship.

The illicit relationship between son and stepmother seemed to be ended with an apology of Yorgi to his father. His father accepted his apology; however, after this peace step, the father continued to beat his wife. They may not have felt remorse at this point because the father/husband mistreated them and broke the promise. In a way, they mistreated those who mistreated them. And since they did not feel remorse at this point, they did not hesitate to give the details of their forbidden relationship, perhaps as a method of revenge. Secondly, these unexpected, detailed remarks related to their illicit sexual relationship could have resulted from severe cross-examination or possible torture to which they were subjected.[72] But since we only have the state's record, it is tough to make further claims on this issue.

All in all, it was normal and acceptable to tell every detail of such sexual incidents in the court environment. The court required these details to determine the sentence to be given. But at the social level, these relations challenged social values. They were conducted in secret and were not accepted. Individually, challenging social values was always an option, though.

5.3.1. The Story of Fatma[73]

The details of Fatma's court case revealed the story of a young girl who tried to find a way out of the dilemma she was stuck and the indifference of her family towards her. In this case, Fatma attempted to reach society about her victimhood. Fatma's drama and despair in the court revealed the distorted and silenced relationship network between family members hidden within

72 Torture was banned after the Tanzimat. Although it was mentioned in the 1840 and 1851 penal codes, it had the most comprehensive formulation in the 1858 penal code. Despite the legal regulation, the application of torture continued. However, this legal domain encouraged the Ottoman subjects to contest torture. See Halil İbrahim Kalkan, "Torture, Law, and Politics in the Late Ottoman Empire (1840-1918)," (Ph.D. Dissertation, New York University, 2015), 96, 227; Also see, Tuna Başıbek, "Tanzimat And Penal Modernity: The Abolition of Torture in the Mid-Nineteenth Century," (MA Thesis, Boğazçi University, 2015)

73 BOA., İ..DA.. 4-58 /12 February 1869

the family's walls and the power the individual asked for and received from their place in society.

In this court case, one of the striking points was the emergence of the patriarchal language of the judiciary at every point of the interrogation and the various implications that Fatma herself was responsible for what happened to her. Fatma was about 16-17 when she came to the court to blame her fifty-year-old father and reveal the abuse and rape she endured for some time. After the question about her identity, they asked her if she had ever got married and who was the baby's father she gave birth to. She explained the situation in a short sentence stating that her father approached her, and the baby was born from him. She gave birth to a baby girl three months ago, and the baby's father was her own father. Soon after she gave birth to her baby girl, her father took her and threw her away into the wild.

This case was carried into court due to the murder of the newborn baby and when her body was found in the woods. We should look at and compare several narratives and documents on this case. First, I would like to start with the summary document of the CJO. In this summary, while the voices of some of the witnesses and defendants were muted, others were raised. According to the summary statement here, one day, Mahmut took the virginity of Fatma while they were alone at home and threw the baby born into the wild.

Mahmut acknowledged his crime in the first instance court in the presence of the witnesses and stated that his daughter did not go to any place other than their home. According to this, it was decided that Mahmut was executed first by the provisions of Articles 199 and 170. Then his execution, according to Article 47, was turned into hard labor for life after being exposed. As can be seen, there was no statement in this verdict regarding the details given by Fatma and her mother regarding the incident.

In Fatma's interrogation in her father's presence, she was first asked whether she was married. Upon saying that she had never married and that the child she gave birth to was from her father, the court did not believe her and insisted on whom she fell in love with and asked questions about the young men of her district. Fatma's answers were not enough to convince the court, but they revealed the details of her despair:

Q: Although you are a girl, you must have certainly fallen in love with your other neighbor's daughters. Tell us which boys you fell in love with.

A: My father, Mahmut, would not let me go anywhere.
Q: You say your father Mahmut would have never let you go anywhere. This is not possible. Indeed, you went to the neighbors' houses. And from time to time, you met and fell in love with young boys by meeting them or seeing them.
….
Q: At least you went to the houses of your neighbors and relatives with your mother.
A: My father would not let me go with my mother like that.
Q: Which of the young men who worked close to your field or the neighbor lads from your district came close to you?
A: Nobody was close to me except my father, Mahmut.
…
Q: Did anyone not notice that you were pregnant? Of course, the women must have visited your house and seen your pregnancy.
A: I have never left my house, and nobody saw my pregnancy other than my mother.[74]

Here, the interrogation proceeded with prejudice against Fatma. Although Fatma gave the same answer every time, the interrogator did not even consider that Fatma might somehow have been abused by her father. Therefore, the court brought up the possibility of having a love affair with the neighbor boys over and over.

Fatma and her father's interrogations took place in each other's presence. Although the father confessed to the incident in the first interrogation in the first instance court by saying that he yielded to the devil's temptation once, he denied everything in his second query.[75] And he did not neglect to add religious connotation to his denial by saying that he would not accept these accusations in this world or the hereafter. But to make his narrative more

74 BOA., İ..DA.. 4-58 / /12 February 1869

75 The written text of this interrogation was not in the hands of the court

credible, he admitted that he stayed alone at home with his daughter from time to time in the absence of his wife. Although Mahmut stated that he never saw his daughter as pregnant, he also emphasized that Fatma had never been to any place other than their house. In other words, while referring to a part of the incident described by other witnesses, he made some adaptations in his answers. He also rejected the witness statements regarding his confession in his first interrogation claiming that the witnesses had hostility towards him. But he did not state any reason for this hostility, which was a typical denial policy of the criminals. They tended to call anyone who made a counterargument against them an enemy and refrain from giving any further information.

Fatma's mother's position in this incident should also be carefully examined. About a year ago from the trial, Fatma told her mother about her father's first rape, but her mother scolded her, saying that such behaviors were impossible to happen and that fathers would not do such things to their children. Moreover, she never felt the need to question this situation from her husband, fearing that he would mistreat her, although she was aware that her daughter was pregnant. Again, because she was afraid of her husband, she could not express the situation to anyone else. I want to emphasize that Fatma never left the house during this pregnancy. In this case, how did mother Emine explain the home confinement of Fatma to the neighbors and her family? It is also clear from the interrogations that Fatma had a married sister whom Emine visited from time to time. Mother Emine told us about her relationship with her other daughter, whose name we do not know, primarily through her son-in-law. For example, she did not say that she stayed at her daughter's house; instead, she said she stayed at her son-in-law Kara Ahmet's house. Somehow, on one of these visits, when she was staying at his son-in-law's home, his husband raped his daughter Fatma; on the other, Fatma gave birth to the baby. These statements make one think that mother Emine Hatun was extremely afraid of her husband and ashamed of failing to fulfill her responsibility in this incident. She stated that she was not at home when the rape happened and when the baby was born and murdered to alleviate her feelings of shame and guilt in front of the public. So, she was trying to imply that everything happened while she was away, and she could not prevent the

crimes. Moreover, in her narrative, she preferred to take refuge in the name of his son-in-law instead of giving the name of his other daughter.

After the baby was born, mother Emine Hatun could learn what happened from Fatma, not from her husband. When the neighbors heard about the incident, they were taken to the government together. So why could Emine Hatun not tell her son-in-law and her other daughter about this affair? Why could they not take any steps to save Fatma if she did? The most reasonable answer one can give to this is that Emine and Fatma did not figure any way out of Mahmut's oppression within the family. And perhaps the other sister also felt this fear and pressure even though she was married.

How did Fatma succeed in taking the case to court? Unfortunately, her interrogation does not give much information on this matter. But we know that sometime after Fatma gave birth, when the mukhtar of the district, Molla Hüseyin came to their neighborhood due to an issue, Fatma declared the situation to him in her house. Upon this rumor, they captured Mahmut from the district and handed him over to the government. In other words, Fatma disclosed the situation at the first opportunity she found, but we do not know how she got it and how mukhtar Molla Hüseyin came to their house. Previously, the neighbors somehow doubted Fatma's condition and asked about her pregnancy. Still, according to the statement of one of the neighbors, Halil, she did not say she was pregnant. After giving birth to the child, she repeated several times that her father, Mahmut, had performed the indecent act (*fiil-i şeni)* and that she was pregnant from him and that nobody approached her except for his father, Mahmut. Here, we cannot figure precisely at what stage and how Fatma got out of home confinement. We cannot say it was found through the baby's dead body because there was no statement in this regard.

Unlike her mother, the villagers did not remain unresponsive to Fatma's statements about her father's abuse, and they held Mahmut and handed him over to the government.[76] In this way, Fatma could find the attention she could not receive from family members, especially her mother, by taking

76 It is possible to see the neighborhood effect in many cases, and this effect is obvious in Fatma's case. As Arlette Farge and Michel Foucault point out, the neighborhood was one of the necessary and active actors in the game. *Disorderly Families,* 40

refuge in the public conscience. Once she could make her voice heard, she explained what was happening in detail when she went to court. As I mentioned earlier, this is one of the most basic attitudes we encounter in crimes related to sexual issues. The witnesses and defendants could make clear statements before the court of what they saw or experienced by leaving the feeling of shame aside. Fatma's telling of these details was part of her pursuit of rights in the public sphere. Moreover, it shows her trust in the judicial process and the state authorities.

Fatma declared that what his father had done to her was not just a one-time thing, saying, "... And after giving birth, my father performed an indecent act several times"[77], but this statement was not emphasized. In other words, the incident was portrayed in the official court records according to the father's statement that he yielded to the devil's temptation only once. But what Fatma tried to tell was much more than that. The fact that her father abused her at every opportunity (which Fatma stated as "whenever her mother went to her son-in-law's house"), that her mother rebuked her when she told him about the first rape and that her mother's indifference towards her was among the things that Fatma tried to express in court. But it seems that the court did not give the expected reaction to all these details she gave. The most significant proof of this was the court's disbelief towards her statements and the insistence that she had a lover somewhere. In this respect, the court case progressed to protect the authority of fatherhood.

Moreover, the court's assertion and attitude happened this way after his father acknowledged the incident in the first instance court. Fatma's victimhood would probably have continued without the testimony of her neighbors, and no confession would have been received from her mother. Fatma concluded her words as follows:

> In short, I declare that my father, Mahmut, acted indecent act by force, first in our house and then in our field and that I became pregnant

77 BOA., İ..DA.. 4-58 /12 February 1869

from him, and then he took the child I gave birth to and threw her away. And confirming what I said, I press my finger on this area.[78]

At the end of the trial, Mahmut received capital punishment according to the law, but it was converted into permanent hard labor. However, he was forgiven by the sultan, and his final sentence was decided as fifteen years of hard labor. I think the mercy of the sultan was related to the fact that he was the father, and as his daughter, Fatma's property and honor belonged to her father. His crime did not change this property relationship. As we will see in detail in chapter 6, this ownership reality was especially binding for sharia law and obstructed any retaliation demand against fathers.

Mahmut committed more than one crime, regular rape/abuse, imprisonment of her daughter in the house, impregnation of her daughter, and killing of a newborn baby (which was probably already premeditated by him). It is worth remembering that his forgiveness was for all these crimes. Here, Fatma's dignity, violated before her family and society, was not within the interest of the court and the state.

5.3.2. Lifting the Painted Veil:[79] Robre and Her Father-in-law[80]

"Lift not the painted veil those who live call life," says Percy Bysshe Shelley, referring to life as an illusion that people are content with. So far, I have opened and removed the painted veil surrounding the family. In this section, by removing one more layer of the painted veil, I would like to convey the story and statements of a bride who was subjected to systematic abuse by her father-in-law while she was in a marriage union.

Robre was 20 years old. Six months after her marriage, she began to be harassed and raped by her father-in-law. We learn the details of her story after her husband killed his father due to his sexual abuse. Robre's father-in-law

78 *"Velhasıl babam Mahmut iptida hanemizde ve sonra tarlamızda cebren fiil-i şeni eylediğini ve ondan hamile kaldığımı ve muahharan doğurduğum çocuğu alıp bir tarafa götürdüğünü beyan ediyorum. Ve söylediğimi tasdiken bu mahale parmağımı basıyorum."* BOA., İ..DA.. 4-58 / 12 February 1869

79 This title is an adaptation of Percy Bysshe Shelley's poem "Lift Not the Painted Veil".

80 BOA., İ..MVL. 551-24722 / 18 April 1866

Milço raped her whenever he could stay alone with her. Milço used his paternal authority in the family at every opportunity to remain alone with Robre, and despite the warnings of Robre, her husband Kulu did not do anything to protect her. After the first rape, Milço threatened Robre with her life if she told anyone, and this threat succeeded in silencing Robre. But when the rape attempts continued, she told her mother-in-law Altun the situation. Altun was the first and only one to believe Robre. She stated the incident as follows:

> ...(*Milço*) got up and came to me, and when he attempted to do the indecent act, I made some noise, and even my mother-in-law heard about it and said, "What are you doing?" and both of us started to cry. He threatened to cut us with an axe. Upon this, my husband Kulu came. Although I told my husband the situation and explained it as it was, my husband did not believe me.
> And a few days passed. One night he came home again and slept with my mother-in-law, and after a while, he came to the room where I was and caught hold of me again. And while he was raping me, my mother-in-law heard and went out to inform our neighbors, Ruse and Layko, and they immediately came. And meanwhile, even my husband was watching him. He also came home, and at that point, the neighbors, my husband Kulu, and my in-law's mother walked in together and found my father-in-law on me.[81]

In her statements, Robre did not hesitate to tell all the details about her victimization. According to Robre's narrative, when her husband saw the situation with his own eyes, he wanted to kill his father at the time of the incident, but they prevented him. But later, Kulu killed his father for his honor at his first opportunity.

When they interrogated Kulu, he seemed shy about explaining what his father did to his wife. He said that his father used to send him to steal, and he used to beat him if he did not go. This was the reason that Kulu first stated related to the murder of his father. When we compare it with Robre and his

81 BOA., İ..MVL. 551-24722 / 18 April 1866

mother, we see that these two women were much more courageous and outspoken than Kulu in front of the court. As the questions continued, Kulu responded that he saw his father on top of his wife. However, throughout this case again, the interrogation proceeded in a way that would protect the paternity. There was a tendency in the interrogators to state society's moral codes. In this respect, they kept saying no father could do such things to his daughter-in-law and implied that she might be lying. Subsequently, they questioned the moral status of Robre and whether the father, Milço, did this act upon her invitation of her. However, when the court examined the possibility of a lie in Robre's statements, Robre put forward the community card and said, "ask neighbors if you don't believe me; they will tell you what kind of man my father-in-law was."[82]

In this case, neighbors and Robre's husband became aware of Robre's victimization thanks to the statements of mother-in-law Altun and the initiative she took in the last rape attempt. Altun started to talk about her husband by saying he was an evil man and blamed him for the disasters that happened to her family.

> Q: What kind of evilness did this Milço have? And what kind of actions did he take? Who made your hair turn grey, and why did his son Kulu shoot his father dead?
> A: Precedingly, my son İstaliko was dead. My husband, Milço, raped his wife. My son, İstaliko, heard about this issue, and he passed away due to the shame he felt. Even today, his wife, my daughter-in-law, cannot go out and see anyone in our village. This time we killed this Kulu. He (my husband) raped even this one's wife, and my son saw it, and since he could not bear it, he shot and killed him.[83]

These statements and the confession of Altun were an act of pouring out her heart. Expressing her desperation and the pain of her elder son, whom he lost due to the same issue, she tried to find a place for this tragedy in the public conscience.

82 BOA., İ..MVL. 551-24722 / 18 April 1866

83 BOA., İ..MVL. 551-24722 / 18 April 1866

As in Fatma's case, the threat that the father threw at the family members within the household was somehow responded to and pushed the family members into silence. But different from Fatma's story, the women of the house cooperated and looked for the opportunity to get the support of the locals. Of course, here, the experience of the other daughter-in-law and the death of her elder son, and despite the passing of time, her other daughter-in-law's current situation in society were enough reasons for the mother to take action.

One of the remarkable points here was that although his father had such a history with his brother's wife and he lost his brother because of his father's actions, Kulu refused to believe in his wife and did not break his father's word. This situation shows us how strong the father's authority in the family was. Neighbors' believing in the indecent acts of the father and forming an opinion against the father was faster than Kulu's. The mother rushed to her neighbors to catch Milço red-handed and to enable justice. So, it was not just state officials who acted as moral police; ordinary people used to report such situations by spying on society. In this context, the neighborhood appeared as a legal entity to observe the general morality and report any attempts that could violate it.[84]

As I mentioned earlier, sexual offenses were rarely stated as adultery or rape in court proceedings or other records. In other words, they generally use euphemisms to declare the crime committed. In this case, the Supreme Council of Judicial Ordinances summary stated that Milço constantly attacked the dignity of his daughter-in-law and wife. One night, he was even caught while performing the indecent act (*fiil-i şeni*).[85] Also, the details of Robre's statements were not included in this summary verdict. It only mentioned the last rape attempt witnessed by Kulu and other neighbors. Therefore, the moments that Robre witnessed only herself and her father-in-law were kept from the summary narration. But events seen by more than one person that could be related to the murder case were added to the narration.

84 Dror Ze'vi, *Producing Desire,* 138

85 "*Milço gelini ve kendi zevcesi Toyra'ya daima tasallut-ı itibar etmesinden ve hatta bir gece cebren fiil-i şeni icra ederken…*" BOA., İ..MVL. 551-24722 / 18 April 1866

Since both neighbors and his mother declared a similar incident about Kulu's brother and his wife, it was included in the summary as a piece of information belonging to the public. As a result, at the end of the lawsuit, Kulu was punished with the penalty of exposure and 15 years of hard labor. Initially, Kulu was put on trial with capital punishment for killing his father, but his sentence was reduced since he committed this crime to protect his honor. His mother also forgave him for blood money.

§ 5.4. Chapter Conclusion

In this chapter, I explored the alternative scenarios related to sexual crimes through the family members and their relations. People in the Ottoman provinces used rhetorical strategies in their interrogations to get the best out of the trial. In this respect, using honor as a keyword to state their victimhood was a number one strategy. They were aware of what they could achieve by using the card of honor, and the state discourse supported them in this regard.

Conflicts within the family affected individuals' perceptions and definitions of honor. When we consider the cases of Zade and Aynışah together, we see that marriage or marriage contract was not enough for everyone to regain the lost honor. For some, the wedlock created a clean slate, the beginning of an honorable life, but for others, it contributed to intra-familial conflicts. So, the concept of honor also had some relativity in itself, and it was easy for people to bend and break the definition of it depending on their self-interests.

The market value of the family was generally evaluated over women. The main motive in honor killings in which women were killed was to regain the family honor and social status that family members thought they had lost. The lost honor was such that the woman's death could only regain it.

Contrary to what was assumed, being married did not render women untouchable and to be in safe hands in social codes. In particular, women who got into the family through marriage could be potential candidates or sexual partners for the men of the family. Or they were some vehicle that could serve as revenge on their husbands. In this context, it turned out that the firewall the family provided against the outside was not as secure as it was assumed.

Illicit sexual relations were the most difficult to decipher within the closed walls of the family. Talking about a sexual crime in front of the court was a kind of honor struggle. But in this struggle, although women got the chance to speak about their victimhood, the domination over women in family relations and the strong patriarchal authority within the family were evident. The court's attitude was also in the direction of defending and protecting this potential patriarchal authority. When women's honor was at stake, and women demanded it from the authorities, patriarchal authority was a significant barrier that had to be overcome. Thus, the honor of the male members of the family, the family honor in general, and the social morals outweighed rather than women's honor. But in general, it is understood from their statements that women knew how to demand and protect their honor despite the patriarchal authority and the representatives of this authority in all areas of society.

It was also visible that the victims and defendants occasionally expressed their complaints with frankness and courage. Statements in the records such as "there is nothing in this, say it, don't be afraid" show that the courts provided an environment for the defendants and witnesses to speak as they wished. People took these opportunities to speak up about their guilt or victimhood.

But I would like to note here that although the private life presented in the court can be visited and observed, as Farge and Foucault say, it never showed its true face completely. "It stepped forward in disguise, cloaked in many colors by those who would defend it and those who would blacken it. It will not unmask itself to our overly curious and often distorted prying."[86]

86 Arlette Farge and Michel Foucault, *Disorderly Families*, 41

6

Juvenile Delinquent and Victim: The Children of the Empire

> *"Childhood has its own way of seeing, thinking, and feeling, and nothing is more foolish than to try to substitute ours for theirs."* – Author, *Epigraph Source*
>
> – Jean-Jacques Rousseau, *Emile*

Being a child was a phenomenon that varied according to the time and place, and the mentality related to it experienced a big change in the long nineteenth century. With the increase in the value given to the family, the importance given to the child and adolescent increased, and various definitions and arrangements were made for these concepts. Concerns about child welfare, a moral panic over the children, and discussions about their criminal status were new for the nineteenth century. This century was a period of the "discovery of childhood," in the words of Andre Turmel, which also initiated a systematic study of childhood.[1] In this respect, the nature of

1 Andre Turmel, *A Historical Sociology of Childhood: Developmental Thinking, Categorization and Graphic Visualization* (New York: Cambridge University Press, 2008), 2

the child, the best way to raise a child, education, and where childhood began and ended was a matter of debate over the years, and it also found a place in judicial discussions. With the definition of childhood, the situations of child victims and criminals were put on the table for possible amendments.

Before the nineteenth century, it was unthinkable for the state to interfere with the relationship between parents and their children. Regardless of religion and nationality, in most countries, governments considered the head of the family responsible for the general situation of family members and gave the head of the family ample rights over their wives and children. Even local communities were reluctant to put pressure on abusive fathers. In the nineteenth century, children increasingly kept the agenda of the state busy, and legal intervention in the family started to spread. In this sense, one of the common forms of action of the states was to recruit the idle young crowd by making them work or rehabilitate them and bring them back to society. For the states, the concern over children was more in the form of child anxiety and moral panic.

In addition to the changing perception of children and childhood, social questions were discussed due to industrialization and urbanization in Europe. There were arguments that the changes in the social and demographic structure undermined the morality of society. Therefore, the working class's vulnerable and sometimes dangerous position, especially the youth and children, required moral protection and various regulations.[2]

Rousseau's idea of the natural child and its impact on the intellectual world, the place of the child figure in romantic literature, the role of the child in the domestic ideal as a cultural norm, the position of the child in the teachings in the evangelical revival, and the emphasis on the innocence of the child instead of the original sin were the main building blocks for the developments regarding childhood in the modern sense.[3] Romantics argued

2 Els Dumortier, "Under Pressure? The Foundations of Children's Courts in Europe," in *Juvenile Justice in Europe: Past, Present and Future*, ed. Barry Goldson (London and New York: Routledge, 2019), 8

3 Harry Hendrick, "Histories of Youth Crime and Justice," in *Youth Crime and Justice: Critical Issues*, eds. Barry Goldson and John Muncie (London: Sage Publication. 2006), 4

that the child was born innocent and emphasized that youth should be kept separate from adulthood. Eventually, religious views emerged in the same regard, and the understanding of potential goodness in the child began to spread. However, this potential for goodness had to be directed in the right direction by the parents. The second half of the nineteenth century was also a time when it was understood that children and adults had completely different physiologies.[4] In this period, the perceptions that children were innocent and would be good people if they were brought up well were combined with their physical development.[5]

Another reason for the increased interest in children was the increasing number of juvenile crime cases. The reasons behind the juvenile crimes were directly related to the social, economic, and demographic changes like the growing population, industrial revolution, rapid urbanization, impoverishment due to its effect on rural and urban markets as a dimension of industrialization, and the revolts caused by the Napoleonic wars. However, in the political environment of the period, the children of the poor, not children in general, were a danger to the social order. In this context, the concepts of crime and criminality also expanded. What they used to see as a nuisance began to fall into a crime category.[6]

The importance given to children and childhood and the various regulations reflects the states' population-related policies. The quality and composition of the population became a significant concern, so regulations about child welfare, concern over infant mortality, and abortion increased.[7]

Also see, Hugh, Cunningham *Children and Childhood in Western Society Since 1500* (London and New York: Routledge, 2020)

4 Stephen Robertson, *Crimes against Children Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill and London: The University of North Caroline Press, 2005), 19 For a broad discussion on intellectual and cultural concerns regarding literature and sciences of childhood in also see Sally Shuttleworth, *The Mind of the Child: Child Development in Literature, Science, and Medicine, 1840-1900* (New York: Oxford University Press, 2010)

5 Stephen Robertson, *Crimes against Children*, 20

6 Harry Handrick "Histories of Youth Crime"., 5

7 For a discussion through a biographical text on childhood, education and social wellfare in Britain in the nineteenth century see Carolyn Steedman *Childhood, Culture, and Class in*

Thus, children's bodies became a political space where they discussed at which age they could marry, when they could be responsible for criminal activity or how to correct the ones involved in various crimes. During the nineteenth century, there were many regulations made in this regard in Europe. The child issue was one of the areas that needed to be tackled to alleviate the concern about the nation's future and race since children were regarded as an investment for the development of the nation-states. In this respect, educating the poor parents or taking their responsibilities, if necessary, occurred as a goal to strengthen the nation. Thus, the main concern for the children was shaped through their health and hygiene because the knowledge of children's health was valuable data related to national health.[8] Psychological and pedagogical approaches and concerns were also on the agenda. For example, various studies were carried out for young defenders in England from 1850 onwards, with reformatory and industrial schools opening. At the same time, laws were passed that restrict children from working in specific fields. With the Children's Charter in 1889, legal protection was provided for children, and as a more comprehensive law, the Children's Act was promulgated in 1908. These regulations strengthened the state's hand at the point of intervention in family life.

In early nineteenth-century America, even 7-year-old children could be tried in the criminal court. However, throughout the nineteenth century, they aimed for optimal child development with reforms such as kindergartens, child labor, compulsory education, and vocational training. The reformers felt it was necessary to separate the child from the adults and saw children as individuals who could be saved, developed, morally invested, and used for the nation's survival if the proper steps were taken. Rehabilitating children

Britain: Margaret McMillan, 1860-1931 (New Brunswick and New Jersey: Rutgers University Press, 1990)

8 Harry Hendrick, *Child Welfare England 1872-1989* (London and New York: Routledge. 1994), 104

became a priority instead of holding them accountable for their criminal behavior and punishing them.[9]

From the mid-nineteenth century onwards, juvenile justice had a momentum, and several acts were promulgated in Europe in this regard.[10] However, juvenile justice was not born in this period, but it took shape in the modern sense.[11] The characterization of children and young people as both vulnerable and dangerous groups also led to the establishment of juvenile courts with different names and different contents at different times. But a few common elements crossed borders: rescuing children and judging adults and children separately and institutionally. Although juvenile delinquency was not a newly discovered concept for this period, the modern juvenile justice system began to develop in Britain, Europe, and North America. The primary motivation behind this was interrelated. It was thought that keeping children with adults could corrupt children and lead them on the right track without corruption, and they felt it necessary to develop a justice system for children.

The inconsistency created by deciding whether a child was of age or not according to physical characteristics was obvious. However, this situation continued until the beginning of the twentieth century, when legal definitions considered the psychological and physical development of the child together. It is by that time that the legislators set a definite boundary for childhood.[12]

Towards the end of the eighteenth century, European countries began to issue the age of consent laws with the influence of Enlightenment thought on childhood. In 1791, the French Napoleonic Code determined the age of consent as 11. The age of consent used for both girls and boys were increased to 13 in 1863. Inspired by the Napoleonic Code, Portugal, Spain, Denmark,

9 National Research Council and Institute of Medicine, *Juvenile Crime, Juvenile Justice*, (Washington, DC: The National Academies Press. https://doi.org/10.17226/9747), 157, 3 October 2022

10 Heather Shore, "Becoming Delinquent? Rethinking The Long History of Juvenile Justice," in *Juvenile Justice in Europe: Past, Present and Future*, ed. Barry Goldson, (London and New York: Routledge, 2019), 33-34

11 Ibid., 25

12 Stephen Robertson, *Crimes against Children,* 22

and Swiss cantons set the age of consent as 10-12 and increased it to 13-16 in the second half of the nineteenth century. The age of consent in the USA ranged from 10 to 12. In 1875, England defined sexual intercourse with girls under 13 as a felony. At the end of the nineteenth century, under the influence of moral reforms, various protests were made to prevent the victimization of girls over the age of consent and prevent child prostitution. Thus, the age of consent was increased to 16 in England.[13] With these age increases, the scope of the concept of childhood has expanded.

The 1810 French Penal Code was also a source of inspiration for many countries and included special provisions for legal minors. The code contained universal principles for juveniles and regulated how and in what way children were punished. The code had set the legal majority age at 16. The French Penal Code remained in force in the Netherlands and Germany for a long time. In rural Wallachia, they adapted the French Penal Code and enacted The Criminal Code and Procedures in 1852. The new code decreased the age of the majority from 25 and defined minor children as 15 years of age or younger.[14] For minors found guilty, responsibility rested with their families, and they were not punished; instead, they were kept under the close watch of their families. If they had no families or were homeless, they were kept in a monastery for three months to 3 years for their moral training. Thus, the new code determined the upper age limit for childhood as 15 and the transitional phase of youth under 25. However, in 1865 the code defined under 21 as a youth.[15] Similarly, in Serbia, in the civil code that came into force in 1844 and which is still in force, everyone under the age of 21 was

13 Stephen Robertson, "Age of Consent Laws," in Children and Youth in History, Item #230, https://cyh.rrchnm.org/items/show/230 (10 October 2022)

14 According to the previous code (Guide to Law) of rural Wallachia, those under 25 were considered minor, and there were three degrees of guilt and punishment: those under seven years old had no criminal liability, the 10–14-year-olds had some degree of liability, and up to 25 years old had reduced penalties. See Nicoleta Roman, "A World of Conflicts: Youth and Violence towards Parents in the Family in Rural Wallachia, 1716–1859," in, *Children and Childhood in the Ottoman Empire: From the 15th to the 20th Century,* eds. Gülay Yılmaz and Fruma Zachs (Edinburg: Edinburgh University Press, 2021), 155

15 Nicoleta Roman, "A World of Conflicts", 156-157

accepted as "youth age," and the youth age category also included small children (under 7), ungrown children (7 to 14 years old) and grown-up children (14 to 21).[16]

The extension of the age of majority was also related to education and state mobilization. Children had to receive a formal education in standard classrooms for state hegemony. One way to achieve this was to prolong the childhood period, and in the process, the influence of state patriarchy was felt in all its forms. Inspired by the Napoleonic code in Egypt, the age of the majority was determined as 21, but this was a complex process. The age of majority was previously decided on whether or not to reach puberty, as in the Ottoman Empire. As a result of the reforms in the nineteenth century, Hanafi fiqh became increasingly dominant, and accordingly, the age of majority was adopted as 15 years old. It was later changed to 18 and then 21. Established in 1896, Majlis al-Hasbiyya supervised the property matters of minors in particular. In cases where the minor was deemed incapable of being self-sufficient, the age of 21 could be extended to 25 by both the council and the legal guardian. [17]

The responsibility for the welfare of the children was also on the agenda of the Tanzimat period. Throughout this period and after that, the perception of children and the meaning of childhood underwent significant changes among the state elites. It also found a voice in the intellectual world, and many magazines were published in this regard. The period newspapers wanted to create a contented, pious, acceptable Ottoman citizen who obeyed all kinds of political and social authority and power, starting with the family. In this context, obedience to the husband, obedience to the father, and obedience to the sultan were essential premise points. Women were seen as the first to be responsible for raising moral individuals.[18] They believed that solving the

16 Naoum Kaytchev, "Children into Adults, Peasants into Patriots: The Army and Nation-Building in Serbia and Bulgaria (1878–1912)," in *Childhood in Late Ottoman Empire*, ed. Benjamin C. Fortna (Leiden and Boston: Brill, 2016), 116

17 Sonbol, Amira "Mixed and Other Courts: Women and Modern Patriarchy" in *Beyond the Exotic: Women's Histories in Islamic Societies*, ed. Amira Sonbol (Cairo: The Amrican University in Cairo Press, 2006), 207-209

18 Eray Yılmaz, *Türkçe Çocuk Gazetelerinde Osmanlı Kimliği (1869-1908): Ahlak,*

child problem through education would benefit society. Education was related to not only academic education but also physical education. The child's physical condition was essential for the nation's general health profile and future. In this context, criteria such as proper posture, ideal height weight, growth rate, adequate nutrition, and adequate sleep were considered. However, what was new for the Ottomans in the nineteenth century was not the child's discovery but the connection they established between raising children, education, and social reform. The most striking aspect of this new connection was their belief that for society to be good, the child's health, character, and knowledge must also be good. This new perception was something they developed internally rather than imported from the west.[19]

In this new modern period, although educated or well-to-do, the families became more child-oriented and more caring, it is not possible to say the same, especially for the village population in the Ottoman provinces. As Stone states, "For those without property, security or prospects, children were often an unmitigated nuisance"[20]. In such situations, children often became the first family member to be sacrificed. Moreover, children were generally regarded as small adults who were expected to contribute to the workforce at home or in the field and were to get married whenever deemed appropriate by their families.

Children were quite visible in the nineteenth century. Children often mingled with adults on the street, in the workshop, or on the farm and were involved in communal life more rapidly in rural areas than in towns.[21] However, their visibility in social life could not find the voice they deserved in historical studies, sometimes due to lack of data and sometimes not worthy of research. The cases I will examine below show that the children somehow managed to take the agency of their own lives into their hands and developed

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İlim, Dil, Tarih ve Coğrafya (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2020), 296

19 Colin Heywood, "Ottoman Childhoods in Comparative Perspective," in *Children and Childhood in the Ottoman Empire: From the 15th to the 20th Century,* eds. Gülay Yılmaz and Fruma Zachs (Edinburg: Edinburgh University Press, 2021), 35

20 Lawrance Stone, *The Family,* 471

21 Colin Heywood, *Childhood in the Nineteenth Century France: Work, Health and Education Among the 'Classes Popularities* (Cambridge: Cambridge University Press, 2002), 1-2

various escape strategies from their situations. My research data show that the children present in the court were generally victims of early-age marriage or parental mischief. In this respect, they were mainly murdered by their fathers and spouses. However, there were also cases where children stood on trial as murderers or witnesses.

The perception of the child as dependent and needing care and protection was an obstacle to the attribution of agency to them.[22] In this respect, children will stand out as active agents in this chapter, and it will show how they were active participants in shaping society and shaped by society. However, as Turmel states, I would like to underline that the child as a sociological subject is a relation rather than the idea that agency is completely individual.[23] In this chapter, I will first examine the borders of childhood according to Islamic law and new penal regulations. Then, through the court registers, I will discuss infanticide and abortion and analyze child profiles as murderers and victims. In this regard, early child marriages and parental mischief will be the fundamental concepts of this section.

§ 6.1. Minors in the Islamic and 1858 Penal Law

Discussions about the age of legal majority in the Ottoman Empire became quite complex when combined with Islamic law. But in any case, the situation of individuals under eighteen was discussed. By the age of eighteen, the individual was already in adult status.

In Islamic law, different stages of childhood were defined according to a process from fetus to independent adult. In the first stage, the fetus was not regarded as a person, so it did not have a legal guardian, and parents had limited rights and responsibilities. If the fetus was stillborn from an injury or assault on its mother, a diet called *gharra* was paid. But if the fetus survived a certain amount after birth and died, the killer had to pay for the entire diet since it is called a human. In this context, if the fetus lived after birth, it was considered a child.[24]

22 Turmel, *Historical Sociology of Childhood,* 43

23 Ibid.

24 Judith Tucker, *Women, Family and Gender,*116

In the second stage, that of caretaking (*hidane)*, the child and its needs were defined according to gender. The difference in the age of puberty between girls and boys was also valid for this level of caretaking. Accordingly, boys were considered ready to leave caretaking at seven, while for girls, this period was nine years old. The reasons for this difference were not explicit, but generally, it was defined according to the signs of physical maturity. So, the caretaking period for girls ended when they started showing signs of sexual development, which was interpreted as being ready to be a wife. As for boys, this period ended when they could take care of themselves.[25]

After the caretaking period, the child was evaluated in the puberty phase. According to Judith Tucker, "Puberty marked the most dramatic shift in the child's status. A physically mature *(baligh)* adolescent *(murahiq)* was considered in many respects a legally competent adult."[26] According to the Hanafi tradition, the age of puberty could begin as early as the age of nine but no later than fifteen for girls and at the age of twelve for boys. So, their legal liability was defined according to their physical signs of maturity rather than a fixed age.[27]

In the Ottoman Empire, there was an ambiguity about where childhood started and when it passed into adolescence and adulthood. This was so for two reasons: first, because it was decided based on physical characteristics, and second, the lack of records illuminating this subject.[28] However, the administrative needs of the state were a determining factor for the age of childhood, adolescence, and adulthood. Therefore, in the classical period, the categorization of the individual as a child was done with fluid constructions rather than static formulations.[29] The boundaries of childhood and adulthood

25 Ibid.,118

26 Ibid., 119

27 For further discussions related to the status of children in Islam see Avner Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society*, (London: Palgrave Macmillan, 1992)

28 Colin Heywood, "Ottoman Childhoods," 32

29 Cahit Telci, "Childhood in the Peasant Militia Registers and the Age Boundaries of Adolescence," in *Children and Childhood in the Ottoman Empire: From the 15th to the 20th Century,* eds. Gülay Yılmaz and Fruma Zachs (Edinburg: Edinburgh University Press, 2021), 66; For various stages of childhood in Islamic law also see Eyal Ginio,

had to be set, especially when it was necessary to finance and organize the military.[30]

The age of puberty in the nineteenth-century Ottoman Empire varied between thirteen and twenty years old, according to different regions. For this reason, children were recorded in the census without specifying their ages. The estimated age range related to puberty, which varied from child to child, lost its function for the Ottoman Empire in the second half of the nineteenth century, and new regulations were made which also eliminated the gender difference for children.

There were four articles for children (as criminals or victims) in the 1858 penal code: 40, 197, 205, and 206. Various regulations were introduced to these articles in 1874 and 1911. Thanks to these regulations, we can monitor changes in the state's definition and perception of children. According to article 40, "an offender who has not attained the age of puberty was not liable to the punishments prescribed for the offense which he had committed"[31] Here, the age of puberty was (supposedly) defined according to the sharia law. Article 985 of Mecelle stated that "the time of puberty is proved by the emission of seed in dreams and the power to make pregnant and by the mensural discharge and power to become pregnant."[32] Approximate age range for this was 12 for males and 9 for females.

The requirement to determine the age of puberty also became a pressure factor for international politics. Accordingly, a record from 1862 shows that the British embassy asked the government when puberty began and if it was

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"Childhood, Mental Capacity and Conversion to Islam in the Ottoman State," *Byzantine and Modern Greek Studies* 25 (2001)

30 Telci observed several trends in the peasant militia registers of the fifteenth and sixteenth centuries. According to the first, the officers recorded the age group of three to seventeen. Except for Iznik, they did not register children under three in the fifteenth-century records. They also did not enter data on those over the age of seventeen. The most recorded group was between the ages of three to fifteen. The second trend was the widening of the age scale from the 1540s and recording the age group of one to fifteen. According to the third trend, children aged three to seven started to enter the census books more frequently. Ibid., 63

31 John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, 27

32 Ibid.

valid throughout the empire.[33] Moreover, even though there was a statement in the law related to puberty, some hesitations were experienced in implementation, as this statement was not clear enough. For example, the necessary treatment to be made to a child named Osman Hasan, who was 12 years old and had not reached puberty, became a subject of correspondence among the authorities.[34] Osman Hasan stabbed and murdered certain Durmuş Cafer, but since he was a *mürahik*[35], they asked for further information about his trial. Unfortunately, the court file related to this case did not exist other than this correspondence, and we cannot figure out the details of the case.

In 1874, an amendment was made to the penal law, and the Ministry of Justice stated that males and females who did not complete the age of 13 years were to be regarded as infants. Offenders over 15 were deemed *murahiks* if their puberty could not be established.[36] In this regard, after 1874, children who did not complete the age of 13 years were regarded as lacking the power to distinguish right and wrong, even if they had reached puberty. But the ones over 15 were to be considered as determining right and wrong even if they had not reached puberty.[37] So, this legal regulation omitted the gender discrimination between girls and boys. When the penal code was prepared, children were included in the law only according to the category of puberty. However, with this regulation, an age definition was made, and the age range, determined separately and approximately for girls and boys in sharia law, was abolished. The age of criminal liability was thus stated as having completed 13, and the law protected those under 13.

The debates on puberty continued during the period of union and progress. Especially with some legal arrangements made in this period, the issue of puberty was renegotiated. In this respect, article 40 was further repealed in 1911 and stated that children who did not complete the age of 13

33 BOA., HR. SYS. 1236-20 / 19 April 1862

34 BOA., MVL. 1030-65 / 25 December 1866

35 *Mürahik*: A boy who is twelve years old but not reached puberty yet. For girls it is used as *mürahika*.

36 John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, 28

37 Ibid.

did not have criminal liability. Their legal guardians were responsible for them in this respect. They had criminal responsibility if they finished 13 but did not complete 15. In this case, if they completed the age of 15 but did not complete 18, they were supposed to be imprisoned for self-reformation.[38] The final arrangement made in article 40 turned into a negotiation area between the state and the subjects. In hot regions, due to the early puberty of children, there were various requests to define the puberty age as 15 and to change the age of crime from 18 to 15 again.[39] Due to the amendment made by the parliament, the age of criminality, which increased to 18, led to an increase in crime in some hot regions.[40]

According to article 197, "whoever does the abominable act to a child under eleven years of age is punished with the punishment of temporary imprisonment for not less than six months." According to the amendment made in 1874, those who did not complete the age of 13 were defined as infants, and when the outrage was applied to those under 13, even if they had consent, it was to be punished.[41] It was stated that those over the age of 13 but did not complete 15 would be punished according to Article 40 if they committed the crime of rape. This article was also repealed in 1911, stating that "whoever does the abominable act to a child who has not completed the of fifteen years is put in kyurek temporarily." However, it was added that if this act was carried out by force and violence, the penalty to be given could not be less than seven years. Thus, with the change in 1911, the age of the victim, which was stated as under 11 in the first version of the article, was changed to 15.[42]

The state's concern over the population also found voice in the penal law related to the situation of infants. In this respect, changing infants became a crime. It was defined in article 205 as follows: "Those who dare infamies such as changing an infant by putting another one in its place or representing a

38 Ibid., 29

39 See, BOA., DH. İD.. 63-34 / 20 December 1913 and DH. EUM.MTK. 13-40 / 29 January 1914 and DH. HMŞ. 17-62 / 28 December 1913

40 BOA., DH. HMŞ. 30-58 / 20 December 1913

41 John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, 149

42 Ibid., 150

child as having been born from a woman who has not given birth to it are imprisoned for six months to three years."[43] Similarly, article 206 stated three months to one-year imprisonment of those who carried away a child that had not reached the age of puberty.[44] With the regulations coming to this article, the age was determined as 15 as well. The term puberty, which was vague in terms of age in the previous regulation, was replaced by the age of 15 and became definite.[45] So, as the years progressed, the state did not try to identify childhood by puberty and physical characteristics; on the contrary, it tried to define the boundaries of childhood by introducing an age standard.

Another aspect that we had to consider regarding the legal regulations towards children was several new social and economic opportunities affecting the structure of families and the morality norms.[46] As Mary Odem emphasizes age regulations should not be considered independent of the moral context. The legislation aimed to bring moral protection and undermine the double standard of morality.[47] These legal arrangements should also be evaluated considering the participation of children in forced labor in the nineteenth century and their increased visibility in the public sphere. Various work environments provided opportunities for these wage-earning children to socialize and have a life experience independent of their families.[48] It would

43 Ibid., 159

44 Ibid., 159

45 If the kidnapped child is male and has not completed the age of 15, the offender's sentence is specified as 1 to 3 years. If the kidnapped child is a girl, a temporary hard labor sentence was deemed appropriate. For those who have completed the age of 15, a prison sentence of 2 to 3 years is specified, regardless of gender. See, John Bucknill and Haig Utidjian, *The Ottoman Penal Code*, 161

46 Mary Odem *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill and London, The University of North Caroline Press, 1995), 3. This study also comprehensively analyzes the Age of Consent movement and controversies that began in the United States in the 1870s. On this subject, also see, Stephen Robertson, *Crimes against Children Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill and London: The University of North Caroline Press, 2005)

47 Ibid., 8

48 See Didem Yavuz Velipaşaoğlu, "Pastimes for the Child Breadwinners: The Sanitisation and Recreation Facilities of the Hereke Factory Campus," in *Children and Childhood in the*

be incomplete and misleading to think that a professional work environment outside the domestic area, independent of families and free from neighborhood pressures, did not change or affect the experience of childhood and adolescence.[49]

§ 6.2. Murders Concerning the Children

Murders against children were easy to commit and difficult to detect. [50] As Randolph Roth points out, children could be abused, beaten, or terrorized as long as their parents did not leave a trace or there was no one around to give information about the situation of the children.[51] In addition, the lack of data and difficulty of accessing data, especially for history studies, was another challenge to detect these murders.

According to my data sample, the number of murders concerning children, either as murderers or victims in the family, was thirty. Only one of the children mentioned in the figures below was 16 years old; the others were 15 years old and below.[52] Children featured on this list not only as offspring but also as spouses. Mostly, fathers and young girls who were married to boys who did not reach the age of puberty committed these murders. Stepfathers/mothers and married little girls followed them. The main motive for the murders committed by the fathers and stepfathers was financial reasons. Young girls killed their child husbands because of marital conflict or to marry someone else.

Ottoman Empire: From the 15th to the 20th Century, eds. Gülay Yılmaz and Fruma Zachs (Edinburg: Edinburgh University Press, 2021), 280

49 Mary Odem *Delinquent Daughters,* 2-3

50 Randolph Roth "Child Murder in New England," *Social Science History* 25, No. 1, Special Issue: Bloody Murder (2001): 101

51 Ibid., 102

52 Her parents roughly stated the age of the 16-year-old girl, and there was a possibility that she was 15.

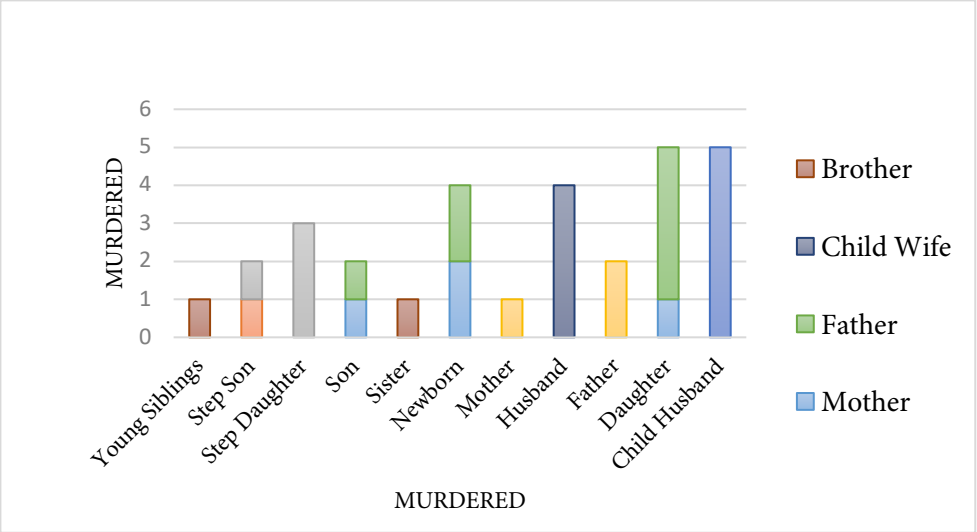

Figure 6.1 Distribution of Murdered Child for each Murderer Family Member

The biggest victim of the murders concerning the children was daughters and "child husbands" whom their wives killed. The age of these murderous wives was generally between 18 and 20. The striking reason for these murders was that these “child husbands” could not fulfill their husbandly duties because they had not yet reached the age of puberty. The logic behind these marriages was generally related to families' economic concerns. In this respect, women marrying these child husbands were supposed to contribute to the household economy through fieldwork or house chores and enable the continuity and wellbeing of the family.

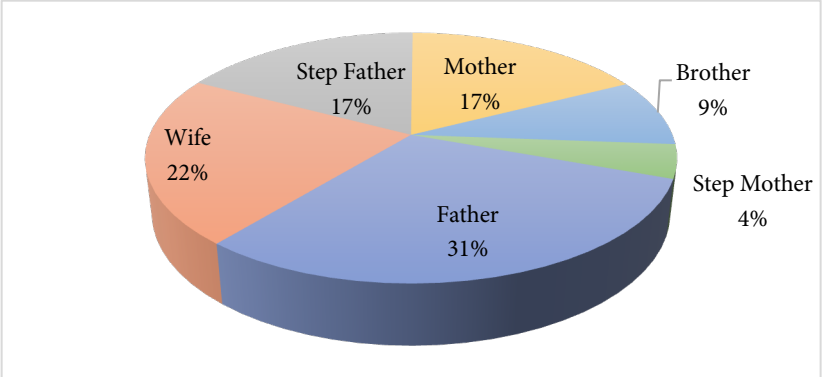

Figure 6.2 Murderers of Children

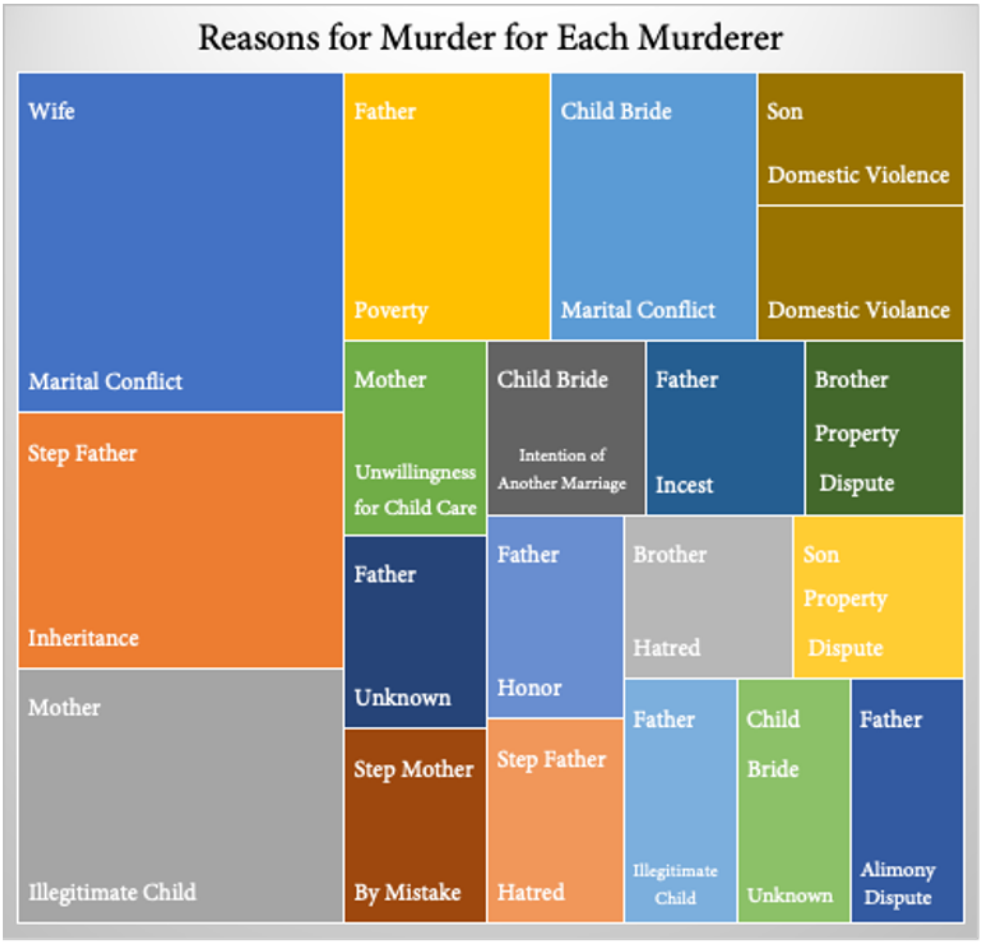

Figure 6.3 Reasons for Murder for Each Murderer

In the murders of daughters and sons (including stepsons and stepdaughters), which had another high rate in the chart, reasons such as poverty and property/inheritance issues were at the forefront. In murders where fathers are murderers, the reason was usually poverty or reluctance to care for children due to financial reasons. Stepfathers committed murder mostly due to their inheritance-sharing concerns. The murders committed by the mothers were aimed at newborn babies born from illegal relationships. Moreover, as I will discuss below, illegitimate children always faced the possibility of death regardless of age.

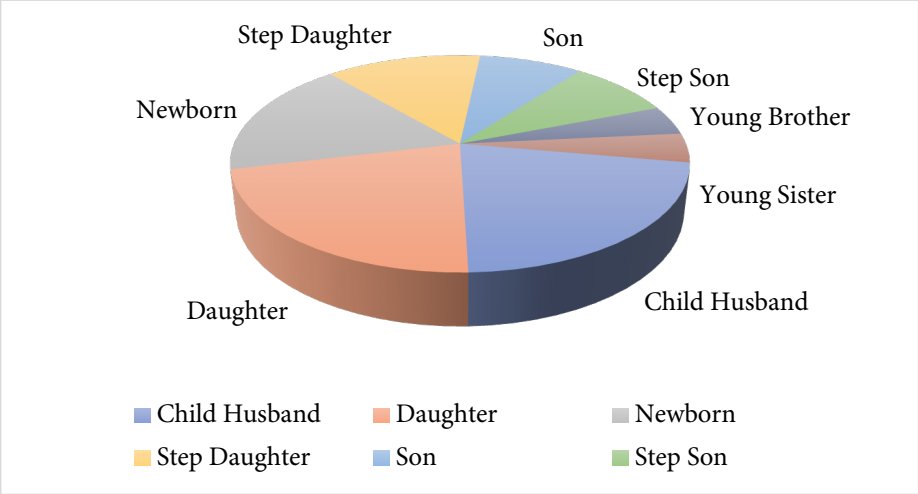

Figure 6.4 Victim Children

Almost every case in the juvenile criminal category in the archive was full of surprising and interesting details. In the interrogations of the children accused of murder and went to court, they were approached with a paternal attitude and tried not to be frightened by the court officers. This approach eased the way for their confessions.

6.2.1. Infanticide and Abortion

Infanticide was defined as the deliberate murder of newborn babies. Various motives behind infanticide include shame and isolation, economic factors, intentional or malicious intent, and psychological situations.[53] Babies born outside the marriage union were regarded as a "dishonor" to the family and considered dangerous and harmful to the family economy and social order. In this sense, the well-being of society and its morality were more important than the baby's well-being or living. Infanticide cases mirrored distorted familial and social relations, and it was thought that these malformed relations could be prevented from coming to light with the destruction of these babies.

53 Anne Marie Kilday, *A History of Infanticide in Britain: C. 1600 to the Present* (Hampshire: Palgrave Macmillan, 2013), 153

Courts had an interesting application in pre-modern Europe regarding infanticide. They thought that it could not be infanticide if the mother were married.

What made the infant's death suspicious was, therefore, whether it was legitimate. When married mothers committed this crime, there was always the possibility that it would be considered an accident.[54] Since it was difficult to distinguish between stillbirth and infanticide, the marital status of the mother and whether she hid her pregnancy were essential criteria for punishment. For this reason, very few infanticide cases by married women were recorded in courts in the pre-modern period.[55] The delinquency of infanticide by married women was so shocking that it was thought that it could only be the result of insanity or mental illness. There was a tolerance towards men who were tried for this crime, which was never shown to women. However, for example, in England, in the nineteenth century, it was decided to hold fathers more responsible for their children born illegally to deal with infanticide. Thus, legal regulations came up to find a solution for this crime.[56]

According to Balsoy, one of the reasons for the occurrence of cases in Europe was that the mother could continue working. In the case of Western Europe, the economic and social transformation, particularly in the seventeenth and eighteenth centuries, affected vulnerable women working in factories and created a context for infanticide.[57] Although, due to the peculiar condition of the Ottoman economy, we cannot talk about such a

54 Margaret Brannan Lewis, *Infanticide and Abortion in Early Modern Germany* (London and New York: Routledge, 2016), 7

55 Ibid., 65. For a comparative perspective also see, Simone Caron, "'Killed by Its Mother': Infanticide in Providence County, Rhode Island, 1810 to 1938," *Journal of Social History* 44, No. 1 (2010)

56 This period also witnessed the all-time high numbers for infanticide cases in Britain and this provoked the first moral campaign regarding infant deaths. See, Annie Cossins, *Female Criminality: Infanticide, Moral Panics and the Female Body* (London and New York: Palgrave Macmillan, 2015), 2-4

57 Gülhan Balsoy, "Infanticide in Nineteenth Century Ottoman Society," *Middle Eastern Studies* 50, No:6 (2014): 977

transformation as women joining the labor force, it is still possible to see similar patterns.

The practice of infanticide crossed the boundaries of religion and geography, and social and economic factors significantly impacted these murders rather than religious concerns. In this respect, the Ottoman example of infanticide cases had similarities with other historiographies. So, to address the issue from a broader perspective, we need to take the analysis of infanticide out of the religious axis.[58]

There was no specific terminology used for infanticide in the Ottoman Empire. Concepts like *idam-ı sabi*, *itlaf-ı mevlud*, and *katl-i velid* were used, but these concepts were not specified in the law.[59] Although there was a legal regulation on abortion, there was no regulation on infanticide. The penal code of 1858 evaluated the deaths of newborns and children in the same category as other murders. As an aggravating factor, the crime of not informing the government of the deceased and burying the body secretly could also be added to the penalty. Still, I did not encounter such a situation in the examined cases. So, for infanticide, the murderers were tried under Article 175 and with capital punishment within the scope of premeditated murder. But the files I studied show that no one was sentenced to death for this reason. There were even statements in the final decision of the Council of Judicial Ordinances stating that they were pardoned from death for committing this crime because of their shame.[60]

Remarkably, few infanticide cases were reflected in the court in the date range I searched.[61] I believe such cases were handled secretly due to prohibitions and measures. The class dimension in infanticide cases was influential in their visibility in public. Those recorded at the court were

58 Ibid., 980

59 Ibid., 978- 979; For a discussion on infanticide and abortion in classical Islamic thought see Avner Giladi, *Children of Islam,* 108-115.

60 See, BOA., İ..DA.. 11-352 / 21 October 1872; BOA., İ..DA.. 13- 485 / 18 February 1874; BOA., İ..MVL. 585-26335 / 20 March 1868

61 Due to the restriction in my research date range, the number of cases I could detect was four. But in this context, for a study with a larger sample see Gülhan Balsoy, "Infanticide in Nineteenth Century Ottoman Society"

generally from lower classes. However, this did not mean such things did not happen in the upper classes. It was happening, but the possibilities to cover it up were greater. Moreover, the divide between urban and rural places also made a difference in recognizing infanticide cases. For those living in rural areas, it was harder to conceal the crime when the baby's body was found.

Infanticide was generally committed to avoid humiliation from an illegitimate pregnancy. In this sense, the link between shame and infanticide was obvious. In the cases I examined, infanticide was mostly committed because of extramarital sex and incest. Infanticide and also abortion were gendered crimes that were generally attributed to and suspected of women in terms of intent and execution. Also, it was brought to light mostly by them.[62] However, although infanticide was a gendered crime, the same was not true for its victims. So, these babies were not killed because of their gender. In fact, in most cases, no importance was given to the gender of the baby.

Despite the numbers that show mothers were the leading criminals, the archival data suggests that fathers were also involved. Mostly, gossip and rumors circulating, or a body found brought the men to court on this issue. Still, it was hard for women to make fathers confess it. In infanticide cases, female criminals generally appear as somewhat isolated and solitary figures.[63] Poor and single women without social security and support were the foremost perpetrators of these crimes and they were alone in the court while facing the sentence. However, the case of Emine that I will discuss below and women in a similar situation showed that although these women experienced sexual intercourse, pregnancy, and childbirth privately, their statements in court addressed a much wider society emotionally.[64] The following statements also

62 Deborah A. Symonds "Reconstructing Rural Infanticide in Eighteenth Century Scotland," *Journal of Women's History* 10, No: 2 (1998): 74; Margaret Brannan Lewis, *Infanticide and Abortion*, 7

63 Dana Rabin, "'For the Shame of the World and Fear of Her Mother's Anger': Emotion and Child Murder in England and Scotland in the Long Eighteenth Century," in *Honor Violence and Emotions in History*, eds. Caroline Strange, Robert Cribb and Christopher Forth (London and New York: Bloomsbury, 2014), 82

64 Ibid., 70

shed light on the emotional expectations and movements surrounding these cases.

Emine was put on trial for murdering her newborn baby. The official court record stated that although she was a widow for four years, she gave birth to a baby girl and murdered her with a cut from her abdomen. Based on this, the court case took place between Emine and Mehmet Ali, whom she claimed to be the baby's father. Mehmet Ali was also her son-in-law's brother, so they had a kinship connection. Emine claimed that Mehmet Ali and his mother, Fatma, had pressured her to kill the baby. However, since Emine could not prove this claim, neither Mehmet Ali nor his mother, Fatma did not receive any punishment:

> Q: You gave birth to a child the other day. How was it?
> A: I had a baby from Onbaşıoğlu Ali, and (*she*) was born.
> Q: What happened later?
> A: Then I said what should I do this? I said I had no face left to go public. That Mehmet Ali said, do whatever you want to do *(with)* this baby. Then the baby was born with a midwife Hadice Hatun . . . Emine Hatun sat next to the baby until the morning and then brought her to me. I cut over her chest with a small knife, and *(she)* shouted once. I took her from there and threw her into the wood.
> …
> Q: Why did you perish this innocent? Tell the truth.
> A: I did this job (committed murder) because of the pain I felt and the shame I felt. That is to say, I did this due to the thoughts of ending my life. [65]

As I mentioned above, Mehmet Ali and Fatma Hatun did not receive any punishment at the end of the trial. It was remarkable that despite the baby girl's death in such a way, his father was not determined. Moreover, Emine showed Mehmet Ali persistently and consistently as the father and instigator. In such a case, the statements of the people or Emine's other children and son-in-law could be consulted. But they were not. The silence of the village was

65 BOA., İ..MVL. 585-26335 / 20 March 1868

also quite remarkable in this respect. A rumor among the villagers about the perpetrators was quite likely when there was an illegitimate relationship and a child, but this was not considered. This silence suggested a probable collaboration between the villagers and Mehmet Ali. Emine had no one other than her children and her blind mother. I think her desolation of her had an impact on this trial.

Although Emine was put on trial with capital punishment, eventually, she was sentenced to five years in prison and was not exposed due to her particular condition. Emine's punishment was light compared to similar crimes. Her execution was not deemed appropriate due to her lack of reason and shame. However, this issue of mental deprivation came to the fore in the verdict of the Council of Judicial Ordinances, not in the interrogation protocols. Unfortunately, the available documents did not adequately answer what made the appellate court consider mental deprivation.

In some cases, illegitimate babies were killed by their fathers. In such cases, fathers accepted or rejected extramarital affairs according to the extent of the illegitimate relationship. The declaration of remorse for the illegal relationship could be a mitigating reason for the sentence to be given at the end of the trial. A mother, Garkaliye Hatun, separated from her husband four years ago, was working in a garden, and she got pregnant by a certain Kosto, who was also a worker in the same garden. As soon as the baby was born, Kosto killed her.[66] The remarkable thing in the court records of this case was that although she gave birth to an illegitimate child, no accusatory words were used against Garkaliye Hatun. In addition, following sharia law norms, the court used the expression of "Garkaliye Hatun's child" to address this baby born out of wedlock, although his father was known.

Kosto was sentenced to death for contemplating this murder, but his sentence was commuted to 15 years of hard labor. As the reason for the reduced sentence, it was stated that Kosto committed this murder because he was ashamed of the discovery of the crime of adultery he committed.[67] I think

66 BOA., İ..DA.. 13- 485 / 18 February 1874

67 *"Merkum Kosto fezahat-ı (rezillik) zinanın şuyuğundan ihtirazen (çekinerek) bu fiili irtikap etmiş olduğuna"*

that the fact that the deceased baby was his child also influenced this reduction in sentence.

A remarkable point in the final punishments in these infanticide cases was that the state did not want these children either. When the killers put forward reasons such as being ashamed of society and the family, this reduced the sentence they would receive. In the reasoned decision of another infanticide case, it was stated as follows: Hadice had to be executed because she had planned this murder. However, since she was married and her honor belonged to her husband, and she had committed this murder hesitantly (or embarrassed), her sentence was reduced to 15 years of hard labor instead of capital punishment.[68]

The expression of sentence reduction in this and other cases' court records in this way recalls the reduction of sentence in honor killings. Although the reduction in honor killings was explicitly written in the law, we can talk about a covert implication of the state here. In other words, the state seemed not to be bothered by the death of these illegitimate babies. In addition, although the state took responsibility for the care of illegitimate children, it was hesitant to identify these children's fathers or impose responsibility on them. This was another manifestation of the acceptance of sharia law norms by society and the state.

The state had a different agenda, especially for infants whose birth parents were unknown. It did not leave the abandoned infants to their destinies and acted as a mediator to find a suitable place for these newborn babies nearby the volunteer families. Children three or four days old or older who were left at the gates of the mosques or bathhouses were handed over by the government to willing mothers who could nurse and take care of them. The government paid a monthly salary of twenty piastres per child for nursing. However, because this salary was not sufficient for the care of the children, those who received the children wanted to return them to the government. Accordingly, to avoid this situation, it was decided to raise the salary of twenty piastres to fifty piasters.[69] Moreover, in the following years, the state allocated a monthly salary of thirty piasters to those with more than four children

68 BOA., İ..DA.. 11-352 / 21 October 1872

69 BOA, İ..MVL. 519-23345 / 23 October 1864

through provincial funds. However, it was reported that those who were well-off and could take care of more than four children also demanded this salary on the pretext that they were in need. Thinking that this could burden the state treasury, they asked for more attention in allocating the wages.[70]

Another issue in which the state had a say about the babies to be born was abortion. In fact, in the nineteenth century, abortion was one of the areas where an observation could be made related to the increasing importance given to the population. Selçuk Akşin Somel states that although Islamic law gives women more space for abortion, we cannot say the same for the Tanzimat period. Accordingly, in classical Hanafi fiqh, there is no problem with abortion until the first 120 days. However, there were concerns about the widespread application of abortion as part of the administration's population policies after the Tanzimat.[71] In line with Somel, Ruth Miller also claims that the regulations in this period were related to population decline. The fear of a declining birth rate was associated with the fear of the disappearance of nationality.[72] The Ottoman Empire and European countries fought relentlessly against abortion in this context. The fear related to the fall in the nation's birthrate, or the worry of the debauched population, was associated with the nation's fall. As a result, the womb of women became a public and political arena.[73] The penal code of 1858 regulated the criminal sanctions for abortion in articles 192 and 193. Accordingly, anyone who knowingly or unintentionally caused a miscarriage would be punished. In this context, various measures were taken for pharmacists who sold drugs for abortion or midwives who had other practices.

As Gülhan Balsoy points out, abortion was an intimate issue, so it is difficult to find a first-hand statement of its existence especially due to the

70 BOA., İ..DH.. 1214-95051 / 11 February 1889

71 Selçuk Akşin Somel, "Osmanlı Son Döneminde Iskat-ı Cenin Meselesi," *Kebikeç* 13 (2002): 68, 76. Also see Tuba Demirci and Selçuk Akşin Somel, "Women's Bodies, Demography, and Public Health: Abortion Policy and Perspectives in the Ottoman Empire of the Nineteenth Century," *Journal of the History of Sexuality* 17, No. 3 (2008)

72 Miller, Ruth, *The Limits of Bodily Integrity,* 15

73 Ibid., 85

very thin line between abortion and miscarriage.[74] Unfortunately, due to a similar difficulty with the data at hand, statements that could mirror this issue were indirectly included in the court records. The limited data at hand, as Balsoy states, are insufficient to make a definite conclusion about who prefers abortion, why and how, and to reach generalizations.[75] However, in the statements about abortion that I have seen indirectly in the records of the *nizamiye* court, it is prominent that abortion was resorted to because of getting pregnant due to illicit relations. According to the data, there was no conflict in the family due to the woman's abortion preference. Abortion was applied to remove the evidence of the illicit relationship. Still, this data is insufficient, and it would be misleading to generalize about Ottoman society. It is also very likely that abortion was preferred due to poverty and the concern of being unable to care for the baby.

In a document dated 21 January 1891, cases of *iskat-ı cenin* in some parts of the state were discussed.[76] It was stated in this document that some state regions could not prevent abortion. Since these cases also decreased the Islamic population, they asked for the necessary precautions. It was also stated in the commission record that little attention was paid to the punishments specified in the penal code for those who had an abortion or caused an abortion, and for this reason, they warned to be more careful. This document shows that, although the articles in the law were quite clear, the people acted in a way that suited best to their interests, and in this context, they managed to take the civil servants with them. Perhaps this was one of the reasons for the less-than-expected court cases of *iskat-ı cenin* in the archive.

74 Gülhan Balsoy, "Gender and the Politics of the Female Body: Midwifery, Abortion and Pregnancy in Ottoman Society (1838-1890)," (Ph.D. Dissertation, Binghamton University State University of New York, 2009), 54, 60. Also see Gülhan Balsoy, *The Politics of Reproduction in Ottoman Society, 1838-1900* (London and New York: Routledge, 2013); "Politik Bir Alan Olarak Kadın Bedeni: Osmanlı Toplumunda Kürtajın Yasaklanması," *Toplumsal Tarih* 223 (2012)

75 Ibid., 54-55

76 BOA., İ..DH.. 1214-95051 / 11 February 1889

§ 6.3. Child Marriages

Child marriages have been deeply rooted in patriarchal family structures and political systems where children of both sexes were regarded as personal property that ought to be controlled and dominated. As discussed in previous chapters, parents' various social, religious, and economic priorities played a decisive role in child marriages. These marriages acted as a contract between families that guaranteed their friendship or trust in each other and "secured" family honor and family's continuity. What was striking about child marriages in the Ottoman provinces was that not only girls but also boys were married at a very early age, and the child couples lived in the same house with the family elders.[77] If boys were married before they reached puberty, the girls they were married to mainly were grown-up girls who had reached puberty and had different expectations from marriage.

According to Islamic law, there was no problem with the materialization of these child marriages. Legal guardians could contract marriages regardless of the ages of the children. However, boys and girls had the right to annul these marriages when they came of age. In other words, the legal system distinguished between contractual marriages of children and the physical realization of these marriages. However, the extent to which families follow this theory in practice is a matter of debate.[78]

In the archive documents, the marriages of children who did not reach the age of puberty and whether these marriages would be recorded were a matter of discussion between the state officials. So, one of the state's interventions and regulations regarding puberty came in the field of marriage. The state did not consider it appropriate for girls and boys who did not reach maturity to get married. In a document dated 1905, the council state declared

77 *Tahrir* notebooks can provide data on the numerical status of married or single boys in the family. For an example in the classical period see David Geza, "The Age of Unmarried Male Children in The Tahrir-Defters (Notes on the Coefficient)," (Acta Orientalia Academiae Scientiarum Hungaricae, Vol. 31, No. 3, 1977)

78 See, Yahya Araz, "17. ve 18. Yüzyılda İstanbul ve Anadolu'da Çocuk Evlilikleri ve Erişkinlik Olgusu Üzerine Bir Değerlendirme," *Kadın/Woman 2000* 13, No.2 (2012); S. Gül Akyılmaz, "Osmanlı Hukukunda Çocuk Evlilikleri," in *II. Uluslararası Kadın ve Hukuk Sempozyumu Cilt 1*, (Türkiye Barolar Birliği Yayınları, 2019)

its decision in this direction. But the discussions continued.[79] The families did not stop the engagement and marriage of children who had not reached puberty. In another document dated August 14, 1905, it was stated that according to Mecelle, weddings carried out by the parents of children who did not reach puberty could be recorded in the registry books.[80] In other words, a conflict occurred between the sharia and the state's governing practices. The state did not find the marriage contracts appropriate for the children who did not come of age and did not consider the registration necessary. Still, if it did, this discretion would belong to the sharia.

Since the argument that minors could be married by their parents was open to abuse, a limit was placed on the age of marriage with the Family Law Decree (*Hukuk-u Aile Kararnamesi*) in 1917. Accordingly, this age was determined as 12 for boys and 9 for girls. This decision was noted in the necessary reasons section as "in the light of the bitter experiences that were going on for centuries"[81]. Still, there were no further explanations regarding these bitter experiences. However, in the record of the necessary reasons, it was stated that the first duty of parents was to educate and discipline their children so that they could establish a decent family.[82] Considering that the life of this decree was short, we can say that the public-adopted practices took precedence over those that the state did or intended to do.

79 BOA, BEO 2620-196429 / 11 July 1905

80 BOA, DH. MKT. 2609-9 / 14 August 1905

81 Hamza Aktan, "İslam Aile Hukuku," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol.2* (Ankara: T.C. Başbakanlık Aile Araştırma Kurumu, 1992), 21

82 *Ebeveynlerin ilk görevi çocukları talim ve terbiye ederek düzgün bir aile kurmalarını sağlamaktır. Hâlbuki aileler çocuklarının tahsil ve terbiyesini ihmal ederek mürüvvetlerini görmek, miras sahibi yapmak için daha beşikte nişanlamışlardır. Sonuçta biçareler dünyayı görmeden evlendirilmiş, ardından düğünleri ile felaketleri hazırlanmıştır. Okul yüzü görmeyip, okuma yazma ve dini bilgilerden haberi olmayan bu çocukların oluşturdukları aileler zifafın ilk aylarından itibaren yıkılmaya mahkûm olmuştur. Bu da ailenin temelsiz olmasının sebeplerinden birisidir. Bu tür davaları görmek için şer'iyye sicillerini incelemek yeterlidir*. "Münekehât ve Müferakat Kararnamesi Esbâb-ı Mucibe Layihası" *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, Cilt 3, (T.C. Başbakanlık Aile Araştırma Kurumu Yayınları, Ankara 1992), 299-300

Regarding these marriages, expectations from girls and boys were shaped not according to age but by societal expectations about marriage. Therefore, even if they did not reach puberty, boys, for example, tried to establish authority over their wives. They were trying to maintain the patriarchal structure they inherited from their elders. However, being physically weak due to their age had some advantages for their older wives. Moreover, their wives desired their child husbands to fulfill their husbandly duties. As I will discuss in more detail below, these untimely requests were a site of conflict for these early marriages. Also, regardless of age, love and respect were emotions that wives wanted to feel for their husbands.

6.3.1. The Victimhood of Child Husbands

The marriage of boys who did not reach the age of puberty to girls older than them was generally related to the labor force that the future bride would bring to the family or ensure the continuation of the bond that was established between different families or clans. In this regard, if the targeted marriage could not continue for some reason, the family or society was ready to interfere in the best possible way that suited their interests. For example, if the bride's first married husband died, these early marriages could prevent her husband's inheritance from leaving the family. With this practice, called levirate, a property dispute could be avoided, and the bride continued to contribute to the family's labor force until her brother-in-law reached the age of puberty.[83]

The fact that the levirate tradition was practiced for centuries was also an indication of the tribal mentality in the societies in which it was practiced. With marriage, a union was established between different families/tribes. And

83 Levirate practice was a form of marriage practiced since ancient times. It is possible to talk about the existence of this practice in various Turkish empires, both among the politicians and among the people. Also, the Jews were at the forefront of the societies in which the levirate was widely practiced. The custom of marrying a sibling's widow was a kind of obligation in Israelite societies. See Dvora E. Weisberg, *Levirate Marriage and the Family in Ancient Judaism* (Hanover and London: Brendeis University Press, 2009). Also, see the murder of Raziye in chapter 3. For the practices in the Christian world also see Jack Goody, *The Development of the Family*, 60

since the possibility of the widowed woman returning to her own home/family after the death of her husband would damage this union, it was ensured that the woman remained in the family with leviratic marriages.[84] However, this practice, which theoretically provided the continuity of the family, sometimes was a lethal agreement. What was at the forefront here was the behavior expected by society or the extended family from the individual rather than the individual's desires. In levirate marriages, the bride's destitution was also an essential factor. If she did not have her own father's house or if it was not possible for her to survive in this house, these marriages took place with the initiative of the extended family and society. But there were always cases where the individual's repressed desires prevailed at the end of the day.

In 1864 a certain Fatma from Bolu, who was 20 years old, was married to 14-year-old Eyüp.[85] Fatma and Eyüp had a levirate marriage. Previously Fatma was married to Eyüp's brother. According to the court statements, Eyüp was sick, bedridden, and had no heirs other than his father and wife. Fatma was trusted to ensure the continuity of this small family. There is no data on how her first husband died and why there were no children from this marriage. At the same time, we do not know whether Fatma had her own family. The apparent fact available regarding this murder was Fatma's expectations for marriage. Fatma strangled Eyüp to death because he could not fulfill his duties as a husband due to his illness. Fatma stated frankly in court that since they married, there was no husband-and-wife relationship between them.

Eyüp's heir for this court trial was his father, and he did not sue Fatma, saying that his daughter-in-law would not commit this murder. But although her father-in-law did not press a charge against Fatma, she was sentenced to death according to the penal code, and her sentence was upheld. The fact that

84 Ahmet Kütük, "Türk/Moğol Devlet ve Toplum Töresinde Levirat Evlilikler ve Uygulama Esasları," (Genel Kültür Tarihi Araştırmaları Dergisi. Vol. 4, No.7, 2022), 51. Also see, Mazhar Bağlı and Aysan Sever, "Tabulaştırılan/Tabulaşan Kurumun (Ailenin) Kurbanlıklar Edinme Pratiği: Levirat ve Sororat," *Aile ve Toplum* 2, No.9 (2005)

85 BOA., İ..MVL. 507-22876 / 26 April 1864

Fatma was not pardoned from the death penalty suggests that it was because she killed a sick and helpless child and her husband.

In some marriages, families decided on the future marriage of a boy and a girl in the cradle (*beşik kertmesi*); in others, this promise was made in early childhood. These marriages were made with the direct intervention and force of the families and without leaving the children a choice. Children were looking for an exit strategy when they reached puberty. But in these exit strategies, especially fathers could have something to say.

According to a murder case from 1871 in Konya,[86], a promise of marriage was made when Ayşe was 13 and Ali was 6. The reasons behind this marriage, unfortunately, were unknown. The conflicts within this marriage resulted in a murder when the deceased, Ali, was 12 and Ayşe was 19 years old. It was stated in the court record that Ayşe murdered Ali and threw him into the river due to their lack of love and affection towards each other.

Ayşe's influential father intervened in the court progress of this case by arranging false witnesses and creating another murder plot.[87] With the various deceptions and threats of her father and his associates Mustafa and Mahmut Ağas, Ayşe blamed other people. Accordingly, the first claim recorded was that Ayiş and Mustafa killed Ali after they committed the indecent act to Ayşe in front of Ali. With this claim, they were trying to portray Ayşe as both a woman whose honor was violated and a victim whose husband was killed. Various statements from the prison doorman and a certain Fatma from the prison supported this claim. According to Fatma, Ayiş and Mustafa had come to the prison window twice and offered money to Ayşe not to betray them. Fatma once claimed that they sent money on the occasion of an unknown Kurdish woman, and the guard supported this claim by stating that he saw a Kurdish woman. However, Mustafa and Ayiş proved they were elsewhere when the incident occurred, so Ayşe had to take responsibility for the murder.

The relationship of the father, who engaged his 13-year-old daughter to a 6-year-old boy, with this boy's family was quite thought-provoking. Mehmet Efendi stated in the court record as an influential person, took a step to

86 BOA., İ..DA. 9-271 / 14 September 1871

87 It was stated as "*Merkum Ayşe'nin müteneffizan ahaliden pederi hatip Mehmet Efendi.*"

consolidate his influence with this early marriage. But unfortunately, Ali's heirs did not have recorded statements in court, and we do not know if Ali's family was prominent people. The fact that Ali's heirs did not have any sharia demands from Ayşe suggests that Ayşe's father continued his lobbying behind the court procedure and worked for the best possible punishment for his daughter.

Unfortunately, it was challenging to find a typical pattern in terms of punishment in such cases. In a similar court case, a certain Hadice, whose age we do not know, killed her husband Mustafa, who was 10-12 years old, by stabbing him in the throat.[88] According to Hadice, her husband constantly argued with her because her sisters always pushed her husband against her. In one of these quarrels, her husband wrapped one hand in her hair and pulled a knife with the other, complaining that she went to her father's house without his permission. During their fight, Hadice somehow seized the knife and killed Mustafa. In the interrogation, they asked Hadice if Mustafa was of age. According to her answer, Mustafa did not reach puberty, and Hadice was still a virgin. In this case, the *nizamiye* court record was relatively short, and the litigation process was more sharia trial oriented.

The fact that a boy who did not yet reach puberty behaved like a masculine husband towards his wife also indicates how strongly such social roles related to the domestic sphere were adopted. Moreover, Mustafa's sisters' hands in this marriage did not contradict traditional family roles and codes. In this context, one of the aspects of the traditional family structure was the intervention of family members in the bride's relationship with her husband. This contentious environment in the family was also influential in the final punishment that Hadice would receive, and she was sentenced to retaliation.

As I mentioned before, equivalence in marriage was one of the points that Islamic law greatly emphasized. It was one of the reasons behind many murders between husband and wife, not just child marriages. One of the essential elements of equivalence in marriage was related to the issue of age. However, contrary to today's conservative marriage codes, the woman's age was not an obstacle to marriage in any way in the nineteenth-century

88 BOA., İ..MVL. 549-24628 / 19 March 1866

Ottoman provinces. In establishing the marriage union, other economic or social relations networks rather than love or compassion came into play. In such unequal marriages, although the means of murder changed, the result was the elimination of one of the spouses. In the murder case, which I will discuss in the following section, we will hear more related to the problems of age-related equivalence in marriage and the lack of love between couples from the mouths of both defendants and witnesses.

6.3.1.1. Three Kezbans and a Murder

Seventeen-year-old Kezban was married to Mustafa, who was ten years old at the time of their marriage. But Kezban had an illegitimate relationship with a certain Hasan, who was thirty-five. Before she married Mustafa, Kezban wanted to marry Hasan, but this marriage did not take place due to financial reasons. It was the murder of Mustafa that brought Kezban to court.

The interrogations in this murder case provide striking data regarding a young girl's relationship with her "child husband" and society and the marriage patterns and childhood perception in central Anatolia.[89] The court file was quite long and complex. The case progressed after Kezban confessed everything that happened right after the day of the murder. According to this, she made a deal with Hasan and brought Mustafa to a forest on the pretext of collecting leaves, and there with the help of Kezban, Hasan murdered Mustafa.

The first interrogations in the file were taken in the village room. It was precisely stated in the statement of Mustafa's father, Ahmet. Apart from the deceased Mustafa, fifty-year-old father Ahmet had a four-year-old son and two other daughters. The officer questioned him about Mustafa's marriage:

> Q: Did they become husband and wife? Was the marriage permission taken? Who performed the marriage act, and how old was the girl?
> A: My son was not old enough to be a husband. I could not get his marriage permission. Preacher Ahmet performed the marriage act. The girl was seventeen years old.

89 BOA., İ..AZN. 8-1 / 16 November 1893

Q: Although the preacher is responsible for performing a marriage act without permission, why did you marry your little son?
A: Sir, you know it best. I made him marry because of loneliness.[90]

After this answer, no other questions were asked on this subject. Still, Ahmet's statement about loneliness suggested that he wanted to marry Kezban to Mustafa to contribute to the house and field chores. Before having any babies, Kezban would serve in her best capacity to the economics of the family.

As I said before, in this file, Kezban's confession directed the court proceeding. Her interrogation clearly described her regret, despair, and the way out she was looking for.

A: I am 17 years old. My name is Kezban. My father's name is Hasan. They call (me) Dehrioğlu's daughter. Hasan, the son of Kara Hasan, took my virginity six months ago. I had a husband. They called him Mehteroğlu Mustafa. I had been in his house for a month. He was only ten years old and could not perform his husbandly duties. My art is farming.[91]

She further stated that she could not wed Hasan because of the wedding fee. Before her marriage to Mustafa, through the wife of the mukhtar, she sent a message to her future mother-in-law Hatime that Hasan had taken her virginity, so they should not wed her to Mustafa. But, mukhtar's wife did not convey the message. Then she told her parents-in-law about the situation, but they did not say anything. The fact that Kezban's condition, which could be described as apparent dishonesty by the social codes of the period, did not affect the realization of this marriage was an unambiguous indication that the principles of honor could be disregarded by people when they deemed necessary.

Kezban tried to explain her situation to her future family through the village's senior wives, but she did not get any results. It remained as a question of why she did not get in touch with any of her family members. Kezban's

90 BOA., İ..AZN. 8-1/11 November 1893

91 BOA., İ..AZN. 8-1 /11 November 1893

relationship with Mustafa was stated in the court records based on Mustafa's inability to fulfill his husbandly duties due to his young age. From the sharia law perspective, Kezban had the right to end this marriage, but divorce was never on their agenda. As discussed in previous chapters, I associate the fact that divorce was not on the agenda with financial reasons and social situations. Being widowed by a deceased husband was a better option rather than being widowed by an alive husband.

During this period, Hasan's suggestions to get rid of Mustafa and his use of him continued, and Kezban tried to find a place to herself at the home of Hasan. In this respect, a few days before the murder, she visited Hasan and his mother at home. Thus, the web of relationships at Hasan's house revealed itself. Hasan was married to another woman named Kezban, who was 25-30 years older than him, and they had a 12-year-old son. He had a peer son with murdered Mustafa. Hasan's mother's name was also Kezban. So, there were three Kezbans in this story. Before Hasan was taken to the government, he was kept in a room in the village where his statement was taken. He did not accept the guilt charged against him and denied all of Kezban's statements. Then he faced Kezban, and her words at their confrontation were quite striking:

> Ah, Hasan, you did what you would do to me. You cheated me . . . I arrived at your house on the bairam day. I gave (you) gold. That night I gave you the slipper staying over there. You deceived me on the bairam day. You said, "Bring Mustafa to the forest on Tuesday; I (will) destroy him there, nobody would know, and you would get rid of him too. I (will) marry you." Upon this, I arrived with Mustafa, and you came and strangled him. And you turned, killed. I also held his feet. Did that not happen?[92]

According to Hasan's seventy years old mother, Kezban wanted to marry Hasan, but since he was already married, it did not happen. Upon the neighbor's rumors that they saw each other and did indecent things, she told Kezban not to come to their house again. His mother did not mention any of

92 BOA., İ..AZN. 8-1 November 1893

Hasan's secret or explicit intentions in her statement and explained the situation based on the neighbors' gossip. However, Kezban told the same incident as follows:

> Hasan's mother and wife used to say do not come to our house; you are perverting our son. Nobody else knew. Since Hasan's wife was old, he said he would take me and divorce her. I also believed his word. I acted this way. And I even had a miscarriage from Hasan that night.[93]

This murder also revealed the drama of older Kezban, who was Hasan's married wife. Kezban was about sixty years old and aware of Hasan's relationship with the other Kezban. She knew more from what she heard from the villagers' mouths. Kezban was asked about things in Hasan's chest and the things that the other Kezban gave. She explained her lack of knowledge about the incident as follows:

> The key to his chest was on my husband and his mother… My husband Hasan would not look at me. He would not call me his wife. (He said) you are old; I am getting married over you. He used to say he would marry Kezban. My mother-in-law, Kezban, did not take Mustafa's wife, Kezban. She used to tell her not to come to our house and talk to her son Hasan.[94]

Hasan and his lover Kezban had a passion and sexual expectations from marriage. Before marrying Mustafa, Kezban slept with Hasan and became pregnant. We know all this with Kezban's statements. This situation made her dependent, and she needed Hasan for her honor and social status. At this point, I would like to emphasize and evaluate this network of marriage and relationships. Hasan had a twelve-year-old son from his married wife, Kezban. However, there was no information about why they got married with such an age difference or for how long they were married. Assuming that they immediately had children after their marriage, Hasan must have married Kezban at 23, and Kezban was 48 years old at that time. Such a marriage must have been made on financial grounds. This reminds me of the cases in

93 BOA, İ..AZN. 8-1 November 1893

94 BOA., İ..AZN. 8-1 November 1893

nineteenth-century France[95], where men preferred to marry women older than themselves to have more workforce but fewer children. Considering the marriages of two Kezbans, we can speculate about a similar situation here. Also, it was easier for younger men to marry older women in terms of wedding finances. Rather than the wedding expenses, the future husband was enabling the bride-to-be with social status, some offspring, if possible, and a family on their own.

Returning to the story of Kezban, the fact that Hasan was living with his mother and his brother's family in the same house indicates their poor financial condition. Also, his inability to pay the marriage fee to marry the other Kezban and his acceptance of gold from her reinforce the possibility of this financial difficulty. Similarly, the marriage of an 11-year-old child to a 17-year-old Kezban reveals a similar labor force demand. Before having children, Kezban could work as an unpaid worker for Mustafa's family. From the aspect of the women involved, these marriages must have sheltered them, a relatively safe environment to live in, and social status.

The children in this court case were not like children anyway. They all joined the workforce, either in the field or at home. The nephew Ayşe was carrying water to the house from the spring, cooking, and setting the table at home. A boy named Osman was working in the field with his brother, like the deceased Mustafa. As Colin Heywood points out, although it was hard to figure out their exact contribution, "…children were perhaps the most flexible workers within the family economy, ranging from full-time employment outside the home to helping their parents with a wide range of light jobs."[96] Besides being flexible, children were also the ignored workers of the domestic sphere. There was no apparent right to object to all these large and small jobs in which they were employed or to the expected labor force.

During the court procedure, children's statements were used several times. In this respect, Hasan's nephew Ayşe, Osman, and another Hasan, between the ages of ten to fifteen, were interrogated. And essentially, the murder of Mustafa was enlightened by Osman's statement and indirect involvement in the murder scene. On the day of the murder, while the

95 Eugene Weber, *Peasants into Frenchmen,* 184

96 Colin Heywood, *A History of Childhood*, 431

suspects were going to the forest, Osman was working in the fields in that area. Seeing that they had left but not returned, Osman threw stones into the woods. Although Hasan and Kezban intended to get rid of the body after committing the murder, they panicked and left the scene because of these stones. The incident was understood when the stones were mentioned in Kezban's statement.

Ultimately, Kezban fell ill and died in prison while the case was ongoing. The court file had a hospital statement and a doctor's report regarding her death. She passed away in the third year of his detention. As for Hasan, he was tried with the death penalty, but his punishment was converted to hard labor. However, it was not stated whether the sentence of hard labor was lifelong or temporary.

The narrative of Kezban produced areas of visibility and invisibility about the fabric of the relationship between her and her society. With a narrative going back and forth, Kezban gave many details related to family life and domestic relations in rural Anatolia towards the end of the nineteenth century. Even though Kezban had an illegal relationship, the people she informed were indifferent to her, and her struggle to avoid the marriage she did not want to be in did not reach a result. This was quite a brilliant example of how society could become double-faced regarding honor. The efforts of families to get their children married as soon as possible unless love was included in the marriage inevitably progressed and resulted in a crisis. In this regard, it was remarkable that Hasan's first wife, the other Kezban's expectance of love and respect from her marriage never ended, despite her advanced age.

6.3.2. Child Brides

Marriage was the first and most appropriate option that came to mind for little girls living alone or in poverty to hold on to life. Regardless of their age, women living alone were a potential threat to the moral values of society. Unfortunately, the marriages of girls who were married at a young age were not always at a level where they could easily express their troubles and find a solution. Also, the *nizamiye* court records did not say much about the

actualizations of these marriages concerning the family elders. It was also difficult to measure the children's reactions to their families when these marriages were about to occur. Still, they expressed their disappointment when they had the opportunity in court and developed various coping strategies related to the inferiorities they faced. Sharia court records contain much more detailed information on this issue.[97]

No religious views or socio-economic conditions were at the forefront of child marriages. It was possible to encounter these marriages in families of almost all nationalities, religious views, and social structures, including the Ottoman rulers. In particular, Jewish tradition closely resembled Islamic law. There were many similarities, such as puberty being the legal age for marriage and a minor girl being able to get married by her father or guardian.[98]
However, concerning these marriages, the patriarchal codes of society were also susceptible to breaking. Murder was the ticket for some to break these social and religious codes and start a new life. Lenke, who got married at the age of 11, confessed to her husband's murder with these words:

> Q: Why did you kill this man? Why would you not love him?
> A: My husband married me even though we had not met before. He was 35 years old, and I was 11 years old. In short, as I could not love my husband, I have loved this Ravul since this November. That is why I agreed to the murder of my husband, Istane.[99]

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97 See Leyla Kayhan-Elbirlik, *Negotiating Matrimony;* Iris Agmon *Family and Court;* Leslie Perice, *Ahlak Oyunları;* Judith Tucker, *In the House of the Law*; Gül Akyılmaz, "Osmanlı Hukukunda Çocuk Evlilikleri"

98 See, Minna Rozen, *İstanbul Yahudi Cemaati'nin Tarihi Oluşum Yılları: 1453-1566* (İstanbul: Türkiye İş Bankası Kültür Yayınları, 2010), 112-120; Aglaia E. Kasdagli, *Land and Marriage Settlements in the Aegean: A Case Study of Seventeenth Century Naxos* (Hellenic Institute of Byzantine and Post Byzantine Studies, Vikelea Municipal Library of Iraklion, Venice, 1999) 231-236; Jennifer McNabb, "'She is but a girl' Talk of Young Women as Daughters, Wives, and Mothers in the Records of the English Consistory Courts, 1550–1650," in *The Youth of Early Modern Women*, eds.Elizabeth S. Cohen and Margaret Reeves (Amsterdam University Press, 2018)

99 BOA., İ..MVL. 552-24785 / 15 May 1866

It was unknown how long Lenke had been married to Istaneko and how old she was when she committed the murder. It seems that they had two small children. After Lenke started having a love affair with Ravul, the two decided to kill Istaneko together. They thought that after his death, they could go to another land and start a new life there. In his confession to the murder, Ravul stated that he and Lenke were always in mutual friendship and conversation, and that Lenke told him one day to kill her husband and escape to another place. When Ravul accepted this suggestion, they decided the time and place of the murder and took action immediately. Although Lenke aided and abetted this murder, she was not deprived of her sharia rights against her husband because Ravul had committed the murder. Lenke even received her share of the blood money. However, according to the sharia judgment, it was decided to give him *tazir-i şedid*.

As I mentioned above, in marriages made by families before reaching puberty, the sharia provisions gave girls the right to annul the marriage right after reaching puberty (*hıyâr'ül buluğ*).[100] This right was reserved for girls, as boys automatically acquired the right to divorce when they came of age. In a similar vein, Jewish girls could exercise this right between the ages of six and ten. They could still refuse if they did not reach puberty after age ten.[101] However, it was difficult to predict to what extent women were aware of this right or whether they dared to ignore their families' decision and annul the marriage. It was obvious that this decision required serious willpower. These girls, who were on the verge of reaching puberty, could face not only the family or society but also the state from time to time. A girl from Silivri named Şerife demanded justice related to her early marriage. Accordingly, she complained that her mother had married her at a young age to Mahmud, a member of the gendarmerie in Silivri. When she came of age, she applied to the Çatalca sharia court for the annulment of the marriage, but she was compelled by the Silivri government and the police to marry Mahmud.[102]

After marriage, child brides could stay in their father's house as well as in their husband's house. Even if they lived with their husbands, according to

100 See Mahmoud Yazbak, "Minor Marriages "

101 Minna Rozen, *İstanbul Yahudi Cemaati*, 114

102 BOA., BEO. 26-1894 / 28 June 1892

the sharia rules, the girl had to be ready for sexual intercourse to realize child marriages fully. In a case from Akka, Abdullatif married his uncle's daughter before she reached puberty. After puberty, the girl returned to her father's house because she could not get her mahr. This fight over the mahr resulted in tension in the family, and Abdullatif first damaged his uncle's propertied and then killed him because he did not give back his daughter.[103] The court stated that the girl's return to her father's house occurred before sexual intercourse took place. Still, it was a great mystery how much this was complied with in practice. According to a court record reviewed by Iris Agmon, a girl named Tamam, who married before reaching puberty in Haifa, applied for the annulment of her marriage. Allegedly, Tamam suffered hellfire from her impotent husband in this marriage, she could not get her mahr, and her husband attempted to kill her because he could not have sexual intercourse. Tamam's husband could not prove the contrary of these allegations, and the court accepted Tamam's request and dissolved the marriage.[104] The torment of hell in her marriage and the sexual impotence of her husband, which Tamam expressed in court, was just one of the indications that this rule mentioned in the marriages of child brides could be ignored.

6.3.3. Kate's Story

In this section, I will discuss the marriage of Katinko (Kate), who had only an aunt as a relative, and her efforts to get out of this marriage.[105] Kate, who was just 15 years old, was married to a certain 30-year-old Istefan with the force of her aunt, and she had been married for two months when she was put on trial. Kate had a pretty unhappy marriage, and according to her statements, her husband was interfering with her prinking ups and going outs. She decided to poison her husband in a night of quarrel over these issues. Her

103 BOA., İ..MVL. 519-23337 / 10 October 1864

104 Iris Agmon, *Family and Court*, 164

105 This court case was also analyzed in Ebru Aykut-Türker's Ph.D. dissertation, "Alternative Claims on Justice," 267, and her article titled "Toxic Murder," 127

confession related to the poisoning came quite later, and, in the meanwhile, we learn many details about her life and marriage.

Kate did not have any parents or relatives other than her aunt. She worked in a couple of places before her marriage. Her aunt took her away from her last working venue to engage her with someone. After staying in her aunt's house for fifteen days, her aunt married her off, but she was unhappy with this arrangement. Before their marriage, her future husband promised her a home. But after the wedding, her husband Istefan did not accomplish this promise, and Kate had to confine herself to the ring she received upon marriage. She noted that her husband was very jealous of her and would not let her go out on the street, and he would not let her meet or talk to anyone. He also would not let her comb her hair and fancy up.[106] Those were the main reasons behind their quarrel.

In her trial, Kate denied the claims against her for a long time. However, since the escape stories she produced contradicted each other, the interrogator caught these contradictions and oppressed her. She told many stories and details until her confession came. When the interrogator said to her that she would not receive any punishment due to her small age, Kate confessed:

> I am 15 years old. I followed the devil. Let me tell you the truth. On the day of Aya Nikola, before my husband got sick, we went to the church of Aya Yorgi with our tenant, Eyalinko. On my way back from the church [...]I bought ten *paras* of arsenic from a Jewish attar to give to the rats. I went home. I put it in the far (corner). I went on a visit that day. I returned home again in the evening. My husband had not come yet. He came to me in the evening and started to attack (me), saying why did you go for a walk? And it was the night he ate his *lakerda*. And he offended (me about) why I even wore the ring he gave me and why I wore the red . . . I was deeply offended. I started crying because he would not let me out of the room. I said what is (wrong with) my going out. After eating bread, he ordered me to make coffee. With those thoughts, I put half of the arsenic mentioned above in his

106 BOA., İ..DA.. 5-78 / 31 May 1869

coffee. I gave it to my husband. We went to bed. He started throwing up halfway through the night.…
Q: You seem to have planned this before.
A: I have not seen a good day since I married him. He was always scolding me. I bought the arsenic that day on the way home from town to keep it at home. I bought it to give to my husband whenever possible. I brought it home.[107]

After her confession, the interrogator asked her if she had any regret related to the murder of her husband. She said she had no regrets but felt a little pity for him after his death.

As we have seen in the previous chapters, men tended not to prefer divorce, regardless of their religion. According to Kate's claim, death of himself was preferable for her husband rather than a divorce, which was not contrary to the facts of their time.

Q: Why did you not go to the priest and divorce him?
A: I told my husband I would never want him. He used to say that if they tore him apart, he would not leave me.[108]

The main factors that made divorce difficult for men were their domination over women, the financial burden of divorce, and the possible alimony that would follow. For Istefan, who did not fulfill the material things he promised Kate when he got married, the cost of divorce and the financial burden of the possibility of remarrying, later on, pushed him to tighten the ropes in his hands.

Although Kate did not give much detail here, Eyalinko's interrogation revealed that Kate was at odds with her aunt because of this marriage. Kate was asked if she went to her aunt and complained about getting into trouble with this marriage. She just said she complained to her aunt that she didn't love her husband. Kate was working and living by herself before getting married. She worked as a maid somewhere for two and a half years, and she had developed a thorough understanding of living since she was twelve years

107 BOA., İ..DA. 5-78 / 31 May 1869, Document Number 5/4

108 BOA., İ..DA. 5-78 / 31 May 1869 , Document Number 5/4

old. She had a liking for dressing up and wandering around. Unable to get a positive response from her husband for all these, she decided that it was the best option to get rid of him within her two months old marriage. Despite her wish to get a divorce, her husband objected. Judging by her statements, she had a particular maturity, but she did not seem clever enough to envision this murder plot. There must have been someone teaching her, as the court suspected. Tenant Eyalinko was the prime suspect at this point. They asked for a further investigation of Eyalinko, but the result is unknown. Here, I think Eyalinko acted as a *çaşıt*. Eyalinko had the important details of Kate's short life and guided her through the rest of that life as a secret hand by helping her in planning the murder and executing it.

Kate's trial was seen both in sharia court and *nizamiye* court. According to the sharia verdict, Istefan's sister forgave Kate from retaliation. In usual conditions, Kate was also supposed to have disinheritance from Istefan's inheritance due to the murder, but the sharia court did not apply this rule. I believe the sharia court considered her age and orphanage for this decision.

Moreover, according to Hanafi jurisprudence, Kate's punishment was not like typical murder, as Istefan ate the poisoned food with his own hands, even though Kate provided the poison and put it in the food. According to the penal law, Kate was put on trial with the demand of capital punishment, but due to her age, she was forgiven and was sentenced to prison for fifteen years without exposure. However, as Ebru Ayku points out, actually this was not possible for the penal law because Kate was already at an age that was capable of discerning right from wrong which was already stated in Article 40.[109] But death penalty pardons, which were applied depending on age, were another aspect of the application of the penal code and Kate was not the only example.[110]

Kate was not a passive figure. Even if hers was an arranged marriage, before their wedding, she took the promise of a material guarantee. She kept

109 Ebru Aykut, "Toxic Murder", 128

110 For example see BOA., İ..DA. 13-480 / 9 February 1874; İ..DA. 14-579 / 18 August 1874; İ..DA. 16-694 / 11 August 1875; İ..DA. 17-729 / 17 January 1876; İ..DA. 18-796 / 17 January 1877; İ..DA.18-799 / 10 May 1877; İ..DA. 18-804 / 1 July 1877; İ..DA. 18-812 / 5 September 1877; İ..DA.

reminding this promise to her husband during their short period of marriage. Despite the fatal ending on the part of her husband, Kate tried to figure out a strategy of resistance and a way of agency. She took an active role in determining the course of her life and made her voice heard in the courtroom about her living conditions and past. Also, in that vein, the Council of Judicial Ordinances highlighted Kate's resentment towards her husband, her inability to go out as she wanted, and his husband's failure to fulfill what he promised her when they married.[111] Deprived of a protective environment in a patriarchal society, the courtroom somehow backed up Kate for her future which could entail possible forgiveness by the sultan.

§ 6.4. Parental Abuse and Victim Kids

Although children were the guarantee of the nation's future for the state, the same was not always valid for families. Sometimes due to poverty, sometimes because they did not want to take care of their children, and sometimes because of inheritance issues, children could become victims of their parents.

The sharia law made a distinction in terms of the conditions that pertain to the victim. Accordingly, "the victim should not be the offspring of the killer or the property of the offender, and the victim's blood should be protected."[112] So, if someone killed his child or grandchild intentionally or unintentionally, retaliation might not be applicable for the killer, and they should pay the blood money. Here, the father was regarded as the owner of the child.

According to my data, excluding the four infanticide cases, there were eleven child murders committed by parents. Inheritance and poverty were the chief reasons behind these murders. Mothers usually killed their babies that were born because of illegitimate relationships. Unfortunately, in most of these files, we do not have the interrogation protocols, so we cannot hear their

111 The reason of murder stated in the final court record as follows "*endam ile sokağa çıkmazdan dolayı zevci merkum kendisini daim-ül vakt şetm ve küfürden hali olmadığı ve taht-ı tasarrufunda olan haneyi ita edeceğini vaat edip sonra vermediği cihetle kendisine meyusiyet gelerek bir yortu günü …… zevci merkumdan dilgir (gücenmiş) olmasından dolayı bu fiili icraya mecbur olduğunu tezkâr etmiş.*" BOA., İ..DA.. 5-78

112 Muhammad Amanullah, "Just Retribution," 98

motivation for murder from their mouths. The file I will discuss below offers a unique example in this context.

On 5 May 1868, 50-year-old Viko from the district of Prizren, Skopje, was accused of killing his 6-year-old son by throwing him into the river.[113] Murderer Viko admitted the crime in cold blood. In the interrogation, he said that his son was mentally ill, and he killed him because there was no one to take care of him. He confessed to the crime as follows:

> Q: . . . Who pushed the six-year-old boy to the river?
> A: I pushed (him) myself to drown.
> Q: Did you throw him by entering the water or push him from the edge to the middle?
> A: I approached the water's edge and threw him into the middle of the stream at around six in the daytime. Water started to take him away, and I turned around and came to the town.
> Q: How can anyone drown his child? Why did you throw your child into the water and drown him?
> A: I have nothing but my life in the world; even the child had a bald head and was suffering from epilepsy. And since even her mother had passed away for three years, I had a daughter; I married her off. I have no one to look after. Since the child stayed with me, I rented a house. *(The landlord)* kicked me out of his house because I could not pay his rent. As I could not manage myself, I could not manage my child, and I took and threw him into the water.[114]

Viko did not have any expectations related to either the murder case or his own life. The interrogator asked why he did not inform the government about the situation. When Viko answered that it did not occur to him, the examiner told him that "throwing the kid into the river occurred to you but informing the government did not?[115]" Viko did not have an answer to this question either. So, it is clear from Viko's interrogation that Viko did not have any expectations related to the case and did not mind the sentence. The court

113 BOA., İ..DA.. 1-5 / 22 February 1868

114 BOA., İ..DA.. 1-5 / 22 February 1868

115 BOA., İ..DA.. 1-5 / 22 February 1868

record stated that since the victim's kid did not have any heir, there was no need for a sharia trial. Moreover, although his crime deserved capital punishment, his sentence was changed to 15 years of hard labor in Salonika.

The child murder committed by Viko was typical of other child murders committed by families. Parents tended to expect a concrete return for the investment they supposedly made in early childhood. Children who did not have any contribution to the family or their parents and who kept demanding care despite their advanced age were coming first to be disposed of. In this context, in some cases, families were indifferent to their children's fate; for some, every lost child meant less of a mouth for the family to feed. In addition, the mother's detention in productive labor for some time to breastfeed or to provide other care increased the living costs for the rural people. In other words, although children could participate in the active labor force after 6-7, the first years could be traumatic for the family economy.[116] For some relief in this regard, parents, also could give their children up for adoption. An *icar-ı sagir* (lease of the child) agreement was made for the poor children who were given to others because they could not be cared for by their families. According to this practice, people with favorable economic conditions hired low-income family children for a certain fee, in agreement with their parents or legal guardians, to have them do domestic services.[117]

As well as the poverty they were in, the property the children were to own could also pose a threat to their lives. The main problem here was the inheritance that the child could inherit either from one of their parents or from their stepfamily. The children murdered due to inheritance issues were generally murdered by their stepfathers.[118] Seven-year-old Fatma became the victim of her stepfather due to the possibility of her inheriting some property from him. Fatma's mother denied the claims related to her husband in her

116 Lawrance Stone, *The Family*, 471

117 Ahmet Şamil Gürer and Abdullah Bay, *Osmanlı Toplumunda Beslemelik Kurumu* (Ankara: Birleşik Kitabevi, 2013), 59

118 See., BOA., İ..MVL. 501-22675 /3 February 1864); BOA., İ..MVL. 576-25852 /27 Ağustos 1867; BOA., İ..DA.. 12-456 /21 October 1873

first interrogation, but she later confessed that she rejected the claims out of fear of her husband.[119] Fatma's mother replied as follows:

> After having dinner with my husband, we left our house with my husband. While the three of us were on the road to take the girl to her grandmother's house, my husband told me, Mebruke, you go back home, and I will take the girl to her grandmother. I returned. The girl stayed with my husband. Then my husband came home. I asked (him) whether he had taken the girl to her grandmother. He said he did. Then her grandmother came. Asked (about) the girl (and said), "Why didn't you send her until now?" I asked her grandmother whether my husband brought her (to you). My mother said he didn't bring her. Then I asked my husband where he had taken the girl. At that time, he told me that he threw the girl into the well and that if I told anyone, he would kill me. I was scared. I could not tell anyone. But now, when I came to the government, I spoke all the words he said to me in his face without fear in your presence. [120]

Failing to refute the accusations against him, stepfather Salih confessed that he donated a share of his property to his children. Since his children were not alive, he feared Fatma could inherit this share, so he murdered her.[121] The inheritance issue was perceived as a threat within the family, particularly for stepchildren. The possibility that stepchildren could receive a share in the inheritance was not well accepted. Although the spouses seemed to accept stepchildren when getting married, this acceptance was valid as long as the children contributed to the family. Their existence in the family contributed to many scenarios based on the possibility of getting a share of the stepfamily's inheritance.

Like Fatma's story, in another case, eight-year-old Döne from Karbala, was murdered by her stepfather.[122] Accordingly, her stepfather tied a stone to her stomach and threw her into a well for the possibility that in case his wife

119 BOA., İ..MVL. 501-22675 /3 February 1864

120 BOA., İ..MVL. 501-22675 /3 February 1864

121 BOA., İ..MVL. 501-22675 /3 February 1864

122 BOA., İ..DA.. 12-456 / 21 October 1873

passed away before him, Döne would inherit a share of the mansion and the garden, and this share could pass to Döne's birth father. As a sign of his greed for money, the stepfather did not neglect to take off the silver anklets on the little girl's feet and bury them in a suitable area before committing this murder. At the end of the trial, the sharia court decided on the blood money, and there was no mention of retaliation. On the other hand, without any negotiation related to his pardon, the *nizamiye* court sentenced him to capital punishment, and the sultan approved the decision. However, Fatma's stepfather Salih received fifteen years of hard labor for a similar crime due to the abstract and insufficient statements of witnesses and informants.

Regarding property division, stepchildren were not seen as a part of the family. Even if the parents were not, the half-siblings were troublesome with the inheritance division. But at the same time, the property of the stepchildren they inherited from their birth parents stood out as an object of desire to be shared immediately or possessed by stepfathers or stepsiblings.

A certain Hasan killed his stepchildren Halil and İbrahim with poison.[123] According to court records, these children, whose birth parents had passed away, lived separately. Halil lived with his aunt, while İbrahim lived with his stepfather Hasan. Hasan first poisoned 15-year-old Halil and then İbrahim with poisonous sugar. The reason for this murder was not Hasan's property, which was likely to be bequeathed to children. Hasan killed his stepchildren for the animals and lands they inherited from their birth father. According to his plan, when Halil and İbrahim died, their inheritance would pass to their half-brothers, Hasan's children. In this context, it was remarkable that he preferred to kill children by poisoning them. The responsibility of the children who had eaten the poison with their own hands was not on him according to the sharia. So, it would be a smooth property transition for his children.

The situation of illegitimate children was fragile from the moment they were born. Even if these children born out of illicit relationships somehow managed to survive without being murdered at birth, the social pressure on them and their parents continued to haunt them as they lived. These children

123 BOA., İ..MVL. 576-25852 / 27 August1867

contradicted the traditional family structure favored by the state and society and threatened this structure. In Islamic law, the continuation of the lineage was on the male line, and the person whose lineage continued through the mother was illegitimate. Even if everyone knew the child's birth father, the child was without lineage on their father's lineage.[124] According to Islamic jurists, there had to be a legal relationship between the parties for the child to be the subject of lineage and to be an heir. Even if the father of the child born out of wedlock was known, the child could not inherit his father because he was born as a result of adultery.[125]

In 1874, Fatma had a one-and-a-half-year-old son named Abdi, whom they said was illegitimate.[126] Abdi was a victim of mixed family relationships and social norms. Although the state took care of children born out of illegal marriages like Abdi, social pressure and the carelessness of parents made it almost impossible to get this help in the countryside. Fatma was married to a man named Mercan. Apart from Abdi, she had a son named Mehmet from her ex-husband. Mehmet's age was uncertain, but I think he was over five years old since he could testify in court. The relationship between Fatma and Mercan was highly debatable. They got married while Abdi's presence was evident. Or they claimed that they were married. They were destitute, and mother Fatma attributed Abdi's murder to several reasons. According to this, since Abdi was illegitimate, people did not accept them in the districts they went to. There was a conflict between Fatma and her husband Mercan because of Abdi, and Mercan said that if they killed the child, Mercan could get along with Fatma. Also, according to Fatma's claim, her brother-in-law

124 Cihan Osmanağaoğlu, "Klasik Dönem Osmanlı Hukukunda Zina Suçu ve Cezası," *İÜHFM* LXVI, S.1 (2008): 166-167

125 Koşum, Adnan. "Evlilik Dışı Çocuklar", 159; Also, Islamic law differentiates between the status of being illegitimate. For example, if the child is born out of zina, the mother has two years of remission to take care of the child before receiving hadd punishment. Later, the responsibility falls on the woman's family. If the family also rejects the child, then it is the duty of bayt aI-mal or the state to intervene, but this is not a completely agreed upon and clearly stated situation. See, Som M. Sujimon, "Implications and Consequences of Illegitimate Child (Walad Ai-Zina) in Islamic Law: A Classical View," *Jurnal Syariah 7*, No.1 (1999): 9

126 BOA., İ..DA.. 12-449 / 3 October 1873

Mustafa said he did not want to see Abdi in her arms. Although Mustafa denied this, Mercan had the idea of getting rid of the child. So, on the day of the murder, Mercan took Mehmet on his back while crossing a stream. Fatma stayed on the other shore with Abdi. Then they threw Abdi into the water, threw stones at him, and drowned him. We learn these details from little Mehmet's statement.[127] Fatma was prosecuted for premeditated murder. However, in terms of personal law, some of Abdi's rights belonged to her, and some belonged to Mehmet.

Meanwhile, Mehmet died of natural causes. Eventually, Fatma's death sentence was commuted to 15 years in prison. Mercan was also sentenced to 3 years of hard labor, but there was no data on Mercan's final sentence in the Sultan's will.

§ 6.5. Chapter Conclusion

Throughout this chapter, I tried to examine the invisible position of children in the household and the society in rural provinces. Due to the data source of this study, we could only hear the voices of these children in cases of anomaly, as they appeared before us as victims, perpetrators, or witnesses through court records.

Although the child-centered family was promoted by wealthy circles, intellectuals, and bureaucrats, it was not easy for people to meet this demand in rural provinces. There was a direct link between child murder and poverty and being unprotected by society, especially for single women. Children could be both flexible and invisible little workers in the family economy. They could work in various jobs outside and simultaneously help their parents at home. As an aspect of rural poverty, families expected the child to start work and bring home money at the earliest possible age.

127 "*Merkum Mehmet dahi kendisini babalığı Mercan arkasına alıp mezkur derenin karşı tarafına geçtiklerini ve validesi mezburenin sabi-i mezbur ile kırda kalıp dereyi geçtikten* sonra *yanlarına gelerek çocuğu suya atarak taş ile bastırıp boğduğunu hikaye eylediğini söylemesi hususuna nazaran…"* BOA., İ..DA.. 12-449 / 3 October 1873

Although the state wanted the population to increase and demanded to raise healthy and moral children, it did not favor those born out of wedlock. Illegitimate children were both a moral and economic burden for the state. So, children were a national asset on the one hand, but on the other hand, especially stray boys, who had no family and were neither at work/field nor school, were seen as a threat by the state.

The untimely marriages of both girls and boys and the lack of equality in these marriages were one of the biggest dilemmas of families. In this context, one of the state's regulations regarding children was related to the age of marriage and puberty. However, it was not easy for the people to abandon the practices and traditions passed down from generation to generation. This was also an element of negotiation between the state and the people.

Although the children included in the family as stepchildren participated in the labor force as much as their full siblings, a possible share of the inheritance was a reason for chaos. The status of being a "step" family member posed one of the greatest dangers for the distribution of family property. In this regard, the biggest source of danger for children was stepfathers.

All in all, the child and childhood patterns that could be observed in the court files included were as follows: parents made their children marry at an early age, even before puberty; children contributed to the family economy by working both at home and in the fields; the issue of education was a far-fetched agenda for most of the families. So, the state's motto of raising healthy individuals, or the emphasis or concerns for raising good children in the magazines or newspapers of the second half of the nineteenth century, did not have an equivalent in families' lives in the provinces. Rural life had its dynamics primarily based on survival, honor, and reproduction.

7

Conclusion: All Rise

> *If we . . . hover over this great city, gently remove the roofs, and peep in at the queer things which are going on, the strange coincidences, the plannings, the cross-purposes, the wonderful chains of events, working through generations, and leading to the most outré results, it would make all fiction with its conventionalities and foreseen conclusions most stale and unprofitable*
>
> – Arthur Conan Doyle, *Sherlock Holmes*

This study dealt with the murders committed in the Ottoman provincial family in the second half of the nineteenth century. Family, as a place of paradox, both harbored affection and conflict, and brutality in the Ottoman Empire. The murder cases analyzed in this study provide such a vantage point into the lives of Ottoman provincial people with sensational, unexpected, and brutal details and thus put a crack in the wall of silence surrounding the family.

In this study, I focused on the Ottoman provincial family from a socio-legal perspective. I tried juxtaposing reform and reality by looking at the family from both the imperial and local levels. Through the murder cases, this

study shed light on the ordinary experiences of people within the domestic sphere, family relations, and kinship dynamics.

One of the contributions of this study to Ottoman social history studies was to explain and understand what the ordinary people of the provinces, whom we met through court records, saw as very important or indispensable in their personal and family lives. I emphasize how important the seemingly insignificant stories of everyday life were and, therefore, how relative the value given to anything, or anybody was. Things/values that took up much space in the world of some might seem worthless to others, but this does not mean that they were unimportant. One should not ignore the anxiety of someone worried that his brother's tree overshadowed his garden or that his brother's cow gave more milk than his own because the only thing he had, perhaps his whole world, was shaped around that tree or cow. And it is through that tree or cow one can probe into the intra-familial and property relations in the Ottoman provinces.

In this study, I dealt with the Ottoman provincial family's social, economic, political, and biological dimensions. Socially and biologically, I examined the family members' relationship with society, extended relatives, and the state; politically, I dealt with examples of the distribution of power and authoritarianism in the family; economically, I studied the issues of property division and inheritance among family members and the marriage economy, which had a decisive role in families' stance. Moreover, I tried to integrate the reform efforts with the lived experiences of people within the domestic sphere in various regions of the empire. I tried to show how individuals in the provinces interacted with the modern criminal justice system.

Throughout this study, I have discussed the vast world that court records have presented about both the Ottoman family and daily life in the provinces in several layers. In this concluding chapter, I will present fragments from the landscapes presented through these layers, which I opened in the introduction and detailed in the following chapters.

§ 7.1. In the Beginning Was the Law

The form of communication channels between the state and society changed with the reforms in the nineteenth century. The process evolved into a more intense and detailed form of communication. This change in how the state and the people came face to face and communicated increased the state's presence in society. The same was also true for the public with their recorded statements. Courts were a safety valve for the state and the people. It was the only way to communicate directly with the Ottoman state and make a complaint. Courts have always existed, and it was an alternative for the public to be able to explain the situation they were in and demand justice. However, with the new court order, the communication between the state and society moved to a new level. Verbatim court records were a control device for the state, but this new characteristic also facilitated the citizens' efforts to seek rights and establish justice. *Nizamiye* courts strengthened the institutional memory of the state. Moreover, there was a two-way interaction in the functioning of the law. Public opinion was never something to be taken lightly.

Ottoman bureaucrats of the nineteenth century did not abrogate Islamic criminal or civil law. Still, they standardized and codified the crimes and punishments according to the necessities and demands of the rapidly changing time and modern imperial state.[1] Thus, the penal code brought together the crimes and punishments inflicted by the sharia (*hadd, qisas*, *diyet, ta'zir*, and *siyaset*) and those imposed by the state.[2] However, the degree to which the standardization brought by the codification movement in the nineteenth century affected the flexibility of the sharia law and the transition between different sects in the sharia tradition, in the medium and long term, is a very important issue that needs to be examined separately.[3]

The establishment process of the *nizamiye* court was not a process that operated in the same way and the same order in all parts of the empire. My

1 Kent Schull, "Criminal Codes," 175

2 Ibid., 177

3 For a broader discussion in this regard see Anver Emon, "Conceiving Islamic Law," 340-348

archival research suggests that it was difficult in the eastern provinces to implement the *nizamiye* court and penal law decisions, but challenges could occur everywhere. But the state was in no hurry in this regard. It took years for the system to settle down since its establishment. In some places, they established and abolished courts; in some places, lower courts were opened and closed; there was a shortage of judicial staff, and sometimes inexperienced judicial staff could not operate the new system as it should.

The murders were decided by going through the double vision of the sharia and *nizamiye* courts. It is difficult to determine exactly how the new penal system affected the Ottoman family, but it is possible to make some claims. Firstly, we cannot talk about a common advantage or disadvantage. While in some cases, the nizamiye courts were an opportunity, in others, they became a place where the option of getting more punishment for the criminal was realized depending on the condition of evidence.

When planning murders in the family, some murderers had an expectation that they would receive less or no punishment. The main reason for this expectation was the belief that any of the deceased's heirs would pardon the murderer in the sharia trial. In this respect, the new judicial order and developments, especially in forensic medicine, seem to have disrupted the plans of these murderers. In addition, although the law provides otherwise, in some exceptional cases, the supreme court could disregard the sharia decisions when it thought it was not a fair trial.

Moreover, family connections occupied a central place when it came to escape from convictions. The extended family and kinship network were considered, especially in the escape plans for the premeditated murders. In some cases, the murder was committed by taking the opinions of the person or persons deemed suitable from the kinship network. In other words, it was almost always possible to find some supporters of the murderer in the murders. This situation was also directly reflected in the demands in the sharia trial. For this reason, I think that the heirs' demands for retaliation or pardon for retaliation should not be considered independently of the extended family or kinship network.

The court was not an easy place for everyone. Being in court, the time spent to reach the court, the money, and the route taken were factors that

made the litigation process difficult for everyone. However, my archival experience suggests no procedural barriers for people to access to the court. I should point out that women were also welcomed in this regard. Women were not prevented from expressing themselves in court if they were not under any pressure from their social or family circles. On the contrary, it was possible to come across expressions that would make them feel safe during the interrogations.

§ 7.2. The Law Was with Family

The state did not neglect to intervene in some issues concerning the family institution, and this had various reflections on the law. For example, as part of Ottoman centralization, population, and nation-building policies, in 1874, Sunni Muslim women and Iranian men were banned from marrying. There were concerns that the Shiite population of the state's borders was growing and threatening the government's control of the provinces. The state thought it needed to control marriages to protect the borders. Whichever citizenship the male head of the household was, the household members were also subject to him. The woman was a dependent citizen and had no choice in citizenship.

There were various attempts by the state to facilitate and promote marriage. What was counted for the state was the family itself as an institution rather than the individuals who formed it. In this context, issues such as the people reviewing various customs/traditions and giving up the bride price were on the agenda. The Ottoman reformers saw the marriage expenses as an unnecessary burden. However, the main burden of the marriage was not the mahr but the establishment of a new house and maintaining it.

The fact that the couple expectations were not met in marriage had a normative legal response. The establishment of love and harmony (*muhabbet* and *imtizaç*) between couples was an important aspect of Islamic law and tradition. While they recorded the reasons for the murders between husband and wife in the court records, they noted that there was a lack of harmony (*adem-i imtizaç*) between them as the reason. In court, interrogators asked spouses whether they loved each other. In addition, equivalence (*küfuv*) was an important criterion in Islamic law in establishing a marriage union.

Equivalence was generally categorized as the couple's social status, age, education, and physical characteristics. These dialogues about marriage in court, and especially women's receiving a chance to express their opinions about a marriage that did not meet their expectations, show that the marriage union was normatively open to negotiation.

One of the most important factors that ensured the strength and continuity of the family after marriage was the marital economy. In this context, a property taken out of the marriage union, as well as a property brought to the marriage union, was a cause of conflict and even murder in the family. The property dispute in these cases concerned not only the husband and wife but also the extended family. The possibility that widows could leave the family together with their husband's inheritance was unfavorable for the extended family. To avoid it, the widow's marriage to her brother-in-law was one of the leading options. Another was that she was murdered.

Marriage was possible at almost any age. There were child brides and child husbands, as well as men and women who married at an advanced age. This was an indication of societal diversity, family, and personal interests, which in some cases could violate the generally accepted norms of society. For women, the fact that marriages occur both at a young age and an advanced age (30-40) was another indication that the family was founded on an economic basis. If the woman needed to work in her father's home, she stayed at her father's home and was married late. If the woman was needed as a bride in another house and her departure from her father's house was more economically favorable, she was married. Also, marrying older women could be financially easier. In these marriages, various demands that made marriage difficult were less common. These marriages meant a shelter, especially for women in need. Religious motives and various honor codes were also important for families in whether marriages took place or not.

Family disputes and quarrels were never independent of the society at large. Social, political, and economic events have affected the relations between family members and increased violence within the family. The data at hand suggests that family relations especially had increasing difficulty during the years of increasing economic stalemate and the war years. In this respect, most murders were committed in 1877, when the Ottoman-Russian

war began, and in 1873, when there was a great famine in Anatolia. From the famine that broke out in 1873 to the end of the Ottoman-Russian War, 66 murders were committed. In other words, 30.2% of the 218 murders that were the subject of this study were committed within six years. However, I should remind the reader again that this study's data sources are limited and unsuitable for making an overall generalization for Ottoman society.

Among the murders that I analyzed, most murders in the family were committed on the grounds of honor. Disputes between spouses and murders committed by women with the intention of another marriage followed honor killings. The cases where spontaneous arguments turned into murder were at an undeniable level. Although these arguments were spontaneous, there could have been a family experience that nurtured these momentary outbursts. Murders committed due to long-standing enmity or hatred were also considerably high. Murders due to property quarrels and inheritance division were another aspect of conflict and violence in the family.

According to the data, murderous wives outnumbered the other murderers in the family. In some of these murders, the wives were assisted by the lovers they considered marrying. Thirty-four murders committed by husbands followed these murders. Apart from husbands and wives, siblings were another group of conflicting subjects in the family. Sixteen brothers and fifteen sisters died in the murders committed by the brothers. However, I want to emphasize that this statistical information obtained is limited and should be re-illuminated in the light of future studies.

Stabbing and shooting with a rifle were the most used methods in family murders. These murders were followed by strangulation, poisoning, beating, and murder with an axe. The most requested punishment for these murders was retaliation. The punishments for retaliation were followed by 15 years of hard labor or imprisonment, with a pardon from death. Depending on the murderer's situation, an exposure penalty was imposed in addition to these penalties.

Marriage was not always a safe institution for women. The competition of men in the family sometimes compromised the physical safety of women. In addition to the violence women could experience from their husbands, their brothers-in-law and fathers-in-law were also a source of danger for them.

Wives could be used as a means of threat in disputes between brothers. Apart from these, women could be subjected to sexual harassment by other male members of the family. Rape was used as a means of revenge within the family. The manifestation of these cases was not easy for the victim and the family, and they tended to remain behind the wall surrounding the family.

Archive documents suggest that divorce was not a priority in the Ottoman countryside, both due to some legal and social factors. But when it came to divorce, men and women acted with different motives. The economic burden of divorcing and remarrying was a handicap, especially for men. When they divorced, they had to give their wives their mahr. And, if any, they had to provide for their children's support. When they were going to get married again, they had the wedding expenses in front of them and had to give the mahr to the new wife.

The fact that the man had the right to talaq was a great challenge for the divorce. It was possible to get out of marriage by applying *hul*, but this meant waiving financial rights. Therefore, committing murder as a way out of marriage was among the options. A kind of gambling was at stake here. If the woman's guilt were not proven, the mahr and inheritance rights would remain. But judicial developments in the nineteenth century threw these plans into disarray.

In addition, it seems preferable for women to be widowed by their dead husbands rather than get divorced. As we can talk about the difficulty of legal divorce here, we can also say that being widowed by a dead husband made it easier for women to remarry. This seemed advantageous both socially and economically. Inheritance rights also remained when they were widowed from a dead husband. It was striking in this respect that women did not have a passive role in the murders committed among couples.

Apart from the victim position of women, another prominent fact in this study was the active agency of women in the family. Various parts of this study covered violence against women in the family. However, as I mentioned above, the violence of women against their husbands was also remarkable. Within the possibilities given to them by the domestic field, women sought ways to get out of their unhappy marriages. In some families, women played an active role in distributing property and punishing those who dishonored

the family. Apart from these, women encouraged same-sex fellows or relatives to divorce and remarry.

In the provinces, there were some female figures who were matchmakers between men and women, supplying poison, carrying information, or little gifts. These women, whom I call *çaşıts* in this study, were mostly figures who were not punished or never appeared in court, despite the allegations against them. They were secret perpetrators who had serious effects on the course of events.

The inheritance system's most distinctive feature was the inheritance transfer after death. Therefore, untimely deaths were frequently preferred for family members concerned about their financial interests. Being a step-parent or step-child in the family was almost always a threat to these individuals. Particularly, in disputes or conflicts over property, it was often the step-members of the family who were the first to stand out or be sacrificed.

In this study, I examined murders against family elders and parents. The prominent ones in these murders were mainly the murders against the fathers, and sons mostly committed these. If adult sons committed these murders, the common cause was property and inheritance disputes. Among these murders, especially the murder of Mestan Ağa was one of the most well-planned and extremely brutal murders I have examined in this study. The Mesta Ağa murder was a striking example of how relations between the nuclear and extended family can break down and become fatal in the debates of inheritance and property.

In the murders committed by younger sons, violence or abuse from their fathers was at the forefront. Fathers' marriage intentions and bad habits were other important reasons behind parricide. In particular, the second marriage of fathers with a young woman could cause conflict for their children. The children born from second marriages and the fact that they would receive a share of the inheritance with their mothers fueled this dispute. Also, in some cases, there could be rivalry between fathers and sons regarding the young girl the fathers married.

§ 7.3. Family Was the Law

The law and tradition had a point of view that held the man responsible for the family's honor. Honor was a concept that united the family and the clan, and it achieved its potential due to some social understanding of its duties and responsibilities.[4]

The honor baggage that women began to carry after reaching puberty was closely linked to their right to live. The virginity of girls, overall, was a concern mostly to brothers and fathers, but female family elders could also be demanding.

However, despite all this heavy baggage and harsh practices, the concept of honor could also be stretched in the Ottoman provinces. In particular, honor codes could be bent when personal or economic interests were at stake. So, I claim that the boundaries of honor were quite vague and prone to stretching in the eyes of individuals. However, as the state and society became involved in the issue of honor, these boundaries became sharper. In such cases, honor became something that needed to be cleaned or saved. Honor could be restored by a murder committed. With a murder, what was gained was not only the honor of a single person but also the honor of society. In some cases, society intervened and judged the criminal faster than the judiciary when it came to establishing public morality.

No matter what age the female members of the family were, they were the main determinant of the market value of the family. The misdeeds of women devalued this value. This was a debt they could only pay with their lives. In cases where it was decided that honor should be cleansed, firstly, the woman's family of birth was expected to do something about it. The preferred figure for this job in the family was the brothers.

There was a very clear distinction between the honor of women and the honor of men. Women's honor was more related to being chaste and

4 Carolyn Strange and Robert Cribb, "Historical Perspectives on Honour, Violence and Emotion", in *Honor Violence and Emotions in History*, eds. Caroline Strange, Robert Cribb and Cristopher Forth (London and New York: Bloomsbury, 2014), 10

displaying dignified behaviors deemed appropriate by society. When women's dignity was at stake, patriarchal authority was always a barrier to them. However, women in the court had the courage to ask the state to protect their honor. In this respect, women also were among the rights seekers of the contract that the state made with its citizens to protect their honor with the declaration of the Tanzimat.

Besides honor killings, women were also victims of passion crimes. A very fine line separated honor killings and passion crimes. Passion crimes were more related to separation or inability to get the one you love or want to marry. Although passion crimes can be evaluated as a crime reduction in modern law, this was not the case in the Ottoman legal system. In these murders, the evaluation criterion of the judiciary was to determine whether there was disloyalty. Passion crime cases were very limited in this study as I only examined the murders of family members against each other. However, this does not mean the absence of these cases in the Ottoman archives. In particular, the murders committed by those whose desire to establish a marriage union was not fulfilled and whose love could not be reciprocated need to be examined separately.

Illicit relations were situations in the Ottoman family that existed secretly behind closed walls. These relationships came to light when the wall surrounding them collapsed due to the murder investigation. Illicit relations could be based on the mutual consent of the parties as well as in the dimension of sexual abuse. As we can see in Fatma's and Robre's stories, even if the family members were aware of the incident, they could disbelieve the victim.

The obscene details given by the victim or the offender during a trial about sexual crimes were added to the official documents following the legal framework and general moral norms. I think one of the reasons behind this euphemistic language used by the state for sexual crimes was the concern about public morality. This language also created a different legal category and punishments for sexual crimes. By diversifying the concepts of sexual crime, the language of law provided key information on the details of the crime committed while creating a decent moral language. The expressions used to express these crimes were much straighter for the public.

It is an undeniable fact that Ottoman children left very little traces. So, any experiences, perspectives, and voices of children are invaluable, and they will make an undeniable contribution to social history studies. To enable this contribution, I tried to liberate children from childhood in this study by presenting them as active historical figures.[5] Regardless of the capacity of the children in court, finding the opportunity to express themselves, their expectations and telling their testimonies about the events shed light on both their own world and their family relationships.

In the new order, guardians, minors, families, and children became more prominent for the state and the intellectual world. The children were given separate roles and unique personalities. The welfare of children became a concern of the state. With the legal regulations in the following years, this interest was tried to be guaranteed by the law, and new definitions of adolescence and childhood were introduced. Various definitions were made in the penal code to avoid the inconsistency created by deciding whether a child was of age or not according to physical characteristics. However, it was not always possible for the regulations to be accepted by the public, or it took time because the agenda of the people or families were almost always shaped around various economic and social interests. Although there were debates about the age of puberty, as part of the traditional family structure, adult children continued to be perceived as minors by the elders as long as they remained under their father's authority or in their household.

Although there were murderer children in the murders committed within the family, children were mostly victims. Mostly, daughters and child husbands were killed. Children were generally killed for economic reasons such as poverty, inheritance, or property issues. In the murders of child husbands, the main reason was that these children could not fulfill their husbandly duties, and the wives had other marriage intentions.

Infanticide cases largely involved infants born as a result of illegitimate intercourse. They, particularly, offer insight into the experiences of poor, single, or orphan women. But these murders could be committed by both fathers and mothers. In these cases, babies were always mentioned by reference to their mothers. According to Islamic law, illegitimate babies were

5 Nazan Maksudyan, *Orphans and Destitute Children*, 8

considered to be without paternal lineage, even if their fathers were known to the public.

Child brides were an Ottoman reality, but they did not appear as a striking number in this study. The themes related to the lives of child brides reveal themselves indirectly. Although we do not have many examples, the memoirs and statements of young wives about the early years of their marriages were the chief information source in this regard.

Children were present at court not only as victims or defendants but also as witnesses. These testimonies were such that they could change the course of the case. In this respect, children also had an agency in revealing the murders. The state also benefited from the agency of children, and it did not do this by ascribing adult characteristics to children. The children appeared in court as children.

This study documented a portrait related to the conflict zones in rural families in the Ottoman Empire in the second half of the nineteenth century. Although the family was emphasized as a strong institution that people were proud and fond of, it is obvious that facts other than the concept of the family also forced this institution. Although the element that bound the family to each other seems to be blood and kinship ties, this bond was quite fragile and was largely influenced by property relations. Individuals questioned family ties for the sake of basic desires, interests, and hostilities. These ties could easily be severed when they conflicted with individual interests, and they could easily evolve into violence and death, especially in disputes over property or honor.

In this study, as Natalie Zemon Davis states, I tried to understand and make sense of how people tell various violent stories and explain their motivations.[6] These stories have been instrumental in opening various conceptual doors. However, as I said in the introduction, the in-depth analysis of these concepts was beyond the scope of this study due to the limits of this study.

In this study, I discussed the family through various anomalies. However, upon entering through the door opened by these anomalies, it became clear how diverse, fragile, and sometimes primitive the relations within the family

6 Natalie Zemon Davis, *Fiction in the Archives*, 4

were. Anomaly was actually on one end of the spectrum in the family. This study highlighted random individual effects rather than gradual changes in the Ottoman provincial family. Although the family wanted to be established as a strong institution equipped with various values, it was always open to being questioned and ignored by individuals.

Family stories that resulted in murder contained a narrative spiral: the narratives of the accused or witnesses in the court and the court's narrative. The Ottoman provincial family portrait revealed by the narrative of this study, which is articulated on top of these two narratives, is just a small brick on the wall. I would like to conclude with conviction and hope that this study can be a building block for future studies in this regard.

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