Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864–1868

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I. PROBLEMATIC AND SOURCES

The *Tanzimat*—a series of legal and administrative reforms implemented in the Ottoman empire between 1839 and 1876[1]—has been described by Roderic Davison as a modernization campaign whose momentum came "from the top down and from the outside in."[2] There can be little doubt about the basic historical veracity of this characterization. Ottoman reform was indeed the brainchild of a small, albeit influential, portion of the imperial bureaucratic elite and its direction and timing were undeniably influenced by foreign diplomatic pressure (in the context of the so-called "Eastern Question"). But by characterizing, correctly, the *Tanzimat* as a state-led, elitist project, Davison's argument enters an interpretive vicious circle which seems to be more a reflection of twentieth-century political sensibilities than of nineteenth-century realities. A "top-down" political project, according to this argument, is by definition less likely to succeed than a project that has "vigorous popular support."[3] And, since we know

I thank Margarita Dobreva, Evgenii Radushev, Maria Kalitsin, Rositsa Gradeva, and the staff of the Ottoman section of the Prime Ministry archives of Turkey, for their help in facilitating my research in Sofia and İstanbul respectively. Professors M. Şükrü Hanioğlu, Stephen Kotkin, and Michael Cook, all of Princeton University, read drafts of this paper and provided helpful comments. My archival work was supported in part by a fellowship from the International Dissertation Field Research Fellowship Program of the Social Science Research Council, with funds provided by the Andrew W. Mellon Foundation.

Transliteration, place names, and dates: Ottoman terms are transliterated according to their modern Turkish spelling, as given in *Redhouse Türkçe-İngilizce Sözlük* (İstanbul: SEV, 1997). The exception is the term *sharia* which is given in its popular English form—derived from Arabic with diacritics omitted—instead of the Turkish equivalent *şeriat* (although the corresponding adjective is transliterated in its *Redhouse* Turkish spelling: *şer'î*). Bulgarian terms are transliterated according to the Library of Congress system. Place names are given in their present form (*Ruse* instead of *Rusçuk, Veliko Tûrnovo* instead of *Tırnova,* etc.). All dates are Gregorian.

[1] The periodization I use here (from the 1839 *Gülhane* Reform edict to the 1876 Ottoman Constitution) is the most widely accepted one; some authors use a narrower one (1856 to 1876).

[2] Roderic Davison, *Reform in the Ottoman Empire: 1856–1876* (Princeton: Princeton University Press, 1963), 406.

[3] Ibid.

0010-4175/04/730–759 $9.50 © 2004 Society for Comparative Study of Society and History

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

that the project in question ultimately failed to stop the breakup of the empire, it must indeed have lacked such support.

It may be objected that the breakup of the Ottoman state itself was also a "top-down, outside-in" event in that most of the empire's post-*Tanzimat* territorial losses were the direct result of military defeats (in 1878, 1912, and 1918) that were, at best, indirectly related to popular support (or lack thereof) for the reform program. Indeed, as we become "less enamoured of the methods by which nation states were created, made homogenous and praised for their virility in the crude, brutal and Darwinian intellectual climate of the early twentieth century,"[4] the very notion of multiethnic empires' incompatibility with modernity appears anachronistic and retroactively built upon a historical contingency. A number of recent studies have criticized the earlier attempts to fit "the ungainly body of late Ottoman history to the Procrustean bed of modernization theory"[5] and have shown that Ottoman reformers' proposed solutions to the dilemmas of empire were often more complex and original than we have been led to believe.

The present study adds to this revisionist line by asking whether the *Tanzimat* reforms made a tangible impact on the cognitive and epistemological worlds of the non-elite Ottoman subjects. This is not a trivial question. A large body of scholarly literature maintains that no such impact existed, especially in regard to the non-Muslim minorities.[6] With this in mind, I have chosen as a case study the Ottoman *vilayet* of Danube: a "pilot" province created in 1864[7] as a proving ground for a projected empire-wide provincial reorganization. Demographically, the Danube province was a very diverse unit[8] whose inhabitants

[4] Dominic Lieven, *Empire: The Russian Empire and Its Rivals* (New Haven: Yale University Press, 2000), 191.

[5] Benjamin Fortna, *Imperial Classroom: Islam, the State, and Education in the Late Ottoman Empire* (Oxford: Oxford University Press, 2002), 3.

[6] Davison (*Reform,* 407–8) claims that the reforms' "most signal failure" was in their inability to popularize the supra-national ideology of *Osmanlılık.* Karpat suggests that the *Tanzimat* had a profound and positive impact on the political culture of Ottoman Muslim groups (e.g., by making it possible for Turks to eventually embrace Kemalism), but no impact on Christian ones. Kemal Karpat, "The Ottoman Rule in Europe from the Perspective of 1994," in his *Studies on Ottoman Social and Economic History: Selected Articles and Essays* (Leiden: Brill, 2002), 504.

[7] *Takvim-i Vekayi*ʿ [8 Oct. 1864]. The organic statute of the province was published as *Loi constitutive du département formé sous le nom de Vilayet du Danube* (Constantinople: Imprimerie Centrale, 1865).

[8] The main ethnic and religious groups in the province were the Orthodox Christian Bulgarians and the Sunni Muslim Turks. Smaller groups included Sunni Tatars and Circassians (immigrants from lands recently conquered by the Russian empire in the Crimea and the Caucasus respectively), Gypsies/Roma (who were split into Muslim and Christian sub-groups), Sephardic Jews, Orthodox Romanians and Greeks, and Gregorian Armenians. There was also a plethora of even smaller insular communities such as Pomaks (Bulgarian-speaking Muslims), Gagauzes (Turkish-speaking Christians), Bulgarian Roman Catholics, Shiite Muslims, Russian Old Believers, Ukrainian Cossacks, Ashkenazi Jews, Protestant Armenians, etc. The precise proportions of the different ethnic groups in the Danube *vilayet* are a subject of considerable controversy. An Ottoman census undertaken in the late 1860 (results published in 1874) indicated that Bulgarians made up just over 50 percent of the population; Turks—34 percent; Tatars and Circassians (combined)—5 percent, Gypsies—3 percent, smaller groups—8 percent. Figures from consular and other European

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included a large non-Muslim ethnic group (Bulgarians) potentially susceptible to the lure of ethnic nationalism and typically portrayed as deeply alienated from the political life of the empire and generally hell-bent upon secession regardless of Ottoman reform efforts.[9] Particularly under its first governor, Midhat Paşa,[10] the province experienced a period (1864–1868) of sustained "modernization" in the fields of legal and institutional reform, infrastructure, communications, economic development, medical care, hygiene, and urban development[11]—yet, in the end, it could only be kept in the Ottoman fold for a mere decade after Midhat's departure and was "liberated" by advancing Russian armies in 1877–1878, becoming (with some territorial alterations)[12] the core of an autonomous Bulgarian nation-state.

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sources tend to vary according to the political sympathies of the source and are altogether less reliable than the census. See Georgi Pletn̆ov, *Politikata na Midkhat pasha v Dunavskiia vilaet* (Veliko Tûrnovo: Vital 1994), 54–61.

[9] This seems to be the consensus of the otherwise antagonistic Bulgarian and Turkish national historiographies. See *Istoriia na Bûlgariia* (Sofia: Izdatelstvo na BAN, 1987), vol. 6, 32–38; Khristo Khristov, *Bûlgarskite obshtini prez Vûzrazhdaneto* (Sofia: Izdatelstvo na BAN, 1973), 130; Hüdai Şentürk, *Osmanlı Devleti̇nde Bulgar Meselesi, 1850–1875* (Ankara: Türk Tarih Kurumu Basımevi, 1992), 87.

[10] Ahmed Midhat Paşa is one of the best-known figures of the *Tanzimat* reforms, celebrated in Turkish historiography as architect of the Ottoman constitution (1876), founder of the system of agricultural credit cooperatives, and a successful provincial governor. For biographical details, see Ali Haydar Midhat, *The Life of Midhat Pasha: A Record of His Services, Political Reforms, Banishment, and Judicial Murder* (London: John Murray, 1903) and İbnülemin M. K. İnal, *Osmanlı devrinde son sadrıazamlar* (İstanbul: Maarif Matbaası, 1940–), 315–414. For various aspects of Midhat's policies as provincial governor, see Pletn̆ov, *Politikata;* Tevfik Güran, "Osmanlı İmparatorluğu̇nda Ziraî Kredi Politikasının Gelişmesi, 1840–1910," in *Uluslararası Midhat Paşa Semineri* (Ankara: Türk Tarih Kurumu Basımevi, 1986), 95–127; Maria Todorova, "Obshtopoleznite kasi na Midkhat Pasha," *Istoricheski Pregled* 28 (1972):56–76; Nejat Göyünç, "Midhat Paşȧnın Niş valiliği hakkında notlar ve belgeler," *Tarih Enstitüsü Dergisi* 12 (1981–1982):279–316; David Dean Comminis, *Islamic Reform: Politics and Social Change in Late Ottoman Syria* (Oxford: Oxford University Press, 1990); Yaşar Yücel, "Midhat Paşȧnın Bağdat Vilayetindeki Alt Yapı Yatırımları," in *Uluslararası Midhat Paşa Semineri,* 175–85.

[11] The reformist policies included the creation of a hierarchy of administrative and judicial council with mixed (Muslim and non-Muslim) membership; the building of some 3,000 km of roads, 150 km of railway, 1,420 bridges, and 34 telegraph stations; the chartering of several publicly traded shareholders' companies providing services ranging from coach and steamship travel to mail delivery; the rectification of city street layouts, planting of public parks and gardens, re-hauling existing arrangements for waste and sewage disposal and other urban reforms; and the establishment of seven hospitals and a provincial quarantine board. Also notable were Midhat's efforts to harness the labor and financial resources of ever broader segments of the population—the roads, for example, were built through a mandatory labor service, the expansion of the bureaucracy was often "self-financed," and previously marginalized social groups such as orphans, vagrants, and prisoners were effectively conscripted in the service of reform through "imaginative" new policies. See Pletn̆ov, *Politikata,* 80–81 and 89–151; Hans-Jürgen Kornrumpf, "Islahhaneler," in *Économie et sociétés dans l'Empire ottoman (fin du XVIIIe—début du XXe siècle),* ed. Jean-Louis Bacqué-Grammont and Paul Dumont (Paris: Éditions du Centre national de la recherche scientifique, 1983), 149–56; *Dunav / Tuna* [newspaper] (Ruse: Pechatnitsa na Dunavskiia vilaet, 1865–1876) (henceforth *Dunav*) III/232 [15 Nov. 1867]; *Başbakanlık Osmanlı Arşivleri: İrade-i Meclis-i Vâlâ* (İstanbul) (henceforth BOA İ.MVL.), 25972; *Natsionalna Biblioteka Kiril i Metodii: Bûlgarski Istoricheski Arkhiv* (Sofia), II A 1042.

[12] As created in 1864, the province also extended over regions that subsequently became parts of Serbia, Romania, and Macedonia.

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Moreover, even if the meta-narrative of "rise of nations" is temporarily set aside, we are still left with the question of whether the Ottoman state of the 1860s was at all capable, either technologically or institutionally, of engaging in any sort of transmission of ideas to its subjects. Although in 1865 the *vilayet* of Danube became the first Ottoman province to set up a government-owned printing press and to start publishing an "official" newspaper (the billingual *Tuna/Dunav*), the miniscule size of the reading public undoubtedly limited the impact of this propaganda outlet. Most state-to-subject communication would have occured, as in earlier periods, through the public reading of government edicts by policemen (*zaptie*) and town-criers (*tellâl*), or through the word-of-mouth of informal social networks which typically relied on the mediation of local notables. The two great avenues of state-led enculturation (or disciplining, depending on the perspective)—the conscript army and the school—were simply not available as such to Ottoman reformers of this period. The military and educational experiences of the empire's subjects varied so greatly depending upon their religious and ethnic affiliation (not to mention gender), that the overall institutional setup of the *Tanzimat* army and school system(s) probably undercut rather than reinforced the stated ideological goal of the reforms.[13]

There is, finally, the question of timing. Undoubtedly, most individuals, regardless of their social status can be expected, over time, to modify their behavior according to the expectations of the prevailing political power, especially in situations in which the individuals come into direct contact with the agents or institutions of power. But insofar as the *Tanzimat* involved a certain degree of change in the state's expectations of ideal/proper subjecthood, the readiness with which "ordinary" men and women learned to "speak *Tanzimat*"[14] should tell us something about the public's own expectations regarding the viability of the reform program, and, ultimately, of the Ottoman state itself. It is true that the official proclamation of the *Tanzimat* had occurred some three decades earlier, and we should not be surprised to find that certain key desiderata of the reform program (such as legal inter-confessional equality) would have entered public discourse by the mid-1860s. But it must be emphasized that the events described in this paper took place in the context of institutions (*nizamî*

[13] Throughout the *Tanzimat* period, repeated promises to allow non-Muslims to serve in the army were never realized, while education remained dominated by confessional schools which were not subject of government regulation. See Davison, *Reform,* 94–95, Fortna, *Imperial Classroom,* 10. This makes for an interesting contrast with Mehmed Ali's Egypt, where both mass conscription and an experiment (however brief) with government education were introduced in the 1820s and the 1840s, respectively. For critical reassessments of Egyptian "modernization" in these fields, see Khaled Falmy, *All the Pasha's Men: Mehmed Ali, His army and the Making of Modern Egypt* (Cambridge: Cambridge University Press, 1997); and Timothy Mitchell, *Colonising Egypt* (Berkeley: University of California Press, 1988), especially 69–74.

[14] I am greatly indebted here to Stephen Kotkin's discussion of "speaking Bolshevik" as a form of mandatory discursive self-identification "game" in Stalinist Russia—see his *Magnetic Mountain: Stalinism as Civilization* (Berkeley: University of California Press, 1995), ch. 5. Of course, this is not meant to suggest that there was any ideological or institutional similarity between Stalinism and Ottomansim.

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courts) and practices (criminal interrogations) which were typically only one to three years old at the time.[15] Nothing in the abstract declarations of the 1839 and 1856 reform edicts could have taught a litigant how to behave in the new courts or what to say under interrogation. Yet, the legal stratagems and exculpatory stories examined below demonstrate a degree of awareness of concrete, clearly contextualized current policies that goes well beyond the level of passing knowledge of reform basics. As we shall see, the inhabitants of the Danibe province—including the Bulgarians—turn out to have been much better attuned to the dominant state discourse than has been assumed by historians dismissive of *Tanzimat* ideological production altogether.

The records of the *nizamî* courts remain one of the most inexplicably underutilized Ottoman sources.[16] For Ottomanists, "court records" are usually synonymous with the so-called *sicil* registers containing summaries of cases heard in the Islamic *şer'î* courts throughout the empire. The contributions of *sicil* scholars to Ottoman history are unquestioned, and indeed, certain sub-fields—women's history, urban history, land tenure, local politics, to name but a few—have been revolutionized or even created *ex nihilo* by their pioneering work. Yet, many such scholars have become acutely aware of the inherent limitations of their source of choice.[17] Commenting upon the imaginative use of legal records by European medievalists,[18] Ottoman *sicil* scholars have conceded that, because of the specifics of the *şer'î* court protocol, the typical *sicil* entry "cannot match" the richness of an Inquisition trial record.[19] The most often cited deficiencies are the absence of direct quotes from the court proceedings, the stilted formulaic language, and the shortage of information on the litigants' motivation and/or the social background in which the cases occur.[20]

[15] Apart from some commercial courts and courts specially designed to hear cases involving non-Ottoman subjects, the *vilayet* of Danube was the first instance in which a distinct hierarchy of judicial bodies separate from the Islamic (*şer'î*) courts was instituted in the Ottoman empire. See C. V. Findley and H. İnalcık, "Mahkama (2.ii)," in *Encyclopaedia of Islam, New Edition* (Leiden: Brill, 1980–), vol. 6, 5–9; Gülnihal Bozkurt, "The Reception of Western European Law in Turkey: From the Tanzimat to the Turkish Republic 1839–1939," *Der Islam* 75 (1998):289; Şerif Mardin, "Some Explanatory Notes of the Origins of the 'Mecelle' (Medjelle)," *The Muslim World* 51 (1961):196, fn. 19; Sedat Bingöl, "Tanzimat sonrası taşra ve merkezde yargı reformu," in, *Osmanlı,* ed. Güler Eren (Ankara: Yeni Türkiye Yayınları, 1999), vol. 6, 533–45.

[16] Khaled Fahmy's pioneering work has demonstrated the great potential of "reformed" or "secular" courts' records as sources for the social history of nineteenth-century Egypt. To date, there has been no comparable study of the structurally similar Ottoman *nizamî* court records. See Khaled Fahmy, "Law, Medicine, and Society in Nineteenth-Century Egypt," *Égypte/Monde arabe* 34 (1998):17–51; *idem.,* "The Police and the People in Nineteenth-Century Egypt," *Die Welt des Islams* 39 (1999):1–38.

[17] For a discussion of the methodological problems of using *sicils* as a historical source, see Dror Ze'evi, "The Use of Ottoman Sharī'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5 (1998):35–56.

[18] I have in mind here the outstanding studies of Natalie Zemon Davis, Carlo Ginzburg, and Emmanuel Le Roy Ladurie and others.

[19] Haim Gerber, "Muslims and *Zimmis* in Ottoman Economy and Society: Encounters, Culture and Knowledge," in *Studien zur Wirtschaft und Gesellschaft im Osmanischen Reich,* ed. R. Motika, C. Herzog, and M. Ursinus (Heidelberg: Heidelberger Orientverlag, 1999), 99.

[20] Besides Ze'evi's article quoted above, see Haim Gerber, *State, Society, and Law in Islam: Ot-*

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By contrast, the *nizamî* court records of the late nineteenth and early twentieth century provide in abundance the kind of raw "social history" data whose absence in the *sicils* is so often regretted. The interrogation protocols (*istintaknname*) attached to many *nizamî* court cases are especially valuable in this regard. Unlike virtually any other type of Ottoman legal source, the interrogation protocols are *verbatim* accounts of what was said during the investigative process. As such, these documents contain the first-person narratives of *bona fide* non-elite social actors, which have proven so elusive in other types of Ottoman sources, including *sicil* records. The interrogations, therefore, provide a precious glimpse into the "intellectual, moral, and fantastic worlds"[21] of the protagonists in the *nizamî* legal process and allow us to apply Carlo Ginsburg's emic, non-statistical "miscrohistorical" approach to the study these subaltern social actors.

That is not to say that the *nizamî* court records pose no interpretative problems as historical sources; they do. One has to keep in mind the caveat that legal sources in general tend to describe real or inferred breaches of "normal" social behavior. There are pitfalls in trying to reconstruct a social reality from documents, which often "distort the picture in favor of the extraordinary"[22] Natalie Davis' verdict that court interrogation records are problematic because the seemingly unadulterated voice of the "people" they present is actually guided and directed at every step by the interrogator[23] also applies, although in the cases I have read the "guiding" tends to cut both ways. Finally, one specific limitation stems from the manner in which the Ottoman archives in İstanbul are organized: the cases that are most readily available to the researcher tend to be either those that involve the most serious types of crimes, or those that were most complicated from a legal standpoint.[24] My sources, in other words, do not constitute a "random sample," and, to the extent possible, I have tried not to use them as such.[25]

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toman Law in Comparative Perspective (Albany: SUNY Press, 1994), 15, 43; Suraiya Faroqhi, *Coping with the State: Political Conflict and Crime in the Ottoman Empire: 1550–1720* (İstanbul: The İsis Press, 1995), xviii–xix; and Madeline Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden: Brill, 1997), 5.

[21] Carlo Ginzburg, "Microhistory: Two or Three Things that I Know about It," *Critical Inquiry* 20 (1993):23.

[22] Amy Singer, *Palestinian Peasants and Ottoman Officials: Rural Administration Around Sixteenth-Century Jerusalem* (Cambridge: Cambridge University Press, 1994), 120. The quote reflects Singer's methodological concerns about the *mühimme* registers upon which her work on sixteenth-century Palestine is based, but it strikes me as applicable to the nineteenth-century *nizamî* court records as well.

[23] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 5–6.

[24] The most accessible cases are those from the *irade* collections (particularly BOA İ.MVL.), which contain *only* those lawsuits that had required Sultanic approval (*irade*). That means that the *irade* collections are limited to cases involving either (a) capital punishment, or (b) reduction of a OPC-prescribed penalty at the discretion of the sovereign.

[25] In other words, I avoid looking at these cases as being "representative" of, for instance, the types of crimes committed, or of the gender, age, or ethnic breakdown of criminality in the Danube province.

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II. THE LEGAL CONTEXT

The criminal law applied in the Danube province during the 1860s was a blend of Islamic (*sharia*) and state-issued (*kanun*) regulations, practices, and institutions.[26] Islamic courts operated side-by-side with the new *nizamî* courts. There were a number of significant differences between these two types of institutions:

(a) An Islamic court can be described as the institutional extension of the person of the judge (*kadı*)—a religious scholar formally trained in the principles of jurisprudence (*fıkh*). In theory, a *kadı* was not required to base his decisions on any specific legal text, but rather on his comprehensive knowledge of *fıkh;* in practice, most Ottoman *kadıs* followed closely one of several *sharia* manuals that effectively codified the legal views of the Hanafi branch of Islamic law.[27] Each *şer'î* court had its own geographical area of jurisdiction but all were, in principle, equal and able to rule as institutions of last instance on every matter referred to them. In matters of criminal law, the *sharia* made a basic distinction between offenses seen as violations of "private rights" (*hukuk-i ibad*) and those seen as infringements upon the "rights of God" (*hak Allah*). Crimes belonging to the former category included homicide and wounding; those in the latter category included fornication, highway robbery, theft, alcohol consumption, and polytheism. The important practical implication of this distinction was that, in dealing with a crime that violated "private rights," a *şer'î* court would give the *injured party* (as opposed to political authorities) the central role in the prosecution and sentencing process. Thus, in cases of crimes against "private rights," *şer'î* courts could impose either retaliatory (*kısas*) or compensatory (*diyet*) penalties depending on the wishes of the plaintiff(s), while crimes against "God's rights" called for specific "fixed" (*hadd*) punitive penalties.

(b) By contrast, *nizami* courts could be described as bureaucratic judicial councils—they were staffed by a mixture of appointed government officials and "elected" local notables.[28] Unlike their *şer'î* counterparts, the *nizamî* courts were expected to adhere strictly to the provisions of a state-produced normative legal document—the Ottoman Penal Code (OPC) of 1858. Procedurally, the main difference between the two institutions lay in the degree of their involvement in the investigative process: while a *kadı* was merely required to hear

[26] A full discussion of the complexities of Ottoman criminal law is beyond the scope of this paper. My remarks here are intended simply to introduce the basic terms and concepts which are essential to understanding the legal cases discussed below. For detailed analyses of the Ottoman legal system in the classical period, see Uriel Heyd, *Studies in Old Ottoman Criminal Law,* ed. V. L. Ménage (Oxford: Clarendon Press, 1973), 167–311; for the seventeenth and eighteenth centuries, see Gerber, *State, Society and Law,* 58–78; for the nineteenth century, see Rudolph Peters, "Sharia and the State: Criminal Law in Nineteenth Century Egypt," in *State and Islam,* ed. C. van Dijk and A. H. de Groot (Leiden: Research School CNWS, 1995), 152–77.

[27] Gerber, *State, Society, and Law,* 30.

[28] The franchise system for electing members to the *nizamî* courts was very restrictive and ensured that the political authorities had ultimate control over the outcome of the "elections." See İlber Ortaylı, *Tanzimat Devrinde Osmanlı Mahallî İdareleri, 1840–1880* (Ankara: Türk Tarih Kurumu Basımevi, 2000), 70–92.

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the testimony proffered to him by the rival litigants, a *nizamî* court actively gathered evidence through interrogations, sometimes aided by the police, but often on its own through *ad hoc* interrogation committees made up of several court members. A *nizamî* court could impose certain penalties, for example hard labor (*kürek*), which had no place in *şer'î* law. Finally, the *nizamî* courts in the *vilayet* of Danube were parts of a hierarchical institutional structure that mirrored the bureaucratic organization of the province itself,[29] and their decisions were routinely submitted for review to the next higher court in the system.[30]

Described in this way, the coexistence of two disparate sets of judicial norms and institutions may appear self-contradictory and unworkable. In practice, however, the elements of *sharia* and *kanun* meshed to form a stable legal environment. Article 1 of the 1858 Penal Code laid the groundwork for the compromise:

> It concerns the State to punish offenses against private persons, by reason of the disturbance such offences cause to public peace, equally with those directly committed against the State itself.
>
> And by reason thereof, the present Code determines the different degrees of punishment, the execution of which has by the [*sharia*] been committed to the supreme authority. Provided always that the following provisions shall in no case derogate from the rights of private persons given to them by the [*sharia*].[31]

In order to understand the importance of that passage, let us take as an example the prosecution of murder trials. The *sharia,* as was mentioned above, regards homicide as a violation of private rights. Consequently, it gives the victim's relatives (who are deemed to be the "injured party") the prerogative to initiate prosecution, select the type of punishment, or absolve the offender of punishment altogether. Strictly speaking, the *sharia* allows the state to punish a murderer independently from the victim's relatives *only* when the killing has taken place in a context of certain other offenses (for example, highway robbery) that fall under the rubric of violation of the "rights of God." That meant that the payment of "blood-money," for example, was considered a sufficient penalty for murder under *şer'î* rules. It is not difficult to see that a "modernizing" state dedicated to expanding its own authority, promoting public order,[32] and, last but not least, maximizing its prison population, (it was used as a readily available labor force for the infrastructural projects), may have found this provision problematic. The 1858 Penal Code addressed the issue by opening a

[29] The Danube province consisted originally of forty-five districts (*kaza*) grouped into seven sub-provinces (*sancak*). *Nizamî* criminal courts (*daavi* or *cinayet meclisleri*) were established in each *kaza* and *sancak* center, as well as in the provincial capital of Ruse. Appellate courts (*temyiz-i hukuk meclisleri*) were set up at the *sancak* and *vilayet* levels.

[30] The cases preserved in the BOA İ.MVL. and *Başbakanlık Osmanlı Arşivleri: Sadaret Evrakı Mektubî Kalemi: Meclis-i Vâlâ* (İstanbul) (henceforth BOA A.MKT.MVL.) in particular allow us to trace the unfolding of each lawsuit through the justice system.

[31] *The Ottoman Penal Code 28 Zilhiceh 1274,* trans. C.G. Walpole (London: William Clowes and Sons, 1888) (henceforth OPC), Article 1.

[32] The preservation of public order (or, "tranquility and silence," to use the officially favored euphemism), was referred to in several articles in the provincial newspaper (e.g., *Dunav* I/28, [20 Sept. 1865]) as the most important *raison d'être* of Midhat's administration.

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new legal avenue that, in effect, enabled both the state and the kinship group to stake their claims against a murderer. In what scholars have called the system of "dual trial"[33] the victim's relatives' right to choose between a monetary (blood-money) and retaliatory (execution) punishment was guaranteed, but, if they opted for the former alternative, the state could then re-try the offender in a *nizamî* court and sentence him/her to up to fifteen years of hard labor.[34]

Besides resolving the fundamental conflict between private and public claims, the system of dual trial also effectively bypassed certain practical problems inherent in criminal prosecution accordining to Islamic law. Proving intent, for example, is difficult under *şer'î* rules, since it is contingent mainly upon the type of weapon used in committing the crime (for example, no murder by strangulation could be judged to have been intentional, since the human hand is not a lethal weapon in itself).[35] The 1858 Penal Code did not explicitly challenge the *şer'î* principle of inferring intent but simply brushed it aside: in the *nizamî* lawsuits I have examined, premeditation was established by looking at the entire available body of evidence (for example, most murders committed during a quarrel were deemed unpremeditated). Another practical accomplishment of the dual trial system was the lowering of the standard of proof required for conviction. In the absence of a confession, the *sharia* requires the testimony of at least two "credible" eyewitnesses to the crime (or to a confession) in order to convict; in practice certain crimes, (e.g., fornication) require such a high standard of proof as to make them practically non-punishable.[36] The *nizamî* courts, on the other hand, could and did convict criminals on the basis of circumstantial evidence and mutually conflicting witness testimony in addition to confessions. Moreover, since in most cases the interrogations predated the *şer'î* hearings, a confession was usually witnessed by enough people (interrogators, court clerks, auxiliary personnel) to make conviction a certainty in the *şer'î* case as well.[37] Finally, the 1858 Penal Code explicitly criminalized numerous practices on which the *sharia* was either completely silent[38] or which it was practically incapable of prosecuting on account of its strict evidence requirements.[39]

[33] Rudolph Peters used this term to refer to the criminal justice system of nineteenth-century Egypt. At least until the establishment of the so-called Mixed Courts in Egypt (1876), the fundamentals of the Egyptian and Ottoman legal systems were similar enough to justify my borrowing of the term. (Egypt, of course, remained an autonomous Ottoman province until World War 1). Rudolph Peters, "Murder on the Nile: Homicide Trials in 19th Century Egyptian Sharī'a Courts," *Die Welt des Islams* 30 (1990):115.

[34] OPC, Article 172.

[35] Peters, "Murder on the Nile," 103.

[36] Peters, "Sharia and the State," 167.

[37] Peters, "Murder on the Nile," 112–13.

[38] For example, slander (other than the slanderous allegation of fornication which is a *hadd* crime), bribery, etcetera.

[39] For example, embezzlement which could not be fitted into the *şer'î* definition of theft, since the latter required that the goods stolen be kept locked and hidden. Peters, "Sharia and the State," 153.

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TABLE 1

şer'î *court outcome*	nizamî *court action*	*typical* nizamî *court outcome*
Plaintiff wins case but agrees to receive blood-money (*diyet*) as settlement	Automatically re-try case	Conviction under Article 174 of OPC to lengthy terms of hard labor (to be endured after the offender had paid the *diyet* to the victim's relatives.)[1]
Plaintiff fails to win case because of insufficient evidence	Re-open and re-investigate case	Conviction, often by virtue of a new evidence or "confession" obtained under interrogation.[2]
No *şer'î* lawsuit because victim had no known relatives	Try case as a court of first instance	Conviction[3]
Victim's relatives do not initiate a *şer'î* lawsuit, or, having initiated one, retract it and pardon the offender	Try case as a court of first instance	Conviction[4]
Şer'î case interrupted because plaintiff accepts settlement in the form of "peace money" (*bedel-i sulh*) in lieu of *diyet.*[5]	Re-try case	Conviction[6]

[1]*Başbakanlık Osmanlı Arşivleri: Ayniyat Defterleri* (İstanbul) (henceforth BOA AYN.D. 919, p.98 [17 Sept. 1867]; BOA AYN.D 919, p. 126, Evrak 710 [15 Dec. 1867].
[2]BOA AYN.D. 919, p. 65 [8 Apr. 1867]: the relatives of a murder victim could produce no eyewitnesses to the act and resorted to aksing the *şer'î* court to force their suspect to take an exculpatory oath (*tahlif*)—the suspect did that and was accordingly proclaimed innocent; however, during the subsequent *nizamî* interrogation he "confessed" that he had killed the victim by mistake. He was convicted of unpremeditated murder and sentenced to fifteen years of hard labor (OPC, Article 174).
[3]BOA AYN.D. 919, p. 72 [13 May 1867]: Ca'fer, the murderer of a nomadic Gipsy was convicted according to the Penal Code, based upon the testimony of two policemen who allegedly overheard him confess (it is not clear whether this occurred in the context of an interrogation or not). However, because of the victim's itinerant lifestyle, no relatives could be found; consequently, no *şer'î* lawsuit could take place. The *nizamî* court convicted Ca'fer of unpremeditated murder (instead of premeditated one) because, the court said, he needed to remain alive in case any relatives of the victim came forth and wished to exercise their *şer'î* rights.
[4]BOA AYN.D. 919, p. 7 [2 June 1866]: despite having been pardoned by the relatives and thereby fully exculpated according to the *sharia,* the suspect was nevertheless re-interrogated and convicted to fifteen years of hard labor (OPC, Article 174).
[5]Unlike "blood money" which was a canonically fixed sum, "peace money" could be any amount mutually agreed to by the litigants, usually through the court's mediation (*tavassut*).
[6]BOA AYN.D. 919, p. 106 [15 Oct. 1867]: a murder suspect and his victim's wife agreed to settle the case by payment of "peace money" before any formal *şer'î* sentence was passed; the *nizamî* investigation nevertheless found the suspect guilty of unpremeditated murder. (OPC, Article 174).

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A brief look at the lawsuit summaries inscribed in the so-called *Ayniyat* registers for the Danube province suggests that the application of the system of dual trial did indeed enable Midhat's provincial administration to prosecute criminals more "vigorously" and to achieve a high rate of incarceration. Table 1 lists the main scenarios in which the state was able to modify "unsatisfactory" *şer'î* outcomes in murder cases through a recourse to the *nizamî* courts.

The *nizamî* courts also proved instrumental in enabling the Ottoman political authorities to avoid certain cumbersome *şer'î* procedures and rules. One example is the canonical mass exculpatory oath (*kasame*)—while still prescribed by Muslim jurists in homicide cases against unknown suspects, the evidence suggests that in practice the *kasame* was rendered obsolete by *nizamî* investigative practices.[40] Another example involves homicide cases in which the crime was committed by more than one accomplice—in such instances the *sharia*'s exceedingly complex rules on establishing complicity[41] were bypassed in favor of the much simpler prescription of the Penal Code,[42] and accomplices were often tried and sentenced according to the *kanun* even when the main culprit had already been convicted according to the *sharia.*[43]

III. LAW AND MODERNITY

It has been observed that legal reform played a uniquely ambivalent role in the *Tanzimat* modernization project. Partly because they were unwilling to antagonize the powerful religious establishment, the *Tanzimat* reformers typically tempered their support for new legislation with an essentially conservative historical analysis steeped in nostalgia for the lost glory days of the late fifteenth and sixteenth centuries, when the "rules of the *sharia* were always perfectly observed."[44] In effect, that meant that social change based on classical liberal no-

[40] BOA AYN.D. 919, p. 127 [15 Dec. 1867]: as part of a homicide case against unknown perpetrators, the plaintiff sought the opinion of the office of the Chief Müfti (*Şeyhülislam*) in İstanbul as to how the *şer'î* lawsuit could proceed. The Müfti's office replied by recommending the enactment of a *kasame,* whereby the plaintiff would select fifty (male) villagers and ask the court to require each one of them to swear to his own innocence of the crime. However canonically correct, the *Şeyhülislam*'s recommendation remained a dead letter—instead of executing the *kasame* procedure the authorities conducted *nizamî* investigation, at which it "became known" that a certain villager had fatally shot the victim during a quarrel.

[41] The plaintiff[s] must prove what each of the accomplices did, whether each accomplice acted willfully, and whether each of the accomplices' acts, if committed separately, would have resulted in death; it is the combination of these variables, *plus* the timing of the death relative to the attack, that decides how the criminal liability should be apportioned. See Peters, "Murder on the Nile,"106–7.

[42] OPC, Article 175: anyone who "has assisted a murderer in the committing of a murder" was to be punished by from three to fifteen years of hard labor.

[43] BOA AYN.D. 919, p. 44 [8 Nov. 1866]: two suspects (father and son) confessed that the son had held the victim's hands, while the father slit the victim's throat. That confession was used in a *şer'î* case against the father, while the son was sentenced as an accomplice according to OPC Article 175 without any reference to the *sharia.*

[44] The quote is from the 1839 *Gülhane* Edict, translation in J. C. Hurewitz, ed., *The Middle East and North Africa in World Politics: A Documentary Record,* 2d ed. (New Haven: Yale University Press, 1975), vol. 1, 269–71.

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tions such as legal equality and guarantees for natural rights had to be presented as a return to former practices and that, consequently, the *sharia* became politically unassailable. Of course, the brisk pace of legislative activity in the post-1839 period suggests that most *Tanzimat* statesmen saw the *sharia* as an inadequate normative basis for their reform programs. Nevertheless, even the most dedicated "Westernizers" balked at the idea of an outright attack on the authority of Islamic law.[45]

It would be misleading, therefore, to describe the process of creating the *Tanzimat* legal codes as one of wholesale "borrowing" from European (usually French) models. Some of the legislative landmarks of the *Tanzimat,* such as the Land Law (1858) and the Civil Code (1870–1877), have been rightfully celebrated as original syntheses of Islamic and "Western" legal norms and principles. But even in criminal law, the "borrowing" model is only of limited use. Most of the 1858 Ottoman Penal Code may indeed have been copied from a 1810 French Penal Code, yet, as we saw above, the incorporation of the all-important Article 1 made the resulting criminal justice system a unique and—considering that, with some amendments, the OPC remained in force until the end of the empire and beyond—highly durable arrangement. Moreover, the privileged position of the *sharia* and the persistence of Islamic courts meant that legal reform was *not* accompanied by any significant process of cadre change within the judicial establishment. Reformist bureaucrats did not supplant *medrese*-trained *ulema* as the chief administrators of law in the empire. In fact, there was a significant degree of cadre continuity from the *şer'î* to the *nizamî* courts: in the Danube province, for example, members of the *ulema*—from the local *kadı* to the province's chief *âlim* (the *müfettiş-i hükkâm* who held office in the provincial capital Ruse)—presided over all *nizamî* courts by virtue of the regulations of the provincial statute. Furthermore, the *ulema* managed to preserve their presence in all walks of the reformed Ottoman judicial system, even after its final major reorganization in 1879.[46]

Given the coexistence of *şer'î* and *nizamî* legal institutions and processes it seems all but impossible to pinpoint "objective" elements of modernity in the Ottoman judicial system during the *Tanzimat* period. Max Weber's famous analysis of Islamic law ("*kadi* justice") as the epitome of a pre-modern ("patrimonial") social system and as the opposite of the substantive, rational, and predictable modern Western law[47] has been shown not to correspond to Ottoman historical realities. Ottoman *kadı*s appear to have followed a well-defined set of substantive rules; their decisions were not arbitrary but, on the contrary,

[45] Hıfzı Veldet, "Kanunlaştırma Hareketleri ve Tanzimat," in *Tanzimat I: Yüzüncü yıldönümü münasebetile* (İstanbul: Maarif Matbaası, 1940), 165–209; see also Bozkurt, "The Reception of Western European Law in Turkey."

[46] David Kushner, "The Place of the Ulema in the Ottoman Empire during the Age of Reform (1839–1918)," *Turcica* 19 (1987):61–62.

[47] On Weber's theory of legal systems, see Max Rheinstein, ed., *Max Weber on Law in Economy and Society* (Cambridge, Mass.: Harvard University Press, 1969).

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showed a great deal of consistency between similar cases; the state not only did not intervene at will in the judicial process, as it is expected to in a "patrimonial" system, but routinely deferred to the authority of the court.[48] By the same token, while the 1858 OPC may seem to be an intrinsically modern text from a Weberian point of view, its application in the courts fell somewhat short of the strict Weberian standards of predictability and repeatability. As will be shown below, the cases heard in the ostensibly modern *nizamî* courts remained subject to a considerable amount of "extra-normative" judicial reasoning and consideration of "special circumstances," such as the social status of the litigants.

In the end, the link between Ottoman legal reform and "modernity" can be seen most clearly and unambiguously at the level of contemporary discourse. The political powers-that-be in the Danube province consistently presented the new legal system as a qualitative break with the past. Specifically, the *nizamî* institutions and practices were promoted as a corrective to the *sharia*'s perceived softness on certain crimes (such as murder) and clumsy evidence protocols.[49] Here, for example, is how an article in the provincial newspaper sought to persuade potential criminals that "in our day and age" crime no longer paid off:

> Some criminals delude themselves by thinking that they would not be caught and that punishment could only be meted out if [according to the *sharia*] they themselves confess, or if two witnesses testify to their guilt. So, they decide that they would deny everything in court, and, if they have accomplices, all make a pact about what they would say, thinking that, as they committed their crime in secret, it would be impossible to prove. Others, not knowing the degrees of punishment prescribed by law for their crimes, think that it [the punishment] would be something light. There are also those, who reflect on what has happened in previous times and make the mistake of thinking that they could find protection or intercession before the law from the notables or from some government officials.
>
> All such plans come to nothing during the interrogations (*istintak*) which take place in the new courts. The rules of the interrogation and the courts are not as simple as some people think. In these courts, there take place long and detailed examinations and investigations of every crime—big or small—so that the truth is invariably revealed. Moreover, thanks to the corps of inspectors (*müfettiş*) dispatched to every place, day and night, secretly or in uniform, all events everywhere are easily made known.[50]

Here, the juxtaposition with "what has happened in previous times" creates the sense of historical rupture that is at the heart of every modernist discourse. The article's anonymous author uses phrases—"big or small," "day and night," "all events everywhere," "invariably"—that emphasize the omnipresence and omniscience of the new legal system. Because a *nizamî* court never fails to reveal the "truth" (by virtue of its superior investigative tools) and to mete out the

[48] Gerber, *State, Society, and Law,* 26–27, 42–57. Gerber's study is based upon seventeenth- and eighteenth-century *sicil* material from the courts of Bursa.

[49] The "barbaric" *hadd* penalties prescribed by the *sharia* for certain crimes aroused the indignation of European observers but appear not to have worried Ottoman reformers—and, in any event, their application had been practically discontinued (with the exception of flogging). Peters, "Sharia and the State," 170–71.

[50] *Dunav* I/28, [20 Sept. 1865].

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harsh sentences prescribed by the Penal Code, its main role shifts from the punishment to the prevention/deterrence of crime.

The self-righteous tone of the newspaper article was often echoed in the *nizamî* courtroom itself. In the following interrogation protocol for example, a certain Ahmed Hamzaoğlu, who is accused of murder, had attempted to reverse a previously made confession, claiming that he had been forced to falsely incriminate himself. The interrogators were not impressed:

> Q: No one ever confesses simply as a result of [being subjected to] force and intimidation. And nowadays especially, governments don't trick criminals like you, or greater or smaller ones for that matter, into confessing by the use of force. If you persist in your denial, we shall officially send you to the police (*polis*). There you'll suffer in vain. Don't do this to yourself. Repeat here the confession you made in Razgrad [the town where Ahmed was first interrogated] and we will find you an easy way of making peace with the deceased's relatives!
>
> A: I won't confess; put me in the police!
>
> Q: Do you know what police means? Even if you regret this [decision] afterwards and even if you deny your guilt for eighty years, it's of no use—you are already condemned . . .
>
> A: I know [what the police is]—it's the prison (*habis*). When I confessed my head was completely confused.
>
> Q: No, the police is not the prison. But it is [such] an extremely narrow and cold place, in which one can be squeezed, that you would be finished there. Besides, no headache or drunkenness can be so great as to make one [wrongly] confess to such a great crime.[51]

It would be obvious that all the key elements of the language of the *Tanzimat* reforms are present in the interrogators' words above. There is a sense of a troubled past (when "force and intimidation" may indeed have been the government's tools in extracting false confessions) but also a clear sense that that past has been decisively transcended. The key phrase marking the transition from the pre-modern to the modern is "nowadays" (*şu zamanda*). It is inconceivable, as a matter of principle, that the state *nowadays* would have tortured a suspect, because torture is incompatible with the *Tanzimat* concept of law as a guarantee not only of public order, but also of justice and individual rights. The beauty of this discursive device, of course, is that it is unaffected by the actual continuity of the practice of torture;[52] in fact, the irony of the above dia-

[51] BOA İ.MVL. 25897 [interrogation: 2 Jan. 1867].

[52] Torture has been called "the most typical *kanun* innovation" (Gerber, *State, Society, and Law,* 68) and appears to have been routinely used in criminal cases in pre-*Tanzimat* times. OPC, Article 103, outlawed the use of torture but, judging by the numerous instances in which suspects attempted to reverse their previous confessions by claiming that they been "cheated" into providing them, the practice seems to have continued in the *nizamî* courts as well. Occasionally, we find specific allegations of torture: for example, a rape suspect alleging that his previous confession had been extracted by the police's application of pepper vapors (*biber tütsüsü*), tweezers, and tongs (BOA A.MKT.MVL. Dosya 312, Vesika 45 [3 Mar. 1867]); or a murder suspect claiming that the investigators had forced him to stand on his feet for two days without allowing him to sit or lie down (BOA İ.MVL. 25824 [17 Nov. 1866]).

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logue is that the very rejection of the possibility that torture could have occurred is made in the context of intimidating the suspect with thinly veiled references to future torture (the tribulations to be suffered at the "police").

Of course, it would be naïve to expect that the Ottoman state's interlocutors across the interrogation line accepted wholeheartedly the idealized official vision of the new justice system. Ahmed, the suspect in the murder case quoted above, seems to have viewed it all as a monolithic disciplinary force whose finer distinctions were irrelevant to him (hence the striking equation of "police" and "prison"). But, regardless of their "real" attitudes towards the reforms, the ordinary men and women of the Danube province proved quite skillful in playing the new judicial game, negotiating with state power, and using the peculiarities of the "dual trial" legal system to their advantage in court. This was a noteworthy achievement.

IV. "I WANT HIM PUNISHED": EXPLORING NEW LEGAL OPPORTUNITIES

On the night of 20 October 1866, a certain Lambi from the town of Svishtov on the south bank of the Danube was mortally wounded in front of his own house.[53] When the horrified neighbors gathered around the house, they saw that Lambi's body had been repeatedly slashed at the chest and stomach. A doctor at the scene declared that the wounded man was beyond saving and, indeed, Lambi died several hours later.

At first glance, the legal case seemed clear-cut. The victim himself (he had remained conscious after the attack), his mother, and his sister had all claimed that the murderer was the local policeman, Salih b. Abubekir. Yet when the relatives brought forward a *şer'î* lawsuit against Salih, (14 May 1867), the case was dismissed due to the lack of independent eyewitnesses to the crime. The policeman's legal victory, however, was only temporary. He faced a determined opposition, particularly in the face of Simeona, Lambi's mother. Undeterred by the dismissal of the *şer'î* case, Simeona wrote a petition to the provincial governor (7 November 1867) requesting that the case be re-tried in a *nizamî* court. Her request was granted and the first round of interrogations began on 10 November 1867 in Ruse.

The first fact of the case that became reasonably well-established was that, on the night of the murder, Salih had spent a substantial amount of time at a tavern (*meyhane*) near Simeona's house, getting increasingly drunk.[54] He had repeatedly sent the tavern owner's young son to the house with instructions to call Elenka (Simeona's daughter and Lambi's sister) to the *meyhane*. Even under far more innocent circumstances, however, a respectable unmarried woman

[53] All documents relating to this case: BOA A.MKT.MVL. Dosya 349, Vesika 38 [8 Dec. 1867].

[54] As attested to by the tavern owner, his son, and a fellow Muslim customer by the name of Hüseyin who said he was embarrassed by Salih's inebriation in front of the Christians present at the *meyhane* (*Hıristiyanlardan utandım*).

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would have avoided taverns at all cost, so Salih's advances were firmly rejected. After a final helping of wine, Salih decided to advertise his virtues as a suitor himself and made his way towards Simeona's yard, where he started calling out Elenka's name. At this point, Lambi, who had been away from home, came back and confronted the intruder. Looking through the house's window, mother and daughter clearly saw how Salih drew out his policeman's knife, repeatedly stabbed Lambi, and fled the scene.

For his part, Salih denied the accusations and underlined the fact that, as he had been acquitted of the crime at the *şer'î* hearing, he would only accept a "guilty" verdict if any eyewitnesses to the crime were to come along, i.e., if the *şer'î* standard of proof was met:

> A: What can I say, sir—let those people [the eyewitnesses] come here; then I would be resigned to God's orders and the Sultan's law.[55] Let them prove (*isbat*) where they saw me and how I injured him, then, I would agree . . .

It is ironic that Salih, who, in his duties as a police officer, would have had some involvement in the administration of the new *nizamî* justice, had failed to grasp its underlying principles. He seems to have regarded his interrogation as an extended and unnecessary repeat of the *şer'î* hearings. Despite the interrogators' repeated offers to help him reconcile with Lambi's relatives,[56] Salih continued to base his defense upon the absence of canonically credible eyewitnesses and to insist that he had not a "grain" of knowledge about the murder. Moreover, in terms of his overall tone and comportment in court, the policeman failed to show even a modicum of respect for the requirements of *Tanzimat* speak. For example, he repeatedly referred to the crime as "the death of some infidel (*gâvur*)," although he would undoubtedly have been aware that the extirpation of that pejorative term was a matter of *Tanzimat* state policy, pursued vigorously by Midhat Paşa's administration.

The policeman's poor choice of strategy was in stark contrast to the behavior of his main opponent. Simeona pursued all her legal options vigorously and shrewdly. In her letter to the governor she explained that she believed that Salih had been wrongfully acquitted and that she wanted him tried according to the "Imperial Penal Code." In court, she repeated that all she wanted was for Salih to be punished in accordance with the law. Simeona correctly assessed the fact that the standard of proof in a *nizamî* court was different from the one in its *şer'î* counterpart, and that, consequently, discursive choices which had no place before a *kadı* could prove decisive during an interrogation. Her testimony was based on dramatism—dramatic description, dramatic story-telling and dramatic action. Describing Lambi's wounds, she related her own horror at the

[55] *Allah'ın emrine ve Padişah'ın kanununa razıyım.*

[56] The interrogators offered Salih to reconcile him with the relatives and pleaded with him not to cause further complications to the case (*bir takım teklifâta hacet bırakma*!) and to admit that the murder had been a drunken accident (*sarhoşluk haliyle bir kaza*).

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sight of her son's intestines spilling out of his abdomen. Intriguingly, Simeona portrayed Salih not only as a cruel and calculating murderer, but also as a person recklessly indifferent to the certainty of his own upcoming punishment:

> A: [after the first stab] my son and we began screaming and, when some neighborhood girls approached, Salih rushed to the yard door [trying to escape]. But then, telling himself: "I'd be put in chains one way or another; let me at least kill him completely," he turned around, stabbed my son again in the stomach and pulled out his intestines. [Lambi] died eight or ten hours after that. Oh, my son!

The crux of Simeona's accusations was her claim that "emboldened by grief" she had rushed out of the house to her son's aid and had hit Salih with a piece of wood leaving an injury mark on his head. During the *şer'î* hearings, such an injury mark would not have been considered as evidence; during the *nizamî* case, however, Simeona was taking no chances—as her cross-examination with Salih drew to a close, she reached out and knocked off his *fes* hat, pointing out, (in the words of an astonished court scribe), that the wound mark was indeed where she had predicted it would be.[57]

The court hardly needed more persuasion. It found the defendant's repeated denials "futile" (*vahi*) and recommended a sentence of fifteen years of hard labor.[58] The interrogators rebuffed Salih's demands for canonically attested eyewitness testimony as irrelevant to the new court rules:

> Q: You are right to say that such a murder case requires [eyewitness] proof according to the *sharia;* however, according to the new rules it can be decided by clues and circumstantial evidence![59]

We have no way of knowing through what mechanisms Simeona obtained her superior legal knowledge. Svishtov was a prosperous commercial center and the education level of its inhabitants was probably higher than the average for the Danube province. Yet, we have no reason to believe Simeona was literate or that her socioeconomic status was anything but average.[60] Her behavior suggests that, less than two years after the establishment of the *vilayet,* its new legal framework was already intimately understood and proactively taken advantage of by Midhat Paşa's "ordinary" subjects.

V. "MY KNOWLEDGE DOESN'T REACH THAT FAR": DEFENSIVE STRATEGIES IN THE INTERROGATION GAME

To be sure, unlike Simeona, most of the "subjects" we see in the *nizamî* criminal cases were caught up on the receiving end of the new Ottoman justice sys-

[57] *Heman merkum Salih'in başını açub irae eylemiş ve filhakika eser-i cerh görülmüş.*

[58] OPC, Article 174 (unpremeditated murder).

[59] *. . . böyle katl maddesi şeraen isbata muhtac isede, nizamen emare ve serrişte ile tutulur*!

[60] Simeona "signed" the interrogation protocol by her fingerprint, which was usual for illiterate litigants. As for her socioeconomic status, the only indication we have is that her husband had been paralyzed for years and could not work—in a patriarchal society that would have been a heavy economic blow.

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tem. The stories told in the context of legal self-defense are significant not only for their literary merits (however considerable) but also because they reflect aspects of the contemporary social consensus on certain key dichotomies such as normalcy/deviance, culpability/innocence, or credibility/incredibility. In Davis' words, each such story incorporates "choices of language, detail, and order needed to present an account that seems true, real, meaningful and/or explanatory."[61]

Let us begin with the most common discursive strategy. Almost invariably, the interrogated persons chose an overall tone and comportment which emphasized their complete submission to the judicial process and their willingness to accept its decisions, whatever they may be. Policeman Salih's arrogance with the interrogators is not matched in any other case I have read and even he, it would be recalled, pledged his resignation to the "will of God and the Sultan's law" if the case were proven to his satisfaction. Outright challenges to legal procedures or the courts' impartiality were rarely voiced and, when they were, proved ineffective.[62] When they spoke of the probability that they would be found guilty, most suspects used phrases like "I would be resigned to my punishment" (*cezama razı olurum*), "I would be in the wrong" (*kabahatli olurum*), "there would be nothing left for me to say" (*diyeceğim kalmaz*), "what can I do—I shall suffer [my punishment]," (*ne yapalım, çekeriz*). This symbolic obedience was also expressed through the suspects' frequent professions of judicial naïveté and the implied concession that the court knows what is "best" for them. "My knowledge doesn't reach that far" (*benim ilmim lâhik değildir*), "Do as you see fit!" (*nasıl bilürseniz öyle icra ediniz*), and "it will be as you decide" (*sizin bileceğiniz şeydir*) are some of the typical phrases used.[63]

Such claims of ignorance and submission merit a degree of skepticism. For one thing, they were often part of a larger defensive strategy through which the accused sought to portray themselves as gullible rather than malevolent and their actions as misguided rather than outright criminal. On 17 April 1866, for example, a certain Halil b. Fatah was interrogated in Leskovač (now in Yugoslavia) in connection with his role in helping his son evade the military draft.[64] Halil had paid a substitute to serve in lieu of his son (not an offense in itself) but, instead of notifying the local authorities of the change, had arranged for it to take place "in secret" as the new recruits were marching towards their base. Upon being arrested, Halil panicked and claimed that the switchover had taken place with the consent of the recruits' supervisor, Süleyman Ağa, whom he [Halil] had bribed in order to have him turn a blind eye to the affair. Since

[61] Davis, *Fiction in the Archives,* 3.

[62] See the Kapucuk case, quoted below, in which one of the suspects claimed that the court had shown excessive leniency towards the village notables, while being too harsh on "us poor people."

[63] BOA A.MKT.MVL. Dosya 275, Vesika 93 [11 Dec. 1865]; BOA A.MKT.MVL. Dosya 312, Vesika 47 [4 Mar. 1867].

[64] BOA İ.MVL. 25186.

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

the investigation failed to corroborate the bribery allegation, Halil was taken to court for falsely accusing Süleyman of having accepted a bribe.[65] Halil did not dispute the defamation charge, but said that he had transgressed only because he saw that the prospect of military service had made his son extremely "anguished." As for the bribery accusation:

A: . . . I made it because, in my fear, I thought: "I have done a really bad thing!" [i.e., by hiring a substitute]

Q: What were you afraid of, . . . that made you say those things?

A: It was on account of my own stupidity (*budalalığımdan*) and fear. I was afraid that they would put me in prison and would take my son away.

Halil's defensive strategy, in other words, was to claim that the crime of which he stood accused (the bribery story) was nothing but an "ignorant" knee-jerk reaction to his realization that he had failed to follow proper procedure in the substitution ("I have done a really bad thing."). That defense proved to be effective. The central criminal court of the Danube province recommended that his punishment be reduced from the six-year imprisonment (*kalebendlik*) term prescribed by the OPC to the much lighter one of exile (*nefy*) for two years to a place within the same district. The reasons for that leniency were precisely those emphasized by Halil's self-defense: "paternal devotion," combined with "ignorance of the law."[66] Although neither one of these arguments was formal legal grounds for reducing a criminal sentence according to the Penal Code, the court was apparently satisfied with Halil's mea culpa.[67]

"Gullibility" defenses proved effective in numerous other cases. A married woman savvy enough to have juggled at least two simultaneous extra-marital affairs (one of them with the village priest) managed to convince the court that she was "ignorant" of the consequences of setting a neighbor's house on fire—the court ruled that, "being a woman [she] could not have known the provisions of the law" on that matter and substituted the death penalty prescribed for her actions by OPC with a ten-year imprisonment at a place "suitable for women."[68] A peasant who had ably marshaled an entire village into collecting

[65] OPC, Articles 68 and 213 (defamation).

[66] *Hasbeʃebu-i şefkatinden ve ahkâm-i kanuniyeyi ârif olmamasından.*

[67] I find it intriguing that Halil presented his motives for trying to "keep" his son in emotional rather than economic terms. Peasant resistance to military service is often interpreted along economic lines: nineteenth-century French peasants are said to have resorted *en masse* to buying off their sons from the army draft, simply because "labor [was] scarce and expensive." (Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* [Stanford: Stanford University Press, 1976], 293.) The potential loss of a son's labor and its implications to the household's economy may well have shaped Halil's actions as well—but economic explanations had no place in his choice of defensive strategy.

[68] BOA İ.MVL. 25852, Lefs. 42–50; incidentally, the reduction of the penalty because the offender was a woman, although commonly practiced, had no normative basis in the OPC; on the contrary, Article 43 stated that "no distinction shall be made between the two sexes as regards punishment."

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

a bribe for a state official was characterized in the court decision as being one of the "dumbest" (*sebükmağız*) inhabitants of the village and to have been incapable of "foreseeing the consequences of his actions"—this qualified him to have his prison sentence commuted to one of exile.[69] Clearly, regardless of whether they were actually aware of the exact provisions of the law in each case, these litigants managed to exploit the court members' cultural assumptions regarding the kind of knowledge "women" or "peasants" were likely or unlikely to have.

The telling of exculpatory stories was another commonly used defensive strategy. Often, such stories followed the "property-defense" narrative model. In this model, the narrator's peaceful daily routine (plowing the fields, herding sheep, guarding a village forest, etc.) is interrupted by an intruder, who is usually an outsider such as an inhabitant of a neighboring village, or a member of an ethnic community popularly associated with crime.[70] The narrator observes the intruder attempting to steal from the narrator's (his master's; his community's) property, is seized by concern (rage), and approaches the intruder trying to reason with him. That is to no avail and before long the two parties are locked up in a heated "quarrel" (*münazaa*) or "struggle" (*mücadele*). Often, it is the intruder who allegedly strikes the first blow, thus making the "property-defense" story into a proper "self-defense" one.[71]

Trying to deflect blame away from oneself and redirect it towards one's enemies, accusers or, as the case might be, accomplices was another recurring defensive strategy. In modern legal jargon this may be called "credibility defense" and the accusations and counteraccusations involved in it provide us with treasure troves of information concerning local politics and the "fault lines" of village society. I have described two such cases in detail in the following section. For the time being, I would only stress that *nizamî* court suspects tended to construct their stories with reference to concrete *Tanzimat* reform policies. Thus, a certain Yusuf b. Emrullah, a suspected arsonist from the Nis district, explained that his fellow villagers bore a grudge against his family because: "we never stop working with the little that God has given us. That is why, when the government

[69] BOA İ.MVL. 26059.

[70] For example, the Roma (Gypsies) or Circassians. Ethnic stereotyping (especially against the Roma) was common among interrogators as well. One defendant's protestations of innocence were bluntly dismissed by court members with the following words: "Look here: you are a Gipsy (*ulan, kıbtısın*): don't waste our time [with your denials]." (BOA İ.MVL. 25897).

[71] BOA İ.MVL. 24852, Lefs. 8–14 (a murder on an estate farm [*çiftlik*] near Sofia, in which three Bulgarian estate workers confronted three Circassians who allegedly had entered the *çıftlik* forest with the intent of stealing firewood; in the ensuing fight one Circassian was killed); BOA İ.MVL 24852, Lefs. 35–40 (two Bulgarian suspects caught up with some Circassians from a neighboring village who were allegedly in the process of stealing the Bulgarians' sheep; after a short chase the Bulgarians murdered two of the Circassians). In BOA İ.MVL. 25897, on the other hand, the "property-defense" model is reversed: this time the alleged intruder has killed the person who had caught him red-handed stealing—accordingly, the suspect's defense recasts the intruder as an innocent bystander, and the "quarrel" as a gratuitous assault by an overzealous property owner.

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recently distributed paper money (*kaime*),[72] our household alone received 1,000 piastres, while the rest of the village combined got only 800 piastres."[73]

In one stroke, Yusuf emphasized both his family's disproportionate contribution to state finances and his enemies' petty jealousy at the family's economic success. In another case, a suspect conceded that he had indeed participated in the theft of livestock from his employer, but specified that his accomplices, and not himself, were the real instigators. The suspect illustrated his ambivalence towards the crime by describing the remorseful reflection (*tefekkür*) that had seized him after the sheep had been stolen—until finally he split from his accomplices and went into hiding.[74]

Occasionally, exculpatory strategies took the form of entire alternative accounts of the facts of the case. This was a road on which the suspects had to tread lightly, since it inevitably involved some form of denial of the interrogator's version of the crime. A suspect caught in the possession of forged coins testified that he had received these as change from someone else and had kept them, thinking they were "antiques" (*antika*).[75] A villager accused of stabbing his sister-in-law and then burning her face in his fireplace claimed that the deceased suffered from epilepsy and fell in the fire herself (he later retracted that claim).[76] A patricide suspect told the interrogators that his father had been an avid hunter who would fiddle around for hours with his favorite rifle until the inevitable "accident" finally happened.[77]

Even seemingly straightforward confessions were usually given a defensive twist. The most typical wording of a confession, "I/we yielded to the devil" (*şeytana uydum/uyduk*) suggested an attempt to dissociate oneself from the full extent of the blame.[78] Moreover, confessions were rarely unqualified and could even be used in conjunction with reaffirmations of one's good character. One arrestee avowed that he had stolen some merchandise from an itinerant trader, but he proudly refused to testify against his suspected accomplice in the crime. He may have stolen, the suspect said, but he was not "the kind of man who would unjustly throw others to the flames."[79]

[72] This probably refers to the pre-1852 period, when Ottoman *kaime* was an interest-bearing treasury bill used as a governmental monetary tool for internal borrowing, rather than modern paper money proper. See Şevket Pamuk, *A Monetary History of the Ottoman Empire* (Cambridge: Cambridge University Press, 2000), 209–11.

[73] BOA İ.MVL. 25852, Lefs. 36–41.

[74] *Natsionalna Biblioteka Kiril i Metodii: Orientalski Otdel* (Sofia) (henceforth NBKM OO) Fond 169/694.

[75] NBKM OO Fond 112A/1603. This may have been a "believable" story: the trade in antiques was a growth sector in the economy of the nineteenth-century Ottoman Balkans. See Khristo Khristov ed., *Dokumenti za bûlgarskoto vûzrazhdane ot arkhiva na Stefan I. Verkovich, 1860–1893* (Sofia: Izdatelstvo na BAN, 1969).

[76] BOA İ.MVL. 25824.

[77] BOA A.MKT.MVL. Dosya 275, Vesika 93 [11 Dec. 1865].

[78] The use of this expression in the context of criminal confessions predates the *Tanzimat* period by several centuries. See Heyd, *Studies,* 244.

[79] BOA A.MKT.MVL. Dosya 312, Vesika 47. [4 Mar. 1867].

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

VI. "THEY DID NOT LISTEN TO ME": NARRATING RURAL CONFLICT IN STRATEGIC TERMS

Let us now turn from our general discussion of defensive strategies to a more detailed examination of two criminal cases which, in my view, illustrate the particularly skillful way in which Midhat Paşa's "subjects" managed to use the *nizamî* legal process in order embroil the state in their own local political struggles. The first case began on 27 December 1865, when the bodies of two Circassian immigrants were discovered in the vicinity of the Bulgarian village of Kapucuk, *kaza* Samokov (in the Rila mountains south of Sofia).[80] A police officer and an official from the *kaza* criminal court were dispatched to the crime scene. They ordered all male villagers to reconvene in the village square on the following day (29 December) and "associate themselves with a guarantor (*kefil*)."[81] In the event, no less than nineteen males (out of a total village population of about forty households) failed to find such guarantors and were arrested and sent to the court in Samokov. There, two marathon rounds on interrogations and re-interrogations took place (4–22 January 1866).[82] My comments below necessarily focus only on selected aspects of the case.

Kapucuk was a typical mountain village, divided into several hamlets set some distance apart. Judging by the occupations of the arrestees, most villagers made a living as either shepherds or coal peddlers. The most prominent village notable, and a pivotal figure in the case, was one Anguel *çorbacı*[83]—a livestock merchant, who bought sheep and animal products from the villagers and then resold them in the neighboring towns. The victims' relatives named no suspect and did not appear at the *nizamî* investigation at all;[84] consequently, the case began as one against an unknown offender. In effect, the inhabitants of Kapucuk were asked to produce the murderer(s) from amongst themselves—and in doing so they were bound to reveal the existing "fault lines" inside their village.

The first man to testify was Anguel *çorbacı* himself. An endnote to his in-

[80] All documents relating to the Kapucuk case: BOA İ.MVL. 24852; this archival unit also contains the correspondence for two other (unrelated) criminal cases.

[81] In suretyship (*kefalet*) arrangements during the Ottoman "classical age," a guarantor was chiefly responsible for ensuring that a person accused of a crime would be available to appear in court at a later date; Heyd, *Studies,* 238–40. In the Kapucuk case, the suretyship system functioned more like a communal check on "deviant" behavior—the guarantors, who had to be from among the "trusted and notable" (*mu'temed ve mu'teber*) men in the village, were asked to provide either concrete alibis or statements of good character for each villager.

[82] BOA İ.MVL. 24852, Lefs. 40–41.

[83] *Çorbacı* (Bulgarian: *Chorbadzhiia*) is a term commonly used to refer to Bulgarian village or town notables during the Ottoman period (especially the nineteenth century.) See Georgi Pletn'ov, *Chorbadzhiite i bûlgarskata natsionalna revoliutsiia* (Veliko Tûrnovo: Vital, 1993); Milena Stefanova, *Kniga za bûlgaskite Chorbadzhii* (Sofia: Universitetsko izdatelstvo 'Sv. Kliment Okhridski,' 1998); Mikhail Grûncharov, *Chorbadzhiistvoto i bûlgarskoto obshtestvo prez Vûzrazhdaneto* (Sofia: Universitetsko izdatelstvo 'Sv. Kliment Okhridski,'1999).

[84] The relatives did initiate *şer'î* lawsuits after the *nizamî* interrogations were over. The protocols of these *şer'î* hearings (BOA İ.MVL. 24852, Lefs. 38–39) are dated 24 January 1866.

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

terrogation protocol reveals that he was not summoned as a witness in the case, but came to court secretly (*hafiyen*) and of his own accord. On that occasion, Anguel volunteered to become a guarantor for three of the nineteen men then in custody, but emphatically refused to vouch for the trustworthiness of the remaining sixteen. That begged the question:

Q: Why would you not become [their] guarantor? Are these bad men?

A: These are not good men. They do not listen to me; they do things as they see fit.

Q: In what way do they not listen to you?

A: They did not listen to me when the Sultan's road was being built!

Out of the sixteen villagers who had allegedly shown such "road-building disobedience" (*yol kazmakta adem-i itaat*), Anguel singled out three as especially "suspicious." In the end, it was these three men who were convicted of the crime.

The sixteen villagers to whom Anguel refused to become guarantor saw the events surrounding the investigation in a rather different light. Almost unanimously they testified that the *çorbacı* and his henchmen were using the lawsuit in order to settle old scores. The suspects described the suretyship episode as a chaotic affair: three of them claimed that they had found guarantors from among "the people," whom the authorities had refused to recognize as legitimate; one said that he had been apprehended after becoming separated from his chosen guarantor "in the mêlée" (*kalabalıkta*); another testified that he had arrived late in the village (since he lived in a remote hamlet) and was therefore summarily arrested. One arrestee spoke for all when he described his frustration in the following terms:

A: I have no knowledge of this matter. But I know [this:] they gathered together and arrested us poor people, [while] the *çorbacıs* are walking around [free]. It is them you should bring here and interrogate! Even if I stay imprisoned here like this for five years, I would still know nothing

For our purposes, the most significant part of these men's testimony was their explanation of Anguel's refusal to vouch for their innocence. Most claimed that the village notable bore a "grudge" (*garaz*) against them and at least four described the reasons for this grudge in virtually the same words: "he would not become our guarantor because he wanted us to sell our sheep to him cheaply, and we did not agree."[85]

Let us analyze this exchange of recriminations between Anguel and the sixteen suspects. Certainly, both sides formulated their claims so as to make them believable in the eyes of the interrogators. What I find more intriguing is that both narratives were linked to concrete aspects of the reform program that was being implemented in the *vilayet* of Danube:

(a) The villagers' allegation that Anguel had tried to buy their sheep at below-market prices can be linked to recent changes in the government policy of

[85] *Bizden ucuz hayvan satın almak isteyüb vermediğimizden kefil olmıyor.*

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

assessing the small livestock tax (*ağnam resmi*). Like other *rusumat* taxes, the *ağnam resmi* underwent a process of "regularization" and monetarization during the *Tanzimat* period. In 1840, a uniform tax rate per sheep/goat was set up throughout the empire, although in practice regional rate variations persisted. In 1856–1857, the tax assessment policy was changed again in order to recognize the wide variations in the market prices throughout the empire. Henceforth, the *ağnam resmi* tax rate would be announced yearly for each region based upon annual surveys of the local market prices.[86] Certainly, one village notable's small-scale machinations were unlikely to affect government revenue in any material way, but, as a matter of principle, an individual trying to depress the price of sheep was harming (as of 1856–1857) not only the sheep producers but also the state directly.

(b) Anguel, on the other hand, tried to undermine the detainees' standing by claiming that they had resisted participating in the government's road building program. This initiative was arguably Midhat Paşa's most cherished pet project. In 1865, the Paşa instituted a compulsory annual road-building labor service for most adult males in the Danube province. By 1868, more than 3,000 km of new roads and some 1,400 new bridges had been built.[87] Failure to participate in such a high-profile reform project would undoubtedly have seemed highly reprehensible in the eyes of the government.

It may be objected that I have misrepresented stories that could have been factually true as elaborate schemes to achieve this or that litigant's goal. In fact, there is no contradiction here: even if Anguel had indeed tried to extort cheaper sheep from his fellow villagers, his opponents nevertheless faced real discursive choices in telling that story. And, *vice versa,* even if the sixteen suspects had indeed failed to report for their road-building service, Anguel's choice to highlight that particular offense of theirs remains significant. The broad outlines of these stories may appear "traditional,"[88] but their real "sting" lay in their references to specific reform policies. In other words, both parties' choices of "language, detail, and order" made perfect sense in the political context in which the interrogations took place.

From the point of view of a small village, such as Kapucuk, the case of the two dead Circassians undoubtedly represented an episode of heightened intrusion by the imperial government into local life. For a brief moment in time, the Ottoman state had come to Kapucuk—literally through dispatching the Samokov *meclis* representatives and figuratively through the process of interrogation

[86] Feridun Emecen, "Ağnam Resmi," in *İslâm Ansiklopedisi* (İstanbul: Türkiye Diyanet Vakfı, 1988), vol. 1, 478–79.

[87] Pletn'ov, *Politikata* , 106–13.

[88] For example, the villager's portrayal of Anguel as an exploitative and vindictive tyrant followed the familiar trope of the idealized Ottoman state as protector of its primary producers/taxpayers from the encroachments of corrupt local strong men (a.k.a. "the circle of justice"). See Metin Heper, *The State Tradition in Turkey* (Northgate: The Eothen Press, 1985) 25–26.

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which looked inquisitively into the minutiae of local conflict. And the fact that the state "listened" also meant that it could it be won over and embroiled in village politics. Anguel, for example, professed his shame that such a ghastly crime could have occurred "within our [village's] borders"[89] and even avowed that he had organized an unsuccessful attempt to bury the bodies beyond these borders. The state's intervention in local politics had not been actively solicited but, once it had taken place, it was too precious an opportunity to miss. How else can we interpret Anguel's refusal to exculpate sixteen of his fellow villagers if, as seems clear, he knew from the start that only three of them had been actually involved in the crime? What about the other thirteen? They were kept incarcerated in Samokov away from their homes for an extra month. They would have needed no clearer illustration of the "capillary"[90] power structure in Kapucuk—Anguel's ability to conspire with the state against them was demonstrated to them on an existential level. Yet, the thirteen arrestees managed to strike back by providing their own narrative of the events. Like the *çorbaci,* the villagers told an unmistakably "modern" *Tanzimat* story—employing reformist terminology, appealing to an idealized reformist mentality, and constructed with reference to reformist expectations.

VII. "AGAINST THE WISHES OF THE PEOPLE": THE LOCAL POLITICS OF CHARACTER ASSASSINATION

We can see similar strategies at work in another case focused on another deeply divided village: Bebrovo, tucked away in the northern folds of the main Balkan range in the region of Veliko Tûrnovo (north-central Bulgaria). There an intriguing, if slightly farcical, series of accusations and counter-accusations took place in the winter of 1865.[91] The main protagonists in the case were a certain villager by the name of Stefan Bakırcıoğlu and the local district superintendent (*kaza müdürü*), Necib Ağa. The formal "crime" addressed in the case was Stefan's allegation that Necib had tried to poison him. The verdict, in a nutshell, was that no such poisoning attempt had taken place and that Stefan's claim constituted slander (*iftira*) against Necib. This was a relatively minor offense, yet the legal case arising out of it became quite complicated—it made its way through the entire court hierarchy of the Danube province, elicited a personal response and sentencing recommendation by the governor himself, and was ul-

[89] Fear of communal punishment, rather than shame, may have motivated Anguel's actions. Collective punishment is a well-known *şer'î* penal provision (Heyd, *Studies,* 308–9). In principle, the practice was discontinued during the *Tanzimat* period (OPC contains no reference to it); in reality, there were attempts to reintroduce it in certain specific cases—in 1868, for instance, a printed proclamation informed the citizens of the Danube *vilayet* that henceforth the responsibility for payment of damages for arson would be shared by "the whole village" if the arsonist was not found (NBKM OO Fond 112A/2204.)

[90] Michel Foucault, "Two Lectures," in *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977,* ed. Colin Gordon (New York: Pantheon Books, 1980), 96.

[91] All documents relating to this case: BOA İ.MVL. 23896.

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

timately decided by the imperial Supreme Court (*Meclis-i Vâlâ*) and a Sultanic decree.

Stefan had claimed that the "poisoning" had taken place on the evening of 31 January 1865, at an informal meeting of some villagers at the *müdür*'s house. Necib had ordered coffee for his guests and the local coffee-maker was carrying around a tray full of coffee cups. When Stefan's turn to take a cup had come, the coffee-maker allegedly steered Stefan's hand towards a "specially marked" portion. Taking a sip, Stefan said he felt a burning sensation in his mouth and throat and immediately realized he had been poisoned. He then allegedly stumbled out of Necib's house, felt extremely sick and repeatedly vomited along his way home, leaving him in no doubt that he had been the victim of an elaborate and pernicious plot masterminded by the *müdür.* Unfortunately for Stefan, witness testimony to confirm his story was not forthcoming. His neighbors did say that Stefan had seemed unwell that night, but they also suggested that his vomiting may have been induced by the baking soda solution he had taken (presumably as an antidote). The witnesses also reported several instances surrounding the incident, during which Stefan's behavior had been, to say the least, bizarre: he had, for example, the presence of mind to dispatch his wife, daughter, and son-in-law back to Necib's house, instructing them to look for the regurgitated matter he had left behind and collect it as evidence! (He was convinced that "his enemies" would have already buried or otherwise concealed these traces of their crime; and indeed, his relatives found nothing.) On the following morning, Stefan (now miraculously recovered) confronted some villagers at the coffeehouse and insisted on showing them "traces" of the poison on his tongue—traces that remained invisible to everyone but himself. The witnesses were unanimous on one point: Stefan had stayed at Necib's house until the end of the soiree, taking not one but up to three cups of coffee and leaving in visibly good health. The coffee-maker summed up the matter rather generously by calling Stefan "an old man whose memory has failed him."

Why, then, did it take a run through the entire Ottoman judicial system to resolve a case where all the evidence pointed in one direction? In fact, Stefan's guilt was never the issue—the problem was that, in the course of the investigation, it became clear that the "poisoning" episode was but a symptom of a deeper and, from the government's perspective, more worrying malaise that was affecting the village of Bebrovo.

The interrogations were concluded on 13 February 1865. On 8 March the criminal court of Veliko Tûrnovo acquitted all defendants and found Stefan guilty of defamation. Pursuant to articles 168 and 213 of the Penal Code the court recommended a sentence of hard labor for three years. That opinion was seconded by the provincial criminal court in Ruse (7 April) and seemed headed for another routine review and implementation by the governor. Midhat Paşa, however, refused to rubberstamp the court decision. Instead, he produced a petition sent to him by some twenty inhabitants of Bebrovo (including Stefan

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and the current mayor, Kolyo) and directed against Necib Ağa and his clique. That document is written in Bulgarian and is dated 30 January 1865—the day *before* the "poisoning" episode occurred. The petition claimed to speak on behalf of all inhabitants of Bebrovo, whom it described as "oppressed and extremely frustrated" by Necib and his three aides—Khadzhi Stancho, Shishko Petre, and Simeon. The members of this "wicked" quartet were compared to "Janissaries"—a politically explosive term, since Sultan Mahmud II's destruction of the notorious Janissary corps (1826) was celebrated during the *Tanzimat* period as "the Auspicious Event" (*Vak'a-i Hayriye*) and was regarded as the historical *sine qua non* of Ottoman reforms. The petitioners claimed that Necib, Stancho, Petre, and Simeon had usurped for a number of years all the key intermediary posts between state and village society in Bebrovo, Necib serving as *kaza* superintendent and his cronies rotating as mayors (*muhtar*), village treasurers (*kabzımal*), and collectors of various taxes for the state (*tahsildar*) or for the church (*epitrop*). The result was, allegedly, the embezzlement and dissipation of both state revenue[92] and the "poor" villagers' property.[93] But the supplicants' most serious accusation was yet to come:

> Two days ago, we received the mayoral signet seals for the outlying neighborhoods of our village. Before giving these seals to the villagers, Necib Ağa and Khadzhi Stancho stamped them here and there for their own benefit. Some of the villagers objected [to that], but found themselves in trouble because these two raised hell, took the seals away from the chosen *muhtars,* selected instead some of their own followers and gave the seals to them, so that their own interests may be advanced. Thus they reshuffled the village elders' councils (*ihtiyar meclisi*) everywhere, against the villagers' wishes creating confusion and anxiety. Finally, today they planned to do the same in Bebrevo itself [as opposed to the outlying hamlets]: they reshuffled the twelve members of *ihtiyar meclisi,* created a panic at the government building, apprehended our mayor and demanded our seals—all against the wishes of the people.

This paragraph holds the key to understanding the conflict in Bebrovo. The village was not split along class or ethnic lines.[94] The power struggle was a distinctly local one and should be described micro-historically within the context of *Tanzimat* reforms of village administration. The main thrust of this particular aspect of the reforms was towards the "officialization" and, to some limited extent, the democratization of the minor local-bureaucracy posts that had previously been occupied on an unregulated/informal basis by members of the village elites.[95] The changing function of the signet seal (*mühür*) was perhaps

[92] Bulgarian: *tsarshtinata,* i.e., what belongs to the Tsar (Sultan).

[93] Bulgarian: *siromashiiata,* i.e., what belongs to the poor people.

[94] The petitioners' claims to represent the "poor people" of Bebrovo should not be misconstrued in class terms: all but one of the signatories of the petition were wealthy enough to possess personal seals, all were literate (as evidenced by handwritten signatures), three were priests, two were *khadjis* (i.e., had performed the pilgrimage to Jerusalem) and one (Kolyo) was the local mayor. The conflict was not an ethnic one either, nor was it presented as such—the petition was aimed equally against the Albanian *müdür* and his Bulgarian henchmen.

[95] Ortaylı, *Tanzimat Devrinde Osmanlı Mahallî İdareleri,* 98–101.

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

the best illustration of that shift. In the pre-*Tanzimat* period, the *mühür* was a private object, typically bearing the owner's name or initials. By contrast, the *Tanzimat* produced the "official" signet seal—an object pertaining to a position, rather than an individual. Bearing no personal name, a typical official seal could read, for example, "primary mayor of the village of Bebrovo."[96] Centrally delivered to every village in the Danube province, the new seals were designed to embody the incorporation of village administrative posts into the *vilayet*'s bureaucratic hierarchy, as well as to facilitate the transition of office from one elected incumbent to the next. It strikes me as particularly appropriate that the conflict in Bebrovo revolved around the control over such symbolically charged objects. In this context, the alleged usurpation of the official mayoral seals by Necib's party was tantamount to a revolution on a microscopic scale, and as such must have struck Midhat Paşa as a particularly grievous example of political obstructionism. To be sure, the accusations of "corruption" in the form of embezzling from the state's tax revenue were a serious matter—but the "seal business" (*mühür maddesi*) was more serious still. Rather deliberately, the supplicants made the case that their enemies' actions had effectively put Bebrovo and its environs beyond the control of the state. Implicit in that was the suggestion that the authors of the petition were patriotic whistleblowers who had done the state a favor—and perhaps deserved a favor back.

Midhat Paşa seems to have read the petition along these lines. His letter to the Supreme Court in İstanbul recommended that Stefan's penalty be reduced from hard labor to the much lighter one of temporary exile. The Paşa conceded that Stefan was indeed an "objectionable and seditious" (*uygunsuz ve müfsid*) man deserving of some sort of punishment. Yet this punishment, Midhat argued, should not be based on the full severity of the Penal Code's provisions because Stefan's accusations belonged in the domain of "private law."[97] While it would normally "do no harm" to try a slander case such as Stefan's under the OPC, it "should not be forgotten" that "*de jure*" (*hal-i zahirisi*) the case remained a private one. Moreover, if Stefan was guilty, the *müdür* and his men were no saints either: "Some of the villagers have also drafted a petition and expressed a complaint designed to prevent the capricious and tyrannical (*hodserane ve gaddarane*) actions of the said official [Necib]. This complaint has been neglected and no benefit has been derived from it . . . "

Although the governor's intervention was couched in legal terms, it was motivated by political considerations. The summary of the case published in the crime chronicle of *Dunav* explained the causes for the leniency shown Stefan

[96] *Muhtar-i evvel-i karye-i Bebrova.* This is indeed one of the seals with which the petition against Necib is signed; it is only during the interrogations that we learn the name (Kolyo) of the actual person behind this seal.

[97] *hukuk-i şahsiye.* The term usually refers to the *sharia,* although in this case there is no evidence that Stefan ever filed a *şer'î* lawsuit against Necib. (Moreover, as Midhat's letter correctly noted, "private law" makes no provision for the crime of "slander" as such).

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

in political terms as well: although unquestionably guilty of slander, he had been "seeking to establish his rights" against an unjust state official.[98]

The Bebrovo petition proved to be an effective defensive weapon for Stefan. As we saw in the Kapucuk murder trials, purely local political conflicts could be presented in such terms as to elicit the sympathies of the reformist bureaucratic cadre staffing the *nizamî* courts. The Bebrovo petitioners did better that that—they managed to embroil no lesser a figure than the top provincial bureaucrat into their "micro-historical" conflict. Midhat was clearly more concerned about the allegations put forth in the petition than about any part of the "poisoning" case per se. As in Kapucuk, these allegations struck a nerve because they suggested that key reform policies were being sabotaged. And no matter how insignificant in scale, such sabotage could not be tolerated.

VIII. CONCLUSIONS

In defining "everyday forms of resistance," James C. Scott suggested that his famous concept had two distinct (if overlapping) dimensions. On the one hand, there is the physical aspect of resistance made up of activities such as: " . . . foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on." But these "Brechtian" or "Schweikian" acts of physical resistance do not tell the entire story: the struggle is not merely "over work, property rights, grain, and cash. It is also a struggle over the appropriation of symbols, a struggle over how the past and present shall be understood and labeled, a struggle to identify causes and assess blame, a contentious effort to give partisan meaning to local history."[99]

The evidence I have presented above contains, for the most part, descriptions of behavior that fits into the category not of "resistance," but of its opposite—compliance. As a particular type of relationship between individuals and political power, compliance makes for a notoriously difficult historiographical subject since writing about it necessarily involves assessments of such intangibles as personal motivation and "willingness" (resistance, on the other hand, never seems to need a motivation). As an illustration, one only needs to recall the controversy caused by Daniel Goldhagen's recent book which attempted to make a specific claim regarding the nature of "ordinary" Germans compliance with the Third Reich's extermination project.[100] A much more fruitful avenue for exploration, it seems, would be to speak of *symbolic* compliance—the willingness to modify discourse and behavior in accordance with what political power expected (or assumed) an individual to say and do in order to demonstrate his or her *bona fide* status as trustworthy suspect, witness, and "subject" in gen-

[98] *Dunav* I/18 [30 June 1865].

[99] James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985), xvi–xvii.

[100] Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Vintage, 1997).

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press

eral. It is in this regard that Scott's analysis of the symbolic/discursive, elements of the "struggle" strikes me as relevant to the topic of compliance as well resistance. For, as the *nizamî* court officials soon discovered, there was more than one way to be compliant and to "speak *Tanzimat.*" Was a suspect to be corrected if he believed that the "police" was "prison"? Was an elderly Christian woman to be allowed to single-handedly convict a police officer? Was the testimony of one notable more believable than that of thirteen "common" folk? Was an offender to be given special consideration because his local adversaries had behaved in a "Janissary" way? These were not simple questions in that they involved not merely the finding of the "truth," but, above and beyond that, the practical definition and redefinition of the course of Ottoman reform on a micro level. In the event, the court became the arena for a process of practical negotiation and ironing out of the differences between the official vision of the *Tanzimat* and its many subaltern understandings.[101]

Methodologically, then, the contribution of this paper has been to examine the system of "dual trial" not on the basis of its normative texts, but on the level of practice. As we saw, the *nizamî* court records of the Danube province in the 1860s abound with references to legal procedures, practices, and arguments that fell outside the provisions of the 1856 Penal Code, which was largely the "blueprint" for the system. In its application, the law proved to be much less monolithic than in its letter, largely because of the great skill with which litigants throughout the social spectrum deployed key elements of the *Tanzimat* discourse in their defensive (and offensive) legal strategies.

The ability and willingness of Midhat Paşa's subjects to play the new interrogation game constitute the most important empirical finding of the present study. There is no evidence that popular attitudes to the new criminal justice system were split along ethnic or religious lines. Specifically, despite the national meta-narrative's expectations to the contrary, there is nothing to suggest that the ethnic Bulgarian inhabitants of the province shied away from the new legal opportunities provided by the *nizamî* courts or in any way regarded the reformed Ottoman justice system as illegitimate or teetering on the brink of collapse. On the contrary, the fact that the Bulgarians in the province learned the complex rules of the *nizamî* interrogation so quickly suggests that, at least into the late 1860s, most of them regarded the imperial framework of which the interrogations were a part as a political arrangement that was likely to endure in the foreseeable future.

[101] This argument is influenced by Ussama Makdisi's incisive analysis of the "crisis in Ottoman representation" in his *The Culture of Sectarianism: Community, History, and Violence in Nineteenth-Century Ottoman Lebanon* (Berkeley: University of California Press, 2000), 105–8.

https://doi.org/10.1017/S0010417504000349 Published online by Cambridge University Press